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TRADE POLICY REVIEW

Report by the Secretariat

AUSTRALIA

This report, prepared for the sixth Trade Policy Review of Australia, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Australia on its trade policies and practices.

Any technical questions arising from this report may be addressed to Mr. Sergios Stamnas (tel: 022 739 5382).

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SUMMARY

(1) ECONOMIC ENVIRONMENT

1. Since its previous Trade Policy Review in 2007, Australia, one of the most open economies in the world, has successfully weathered the global financial crisis without any backsliding on trade liberalization or action to influence the value of its currency. Although the crisis resulted in economic growth slowing from 3.8% in 2007/08 to 1.4% in 2008/09, the slowdown was milder than in most other advanced economies and growth rebounded to 2.3% in 2009/10. The mild slowdown and subsequent rebound in growth were due to, *inter alia*, strong demand for Australia's commodity exports, especially from China, which pushed Australia's terms of trade to its highest level in 60 years; a flexible exchange rate; a healthy banking sector; and a timely and appropriate policy response to the crisis. Although Australia is still considered one of the most competitive economies in the world, it has experienced a marked decline in multi-factor productivity growth owing mainly to special developments in agriculture, mining, electricity, gas, and water. Inflation has been slightly above or within the central bank's 2%-3% target, and the unemployment rate has remained relatively low, albeit rising gradually from 4.5% in 2006/07 to 5.5% in 2009/10.

2. Sound macroeconomic policies and past structural reforms (of which trade liberalization, induced by an exceptionally transparent policy framework, has long been an integral part), together with greatly improved terms of trade, have been among the main factors contributing to Australia's impressive economic performance during the period under review (as well as the past two decades). Nevertheless, as from 2008/09, Australia's fiscal position shifted to a deficit, largely reflecting reduced tax revenues, and spending relating to the implementation of the generous economic stimulus measures. More importantly, however, soaring export prices and low unemployment seem to have reduced the appetite for further structural reforms, which appear to have slowed or failed to deliver during the review period, thereby possibly affecting the prospects for achieving sustained growth in the future.

3. The responsiveness of the flexible exchange rate to commodity price fluctuations helped stabilize export incomes. In 2008/09, the exchange rate of the Australian dollar against the U.S. dollar depreciated sharply, thus boosting exports and reducing imports, but since then it has been appreciating and negatively affecting Australia's export competitiveness, particularly of agricultural exports. In 2008/09, the trade account turned to surplus, mainly reflecting large increases in commodity contract prices negotiated in early 2008 for iron ore and coal exports, as well as the sharp exchange rate depreciation; subsequently, it returned to a deficit. Net external debt increased, largely reflecting interest and dividends paid to foreign investors in Australia (net of income received on Australian investment abroad).

4. The gradual shift in the pattern of Australia's merchandise trade towards East Asia was further reinforced as a result of the virtual doubling of China's share of total exports. Australia has maintained its open stance towards foreign investment, and has reduced the compliance costs related to notification and removed foreign ownership restrictions in the media sector. It continues to screen large investment projects on the basis of vaguely defined "national interest" criteria restricting foreign ownership in a few sensitive areas (e.g. international aviation and shipping). Nevertheless, screening does not seem to have been a major barrier to inward foreign investment.

(2) TRADE POLICY FRAMEWORK

5. Australia's trade policy framework continues to be characterized by an unusually high degree of transparency. This involves rigorous economic analysis undertaken by government institutions and independent advisory bodies (notably the Productivity Commission), from which policy-makers benefit in formulating cost-effective trade and trade-related policies, including continuing regulatory reforms, aimed at removing barriers

to improved productivity and facilitating (rather than impeding) the reallocation of domestic resources. The Secretariat has once again drawn heavily on publicly available documents from these institutions in preparing its Report for this sixth Trade Policy Review of Australia.

6. While remaining committed to multilateralism, more emphasis has been placed on exploring the prospects of broadening preferential trade relations through the conclusion or negotiation of comprehensive agreements with major trading partners or regional groups (e.g. the Association of South East Asian Nations and Trans-Pacific Partnership Agreement), despite their negotiating and administrative costs, and uncertain benefits. Commitments under these agreements go beyond WTO Agreements in a number of areas, including services and investment, and in certain cases (e.g. intellectual property rights) are applied to all trading partners.

7. 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 demand-driven aid for trade at multilateral, regional, and bilateral levels; policy in this area is based on improving market access, and building competitive economies.

8. The Council of Australian Governments (COAG) has continued to facilitate consultation, cooperation, and policy coordination between the Commonwealth, states, and territories with a view to avoiding potential inconsistencies. These jurisdictions remain responsible for a number of trade-related policies, such as standardization, government procurement, and state-trading, and have legislative powers in a number of areas. The COAG Reform Council, which aims to achieve a seamless national economy, is also responsible for implementation of the National Reform Agenda (NRA), which has been rather slow.

(3) TRADE POLICY DEVELOPMENTS

9. The tariff remains one of Australia's main trade policy instruments, albeit a minor source of tax revenue (1.9% of total tax revenues). Unilateral reductions in tariffs (on 1 January 2010), including peak rates, applied to textiles, clothing, and footwear (TCF) as well as to passenger motor vehicles (PMVs), reduced the average applied MFN tariff rate to 3.1%, from 3.8% in 2006; further unilateral reductions are envisaged by 2015. Whereas the average applied MFN tariff for agricultural products is 1.4%, that for industrial products is roughly 3.4%. Some 96% of tariff rates are now within the zero to 5% range. The tariff structure was simplified and now involves seven rates (four *ad valorem*, one specific, one compound, and one alternate). Most tariff rates (99.7%) are *ad valorem*, a feature that contributes to the transparency of the tariff. By contrast, non-*ad valorem* rates tend to conceal relatively high tariff rates, particularly those on used vehicles, which seem to be rarely applied. However, these changes have done little to change the pattern of tariff escalation, which means that effective rates of MFN tariff protection can be considerably higher than nominal rates. Some 96.5% of tariff lines are bound, thereby imparting a high degree of predictability to the tariff. Applied MFN tariff rates currently fall short of bound rates by an average of about 7 percentage points and up to 55 percentage points for clothing items. While the consequent gap between bound and applied MFN rates provides considerable scope for the authorities to increase applied tariffs within bindings, this does not appear to have happened during the period under review.

10. Documentation requirements have remained minimal, and computerized customs clearance has facilitated virtually all imports and exports; trade facilitation has been supported by the Enhanced Trade Solutions programme, and import clearance performance has been measured with a Time Release Study device. The transaction value has been mostly used for customs valuation purposes.

11. Import prohibitions and restrictions in the form of technical regulations and stringent quarantine requirements have remained in place, in principle, to preserve, *inter alia*, public health, the environment, safety, or security. Changes were made to ensure that all standards developers work together, avoid duplication, and work in harmony with international standards, as well as to centralize the Commonwealth Government's power for introducing mandatory product safety and information standards as from January 2011. Although Australia continues to maintain strict SPS measures, which it considers proportionate to its appropriate level of protection, it recognizes that zero-risk is unattainable and launched reforms involving a shift from "quarantine to biosecurity". Whereas the net benefit to the community as a whole (including domestic consumers) needs to be demonstrated in order for the adoption of a standard, SPS measures are taken without similar cost-benefit analysis, including due account of the trade effects of such measures for stakeholders along the supply chain, although import risk analyses are expected to address the issue of economic consequences to relevant stakeholders. Recourse to anti-dumping and countervailing action has been steady with most initiations and measures relating to items originating in Asia. No safeguard measures were adopted during the period under review.

12. Australia has continued to use government procurement as an instrument of economic policy aimed at fostering industrial development in certain sensitive areas (e.g. real estate property or accommodation, R&D services, and motor vehicles) that are exempt from the mandatory procurement procedures applying to procurement above certain thresholds. The target of sourcing at least 10% of purchase value from small and medium-sized enterprises (SMEs), as well as preference margins for local suppliers and local-content requirements by certain state governments have been maintained and, in certain areas, reinforced but applied in line with FTA commitments. Foreign participation in bidding or the granting of duty concessions may require the submission of an Australian Industry Participation plan, an element also used for the granting of duty concessions under the Enhanced Project By-Law Scheme. Australia has remained an observer of the WTO Agreement on Government Procurement (GPA) but has followed negotiations on the revised GPA. Its comprehensive FTAs contain chapters committing Australia to principles of transparency and non-discrimination in government procurement.

13. Export controls or quantitative restrictions to, *inter alia*, manage access-related import quotas operated by public sector entities affect certain primary and therapeutic goods to ensure, *inter alia*, adequate domestic supply, and to enforce standards. Exports of merino sheep were liberalized as from January 2010.

14. Export assistance, consisting of direct grants (e.g. through Export Market Development Grants) and tax concessions (e.g. Tradex), has been maintained and revised. In addition to local-content requirements termed as "Australian activity", export finance is, *inter alia*, conditional upon "national interest" criteria. Export credit terms seem to be in line with OECD guidelines.

15. Support for domestic production and trade has been provided through tax and non-tax incentives, with steady, albeit declining, emphasis on R&D spending as well as regulatory restrictions on competition. Some of the industry-specific programmes (e.g. dairy, automotive, pharmaceuticals) were ended or amended during the period under review. The special Luxury Car Tax, which is levied at the same rate on domestic and foreign cars, but nonetheless seems to fall disproportionately on imports, was raised from 25% to 33%. The effective rate of combined assistance (i.e. tariff, budgetary, agricultural pricing and/or regulatory assistance) remained relatively high for TCF, PMVs, grain, sheep and beef cattle farming, and horticulture and fruit growing activities; support for primary production depended on the effects of climate.

In addition to certain commodity export activities, state involvement in the economy involving the provision by government trading enterprises of services in key infrastructure sectors (e.g. water, electricity, ports, rail, urban transport), are not always on a fully commercial basis.

16. Australia has further strengthened protection of intellectual property rights by expanding its international commitments. The competition policy framework, which remains characterized by a long list of special regimes and exemptions, including at the state or territory level, has been updated in several areas with particular emphasis on cartel criminalization. Legislation enacted on 13 July 2010 is aimed at strengthening consumer protection and enforcement at the national level.

(4) SECTORAL POLICY DEVELOPMENTS

17. Despite its relatively small contribution to GDP, Australia's highly market- and export-oriented agriculture remains of fundamental importance. Average applied MFN tariff protection for the sector (excluding forestry) remained negligible, at 1.4 %, compared with 3.4% for manufacturing. Some sensitive items (e.g. cheese, certain vegetables, and certain oils and fats) continue to receive tariff protection, and tariff-rate quotas affect certain types of cheese and curd. Non-tariff measures, such as the strict quarantine and inspection regime, export and/or production levies, and a single-desk arrangement on rice remain in place; similar statutory arrangements for grains, wheat and sugar were dismantled during the review period although entities that operated under these arrangements remain active. A new bilateral agreement on wine trade relating to geographical indications was signed with the EU. Despite a wide range of assistance programmes, the sector's overall level of support has remained relatively low, equivalent to 0.1% of GDP; the majority of this assistance was delivered in the form of non-trade-distorting budgetary outlays, and was within Australia's *de minimis* WTO commitments. Since 2009, no industry-specific support has been provided to the dairy sector. A policy has been put in place to address the profitability and sustainability of Australian fisheries as well as illegal fishing.

18. Mining, which operates in a competitive market environment with seemingly no industry-specific restrictions on foreign investment and little government support compared with other sectors, remains critical to Australia's economic performance despite the pronounced decline in its multi-factor productivity. Despite reforms aimed at creating a nationwide energy market and strengthening price signals *vis-à-vis* consumers, Australia's electricity generation, transmission, and distribution remain segmented geographically; generation capacity is largely owned or controlled by the Government and ceilings on retail electricity rates remain in place. A National Strategy on Energy Efficiency is being implemented, and renewable power generation has been the focus of government assistance to the sector. Some state governments provided subsidies at the retail level to reduce the price of unleaded petrol and diesel; domestic producers of ethanol and biodiesel used in transport also receive a government subsidy.

19. Manufacturing policy has been largely focused on innovation as a means of, *inter alia,* improving productivity, and thus international competitiveness, and in order to reap benefits from rapid economic expansion in overseas markets. The average applied MFN tariff rate on industrial products has declined slightly as a result of unilateral tariff cuts. Budgetary assistance for manufacturing as a share to GDP is estimated to have remained steady at 0.1%, albeit an increase in value terms; the TCF and leather industries, and motor vehicles and parts activities continued to benefit from relatively high effective rates of protection, i.e. more than double the manufacturing sector's average and the highest of all goods industries. Some programmes for the automotive industry have been complemented with elements reflecting a

persistent interventionist approach to adjustment.

20. Services remains the largest and fastest growing sector of the economy. Budgetary assistance to the sector, mainly delivered through tax expenditures, rose considerably and in 2008/09 was equivalent to 0.28% of GDP. Australia's GATS and bilateral RTA commitments remain unchanged; its RTAs generally provide for greater commitments on trade in services to signatories than those under its GATS commitments. Financial services reforms (e.g. prudential rules, Basel II) have been pursued in several areas and policies to mitigate the impact of the global financial crisis allowed Australia's banks to cope well with the financial turmoil. Action is being undertaken to remove impediments to Australia's position as a financial services centre in the Asia Pacific region. In telecommunications, the formerly government-owned Telstra has been able to retain considerable market power, an issue of concern in several areas, including broadband services; efforts to address these issues include the passing of new legislation to reform the telecommunications regulatory regime and the possible establishment of a government-owned National Broadband Network company. Support to domestic advertisement and film producers has been maintained through local-content requirements in television broadcasting as well as film production funding. Efforts have been undertaken to drive the development of a long-term coordinated approach to national transport infrastructure planning and investment, and to identify priority projects aimed at coping with a variety of shortcomings and coordination of transport infrastructure development between the federal government, the states and territories, and the private sector. A new comprehensive policy framework for the development of the aviation industry has been established. A new strategy and additional support have been provided to promote innovation, infrastructure development, and growth in the tourism sector.

(5) OUTLOOK

21. Australia's economic growth is expected to remain strong. Despite sound macroeconomic management and relative economic strength, downside risks to the economic outlook relate, *inter alia*, to the withdrawal of the economic stimulus package, the global economic and financial fragility, as well as Australia's increasing exposure to commodity prices, its reliance on short-term external debt, and the high and growing indebtedness of households. Australia's growing dependence on mining may amplify the business cycle, as the economy will become more vulnerable to swings in its highly favourable terms of trade. A major economic challenge confronting Australia, with potential trade policy implications, is to formulate appropriate macroeconomic and structural policies to facilitate rather than impede adjustment to the effects of its greatly improved terms of trade owing to the mining boom and the associated appreciation of the Australian dollar. The latter is likely to reduce the competitiveness of import-competing activities and non-mining exports, unless productivity in these activities can be improved. This will have far-reaching implications for the pattern of growth and structure of the economy by necessitating a reallocation of domestic resources. Significant structural adjustment by the non-mining economy will be required. Market-driven structural adjustment and reforms underpinning productivity growth should enable Australia to strengthen its international competitiveness, provide the basis for sustained growth, and address the longer term challenge of a growing but ageing population, climate change, and technological change, which is arguably the main determinant of multi-factor productivity growth in the long run. The authorities consider that Australia's approach to trade policy should be reviewed against the principles of unilateralism; non-discrimination; transparency; and "the grand unifying principle of" trade policy as an indivisible part of overall economic reform.

I. ECONOMIC ENVIRONMENT

(1) OVERVIEW

1. Since its previous Trade Policy Review in 2007, Australia, one of the most open economies in the world, has successfully weathered the global financial crisis. Following a prolonged period of expansion, resulting from sound macroeconomic policies and structural reforms (of which trade liberalization, induced by an exceptionally high degree of transparency, has long been an integral part) together with more favourable terms of trade, the global crisis caused a slowdown in Australia's economic growth from 3.8% (2007/08) to 1.4% (2008/09). However, the downturn has been milder than in most other advanced countries, with growth rebounding to an estimated 2.3% (Table I.1). This milder slowdown and subsequent rebound were due to, *inter alia*, strong demand, especially from China, for commodity exports, a flexible exchange rate, a healthy banking sector, and a timely and significant policy response to the crisis, involving the $A 42 billion Nation Building and Jobs Plan (Box I.1).[1] Although Australia is still considered one of the most competitive economies in the world[2], it has experienced a marked decline in multi-factor productivity (MFP) growth, which is a key determinant of Australian enterprises' international competitiveness and domestic living standards in the longer term (Box I.2). This slowdown in MFP growth is due mainly to special developments in three sectors: agriculture; mining; and electricity, gas, and water (Chapter IV).[3] Whereas inflation remained relatively stable, at around 3%, before dropping to 2.3% (2009/10), the unemployment rate rose gradually from 4.5% in 2006/07 to 5.5% in 2009/10. Despite Australia's impressive human development performance, there has been a slight increase in income inequality (which the authorities attribute in large part to methodology changes).[4] The changing patterns in international trade and foreign direct investment (FDI) reflect the rising importance of China as Australia's export market, and the fall in outward FDI to the United States owing to the global financial crisis and the appreciation of the Australian dollar.

Table I.1
Selected macroeconomic indicators, 2005-10

	2005/06	2006/07	2007/08	2008/09	2009/10
Real GDP ($A million, 2008/09 prices)	1,150,644.0	1,191,655.0	1,237,320.0	1,255,241.0	1,283,799.0
Real GDP (US$ million, 2008/09 prices)	860,020.1	936,938.7	1,109,659.5	935,907.7	1,133,594.5
Current GDP at market price ($A million)	1,001,440.0	1,091,633.0	1,185,740.0	1,255,241.0	1,284,670.0
Current GDP at market price (US$ million)	748,501.3	858,296.4	1,063,401.3	935,907.7	1,134,363.6
GDP per capita at current market price ($A)	48,752.0	52,303.0	55,771.0	57,770.0	57,965.0
GDP per capita at current market price (US$)	36,438.5	41,123.2	50,016.8	43,073.3	51,183.1
National accounts			*(% change)*		
Real GDP (at 2008/09 prices)	3.1	3.6	3.8	1.4	2.3
Consumption	2.8	4.2	4.4	0.8	2.0
Private consumption	2.8	4.3	4.7	0.2	2.1
Government consumption	2.5	3.7	3.2	2.8	1.8

Table I.1 (cont'd)

[1] IMF (2009a) and (2010a).

[2] In 2010, Australia ranked 5th (out of 58 countries) (12th in 2007) in the IMD *World Competitiveness Yearbook*. Furthermore, in 2010 Australia ranked 15th (out of 133 countries) (19th out of 131 in 2007/08) in the WEF *Global Competitiveness Index*, in which Australia's most problematic factors included restrictive labour regulations and access to financing (IMD, 2010; and WEF, 2010).

[3] Productivity Commission (2009c).

[4] In 2009, Australia ranked 2nd (out of 182 countries) in the UN Human Development Index (HDI) (UNDP, 2009). According to Australian Bureau of Statistics, the Gini coefficient rose from 0.314 (2006) to 0.331 (2008).

	2005/06	2006/07	2007/08	2008/09	2009/10
Gross fixed capital formation	8.8	5.4	10.4	0.8	2.5
Exports of goods and non-factor services	2.2	2.5	4.0	2.6	5.5
Imports of goods and non-factor services	7.3	9.1	14.6	-3.3	5.3
XGS/GDP (%) (at current market price)	19.5	19.7	19.7	22.7	19.8
MGS/GDP (%) (at current market price)	21.1	20.9	21.8	22.1	20.2
Unemployment rate (%)	5.0	4.5	4.2	4.9	5.5
Labour participation rate (%)	64.6	65.1	65.5	65.5	65.4
Productivity[a]					
Labour productivity	1.5	0.7	1.0	0.6	2.3
Capital productivity	-3.1	-2.4	-2.8	-4.5	-2.5
Multi-factor productivity	-0.6	-0.7	-0.7	-1.8	0.0
Prices and interest rates			*(%)*		
Inflation (CPI, % change)	3.2	2.9	3.4	3.1	2.3
90-day bank bill (end-period)	5.97	6.43	7.80	3.20	4.89
90-day bank bill (average-period)	5.68	6.33	7.30	4.79	4.04
Government bond yield (end-period)	5.79	6.26	6.45	5.52	5.10
Government bond yield (average-period)	5.39	5.80	6.17	5.02	5.50
Exchange rate					
US$/$A (financial year average)	0.747	0.786	0.897	0.746	0.883
Real effective exchange rate (% change)	2.0	3.5	8.9	-12.1	..
		(% of current GDP, unless otherwise indicated)			
General government fiscal balance					
Revenue	26.1	25.5	25.7	23.8	22.5
Tax revenue	24.6	24.1	24.2	22.2	20.6
Expenditure	24.2	23.7	23.7	25.9	26.1
Net operating balance	1.9	1.8	2.0	-2.0	-3.6
Commonwealth government debt	-0.4	-2.7	-3.8	-1.3	3.3
Saving and investment					
Gross national savings	22.5	22.6	23.3	23.9	-21.6
Gross domestic investment	27.9	28.2	29.6	28.72	28.3
Savings-investment gap	-5.4	-5.5	-6.3	-4.2	-6.7
External sector					
Current account balance	-5.4	-5.5	-6.3	-3.2	-4.3
Net merchandise trade	-1.5	-1.2	-1.8	0.9	-0.2
Merchandise exports	15.2	15.4	15.3	18.4	15.4
Merchandise imports	16.7	16.6	17.1	17.5	15.7
Services balance	0.0	0.1	-0.2	-0.3	-0.1
Capital account	0.0	0.0	0.0	0.0	0.0
Financial account	5.5	5.6	6.2	3.2	4.4
Direct investment	-0.6	1.1	2.5	1.4	1.3
Terms of trade (2007/08=100)	88.9	94.8	100.0	108.3	107.2
Merchandise exports (% change)[b]	20.2	10.2	7.6	27.6	-13.0
Merchandise imports (% change)[b]	12.5	8.3	11.6	8.6	-7.4
Service exports (% change)[b]	6.0	10.4	10.2	4.4	-0.2
Service imports (% change)[b]	4.6	8.7	18.1	5.3	-4.8

Table I.1 (cont'd)

	2005/06	2006/07	2007/08	2008/09	2009/10
Foreign exchange reserves ($A billion, end-period)[c]	60.6	77.0	32.8	48.0	33.4
Foreign exchange reserves (US$ billion, end-period)[c]	45.31	65.4	29.4	35.8	28.5
in months of imports of goods and non-factor services	3.4	4.0	1.5	2.1	1.5
Net external debt ($A billion)	494.9	539.6	600.4	624.3	671.9
Net external debt (US$ billion)	367.8	458.1	578.0	506.5	572.6
Debt service ratio[d]	9.4	11.5	12.2	10.4	10.5

.. Not available.

a Labour productivity = GDP per unit of labour input; capital productivity = GDP per unit of capital services; total factor productivity = GDP per combined unit of labour and capital.
b Growth rates on goods and services trade are based on Australian dollars.
c Excluding gold, SDRs (Special Drawing Rights) and reserve position in the IMF. Figures are taken from the Reserve Bank of Australia, as at 8 October 2010.
d Net interest payments to exports of goods and services.

Source: Australian Bureau of Statistics online information; and Reserve Bank of Australia online information.

2. Despite Australia's sound macroeconomic management and relative economic strength, downside risks to the immediate economic outlook are posed by, *inter alia*, the withdrawal of the economic stimulus package, global economic and financial fragility, as well as increasing exposure to commodity prices, reliance on short-term external debt, and the high and growing indebtedness of households.[5] Long-term trends that will continue to shape the economy include the continuing emergence of China and India[6], a growing but ageing population, climate change, and technological change. There is also concern about Australia's growing dependence on mining, which may amplify the business cycle, as the economy will become more vulnerable to swings in its highly favourable terms of trade, which are forecast to improve by a further 17% in 2011 to around record levels.[7] One of the major economic challenges confronting Australia, with potential trade policy implications, is to formulate appropriate macroeconomic and structural policies to facilitate adjustment to the effects of its improved terms of trade, owing to the boom and increased inward FDI in mining as well as the associated appreciation of the Australian dollar. The latter is likely to reduce the competitiveness of import-competing activities and non-mining exports, unless productivity in these activities can be improved. Clearly, significant structural adjustment by the non-mining economy will be required.

[5] The authorities clarified that the risks are balanced by Australia's sound public finances, a strong and well regulated banking system, a flexible exchange rate and product and labour markets, limited foreign exchange risk, and the fact that foreign borrowing reflects increased investment Furthermore, they explained that while national savings have persistently fallen short of domestic investment, the majority of increased investment over the past few years has occurred in the mining sector and is not directly linked to household indebtedness.

[6] According to the authorities, these countries are the key drivers of the shift of global strategic weight towards Asia, from which Australia is a key beneficiary. According to the IMF, Australia's growing integration with emerging Asia underpins its favourable medium-term growth prospects; however, it brings with it vulnerabilities to which policy will need to respond as shifting resources to the mining sector without giving rise to inflationary pressures will be challenging. The impact on Australia's terms of trade from industrialization and urbanization in China and the rest of emerging Asia is expected to be long-lived and to remain more than 40% above the average for the 1990s (The Treasury, 2010c; and IMF, 2010a).

[7] The term business cycle (or economic cycle) refers to economy-wide fluctuations in production or economic activity over several months or years (IMF 2010a; and The Treasury, 2010d).

Box I.1: The economic stimulus shield

Australia's strong fiscal position in the wake of the global financial crisis allowed for the launch of a range of fiscal stimulus measures, of which the largest was the two-year, $A 42 billion Nation Building and Jobs Plan, announced in February 2009. To help cushion the economy from the worst effects of the global recession and strengthen future economic growth, the Plan was aimed at building lasting infrastructure necessary for enhancing long-term productivity, and supporting jobs.

The Plan funded or provided for:

(a) the Building the Education Revolution programme, investing $A 16.2 billion in building and refurbishing primary and secondary school infrastructure and maintenance;

(b) $A 5.9 billion to boost the number of social and defence-force houses by around 20,000 and to fast-track repairs and maintenance of existing social housing;

(c) $A 1.7 billion for investment in higher and vocational education as well as trade training centres;

(d) $A 800 million to enhance local community facilities and infrastructure;

(e) $A 2.3 billion to improve regional road and rail infrastructure and safety, through repairs to regional roads and black spots, and the installation of boom gates at rail crossings;

(f) an additional 30% tax deduction for small and general businesses buying eligible assets; and

(g) one-off cash tax bonus payments up to $A 900, to eligible families, single workers, students, drought affected farmers, and others having earned less than $A 100,000 in 2007/08 and paid tax.

These stimulus measures are being implemented broadly in line with planned timeframes. By December 2009, it was estimated that 71% of the infrastructure stimulus projects under the Nation Building – Economic Stimulus Plan were under construction, about 17% were completed, and over 60% of the budget of the Plan (i.e. $A 25.8 billion) had been used for targeted bonus payments, tax breaks, and medium-term infrastructure. According to the Treasury the overall stimulus supported around 200,000 jobs.

Without the stimulus plan, it is estimated that the economy would have contracted by 2% in 2008/09 and the unemployment rate would have risen to 8.25%, thus creating a vicious downward spiral in the economy and plunging Australia into recession.

Source: Information provided by the Australian authorities; Australian Government (2009), *Nation Building Economic Stimulus Plan – Commonwealth Coordinator General's Progress Report to 31 December 2009*. Viewed at: http://www.economicstimulusplan.gov.au/documents/pdf/YearinfocusWEB4.pdf [1 October 2010]; and Australian Government online information. Viewed at: http://www.economicstimulusplan.gov.au/pages/theplan.aspx [1 October 2010].

Box I.2: Productivity and Economic Reform: from Success to Challenge

Concerns about declining productivity growth and per capita income growth in the early 1980s provided an impetus to the wide ranging economic reforms begun in the mid-1980s and continued in the 1990s with the adoption of the National Competition Policy (NCP). These two waves of reform involved first the largely unilateral lowering of border protection, notably tariffs, and then behind-the-border reforms of infrastructure and labour markets. The extent of economic reform in Australia is perhaps best illustrated by the drop in the effective rate of assistance for manufacturing from 25% to 5% over two decades or so. The outcome was a surge in multi-factor productivity (MFP) growth to an average annual rate of 2.3%, during the 1993/94 to 1998/99 productivity cycle, more than double the long-term average rate of 1.1%, propelling Australia's ranking from 12th to 2nd amongst key OECD countries. Improved MFP growth thus accounted for more than half of the 3.1% average annual growth rate of incomes during the 1990s. In the first cycle of this century to 2003/04, average annual MFP growth returned to the long-term average of 1.3%. However, in the current partially completed cycle since then, MFP growth has fallen to an annual average of -0.2%. Given its importance in raising living standards in the longer term, this very significant slowdown in productivity growth has understandably been of concern.

Box I.2 (cont'd)

Some 70% of this recent rapid decline in MFP growth can be attributed to specific developments in three sectors: mining; electricity, gas, and water; and agriculture (Chapter IV). As the special factors reducing productivity in these sectors wash through the production processes, and new investments begin to contribute to output, some recovery in MFP growth can be expected.

However, the likely recovery in these sectors provides no grounds for complacency. Improved productivity ultimately depends on the performance of individual firms and competitive pressures that result in more efficient firms and industries prevailing over others. The main lessons from the unprecedented MFP growth of the 1990s were that broad, enabling reforms, together with the pervasive, competitively driven deployment of breakthroughs in information and communications technologies, provided exceptional opportunities to change production processes and re-design workplaces to improve productivity. In this regard, heightened market competition is crucial in encouraging cost reductions and product and process improvements, including through innovation and its diffusion.

Australia's first two waves of reform can be seen as mainly focused on incentives and market flexibility. Not all opportunities have been exhausted. For example, competitive reforms in coastal shipping and aviation, significant transport inputs, offer the potential to stimulate innovation and thus productivity more widely. Implementation of scheduled tariff reductions for the automotive, textile, clothing and footwear industries can be expected to deliver further net benefits. By contrast, subsidies to these or other sectors are unlikely to yield commensurate gains. Such support to investment or production tend to distort competition. While a case can be made for subsidies where market signals are inadequate, such measures need to be well-targeted to ensure that the public benefits exceed their costs. Notwithstanding Australia's exemplary record concerning transparency, including extensive use of cost-benefit analysis by the independent Productivity Commission, little of the nearly $A 17.5 billion of gross annual Commonwealth assistance to industry is regularly evaluated to determine whether such assistance yields value for money.

While unfinished business remains in these and other areas concerning incentives and market flexibility, there is relatively more to be done in building capabilities in the human capital area. This change in emphasis was reflected in the evolution and broadening of reform measures from the NCP to the 2005 "third wave" National Reform Agenda (NRA). However, implementation of the NRA under the auspices of the Council of Australian Governments (COAG) Reform Council, which plans to achieve a seamless national economy, has been rather slow.

Source: Productivity Commission (2009c), *Australia's Productivity Performance*, Submission to the House of Representatives Standing Committee on Economics, September. Viewed at: http://www.pc.gov.au/__data/assets/pdf_file/0005/91382/productivity-growth.pdf [3 August 2010].

(2) RECENT ECONOMIC DEVELOPMENTS

(i) Growth, incomes, and employment

3. The Australian economy has weathered the global financial crisis relatively well.[8] One of the main economic developments has been the boost in national income[9] owing to the commodity price boom, which pushed the terms of trade to their highest level in more than half a century.[10] If not temporary, the large improvement in terms of trade, which could "possibly prove to be the largest external shock to ever hit the Australian economy"[11], will likely have far-reaching implications for the pattern of growth and structure of the economy by necessitating a reallocation of resources. Sectors

[8] By 2009, Australia was the third fastest growing economy of the 33 IMF advanced economies; one of three economies not to fall into technical recession; and the economy with the lowest level of Government debt (approximately 10% of GDP) (Australian Government, 2009a).

[9] GDP per capita in Purchasing Power Parity terms increased from US$36,357 in 2007 to US$39,230 in 2009 according to World Bank data. Viewed at: http://databank.worldbank.org/ddp/home.do.

[10] IMF (2009a).

[11] *The Australian*, "Industry aid will spark rate rise, Ken Henry warns", 23 November 2010.

whose output prices have risen, thus making them more profitable, will seek to expand by attracting inputs of labour and capital from less profitable sectors whose output will decline as a share of GDP. Hence, one of the principal policy challenges facing the Government will be whether to help these sectors resist change or help them adjust to it.[12] Clearly, both macroeconomic and structural policies have an important role in this regard.

4. After rising steadily from 2001, real GDP growth slowed sharply to 1.4% in 2008/09 due to slowing business investment, related to declining commodity prices, tightening credit conditions in global capital markets, and slowing world growth (Table I.1).[13] According to the IMF, real GDP growth is projected at 3-3.5% in 2010 and 2011, with private investment in mining and commodity exports taking over from public demand as the main driver of growth; by contrast, the authorities forecast GDP growth of 3.25% over 2010 and 3.75%-4% over 2011 and 2012 underpinned, *inter alia,* by the positive prospects for mainly resource-related investment, strong growth in resource exports, and a gradual pick-up in business investment.[14] According to the IMF, output will likely remain below potential for some years; nevertheless, the authorities predict that the economy will return to full capacity in 2011.[15]

5. Since 2007, there have been minor changes in the sectoral pattern of Australia's GDP and employment, which remain dominated by services (Table I.2, Chapter IV); the GDP share of manufacturing dropped from 10.3% in 2006/07 to 9.3% in 2009/10, while that of mining rose from 7.7% to a peak of 9.8% during the same period as resources flowed into the sector, driven by booming world prices for commodities and strong demand from emerging economies.

Table I.2
Basic economic indicators, 2005-10

	2005/06	2006/07	2007/08	2008/09	2009/10
			(Annual % change)		
GDP by economic activity at 2008/09 prices[a]					
Agriculture, forestry and fishing	2.8	-15.3	6.9	17.6	-1.2
Mining	1.9	8.5	2.0	2.6	6.2
Manufacturing	-0.3	1.9	4.0	-5.9	1.5
Electricity, gas, water and waste services	1.7	1.0	0.2	3.8	2.7
Construction	8.2	5.5	7.0	3.0	0.5
Services	3.4	4.0	3.9	1.8	2.3
Wholesale and retail trade	2.4	3.7	3.9	0.7	2.6
Accommodation and food services	2.8	1.6	-0.2	-3.2	-2.1
Transport, postal and warehousing	3.1	5.8	5.5	-1.2	2.4
Information media and telecommunications	4.1	6.2	6.2	1.1	1.2
Financial and insurance services	6.0	10.4	8.2	0.1	3.0
Rental, hiring and real estate services	4.7	-5.2	-3.3	4.6	1.8
Professional, scientific and technical services	2.5	0.7	3.3	3.9	3.8
Administrative and support services	2.5	5.0	5.9	-4.2	1.5
Public administration and safety	2.3	4.6	0.5	5.7	0.0
Education and training	1.5	1.8	2.1	3.0	2.6
Health care and social assistance	5.0	4.1	5.0	5.5	3.6

Table I.2 (cont'd)

[12] Reserve Bank of Australia (2010c).
[13] IMF (2009a).
[14] IMF (2010b); Reserve Bank of Australia (2010b); and IMF (2010a).
[15] The Treasury (2010c).

	2005/06	2006/07	2007/08	2008/09	2009/10
Arts and recreation services	2.1	6.5	2.3	7.6	0.0
Other services	-0.4	2.1	1.9	1.8	-1.1
Ownership of dwellings	3.9	2.5	3.0	2.7	2.9
			(%)		
Share of sectors in GDP, current prices[b]					
Agriculture, forestry and fishing	3.0	2.4	2.4	2.4	2.3
Mining	7.2	7.7	7.6	9.8	8.4
Manufacturing	10.8	10.3	10.1	9.3	9.3
Electricity, gas and water	2.5	2.3	2.3	2.2	2.1
Construction	7.2	7.6	7.7	7.7	7.9
Services	69.3	69.7	69.9	68.7	70.0
Wholesale and retail trade	9.6	9.5	9.5	9.3	9.3
Accommodation and food services	2.6	2.5	2.4	2.3	2.3
Transport, postal and warehousing	5.2	5.5	5.4	5.1	5.2
Information media and telecommunications	3.5	3.4	3.3	3.3	3.3
Financial and insurance services	10.0	11.0	11.7	10.9	10.6
Rental, hiring and real estate services	3.1	3.1	3.1	2.8	2.7
Professional, scientific and technical services	6.0	6.1	6.3	6.4	7.3
Administrative and support services	2.7	2.7	2.7	2.5	2.5
Public administration and safety	5.6	5.5	5.2	5.2	5.2
Education and training	4.6	4.5	4.3	4.3	4.4
Health care and social assistance	6.0	6.0	6.1	6.0	6.2
Arts and recreation services	0.9	0.9	0.9	0.8	0.8
Other services	2.1	1.9	1.8	1.8	1.8
Ownership of dwellings	7.3	7.1	7.3	7.8	8.4
Share of sector in total employment					
Agriculture, forestry and fishing	3.5	3.4	3.3	3.3	3.3
Mining	1.3	1.3	1.4	1.6	1.6
Manufacturing	10.2	9.9	9.9	9.4	9.1
Electricity, gas and water	1.1	1.0	1.1	1.3	1.2
Construction	8.7	9.1	9.1	9.2	9.1
Services	75.4	75.3	75.3	75.2	75.7
Wholesale and retail trade,	15.4	15.3	15.2	15.0	14.7
Accommodation and food services	6.7	6.7	6.6	6.6	6.8
Transport, postal and warehousing	5.0	5.0	5.2	5.5	5.2
Information media and telecommunications	2.4	2.4	2.2	2.1	1.9
Financial and insurance services	3.8	3.9	3.8	3.7	3.6
Rental, hiring and real estate services	1.9	1.9	1.9	1.8	1.7
Professional, scientific and technical services	7.1	7.2	7.3	7.2	7.6
Administrative and support services	3.5	3.4	3.3	3.2	3.4
Public administration and safety	6.1	6.2	5.9	6.2	6.2
Education and training	7.4	7.2	7.4	7.4	7.5
Health care and social assistance	10.3	10.3	10.3	10.6	11.0
Arts and recreation services	1.8	1.7	1.8	1.9	1.8
Other services	4.1	4.0	4.3	4.2	4.1

a Based on chain volume measures.
b Percentage of gross value added at basic prices.

Source: Australian Bureau of Statistics, *Australian System of National Accounts, ABS Cat. No. 5204.0;* and *Labour Force, Australia, Detailed, Quarterly, ABS Cat No. 6291.0.55.00B.*

6. Despite the temporary economic stimulus package (Box I.1), unemployment and under-employment[16] has followed an upward trend since Australia's previous Review (to 5.5% in 2009/10) due to the effects of the global financial crisis, which made the economy run below capacity.[17] According to the IMF, unemployment is expected to drop gradually to 5.1% in 2011.[18] The authorities consider that various forward-looking indicators continue to suggest solid growth in employment over the years ahead as the economy is expected to return to full capacity in 2011.[19]

(ii) Prices

7. During the review period, consumer price inflation (CPI) slightly exceeded the officially set target rates of 2%-3% (section (3)(i)), largely due to the effect of the currency depreciation and the higher tobacco excise (Chapter III), before moderating to 2.3% in 2009/10 as a result of weaker demand growth, lower wage increases in 2009, and the appreciation of the exchange rate (Table I.1).[20] With the output gap forecast to close by mid-2011, further increase in the tobacco excise, large increases in the prices of utilities, and inflationary pressures from the mining boom, inflation is projected to re-emerge at 3% over the next three years, the top of the target range.[21]

(3) MAIN MACROECONOMIC POLICY DEVELOPMENTS

(i) Monetary and exchange rate policy

8. During the period under review, the Government endorsed the inflation target (2%-3% over the cycle) of the Reserve Bank of Australia (RBA) and its independence in setting monetary policy.[22] As indicated above, CPI rates slightly exceeded target levels in 2007/08 and 2008/09. To contain inflationary pressures in these years (and prior to the onset of the global financial crisis), the RBA had progressively raised the official cash rate on several occasions. Should the recovery unfold as expected, monetary policy will need to tighten further to contain inflation pressures generated by the China-fuelled mining boom.[23]

9. Australia has maintained its floating exchange rate system, which tends to rise with the terms of trade, thereby reducing the prices of imports and thus domestic inflation, as well as facilitating the reallocation of resources. However, foreign exchange market operations may be undertaken by the RBA when the market threatens to become excessively volatile or when the exchange rate is clearly

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[16] According to the Australian Bureau of Statistics (ABS), under-employment rose from 6.6% in 2006 to 7.7% of the working population in 2009 (ABS online information, "1370.0 - Measures of Australia's Progress, 2010". Viewed at: http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0~2010~Chapter~Underemployment%20(4.3.3) [18 November 2010].

[17] Unemployment has increased, but less so than in many other advanced countries. As prior to the crisis the economy was at full capacity and it was hard to hire qualified and skilled workers, when the crisis came employers preferred to reduce the employees working hours rather than have recourse to widespread layouts; thus, in 2008 while 200,000 full-time jobs were lost 180,000 part-time jobs were created, significantly cushioning the unemployment rate (The Treasury, 2009c).

[18] IMF (2010b).

[19] Reserve Bank of Australia (2010b); and The Treasury (2010c).

[20] Reserve Bank of Australia (2010b).

[21] IMF (2010a) and (2010b).

[22] Reserve Bank of Australia online information. *Statement on the Conduct of Monetary Policy* by the Treasurer and the Governor of the Reserve Bank of Australia, 30 September 2010. Viewed at: http://www.rba.gov.au/monetary-policy/framework/stmt-conduct-mp-5-30092010.html [1 October 2010].

[23] IMF (2010a).

inconsistent with underlying economic fundamentals.[24] These operations are invariably aimed at stabilizing market conditions rather than meeting exchange rate targets; explanations of these interventions are set out in the RBA's Quarterly Statements on Monetary Policy.

10. The responsiveness of the exchange rate to commodity price fluctuations helped stabilize export incomes, while the hedging of currency risk has minimized any negative impact on corporate or bank balance sheets.[25] Following a period of steady appreciation, in 2008/09 the exchange rate against the U.S. dollar depreciated sharply (Table I.1), driven by falling commodity prices, global uncertainty, and investors' search for safe haven assets, thus temporarily boosting exports and reducing imports.[26] Since then it has started to appreciate again supported, *inter alia*, by Australia's strong economic growth relative to other developed economies, the increase in the RBA's cash rate, the record high terms of trade, the rebound in prices for iron ore and coal, strong business confidence, a low risk assessment of the sovereign finances in Australia, and the weakening of the U.S. dollar.[27] The Australian dollar is expected to remain high over the short term as these factors are not expected to dissipate quickly. According to the IMF, by 2010 the national currency was broadly in line with fundamentals but mildly overvalued; this overvaluation could dissipate with the eventual normalization of interest rates in the United States and other advanced economies.[28] The recent strong appreciation of the Australian dollar relative to the U.S. dollar was also presumably due in large part to interest rate differentials that have stimulated carry-trade.

(ii) Fiscal policy

11. Following a period of continuous fiscal surpluses (about 2% of GDP), the Australian Government's fiscal position shifted to a deficit equivalent to 2% of GDP in 2008/09 (Table I.1) largely reflecting reduced tax revenues, and the implementation of the temporary economic stimulus measures (Box I.1).[29] Increased investment spending by states and public corporations is not taken into account in these calculations. The fiscal deficit is expected to narrow from 3.6% of GDP (Table I.1) in 2009/10 to 2.8% in 2010/11, before moving back to a small surplus by 2012/13 or 2013/14 as a result of the exit from the temporary stimulus plan and rising government receipts as growth picks up.[30]

12. The improvement in Australia's terms of trade owing to the boom in commodity prices and consequent appreciation of the exchange rate has prompted a debate over the role of fiscal policy in the longer term, with some suggesting that the federal government should consider setting aside the surpluses resulting from the resource boom in a "stabilization fund".[31] Insofar as such a fund were invested overseas, it would mitigate the appreciation of the Australian dollar's exchange rate and thus the threat of "Dutch disease".

[24] APEC Secretariat online information. Viewed at: http://www.apecsec.org.sg [20 February 2001]; and WTO document WT/TPR/S/104, 26 August 2002.

[25] IMF (2010a).

[26] As policy rates declined further and faster in the United States than Australia, the interest rate differential widened and this acted to limit the depreciation.

[27] The depreciation of the Australian dollar sustained exporter incomes as the U.S. dollar price of commodity exports fell sharply in late 2008. CBS online information. Viewed at: http://www.cbs.gov.ws/publications/pub/exrdev/10/cbsexratesdev10Mar.pdf and http://www.cbs.gov.ws/publications/pub/exrdev/10/cbsexratesdev10July.pdf [2 October 2010].

[28] IMF (2009a) and (2010a).

[29] According to the IMF, by 2009 this deficit was appropriate given low public debt by advanced country standards; however, further fiscal adjustment would be needed to return to surplus if trend growth and the terms of trade turn lower than assumed (IMF, 2009a).

[30] Reserve Bank of Australia (2010b); and IMF (2010a).

[31] Reserve Bank of Australia (2010c).

(4) MAIN STRUCTURAL POLICY DEVELOPMENTS AND CHALLENGES

13. Soaring export prices and low unemployment seem to have temporarily reduced the appetite for further reform.[32] As a consequence, structural reforms in certain areas appear to have slowed or have failed to deliver during the period under review (section (1)). At the same time, productivity growth has dropped markedly (Box I.2). Structural reform for improving Australia's international competitiveness has been focused on the regulatory framework, innovation, adjustment to climate change, and domestic support to a few sectors, especially automotive products. Transport infrastructure reform remains a major challenge (Chapter IV). According to a 2010 report by the Treasurer, an ageing population and climate change present, *inter alia*, significant long-term risks for the economy and the sustainability of government finances.[33] As the population ages, the rate of economic growth will slow and pressures for government spending will increase, particularly in the health sector. These challenges are being addressed through a broad agenda that includes: supporting productivity growth through investment in infrastructure, innovation, skills, and education; overhauling the health system to ensure it delivers maximum value for money; adhering to a disciplined fiscal strategy; and considering the introduction of a cap-and-trade Carbon Pollution Reduction Scheme (Chapters III and IV).[34] Many of these policy options to deal with structural adjustment will have cost-of-living implications in the form of higher electricity, water, and road bills, which could be an impediment to reform, and may push the budget into deficit over the next 40 years, if corrective policy action is not taken.[35] According to the Treasury, in light of Australia's difficult medium-term fiscal position (section (3)(ii)), reforms should be "budget-neutral".[36]

Tax reform

14. A substantial tax reform programme is under way to make the tax system fairer, simpler, and more competitive internationally.[37] More specifically, the authorities intend to increase taxation of natural resource rents (e.g. iron ore, coal, oil, and gas) as well as to reduce the tax burden and ease compliance costs for small businesses. Among the major tax reforms envisaged are: the introduction of a Minerals Resource Rent Tax (MRRT); the extension of the Petroleum Resource Rent Tax (PRRT) to all onshore and offshore oil and gas projects; a cut in the company tax rate from 30% to 29% (from 2012 onwards for small firms, 2013 for others); and measures to build superannuation adequacy.[38] Furthermore, there is a long-standing need to reform state taxes, some of which are poorly designed and impose large deadweight losses on the economy, and to get industry assistance through the tax system (or otherwise) focussed on dealing with market failures rather than continuing to support inefficient industries at the expense of the community.[39] In September 2010, the Treasury

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[32] *The Australian*, "Red Book's hard reading for Labor", 27 September 2010. Viewed at: http://www.theaustralian.com.au/news/features/red-books-hard-reading-for-labor/story-e6frg6z6-122592969 7035 [1 October 2010].

[33] Commonwealth of Australia (2010).

[34] The CPRS is designed to deliver significant reductions in Australia's carbon emissions in a cost-effective way, while protecting Australian businesses and jobs during the transition period; it is expected to, *inter alia*, reduce emissions by 5% below their 2000 levels by the year 2020.

[35] The Treasury (2010c); and *The Australian*, "Red Book's hard reading for Labor", 27 September 2010. Viewed at: http://www.theaustralian.com.au/news/features/red-books-hard-reading-for-labor/story-e6frg6z6-12259296970 35 [1 October 2010].

[36] The Treasury (2010c).

[37] Australian Government online information "A Tax Plan for our Future". Viewed at: http://www.futuretax.gov.au/pages/topic_whytaxreform.aspx [1 September 2010].

[38] For the superannuation plan, the authorities envisage to increase retirement savings by gradually raising the superannuation guarantee from 9% to 12% (The Treasury, 2010c).

[39] The Treasury (2010c).

suggested the elimination of stamp duties on real estate, the reform of state payroll and land taxes, and the phased introduction of road congestion pricing.

Pension system reform

15. In May 2009, the pension system was reformed to provide more support to those who need it most, and to enhance the sustainability of the pension system.[40] The increase in the pension was delivered without placing additional long-term pressure on the Budget. The income test arrangements were revised to better target the pension to those most in need. Pension payments were changed so that they are simpler to understand and available on a more flexible basis. To respond to the long-term cost of demographic change, the authorities are to increase the pension age progressively to 67 years, at a rate of six months every two years, beginning in 2017.

Labour market reform

16. As of 1 July 2009, Australia moved to a new legal and institutional framework for workplace relations, with the commencement of the Fair Work Act 2009. The new framework is a significant shift from previous legislation, offering a stronger focus on enterprise level bargaining to closely link wages with productivity in the workplace. A number of initiatives to boost labour force participation have included: increasing incentives to work, through personal income tax cuts and increases in the Child Care Tax Rebate; reforms in education, employment services, and health; and the Productive Ageing Package to support mature-age participation through practical measures, e.g. retraining and re-skilling programmes and enhanced assistance through the Keep Australia Working Career Advice Line.[41]

(5) BALANCE-OF-PAYMENTS DEVELOPMENTS

(i) Current and trade accounts

17. Reflecting the savings-investment gap, Australia's current account deficit peaked in 2007/08 (6.3% of GDP, Table I.3) largely due to constraints on export volume growth relating to drought and bottlenecks in the export supply chain; strong import growth owing to buoyant domestic demand and an appreciation of the real effective exchange rate; and increased investment income deficit reflecting higher interest payments on foreign debt and large dividend payments to foreign investors, particularly by the resource sector.[42] In 2008/09, the current account deficit was reduced considerably (3.2% of GDP) reaching the lowest annual level of the review period; the trade account turned to surplus, mainly reflecting large increases in commodity contract prices negotiated in early 2008 for iron ore and coal exports, as well as the sharp exchange rate depreciation; since then it has turned back to a deficit. The current account deficit is expected to narrow to less than 2.5% of GDP in 2010 and 2011 as improved terms of trade should help generate a trade surplus; however, it is forecast to widen to about 6% of GDP over the medium term.[43]

18. Growing external liabilities used, *inter alia,* for the financing of current account deficits are a potential source of vulnerability for the economy. Debt service payments on Australia's relatively high external debt remain the principal reason for the net income deficit, equivalent to about 88% of the current account deficit in 2009/10 (Table I.3), reflecting mainly interest and dividends paid to

[40] Commonwealth of Australia (2010).
[41] Commonwealth of Australia (2010).
[42] Australia's current account deficits largely reflect high investment rather than low saving, and should be sustainable as long as investment leads to growth in export capacity (IMF, 2008).
[43] IMF (2010a).

foreign investors in Australia (net of income received on Australian investment abroad).[44] Between 2006/07 and 2009/10, net external debt increased by 24.5% (Table I.3); in June 2010, the private sector, especially financial corporations, continued to account for 83.8% of foreign debt although public sector debt has increased almost tenfold since September 2007 (Table AI.1).[45] While Australia's net external liabilities are relatively high, at about 60% of GDP, gross external debt is lower than in many advanced countries, at just under 100% of GDP.[46] Similarly, short-term external debt remains sizable, at 46% of GDP, but is lower than in many advanced countries.

Table I.3
Balance of payments, 2005-10
($A million)

	2005/06	2006/07	2007/08	2008/09	2009/10
Current account	**-54,075**	**-60,541**	**-73,980**	**-40,515**	**-56,103**
Goods and services balance	-15,354	-13,231	-24,579	5,887	-5,965
Goods balance	-15,476	-14,048	-21,894	9,186	-4,561
Exports	154,035	169,524	182,952	231,564	201,458
Imports	169,511	183,572	204,846	222,378	206,019
Services balance	122	817	-2,685	-3,299	-1,404
Receipts	41,641	45,956	50,645	52,873	52,546
Transportation	8,186	8,546	9,129	7,342	6,376
Travel	22,624	25,161	28,252	31,096	33,285
Finance and insurance	1,492	1,444	1,420	1,616	1,304
Royalties and licence fees	771	887	778	872	1,064
Telecommunication	445	377	309	290	237
Computer and information	1,199	1,484	1,587	1,786	1,506
Other business	5,180	6,369	7,394	7,779	6,688
Personal and cultural	647	608	726	797	788
Government goods and services n.e.s.[a]	1,097	1,080	1,050	1,295	1,298
(Tourism-related services)	(26,728)	(29,398)	(32,370)	(34,506)	(35,866)
Payments	41,519	45,139	53,330	56,172	53,950
Transportation	14,838	15,732	16,797	15,832	13,835
Travel	15,089	15,934	20,153	22,082	23,354
Finance and insurance	1,646	1,822	2,216	1,325	1,198
Royalties and licence fees	2,688	3,181	3,514	3,526	3,585
Telecommunication	543	499	488	607	506
Computer and information	1,067	1,431	1,478	1,641	1,553
Other business	3,647	4,450	6,569	8,549	7,492
Personal and cultural	1,080	1,108	1,163	1,565	1,241
Government goods and services n.e.s.[a]	921	982	952	1,045	1,186
(Tourism-related services)	(21,373)	(22,810)	(27,431)	(27,917)	(28,556)
Income balance	-37,884	-47,001	-49,496	-45,407	-49,224
Credit	27,937	38,318	44,217	42,823	35,901
Debit	65,822	85,319	93,713	88,231	85,124
Current transfers	-837	-309	95	-995	-914
Credit	5,314	6,002	6,255	6,657	6,380
Debit	6,151	6,311	6,160	7,652	7,294

Table I.3 (cont'd)

[44] Garton, Sedgwick, and Shirodkar (2010).
[45] Australian Bureau of Statistics online information. Viewed at: http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/19A7112FC836013ECA25778F00204B18/$File/A3374925K [1 October 2010].
[46] IMF (2010a).

	2005/06	2006/07	2007/08	2008/09	2009/10
Capital and financial account	54,435	61,153	72,572	39,873	56,613
Capital account	-141	281	-232	-611	-132
Financial assets	-3	423	-1	-244	14
Credit	3	489	9	2	4
Debit	-6	-66	-10	-246	10
Capital transfers	-138	-142	-231	-367	-146
Credit	0	0	0	0	0
Debit	-138	-142	-231	-367	-146
Financial account	54,576	60,872	72,804	40,484	56,745
Direct investment	-5,675	11,507	29,117	17,665	17,398
Australian's direct investment abroad	-29,750	-34,432	-27,291	-30,474	-17,550
Foreign direct investment in Australia	24,074	45,938	56,407	48,140	34,948
Portfolio investment	64,937	66,370	-4,084	49,220	68,112
Assets	-59,996	-76,609	-65,469	4,008	-92,470
Liabilities	124,933	142,979	61,385	45,212	160,582
Financial derivatives	-3,511	2,006	-7,043	-3,726	-5,951
Assets	13,037	12,700	-4,365	30,682	37,651
Liabilities	-16,548	-10,694	-2,678	-34,408	-43,602
Other investment	4,431	1,116	10,523	-10,779	-28,743
Assets	-18,228	-21,090	-31,802	-51,415	-20,009
Liabilities	22,659	22,206	42,325	40,636	-8,734
Reserve assets	-5,605	-20,127	44,292	-11,896	5,929
Net errors and omissions	-359	-613	1,407	642	-510

a "Services n.e.s." include manufacturing services, maintenance and repair services, and construction.

Source: Australian Bureau of Statistics (2010), *Balance of Payments and International Investment Position - 5302.0*, June.

19. Since 2006/07, a peak year, Australia's international (foreign exchange) reserves have dropped significantly, from $A 77 billion equivalent to 4 months of imports of goods and services in 2006/07 to $A 33.4 billion or 1.5 months of imports in 2009/10 (Table I.1). This drop is due mainly to the withdrawal of Future Fund (Government budget surpluses) deposits from the reserves, for investment in other assets; it also reflects valuation losses arising from the appreciation of the Australian dollar, which has reduced the value of reserves in Australian dollar terms.[47] The authorities consider that the low reserves level is not a problem because of Australia's floating dollar.

(6) DEVELOPMENTS IN MERCHANDISE TRADE

20. As a result of the increased openness of the Australian economy to international trade, and its integration into the world economy, the ratio of its trade (exports plus imports) in goods and services to GDP increased from 40.6% in 2006/07 to 44.8% in 2008/09, before dropping to 40.0% in 2009/10 (Table I.1).

21. Since its previous Review, Australia has remained largely dependent on commodity exports (metalliferous ores, mineral fuels, food), particularly mining products, reflecting the world prices boom (Chart I.1, Table AI.2); agriculture exports have been adversely affected by the appreciation of the national currency and drought-related constraints (section (3)(i), Chapter IV). The share of manufactured items (machinery and transport equipment, automotive products) in total imports has fallen slightly since 2006 (Chart I.2, Table AI.3).

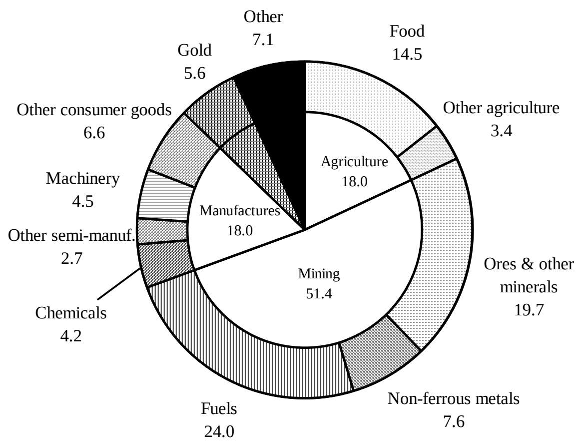
[47] Furthermore, the RBA indicated that there is a large difference between changes in net and gross reserves owing to the use of foreign exchange swaps (a type of foreign exchange derivative) for liquidity operations in the domestic market. The fall in gross reserves between 2006 and 2007 was due to a reduction in the level of swaps outstanding, held for domestic liquidity operations (Reserve Bank of Australia, 2008).

Chart I.1
Product composition of merchandise trade, 2006 and 2009

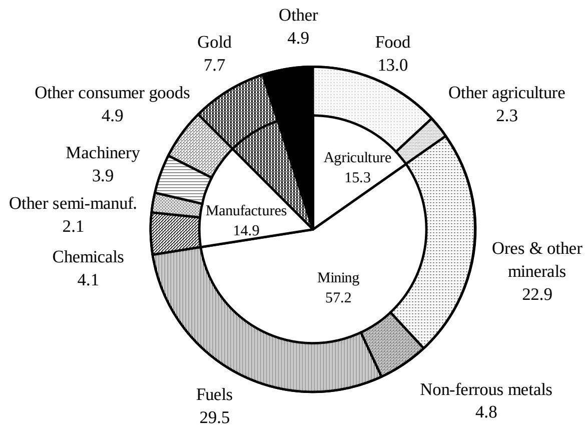
Per cent

2006 | **2009**

(a) Exports (f.o.b.)

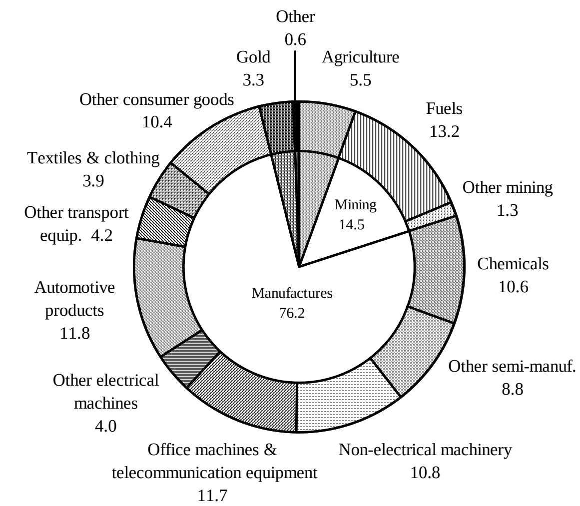


Total: US$123.3 billion

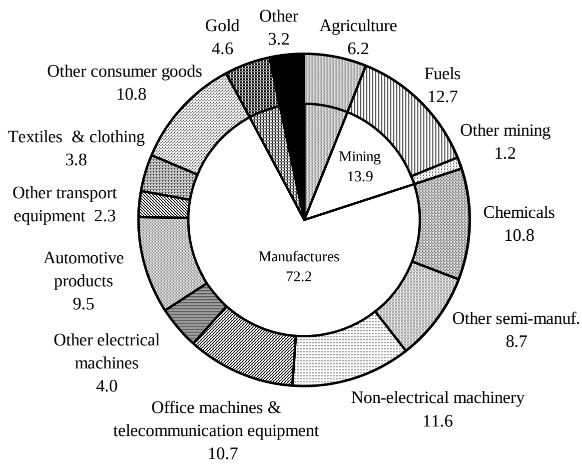


Total: US$153.8 billion

(b) Imports (f.o.b.)



Total: US$132.7 billion



Total: US$158.9 billion

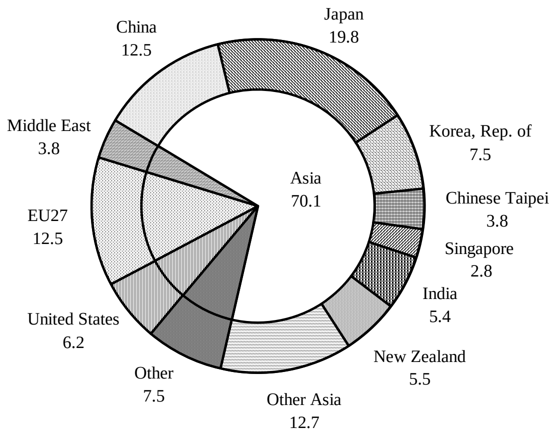
***Source*: UNSD, Comtrade database (SITC Rev.3).**

Chart I.2
Direction of merchandise trade, 2006 and 2009

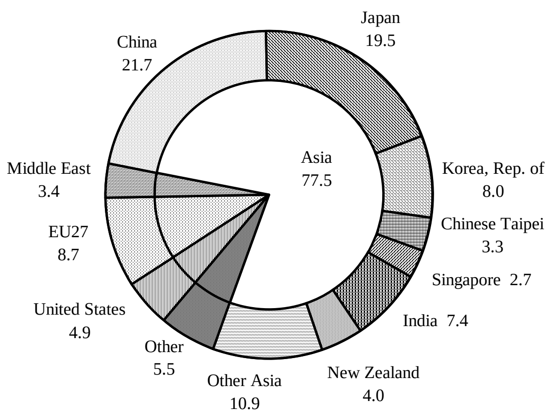
Per cent

2006	2009

(a) Exports (f.o.b.)

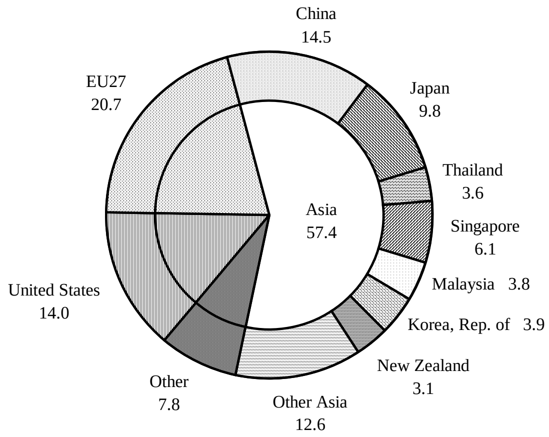


Total: US$123.3 billion

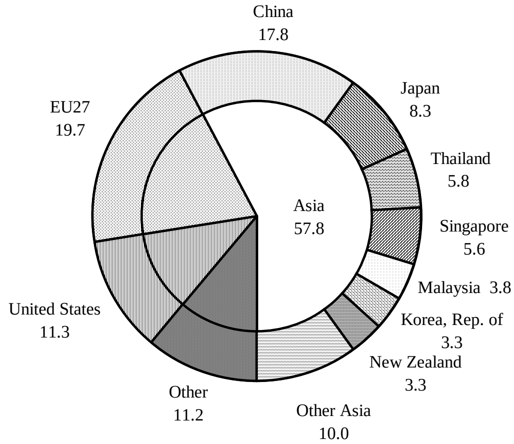


Total: US$153.8 billion

(b) Imports (f.o.b.)



Total: US$132.7 billion



Total: US$158.9 billion

***Source*: UNSD, Comtrade database (SITC Rev.3).**

22. Australia's merchandise trade with East Asia was further reinforced between 2006 and 2009 (Chart I.2) mainly as a result of the virtual doubling of China's share of total exports. Notwithstanding some fluctuation in trade shares, more than 72% of total merchandise trade has continued to be conducted with trading partners from the Asia-Pacific Economic Cooperation (APEC) and around 15% with members of the Association of East Asian Nations (ASEAN) (Tables AI.4 and AI.5). China, Japan, the EU, Korea (Rep. of), India, and the United States were Australia's main markets in 2009. New Zealand's share in Australian foreign trade fell during 2006-09; in 2009, it accounted for 3.6% of Australia's total merchandise trade.

(7) TRENDS AND PATTERNS IN FOREIGN INVESTMENT

23. During 2007-09, Australia's stock of inbound foreign direct investment (FDI) expanded by about 10% to $A 436 billion (Table I.4). The overall pattern of the FDI stock has remained unchanged; it is concentrated in mining, manufacturing, wholesale and retail trade, finance and insurance, and property and business services. It originates mainly in the EU, the United States, and Japan; the share of inward FDI stock originating in Australia's RTA partners (Chapters II and III) declined gradually.

24. Since 2007, the stock of Australian investment overseas has varied considerably and has not exceeded the value of inward FDI (Table I.5). It remains concentrated in manufacturing, and in finance and insurance services. The United States, the EU, and New Zealand remain the main destinations for Australian outbound FDI; the share of outward FDI stock in RTA partner countries declined considerably, driven mostly by Australian FDI stock reductions in the United States due to exchange rate movements and the impact of the global financial crisis.

Table I.4
Inward stock of foreign direct investment by country and economic activity, 2005-09
(A$ million and %)

	2005	2006	2007	2008	2009
Total inward FDI stock (A$ million)	297,641	336,865	396,852	396,515	436,059
FDI by origin (% of total FDI)					
United States	25.4	25.7	25.3	25.2	22.7
United Kingdom	17.6	16.6	16.2	15.5	14.5
Japan	7.2	7.1	7.8	9.2	10.3
Netherlands	7.2	7.3	6.4	5.2	7.7
Switzerland	4.0	4.9	4.1	4.9	4.0
Germany	3.3	3.1	4.4	3.4	3.8
Singapore	1.4	1.7	3.6	2.6	3.6
FDI from RTA partner countries (% of total FDI)	32.2	33.3	33.7	31.6	30.3
Canada	2.0	2.3	2.8	2.4	2.5
Chile	..[a]	..[a]	..[a]	..[a]	..[a]
Malaysia	1.0	0.8	..[a]	..[a]	..[a]
New Zealand	2.3	2.8	2.0	1.4	1.4
Papua New Guinea	..[a]	..[a]	..[a]	..[a]	..[a]
Singapore	1.4	1.7	3.6	2.6	3.6
Thailand	0.0	0.0	0.1	..[a]	..[a]
United States	25.4	25.7	25.3	25.2	22.7
FDI by economic activity (% of total FDI)					
Agriculture, forestry and fishing	0.3	0.2	0.2	0.2	..
Mining	21.8	24.7	24.0	25.4	..
Manufacturing	18.7	18.1	18.4	18.8	..
Electricity, gas, and water	2.9	2.5	4.1	4.1	..
Construction	2.2	2.2	4.0	3.3	..

Table I.4 (cont'd)

	2005	2006	2007	2008	2009
Services	49.5	47.9	45.5	45.1	..
Wholesale and retail trade	16.6	15.9	14.5	14.5	..
Accommodation, cafes, and restaurants	0.5	0.3	0.3	0.2	..
Transport and communication	9.3	9.0	7.6	6.6	..
Finance and insurance	15.4	15.5	13.6	13.5	..
Property and business services	6.8	6.4	8.2	8.6	..
Other Services	0.8	0.8	1.4	1.6	..
Unallocated	4.5	4.5	3.8	3.2	..

.. Not available.

a Included in totals where applicable but not available for publication.

Source: Australian Bureau of Statistics document 5352.0.

Table I.5
Outward stock of foreign direct investment by country and economic activity, 2005-09
(A$ million and %)

	2005	2006	2007	2008	2009
Total outward FDI stock (A$ million)	252,301	299,456	343,652	300,848	344,572
FDI by destination (% of total FDI)					
United States	45.5	44.0	48.1	45.1	28.9
United Kingdom	13.3	15.2	9.3	8.4	18.7
New Zealand	15.4	14.2	13.7	11.4	12.2
Hong Kong, China	1.8	2.2	1.9	2.0	3.3
Germany	1.5	2.0	3.2	2.9	2.8
Singapore	1.2	1.7	2.6	2.2	2.1
FDI to RTA partner countries (% of total FDI)	64.6	61.1	65.9	60.8	44.1
Canada	1.7	..[a]	..[a]	..[a]	..[a]
Chile	0.0	..[a]	..[a]	0.4	..[a]
Malaysia	0.1	0.1	0.7	0.7	0.9
New Zealand	15.4	14.2	13.7	11.4	12.2
Papua New Guinea	0.6	0.9	0.8	0.8	..[a]
Singapore	1.2	1.7	2.6	2.2	2.1
Thailand	..[a]	0.2	0.1	0.1	0.1
United States	45.5	44.0	48.1	45.1	28.9
FDI by economic activity (% of total FDI)					
Agriculture, forestry, and fishing	..[a]	..[a]	..[a]	..[a]	..
Mining	4.8	9.6	..[a]	11.5	..
Manufacturing	41.8	40.6	45.1	44.3	..
Electricity, gas, and water	..[a]	..[a]	1.2	1.1	..
Construction	2.5	1.2	1.7	2.1	..
Services	..[a]	..[a]	..[a]	..[a]	..
Wholesale and retail trade	2.4	2.2	1.9	3.0	..
Accommodation, cafes, and restaurants	..[a]	..[a]	..[a]	..[a]	..
Transport and communication	5.7	2.8	2.5	3.7	..
Finance and insurance	37.1	36.9	34.6	27.9	..
Property and business services	1.9	3.0	3.3	4.1	..
Other Services	1.3	1.4	1.5	1.8	..
Unallocated	..[a]	..[a]	..[a]	..[a]	..

.. Not available.

a Included in totals where applicable but not available for publication.

Source: Australian Bureau of Statistics, document 5352.0.

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[1]

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

[1] 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.[2] 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

[2] 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.[3] 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.[4]

(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.[5] 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.[6] 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[7]; 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[8], but despite Australia's high ambition to achieve international best practice, further improvements remain both desirable and possible.[9]

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[3] 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.

[4] Productivity Commission (2009).

[5] 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.

[6] Office of Best Practice Regulation (2009).

[7] 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).

[8] Australia ranks 3rd (4th 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[10], 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.[11] 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).

[9] 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).

[10] 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 8th 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). In 2005, it ranked 11th (out of 179) with a score of 8.6 out of 10.

[11] 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.[12] 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.[13] New approaches to the negotiations, and concerted political-level attention, are viewed as crucial to making progress in the near future.[14]

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.[15] 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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[12] 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 [12 September 2010].

[13] 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 [15 November 2010].

[14] Department of Foreign Affairs and Trade (2010a).

[15] 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.

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

(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.[17] 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.[18] 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[19]; 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.[20] 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 due on 27 November 2010. 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.[21]

(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.[22] Under the 1994 Bogor Declaration, APEC members made a voluntary commitment to achieving free and open trade and investment by 2020 (2010 for developed economies) through unilateral, regional, and multilateral

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[16] 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 [25 November 2010].

[17] Productivity Commission (2010a).

[18] 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 [12 September 2010].

[19] 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).

[20] Productivity Commission (2010a).

[21] WTO document WT/REG/W/54/Rev.1, 11 June 2010.

[22] 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)).

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.[23] 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).[24] It was notified to the WTO under GATT Article XXIV and GATS Article V, on 8 April 2010.[25] 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.[26] 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.[27] 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[28], and certain subsidies. A 1988 protocol on trade in services provides for

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[23] APEC (2007).

[24] 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 remaining ASEAN countries (Cambodia, Indonesia, and Laos) were working to complete their internal requirements at the earliest possible opportunity in 2010. The Agreement will enter into force for these parties 60 days after the dates of their respective notifications.

[25] 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/oSiPelafl3Q= [12 September 2010].

[26] 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 [12 September 2010].

[27] 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].

[28] 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.[29] 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[30]; 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.[31]

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.[32] In addition to tariff elimination, SAFTA improves market access for Australian exporters of services, particularly education, environmental, telecommunications, and professional services.[33] 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.[34] 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.[35]

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

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[29] 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)).

[30] DFAT online information. Viewed at: 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 [16 September 2010].

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

[32] 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].

[33] 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)).

[34] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/australia_singapore_agreement.html [12 September 2010].

[35] 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.[36] 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[37]; 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.[38] 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.[39] 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.[40] 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.[41] 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(AClFTA)

29. The AClFTA 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

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[36] 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 [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=YYuDN7xlkFIOozLDlR+cDfuijMHIxZpdtLn6hBLfhEM= [12 September 2010].

[37] In 2009, Thailand was Australia's tenth largest merchandise export market and its seventh source of imports (UNSD, Comtrade database (SITC Rev.3)).

[38] DFAT online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/aust-thai/goods_outcome_benefits_031003.html [12 September 2010].

[39] 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/ [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+wvRY2nhziPpBE= [12 September 2010].

[40] In 2009, the United States was Australia's third most important trading partner.

[41] WTO document WT/REG184/3, 11 June 2007.

Regional Trade Agreements on 14 June 2010.[42] 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.[43] 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.[44] Similarly to Australia's other FTAs, the AClFTA 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 AClFTA 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.[45]

(c) Future agreements

31. Negotiations for further bilateral agreements are under way with China (since 2005), Japan (since 2007), Malaysia (since 2005), 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.[46] 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 quota-free access for all goods originating in the 50 countries designated as LDCs by UNCTAD (Chapter III).

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[42] Full text of AClFTA 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+ShsWlLnAcvlvAR037oHks7Y64dKWq/MvC5QRJs9Bg= [12 September 2010].

[43] WTO document WT/REG263/1, 1 April 2010.

[44] 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 4th 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 [16 September 2010].

[45] DFAT online information. Viewed at: http://www.dfat.gov.au/geo/chile/fta/facts_at_a_glance.html [16 September 2010].

[46] The United States and Peru are also participating in the TPP negotiation (Productivity Commission, 2010a).

(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.[47] 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)[48]; a dispute initiated by the EU in 2003[49], 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.[50]

34. Australia seeks to resolve disputes through international agreements that include state-state and/or investor-state dispute settlement provisions.[51] 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.[52] Its screening regime (see below) allows consideration of, *inter alia*, community concerns about foreign ownership of certain Australian assets.[53] 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.[54]

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[47] Productivity Commission (2010b).

[48] 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.

[49] WTO document WT/DS287/1, 9 April 2003.

[50] 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 [28 September 2010].

[51] 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)).

[52] The Treasury (2010a).

[53] In 2010, Australia ranked 32nd (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).

[54] In 2010, the World Bank ranked Australia 9th (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 4 positions to 57th. The authorities indicated that this drop reflects improvements of protection in other economies rather than a decline of protection in Australia (World Bank, 2010).

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)[55], and possibly, more recently, natural resources.[56] 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.[57] 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[58], 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.[59]

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.[60] 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.

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[55] The Airports Act 1996 stipulates a 49% foreign ownership limit for airports, a 5% airline ownership limit, and 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).

[56] In 2009, a senior official of the Foreign Investment Review Board (FIRB) made public statements concerning guidelines for 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 the 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).

[57] These thresholds include: acquisitions of substantial interests in an Australian business where the value of its gross assets, or the proposal values it, in excess of $A 100 million; proposals to establish new businesses involving a total investment of $A 10 million or more; takeovers of offshore companies whose Australian subsidiaries or gross assets exceed $A 200 million and represent less than 50% of global assets (Novak, 2008; and The Treasury, 2009a).

[58] 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).

[59] 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".

[60] 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.[61] 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.[62] 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)[63], 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 of National Treatment are in force with several economies.[64] 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 8 are in force.[65]

[61] Foreign Investment Review Board (2010).

[62] 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 [7 September 2010]).

[63] 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).

[64] 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 [29 September 2010]).

[65] 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 [29 September 2010]).

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Since its previous Trade Policy Review in 2007, Australia has maintained the openness of its trade regime, which is to a large extent due to the exemplary transparency in trade and related policy. Australia has proceeded with some unilateral liberalization in certain areas with a view to increasing the competitiveness of domestic firms and reducing anti-export bias. However, some significant tariff and non-tariff barriers to trade and to efficient re-allocation of domestic resources remain. Emphasis has been placed on better coordination of policy formulation and implementation at central, state, and territory level in areas such as standards, sanitary and phytosanitary (SPS) measures, and government procurement.

2. The tariff remains one of Australia's main trade policy instruments, albeit a minor source of tax revenue. As a result of unilateral reductions (on 1 January 2010) in tariffs applied to textiles, clothing, and footwear (TCF) as well as to passenger motor vehicles (PMVs), the average applied MFN tariff rate dropped slightly, from 3.8% in 2006 to 3.1% in 2010, with further unilateral reductions expected by 2015. The average applied MFN tariff for industrial products is 3.4%, while that for agricultural imports is roughly 1.4%. Some 96% of applied MFN tariff rates are currently in the range zero to 5%. Notwithstanding the unilateral cuts in tariffs, including peak *ad valorem* rates, in line with long-standing sectoral support to TCF and PMVs products, the applied MFN tariff rates on the latter remain considerably higher than the average. The tariff structure has been simplified and now involves seven rates (four *ad valorem*, one specific, one compound, and one alternate). However, the tariff structure is also characterized by tariff escalation, which means that effective rates of tariff protection can be considerably higher than nominal rates. Some 99.7% of tariff rates are *ad valorem*, which contributes to the transparency of the tariff. Nevertheless, non-*ad valorem* rates tend to conceal relatively high tariff rates, particularly those on used vehicles. The fact that 96.5% of tariff lines are bound imparts a high degree of predictability to the tariff; however, the simple average of bound MFN rates (10.1%) considerably exceeds the average applied MFN rate, providing the authorities with extensive scope for increasing applied tariffs within bindings, though there has been no such increase during the period under review. Although tariff-rate quotas have remained in place for five cheese items and for non-manufactured tobacco, they are apparently applied in a flexible/liberal manner; those on tobacco have never been applied. Computerized customs clearance has facilitated virtually all imports and exports.

3. Import prohibitions and restrictions in the form of stringent quarantine or technical requirements, which are considered by the Government to be proportionate to Australia's appropriate level of protection (ALOP), have remained in place, in principle to preserve, *inter alia*, human, animal or plant life or health, the environment, safety, or security. Changes were made to ensure that all standards developers work together, avoid duplication, and work in harmony with international standards, as well as to centralize the Commonwealth Government's power for introducing mandatory product safety and information standards. The share of national standards that are identical or "modified adoptions" of international standards remains at 38%. No new mutual recognition agreements (MRAs), a trade facilitation measure, were signed during the review period. Although Australia continues to maintain strict SPS measures, it recognizes that zero-risk is unattainable and launched reforms for a shift from "quarantine to biosecurity". Whereas the "net benefit" to the community as a whole (including domestic consumers) needs to be demonstrated in order for a standard to be adopted, SPS measures are taken without such cost-benefit analysis including the trade effects of such measures for stakeholders along the supply chain, athough import-risk analyses are expected to address the issue of economic consequences for relevant stakeholders. Recourse to

anti-dumping and countervailing action has been steady, with most initiations and measures relating to items originating in Asia; no safeguard measures were adopted during the period under review.

4. Australia is an observer to the WTO Agreement on Government Procurement (GPA), but comprehensive chapters on government procurement in a number of its FTAs (Chapter II) oblige it to respect principles of transparency and non-discrimination in the conduct of its government procurement. Australia has continued to use government procurement as an instrument of economic policy aimed at fostering industrial development in certain sensitive areas (e.g. real estate property or accommodation, R&D services, and motor vehicles) that are exempt from the mandatory procurement procedures applying to procurement above certain thresholds. The target of sourcing at least 10% of purchase value from small and medium-sized enterprises (SMEs), as well as preference margins for local suppliers and local-content requirements by certain state governments have been maintained and, in certain areas, reinforced but applied in line with FTA commitments.

5. Export controls or quantitative restrictions operated by public sector entities affect certain primary and therapeutic goods to ensure, *inter alia*, adequate domestic supply, and to enforce standards; merino sheep exports have been liberalized. State involvement in the economy has been maintained where benefits can be captured from promoting and/or regulating export trade in certain agricultural goods (e.g. wheat, barley, rice, sugar). Nevertheless, the character of state involvement has changed in recent years with all statutory arrangements terminated (i.e. for grains, wheat, and sugar) except for the NSW-state based Rice Marketing Board, which is currently the sole entity with export monopoly rights. Export assistance, consisting of direct grants (e.g. through export market development grants) and tax concessions (e.g. Tradex), has been maintained and revised. In addition to local-content requirements, termed as "Australian activity", export finance is, *inter alia*, conditional upon "national interest" criteria; export credit terms seem to be in line with OECD guidelines.

6. Support for domestic production and trade has been provided through tax and non-tax incentives, with steady, albeit declining, emphasis on R&D spending as well as regulatory restrictions on competition. Some industry-specific programmes (e.g. dairy, automotive, pharmaceuticals) were ended or amended during the review period. The rate of the special Luxury Car Tax, which affects both domestic and foreign cars but seems to fall disproportionately on imports, was raised from 25% to 33%. The effective rate of combined assistance[1] (i.e. tariff, budgetary, agricultural pricing and/or regulatory assistance) remains relatively high for TCF, PMVs, grain, sheep and beef cattle farming, and horticulture and fruit growing activities; according to the authorities, support to primary production depends on the effects of climate. In addition to certain commodity export activities, the state is involved in the economy through government trading enterprises (GTEs) providing services in key infrastructure sectors (e.g. water, electricity, ports, rail, urban transport), though not always on a fully commercial basis.

7. Australia has further strengthened protection of intellectual property rights by expanding its international commitments. The competition policy framework, which remains characterized by a long list of special regimes and exemptions, including at state or territory level, has been updated in several areas with particular emphasis on cartel criminalization. Newly passed legislation is aimed at strengthening consumer protection and enforcement at the national level.

[1] This Chapter refers to several indicators, including effective rate of combined assistance, used by the Productivity Commission (Chapter II) for assessing support provided to different economic activities. For details on the definition, methodology, and scope of these indicators see Productivity Commission (2010b).

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration and documentation requirements

8. During the period under review the minimum documentation requirements have remained unchanged; they include a full import declaration (FID), which is required for most imports.[2] Import permits are also required for certain goods subject to controls or restrictions (sections (v), (vi) and (vii) below). An Integrated Cargo System (ICS), replacing all previous cargo declaration systems, has been in place since 2005. The ICS is a single window for the vast majority of international trade-related transactions and provides an interface for industry to connect electronically for coordinated customs and quarantine clearance. Some transactions may require separate contact with permit-issuing agencies and some may require the presentation of the permit in hard copy. Opportunities are continuing to be explored on a case-by-case basis for higher volume and higher risk permit management processes to facilitate electronic clearance. Virtually all customs brokers are connected to the Customs electronic systems, while individual importers are also able to connect via the Internet and obtain a digital certificate to enable secure communication with the system. In 2009/10, 99.3% (99.4% in 2004/05) of Customs entries in Australia were processed electronically. Self-assessment of duty continues to be the norm, with compliance addressed by post-audit regimes.

9. The Enhanced Trade Solutions Program, Australia's trade facilitation programme, focuses on the ongoing preparation for paperless trading and other border-clearance improvements, and the development of an entity-based approach to risk management to supplement the existing transaction-based risk-assessment processes.[3] Australia first conducted a time release study (TRS) in 2007, with further studies in 2008 and 2009; the TRS is based on the World Customs Organization (WCO)-endorsed method for measuring import clearance performance. The studies have shown and that Customs did not pose a significant impediment to the movement of cargo at the border and that Australia performed favourably against other economies.[4] They also found that ongoing measurement of trade facilitation performance contributes to improvement and reform by helping to inform decision-making by both government and industry. The 2009 TRS showed that more than 85% of sea and air cargo is now fully risk assessed and unimpeded by the time it is physically available for delivery; in 2007, the arrival to clearance times for sea and air cargo were 1.8 and 0.3 days, respectively. In 2009, Customs released the Enhanced Trade Solutions (ETS) 2015 paper, and a work programme focused on: refining the cargo intervention strategy; improving risk management capabilities; and continuing work with industry, other government agencies, and international forums to address business challenges and opportunities in the trade environment.[5] The estimated 2010/11 budget to cover trade facilitation activities is about $A 234 million.

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[2] For further information see WT/TPR/S/178/Rev.1, 1 May 2007, and Customs online information. Viewed at: http://www.cargosupport.gov.au/site/page5954.asp.

[3] Studies by the OECD show that the thinning of trade barriers increases domestic productivity. In the trade facilitation context, Customs is required to deliver effective border management that, with minimal disruption to legitimate trade and travel, prevents illegal movement across the border, raises revenue, and provides trade statistics. For further details on trade facilitation in Australia see Australian Customs and Border Protection Service (2009a) and (2007).

[4] For further details see Australian Customs and Border Protection Service (2009a) and (2007).

[5] Australian Customs and Border Protection Service (2009b).

(ii) Tariffs

(a) Features

10. Since January 2007, Australia's tariff classification system has been based on the HS 2007 nomenclature.[6] It is applied at the HS eight-digit level and has 6,008 lines, 116 lines less than the previous (HS2002) customs tariff. Australia continues to submit its customs tariff and trade data regularly to the WTO Integrated Data Base.[7] The customs tariff comprises MFN and several preferential rates granted under bilateral and plurilateral agreements and unilateral concession schemes (Chapter II and section (e) below).

(b) Applied MFN tariff

11. On average, Australia's applied MFN tariffs remain relatively low. On 1 January 2010, tariffs on apparel and certain finished textile articles were reduced to 10% and those on other textiles, clothing, and footwear (TCF) goods, and motor vehicles and parts components to 5%. As a result of these cuts Australia's average applied MFN tariff rate dropped slightly, from 3.8% (2006) to 3.1% (2010) (Table III.1)[8]; tariffs on apparel and certain finished textile articles are to be further reduced to 5% on 1 January 2015. Around 1.9% of the Government's total tax revenue (2% in 2004/05) was from customs tariffs in 2008/09 (Table III.5).[9]

12. In accordance with the indexation provisions in section 19 of the Customs Tariff Act 1995 and section 6A of the Excise Tariff Act 1921, the rates of excise duties (section (4)(i)(a)) on certain spirits, beer and tobacco were last increased on 2 August 2010.[10]

Structure

13. During the review period, Australia simplified the structure of its customs tariff. In 2010, around 99.7% (5,992 lines) of the tariff lines were subject to four *ad valorem* rates (zero, 4%, 5%, 10%) down from six rates in 2006; this ensures a high degree of transparency of the tariff. The peak

[6] Changes included mainly: restructuring of tariff classifications for certain wood and paper products, certain automotive parts, information technology and consumer electronic products to reflect changes in technology and trade; consolidating three headings for toys into a single heading, with fewer subheadings, to facilitate trade; deleting tariff classifications in around 200 six-digit subheadings due to low trade volumes across a broad range of commodities, including foods, chemicals, paper products, textile, clothing and footwear products, metals and machinery; and inserting and splitting subheadings. As a result there was, *inter alia*, a rise of the tariff rate on plywood veneered panels consisting of layers of bamboo and certain tropical woods from duty free to 5% (Australian Customs Service online information. Viewed at: http://www.customs.gov.au/webdata/resources/files/hs2007_faqs.pdf, and http://www.customs.gov.au/webdata/resources/files/HS2007_ImpSeminar.ppt [25 March 2010]).

[7] WTO document G/MA/IDB/2/Rev.32, 6 October 2010.

[8] As the calculation of import duty in Australia is based on the f.o.b. value, the actual tariff imposed is lower than in economies that calculate duty on the c.i.f. value.

[9] Customs duties constituted around 99.8% of taxes on international trade; export fees and charges on selected agricultural products accounted for the remaining 0.2%.

[10] The new rates of customs and excise duty listed are calculated by multiplying the previous rates by an indexation factor, which is calculated by dividing the most recent CPI number by the previous highest December or June Quarter number occurring after December 1983. Accordingly, the December 2009 index number (169.5) has been divided by the June 2009 index number (167.0) to establish an indexation factor of 1.015. As this factor is more than one, rates of customs and excise duty have been increased by the application of this factor (Australian Customs Notice No. 2010/05, 2 February 2010. Viewed at: http://www.customs.gov.au/webdata/resources/files/ACN_2010-05.pdf [20 April 2010]).

ad valorem rate dropped from 17.5% to 10%. Some 46.2% of tariff lines now carry a zero rate (Table III.I, Chart III.1), nearly half (49.8%) are subject to a rate of 5%, and 3.7% are at 10% (7.5% in 2006).

Table III.1
Australian tariff structure, 2002, 2006, and 2010
(%)

		MFN applied			Final bound[a]
		2002	2006	2010	
1.	Bound tariff lines (% of all tariff lines)	96.7	96.7	96.5	96.5
2.	Simple average rate	4.5	3.8	3.1	10.1
	Agricultural products (HS01-24)	1.4	1.4	1.4	3.6
	Industrial products (HS25-97)	5.0	4.2	3.4	11.2
	WTO agricultural products	1.5	1.5	1.6	4.1
	WTO non-agricultural products	5.0	4.1	3.3	11.2
	Textiles and clothing	12.4	12.1	5.4	24.0
	Passenger motor vehicles	57.6	55.1	41.7	23.0
	(excluding AVEs of non-*ad valorem* rates)	8.2	6.6	5.0	23.0
	ISIC 1 - Agriculture, hunting, and fishing	0.3	0.3	0.3	1.3
	ISIC 2 – Mining	0.4	0.4	0.5	2.2
	ISIC 3 – Manufacturing	4.8	4.1	3.3	10.8
	Manufacturing excluding food processing	5.2	4.3	3.4	11.5
	First stage of processing	0.5	0.5	0.4	1.5
	Semi-processed products	4.2	3.5	2.9	10.1
	Fully processed products	5.5	4.6	3.7	11.8
3.	Domestic tariff "peaks" (% of all tariff lines)[b]	11.4	4.1	3.9	5.6
4.	International tariff "peaks" (% of all tariff lines)[c]	4.1	4.1	0.2	13.7
5.	Overall standard deviation of tariff rates	9.9	8.9	6.5	10.9
6.	Coefficient of variation of tariff rates	2.2	2.3	2.1	1.1
7.	Duty-free tariff lines (% of all tariff lines)	47.4	47.6	46.2	19.8
8.	Non-*ad valorem* tariffs (% of all tariff lines)	0.3	0.3	0.3	0.4
9.	Nuisance applied rates (% of all tariff lines)[d]	0.0	0.0	0.0	9.3

a Based on 2010 tariff schedule. Implementation of final bound rates was reached in 2000. Calculations are based on 5,796 bound tariff lines, of which 5,771 are fully bound and 25 are partially bound.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: 2002 and 2006 tariffs are based on HS02 nomenclature consisting, respectivley, of 6,101 and 6,124 tariff lines; the 2010 tariff is based on HS07 nomenclature consisting of 6,008 tariff lines. Calculations include AVEs provided by the authorities for non-*ad valorem* rates.

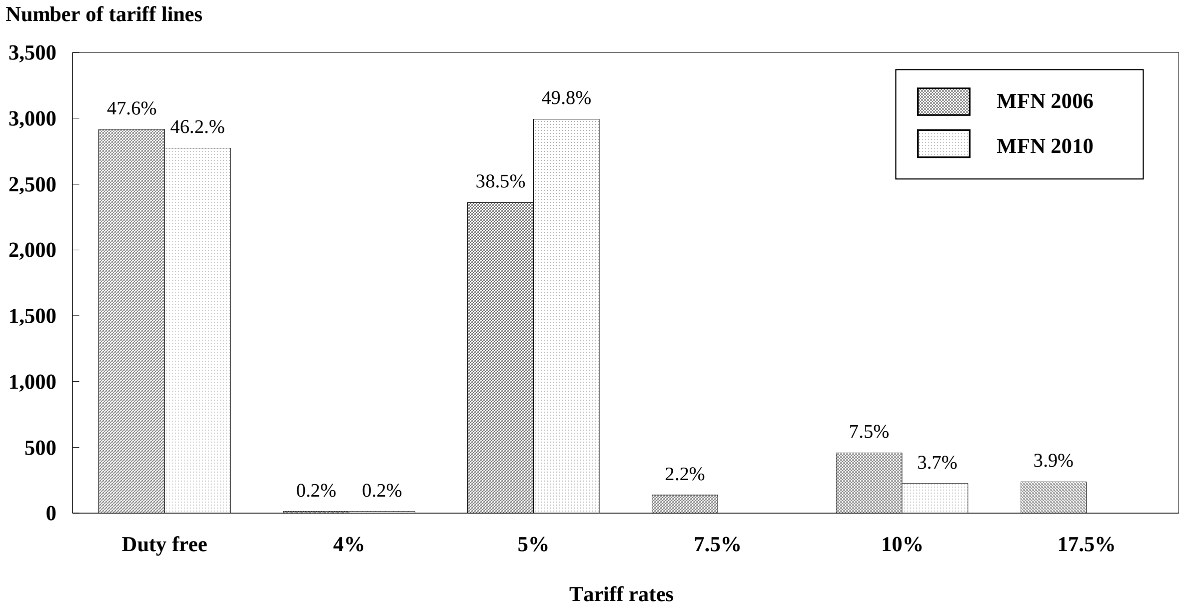
Source: WTO Secretariat calculations, based on data provided by the Australian authorities.

14. A few (0.3%) tariff lines remain subject to non-*ad valorem* rates, which tend to conceal relatively high tariff rates. These involve a specific rate of $A 1.22/kg applied to five tariff lines (cheese and curd), an alternate rate of 5% or $A 0.45/kg, whichever is lower, applied to four tariff lines (fruit juices), and a compound rate of 5% (10% in 2006) plus $A 12,000 per unit applied to eight items (used or second-hand vehicles), which has rarely been applied since 2006.[11] Average

[11] Item 59 of Schedule 4 of the Customs Tariff allows for the waiving of the $A 12,000 duty component on second-hand cars, provided the Department of Infrastructure, Transport and Regional Development has issued a Vehicle Import Approval (VIA). A vehicle must have a VIA to be imported. Vehicles falling under this category include those imported under the Registered Automotive Workshop Scheme

ad valorem equivalents (AVEs) for the period under review ranged from 10.2% to 27.1% for specific rates, up to 5% for alternate rates, and from 89.5% to 215.4% for compound rates (including the 5 percentage points *ad valorem* component).[12] These 13 AVEs are the highest applied tariff rates in place.

Chart III.1
Distribution of MFN tariff rates, 2006 and 2010



Note: **Percentages denote the share of total lines. Calculations exclude specific rates and include the *ad valorem* part of alternate and compound rates. Figures for 2006 are based on HS02 nomenclature, and for 2010 on HS07. Totals do not add to 100% due to the exclusion of specific rates, representing 0.1%, for both years.**

***Source*:** **WTO Secretariat calculations, based on data provided by the Australian authorities.**

Tariff dispersion and escalation

15. Despite a low overall average tariff rate and large share of duty-free items, tariff peaks in some sectors remain a potential distortion and thus a source of inefficiency. In particular, while agriculture continues to face relatively low tariff rates (1.6%, under the WTO definition of agriculture, Table III.1), average rates for non-agriculture items, notably textiles and clothing (5.4%) and passenger motor vehicles (PMVs)[13] remain significantly higher despite recent unilateral reductions, thus reflecting sensitivities in these sectors. Domestic "tariff peaks" affect 3.9% of tariff lines (3.7% excluding AVEs); their share has decreased since 2006.

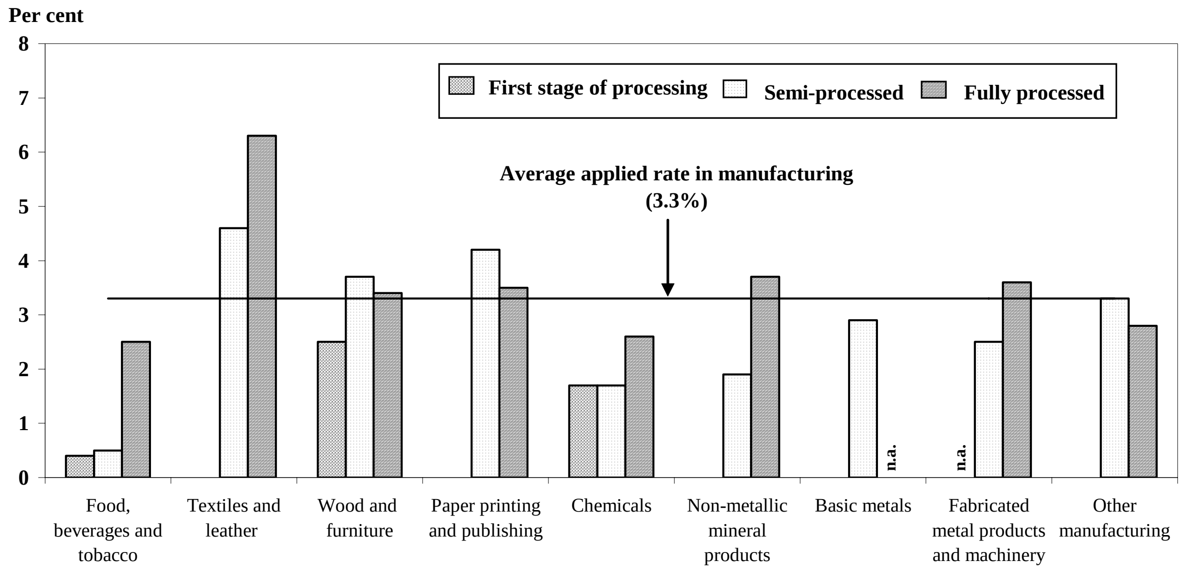
(RAWS), which caters for specialist and enthusiast used imported vehicles not available in Australia in full volumes by mainstream manufacturers (Australian Customs and Border Protection Services online information. Viewed at: http://www.customs.gov.au/site/page4371.asp#2ndHandVechicle [2 December 2010]).

[12] The *ad valorem* equivalents (AVEs) are computed on the basis of unit values for imports of the items concerned over the period 2006-08.

[13] The rate on new cars is 5%, while the rate rises to 52.7% when duties on used cars form part of the calculation.

16. Overall, the tariff shows a tendency to escalate, with the average for unprocessed, semi-processed, and fully processed goods rising from 0.4% to 2.9% and 3.7% (Table III.1). The outcome is that the level of effective protection increases as goods undergo further processing.[14] The textiles and clothing sector shows more significant tariff escalation (Chart III.2); since 2006, the average tariff for fully processed textiles and clothing and leather products has declined from 10.4% to 6.3% but remains high compared with other product categories, which range from 2.5% to 3.8%. The average tariff for semi-processed products has fallen from 3.5% to 2.9% during the period. Tariff escalation is a potential impediment to the efficient allocation of resources, it also constitutes an obstacle to local processing of primary and semi-finished goods produced in exporting countries, thereby impeding the industrialization of these developing countries whose exports are not eligible to preferential duty-free access to Australia's market.

Chart III.2
Tariff escalation by 2-digit ISIC industry, 2010



n.a. **Not applicable.**

Note: **Calculations include AVEs for non-*ad valorem* rates, provided by the authorities.**

***Source*:** **WTO Secretariat calculations, based on data provided by the Australian authorities.**

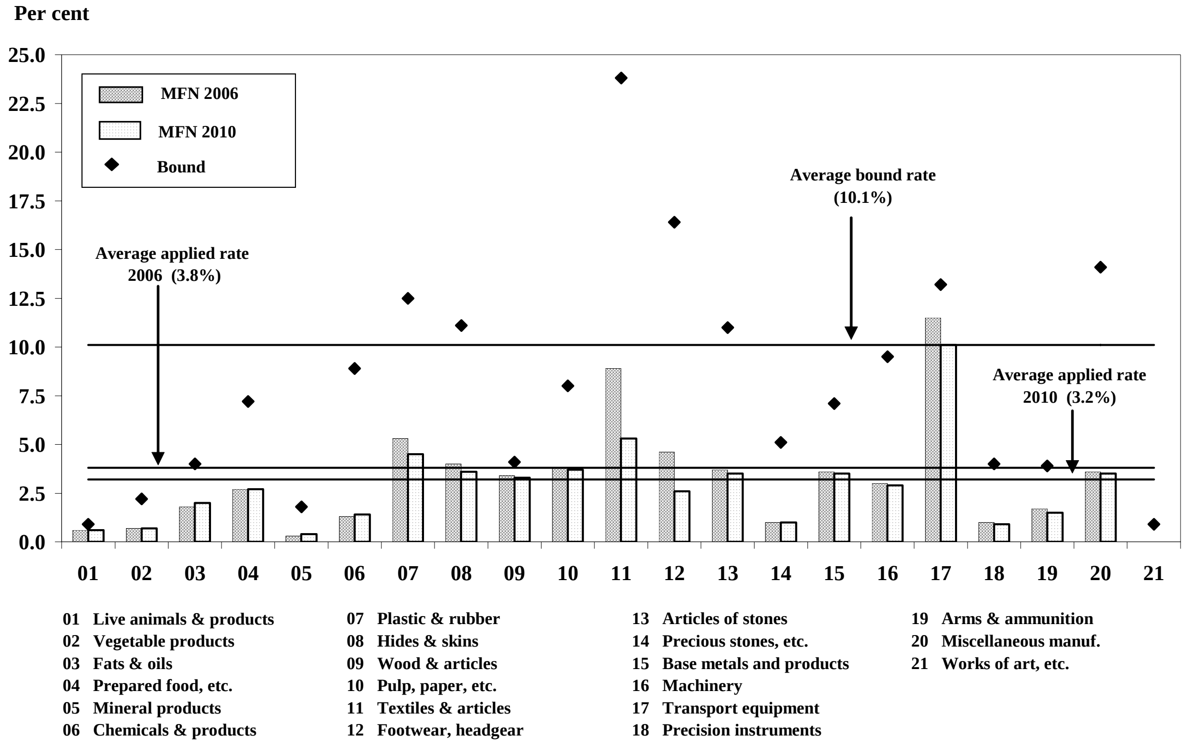
(c) Bound tariff

17. Australia's tariff Schedule of Concessions has remained based on the Harmonized Commodity Description and Coding System 2002 but has not been certified (as at November 2010) (see below). According to its HS07 version supplied by the Australian authorities, 96.5% (96.7% in HS02 version) of tariff lines are bound; bindings cover 100% of agricultural tariff lines and 96.2% of non-agricultural products (WTO definitions); 96% (95.9% in HS02 version) of the non-agricultural

[14] The effective rate of protection (ERP) measures the protection provided by the entire structure of tariffs, taking into account those levied on inputs as well as those on outputs. It is defined as ERP = $(V_D - V_W)/V_W$, where V_D is the value added in the given sector at domestic prices, which includes tariffs, and V_W is value added at world prices. If the nominal tariff on the final product is t, the share of each imported input i in the total value of the final product is a_i, and the nominal tariff on each imported input is t_i, then the effective rate of protection can be written as: ERP = $(t - \Sigma a_i t_i)/(1 - \Sigma a_i)$. Thus, if $t = 5\%$, $t_i = 2.5\%$ for all inputs, and $\Sigma a_i = 0.6$, the ERP is nearly 8.75%.

products are fully bound.[15] Bound rates range from zero to 29% (processed potatoes) for agriculture, and from zero to 55% (clothing) for non-agricultural products. Australia's bound rates currently exceed applied MFN rates by nearly seven percentage points (Chart III.3); maximum gaps of up to 55 percentage points affect clothing items. Differences between bound and applied rates may provide scope to raise applied tariffs, especially in sensitive sectors, although this has not been the case during the period under review.

Chart III.3
Average applied MFN and bound tariff rates, by HS section, 2006 and 2010



Note: **Calculations include AVEs for non-*ad valorem* rates, provided by the authorities. Sections 7, 8, 11, 12, 13, 15, 16, 17, 18 and 20 are not fully bound.**

***Source*:** **WTO Secretariat calculations, based on data provided by the Australian authorities.**

18. Australia has remained covered by waivers from Article II of GATT 1994 to implement domestically the HS2002 (since 2002) and HS2007 (since December 2006) changes, pending incorporation of such changes into its Schedule of Concessions.[16] By the time of completion of this report, neither the HS96 nor the HS2002 changes to Australia's WTO Schedule I had been certified. In a communication to the Committee on Market Access on 26 May 2010, Australia indicated that the domestic certification process of its HS02 changes was still ongoing and was to be completed as soon as possible.[17] Concerning the process of incorporating HS07 changes to its WTO Schedule of Concessions, Australia was one of the two Members that had submitted the relevant files within the

[15] The 212 eight-digit HS07 unbound lines include yarns, textiles, clothing, leather, rubber products, tools/articles of base metals, products of iron and steel, ceramic products, glassware, machinery, transport equipment, photographic equipment, and other electrical components and equipment.

[16] WTO Secretariat documents WT/L/786, 21 December 2009, WT/L/787, 21 December 2009, and G/MA/TAR/RS/154, 12 February 2010.

[17] WTO document G/MA/M/51, 26 May 2010.

agreed original deadline in 2007. No progress has been made in any Member's work in this area because of its linkage with the ongoing NAMA negotiations.[18]

(d) Tariff-rate quotas

19. Tariff-rate quotas (TRQs) involving specific rates apply to most types of cheese and curd imports[19]; the TRQ on unmanufactured tobacco has never been implemented as the customs duty rate for this item is set at zero. The out-of-quota (above 11,500 tonnes) and in-quota rates for cheese remain at $A 1,220 per tonne and $A 96 per tonne, respectively. Since 1995, quota allocation has been based on historical import performance within the quota for the previous 23 months (excluding quota transfers); the quota may be accorded upon application to the Customs. New importers are able to obtain an allocation only on transfer from an existing holder of a tariff quota share. Between 2003/04 and 2005/06, tariff quota utilization varied from 92.4% to 97.4% but from 2006/07 to 2008/09 its fill in ratio exceeded 99%[20]; this is indicative of strong demand for cheese and curd as well as minimal impediments to accessing the quota.

20. Future cheese and curd import arrangements are to be considered in the context of the Doha Round negotiations on agriculture. Preferential imports from LDCs, partners covered by regional trade agreements (New Zealand, Singapore, Thailand, the United States, Chile, and ASEAN), and the South Pacific Forum island countries are exempt from this TRQ (see below). Developing countries are subject to a reduced out-of quota tariff for the lines covered by the cheese and curd tariff quota, at $A 1,220 per tonne less 5%.

(e) Tariff preferences

21. Australia maintains numerous unilateral preferential and regional trade agreements (Chapter II). Duty- and TRQ-free access in particular is provided for goods originating in the 50 LDCs, Papua New Guinea, New Zealand, and Singapore. However, bilateral tariff reductions resulting from recently signed RTAs lead to lower tariffs for some developed countries than those granted to around 90 developing countries (or economies) under Australia's Generalized System of Preferences (GSP) (Table III.2).

Table III.2
Summary analysis of the Australian preferential tariffs, 2010
(Number and %)

	Number of preferential lines[a]	Total		WTO agriculture		WTO non-agriculture	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
MFN		3.1	53.8	1.6	29.1	3.3	57.3
Canada (CANATA)	512	2.7	46.1	1.4	26.6	2.9	49.0
Chile (ACIFTA)	2,672	0.6	9.2	0.0	0.3	0.7	10.5
Malaysia (MATA)	801	2.8	50.7	1.3	26.2	3.1	54.2
New Zealand (ANCZERT)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Papua New Guinea (PATCRA)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Singapore (SAFTA)	3,233	0.0	0.0	0.0	0.0	0.0	0.0
Thailand (TAFTA)	3,232	0.2	3.7	0.0	0.0	0.2	4.3
United States (AUSFTA)	3,233	0.7	9.9	0.0	0.0	0.8	11.4
SPARTECA[b]	3,207	0.2	0.1	0.0	0.0	0.2	0.2

Table III.2 (cont'd)

[18] WTO document G/MA/M/50, 22 October 2009.
[19] Camembert, brie, roquefort, stilton, and goat-milk cheeses are exempt from the quota scheme.
[20] WTO documents G/AG/N/AUS/66, 28 August 2007, and G/AG/N/AUS/78, 13 August 2010.

	Number of preferential lines[a]	Total		WTO agriculture		WTO non-agriculture	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
ASEAN-Australia-New Zealand FTA							
Brunei Darussalam	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Burma	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Cambodia	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Laos	3,029	0.3	3.6	0.0	0.3	0.4	4.1
New Zealand	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Philippines	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Singapore	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Viet Nam	3,029	0.3	3.6	0.0	0.3	0.4	4.1
Indonesia	3,004	0.3	4.0	0.0	0.3	0.4	4.6
Malaysia	3,024	0.3	3.7	0.0	0.3	0.4	4.2
Thailand	3,004	0.3	4.0	0.0	0.3	0.4	4.6
GSP[c]	3,129	0.5	5.6	0.1	0.7	0.5	6.3
GSP[d]	797	2.8	50.8	1.3	26.2	3.1	54.3
DCT[e]	176	3.0	51.2	1.4	26.2	3.2	54.8
LDCs	3,233	0.0	0.0	0.0	0.0	0.0	0.0

a The number of preferential lines includes only lines on which the rates are lower than the corresponding MFN applied rate. The 2010 MFN tariff consists of 6,008 tariff lines of which 2,775 lines are duty free.
b Forum Islands - South Pacific Regional Trade and Economic Cooperation Agreement.
c GSP for New Caledonia, Northern Mariana Islands, Wallis and Futuna Islands, Tokelau, Pitcairn, Namibia, Palau, Guam, French Polynesia, Botswana, and American Samoa.
d GSP for around 90 developing countries.
e Republic of Korea, Chinese Taipei, and Hong Kong, China.

Source: WTO Secretariat calculations, based on information provided by the Australian authorities.

(f) Duty concession schemes

22. Australia has a number of tariff concession schemes to support local industry. Total duty forgone through these schemes has risen considerably since the previous Review (Table III.3); this is due mainly to an increase in both the use of the Tariff Concession Scheme (TCS) and imports, including those of electronic consumable goods, and machinery destined for use by the mining sector. The drop in 2009/10, which was due to the global financial crisis, should be reversed by the broader use of these concessions in a few very large projects.

Table III.3
Duty forgone through tariff concession arrangements, 2005/06-2009/10
($A million)

Industry assistance measure	2005/06	2006/07	2007/08	2008/09	2009/10
Tariff Concession Scheme	1,073.5	1,300.1	1,456.8	1,624.7	1,471.5
Textile Clothing and Footwear Policy By-Law	13.5	13.8	11.9	11.5	7.3
TRADEX	65.5	77.6	80.0	68.0	51.2
Enhanced Project By-Law	33.2	64.6	53.6	131.2	132.9
Cheese and Curd Quota Scheme	12.6	13.1	13.0	12.9	12.6
Certain Inputs to Manufacture	2.6	2.1	5.1	2.2	2.0
Other concessions	146.7	124.5	171.6	151.3	147.1
Total	1,346.8	1,550.8	1,765.0	1,966.1	1,824.7

Source: Data provided by the Australian authorities.

Duty deferral – customs warehouses

23. The duty deferral facility allows imported goods to be stored in a customs licensed warehouse. These goods (referred to as "under bond") are under Customs control until the owner is ready to sell them for domestic consumption and pay the duty, or export them.[21]

Tariff concessions

24. Minor administrative changes (e.g. guidelines and application form) have been made to the TCS since 2007 to, *inter alia,* better reflect the obligations of the applicants; the TCS legislation and policy objectives remain unchanged. In 2009, it was agreed to pursue a range of additional reforms including tighter guidelines for the TCS. Australia's TCS is available for imports for which substitutable goods were not produced in Australia at the time a Tariff Concession Order (TCO) application was lodged.[22] Products that do not qualify for a TCO include foodstuffs, most textiles and clothing, certain motor vehicles and parts, jewellery, and furniture, as local industry produces these goods. A local manufacturer may object to the granting of a TCO and may request revocation of an existing TCO. A total of 431 TCOs were revoked between January 2007 and June 2010 upon proof that the Australian-made goods concerned could be substituted for imported goods; in 2009/10, the most common types of goods covered by revoked TCOs were steel products, plastics products, electrical, shelters and pre-fabricated buildings. In June 2010, there were 13,500 active TCOs.

25. In March 2010, the authorities initiated work on the rationalization and simplification of Schedule 4 of the Customs Tariff Act 1995, which provides tariff concessions for over 90 items covering a range of goods and industry sectors as well as circumstances; in November 2010, work was still in progress.[23] The key objectives for tariff concession rationalization are: to ensure that tariff concession arrangements reflect current market practices and government policy; to remove obsolete items; to reduce the regulatory burden on business and, more generally, to address the "significant monitoring and compliance costs for businesses". Reportedly, the list of concessions has grown over many years, becoming increasingly complex to administer and difficult for users to understand. Some concessions have been in place since 1901; many items were introduced when general tariff rates were much higher than current rates. There are 14 government agencies with policy responsibility for various items. Complexities create burdens on business with costs being passed on to consumers; they may also result in inappropriate use of concessions.

Other duty concession schemes

26. Other duty reduction or exemption arrangements include: the Enhanced Project By-Law Scheme (EPBS), the Automotive Competitiveness Investment Scheme (ACIS), the textiles, clothing and footwear policy by-laws, the Trade and Export Concession Scheme (TRADEX) (section (3)(iv)(b)), the Certain Inputs to Manufacture (CIM) programme (section (3)(iv)(d)), and the Space Concession programme.[24]

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[21] Australian Customs factsheet. Viewed at: http://www.customs.gov.au/webdata/resources/files/fscustomswarehousedeferduty.pdf [20 April 2010].

[22] In respect of goods that are the subject of a TCO application or of a TCO, substitutable goods are Australian-made goods that have a use that corresponds with the use (including a design use) of the goods that are the subject of the application or of the TCO (Australian Customs factsheet. Viewed at: http://www.customs.gov.au/webdata/resources/files/commer01.pdf [20 April 2010]).

[23] Department of Finance and Deregulation (undated).

[24] For further details on these schemes, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, as well as AusIndustry online information. Viewed at: http://www.ausindustry.gov.au/ImportandExport/Pages/home.aspx and http://www.ausindustry.gov.au/Manufacturing/Pages/home.aspx [20 April 2010].

27. The EPBS provides duty-free entry for eligible goods (capital equipment and machinery) for projects in agriculture, food processing, food packaging, manufacturing, mining, resource processing, gas supply, power supply, and water supply industries. These goods must not be produced in Australia, or the imports need to be more advanced, more efficient or more productive than those made in Australia. Total expenditure on capital goods for eligible projects must be no less than $A 10 million. In addition, an EPBS applicant must develop and implement an Australian Industry Participation plan (AIP), which outlines how the applicant will provide "full", "fair", and "reasonable" opportunity for Australian industry to participate in the project; in this way, Australian industry is provided the same opportunities as global suppliers in all aspects of the project, it is treated on an equal and transparent basis, and tenders are not structured in a way that might rule out the Australian industry.[25] The authorities indicated that these requirements are not compulsory. Since 2006, approximately 200 EPBS AIP plans have been prepared and the total tariff concession benefit from the EPBS amounted to around $A 380 million.

28. Under the ACIS, scheduled to end on 31 December 2010, import duty credits are issued quarterly to eligible participants, to encourage new investment and innovation in the automotive industry. These credits can be used to discharge customs duty on subsequent eligible automotive imports; the credits can also be sold or transferred. Although most textiles, clothing, footwear, and headwear products are exempted from the tariff concession system, some can be imported duty free under various by-laws (Table III.3).

(iii) Other charges affecting imports

29. In addition to fees for cargo handling, customs clearance, and post-clearance compliance activities, last amended in 2006, imported and domestic goods are subject to indirect taxes (section (4)(i)(a)). Customs fees and charges remain set on a cost-recovery basis rather than on import values. Fees relating to quarantine processes were last amended in July 2009.

(iv) Customs valuation and rules of origin

(a) Customs valuation

30. Australia has implemented the GATT/WTO Agreement on Customs Valuation since 1981. Goods are valued under nine different methods of valuation in a sequence established in the domestic legislation[26]; the most common is the transaction value method, which is used for around 98% of imports. Australian valuation legislation allows for the inclusion of royalties and buying commissions in line with requirements under Article 8 of the WTO Agreement, and foreign inland freight and inland insurance in the dutiable value of goods; the authorities consider that this practice is permitted under the WTO Agreement. The total understated revenue (under-invoicing) for 2009/10 was $A 128.9 million.

(b) Rules of origin

31. Australia's approach to non-preferential rules of origin (ROOs) remains unchanged since its last Review; on the other hand, changes were made to preferential ROOs in its bilateral and regional free-trade agreements (FTAs). The most common rules in these FTAs are those of: wholly obtained; change in tariff classification (CTC); regional value content (RVC); and the process rule

[25] AusIndustry (2010).

[26] These valuation methods are: the transaction value; the identical goods value; the similar goods value; the deductive goods value (consisting of the contemporary sales, later sales, and derived sales methods); the computed goods value; and the fall-back method.

(chemicals).[27] The ROOs in Australia's bilateral FTA with Singapore are based on an RVC measure, while the ROOs in its FTAs with New Zealand, the United States, Thailand, and Chile are essentially based on the CTC methodology, reinforced and enhanced where necessary with RVC and process rule requirements or options. In the regional FTA with ASEAN and New Zealand, "alternative and co-equal" product-specific rules exist for most tariff lines, offering exporters the choice of a CTC-based rule or an RVC-based equivalent. Around 83% of tariff lines are covered by these "alternative and co-equal" rules, while approximately 11% of lines offer only one pathway – either a CTC-based or RVC rule. The remaining lines are covered by wholly obtained requirements for agricultural goods and special rules for waste and scrap goods. Other provisions relating to ROOs include final process of manufacture requirements, rules governing consignment, and *de minimis* provisions. The objective of the different types of ROOs is to properly limit preferential rates of duty to goods that either wholly originate in the preference-receiving country, or that have undergone substantial transformation in that country.

(v) Import prohibitions, restrictions, and licensing

32. Import prohibitions or restrictions may be applied for various reasons, including public health or safety concerns, animal and plant life, environmental conservation, security, and international commitments. No automatic import licensing has been imposed. Non-automatic licensing requirements have been in place to enforce import prohibitions, restrictions, and controls (Table III.4); non-automatic import permits may be given on an ad-hoc or defined-period basis. Prohibition or stringent quarantine/permit/inspection procedures (section (vii)(b)) currently apply on more than 150 agricultural/livestock products (e.g. cereals, fresh fruit, vegetables, meat, poultry products) and other items (e.g. used machinery) considered to have the potential to introduce contamination or disease. Australia's last submission to the WTO of its Replies to the Questionnaire on Import Licensing Procedures was in October 2006[28]; in November 2010, Australia was in the process of developing a revised submission to reflect recent limited changes.

Table III.4
Main import prohibitions, restrictions, and controls, 2010

Goods	Reason	Policy agency/permit issuing agency
Prohibited		
Dogs - dangerous breeds, and related advertising matter	Public health or safety concerns	
Embryo clones - viable materials, and related advertising matter	Public health or safety concerns	
Suicide devices	Community protection	
Diamonds - from Côte d'Ivoire	International commitment	
Restricted		
Anabolic and androgenic substances and ketamine	Public health or safety concerns	Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
Asbestos	Public health or safety concerns	National Occupational Health and Safety Commission
Therapeutic substances and goods (antibiotics)	Public health or safety concerns	Therapeutic Goods Association, Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
ANZAC, and related advertising materials	National symbol	Department for Veterans' Affairs

Table III.4 (cont'd)

[27] For further details on these rules, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, and Australian Customs and Border Protection, "Service Practice Statement", 27 February 2009. Viewed at: http://www.customs.gov.au/webdata/resources/files/PS200913-Rules_Of_Origin.pdf [21 April 2010].

[28] WTO document G/LIC/N/3/AUS/3, 23 October 2006.

Goods	Reason	Policy agency/permit issuing agency
Australian flag and coats of arms	National symbol	Department of Prime Minister and Cabinet; Australian Customs Service
Hazardous and health-related goods (glucomannan in tablet form, seat-belt accessories, autotrend sun filters, victim toys, smokeless tobacco products, diveman underwater breathing apparatus, "quickie" line release system, gas masks containing asbestos, cigarette lighters)	Public health or safety concerns	Australian Competition and Consumer Commission
Cat and dog fur products	Animal welfare	Australian Customs Service
Glazed ceramic ware[a]	Public health or safety concerns	Australian Customs Service
Cetaceans (whales, dolphins, and porpoises)	Environmental conservation	Department of the Environment, Water, Heritage and the Arts
Chemical weapons	International commitment (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (CWC))	Australian Safeguards and Non-Proliferation Office in the Department of Foreign Affairs and Trade
Cosmetics – toxic materials	Public health or safety concerns	Australian Customs Service
Credit cards – counterfeit	Community protection	Australian Customs Service
Crowd control equipment	Community protection	Australian Customs Service
Papua New Guinea cultural items	International commitments	Australian Customs Service
Diamonds – Kimberley Process	International commitments	Department of Foreign Affairs and Trade
Dog collars – electronic and protrusion	Animal welfare	Australian Customs Service
Drugs and narcotics	Public health or safety concerns, International commitments (Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971, and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988)	Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
Endangered species of wild fauna and flora	International commitment (Convention on International Trade in Endangered Species (CITES))	Department of the Environment, Water, Heritage and the Arts
Erasers resembling food in scent or appearance	Public health or safety concerns	Australian Customs Service
Explosives, plastic	Community protection	Attorney-General's Department
Fish/toothfish	Environmental conservation	Australian Fisheries Management Authority
Fly swatters/mosquito bats – electronic	Public health or safety concerns	Australian Customs Service
Marked fuels (duty-free fuel marked to signify that it is not for use in internal combustion engines)	Domestic regulation	Australian Customs Service
Growth hormones and substances of human or animal origin	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Hazardous waste	International commitments (Basel Convention, OECD Council Decision C(92)39)	Department of the Environment, Water, Heritage and the Arts
Incandescent lamps	Energy saving	Department of the Environment, Water, Heritage and the Art, Energy Efficiency Branch
Certain industrial chemicals	Public health or safety concerns, environmental conservation	Department of the Environment, Water, Heritage and the Arts
Kava	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing, the Office of Chemical Safety and Environmental Health
Knives and daggers	Community protection	Australian Customs Service

Table III.4 (cont'd)

Goods	Reason	Policy agency/permit issuing agency
Laser pointers	Community protection	Australian Customs Service
Logs and timber products – from Liberia	International commitment (UN Security Council Resolutions)	Department of Foreign Affairs and Trade
Goods coated with or containing unsuitable mineral compounds (toys, cosmetics, money boxes, pencils)	Public health or safety concerns	Australian Customs Service
Ozone-depleting substances	Environmental conservation/International commitment (Ozone Protection and Synthetic Greenhouse Gas Management Act 1989)	Department of the Environment, Water, Heritage and the Arts
Organochlorine chemicals (pesticides)	Public health or safety concerns, environmental conservation	Department of Agriculture, Fisheries and Forestry
Objectionable material	Community protection	Classification Board
Radioactive substances	Community protection, international commitments	Australian Radiation Protection and Nuclear Safety Agency; Department of Health and Ageing
Steroids	Public health or safety concerns	Therapeutic Goods Administration, Department for Health and Ageing
Tablet presses	Public health or safety concerns	Attorney-General's Department
Therapeutic drugs and substances	Public health or safety concerns	Therapeutic Goods Administration, Department of Health and Ageing
Tobacco leaf	Domestic regulation	Australian Taxation Office
Weapons, firearms, and parts of firearms	Community protection	Australian Customs Service, Firearms and Weapons Section
Woolpacks and woolpack caps	Domestic regulation	Department of Agriculture, Fisheries and Forestry

a No permit is needed for importation. However, a testing certificate is required from the Australian Government Analytical Laboratory or a testing agency approved by the National Association of Testing Authorities Australia.

Source: Customs online information. Viewed at: http://www.customs.gov.au/site/page4369.asp [14 July 2010].

33. Since 12 January 2009, a Post Import Permission Scheme has allowed permission to be granted after importation, at the discretion of Customs, in respect of certain classes of controlled goods including specific drugs, chemicals, consumer items, firearms and knives, asbestos products, and items bearing Australian national symbols. If the post import permission is not sought or it is not granted within 30 days of application, then Customs seize the goods in question.[29] The system allows flexibility to Customs in dealing with importers who were genuinely unaware of the need for, or unable to obtain import permission prior to importation.

(vi) Contingency measures

(a) Anti-dumping and countervailing measures

34. No changes have been made to the legislative, institutional or procedural framework on anti-dumping and countervailing measures during the review period[30]; these measures continue to be subject to a five-year sunset clause, but their duration may be extended. Investigations are conducted by Customs; and parties may appeal Customs decisions. In light of the unique convergence in business practices and bilateral application of competition legislation between Australia and New Zealand, imports from New Zealand covered by the ANZCERTA remain excluded from

[29] Australian Customs Notice No. 2009/03, 16 January 2009. Viewed at: http://www.customs.gov.au/webdata/resources/notices/acn0903.pdf [20 April 2010].

[30] For further details on these matters, see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

anti-dumping actions and are dealt with under competition laws[31]; competition legislation has never been exercised in this regard.

35. With 221 cases initiated between 1995 and 2010, Australia was one of the world's major user of anti-dumping measures (sixth in 2008).[32] Between 1 July 2007 and 31 October 2010, Australia initiated 25 anti-dumping investigations; 30% concerned items originating in China. As of October 2010, 21 anti-dumping measures were in force on 18 products, mainly pineapple fruit (5 cases), several steel items (3 cases), and polyvinyl chloride (2 cases). Nine of these measures were extensions of existing measures beyond their five-year sunset period. Action affected mostly products originating in Asia (15, mainly China (7) and Thailand (3)), but also the EU (3) and the United States (2).[33] Between 2006 and October 2010, Australia initiated six countervailing investigations; these included brandy from France, mobile garbage bins from Thailand, toilet paper, hollow structural sections and aluminium extrusions from China, and biodiesel from the United States. Definitive countervailing duties were levied on certain brandy from France and aluminium extrusions from China. At end-October 2010, the countervailing investigation on biodiesel from the United States was still under way.[34]

36. A 2009 Productivity Commission report recommended retaining the anti-dumping and countervailing system, on the basis that it provides leverage for broader trade reforms. However, it, *inter alia,* notes that the current system has a number of significant deficiencies which, if not addressed, will continue to impose a net cost on the economy.[35] The Commonwealth Government's response to the review will be considered in the 2011/12 Budget process.

(b) Safeguards

37. Australia has no specific legislation for the imposition of safeguard measures and there has been no development in this regard during the review period.[36] The Productivity Commission remains the investigating authority. Following consideration by the Australian Government, the Treasurer may refer matters to the Productivity Commission for inquiry. An investigation on increased imports of frozen pig meat was initiated in October 2007 and was terminated in April 2008 without the adoption of any safeguard measures.[37]

38. Bilateral free-trade agreements (such as, for example, the Thailand-Australia Free Trade Agreement) may have additional safeguard processes covering preferential trade where the injury caused by increased imports is due to the tariff reductions under the particular FTA; these

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[31] Under the ANZCERTA, both countries have precluded anti-dumping action against goods that are the produce or manufacture of the other. However, actions may be taken in cases of alleged dumping by a third country whose exports were dumped into Australia or New Zealand and are causing or threatening to cause material injury to industry.

[32] WTO online information. Viewed at: http://www.wto.org/english/tratop_e/adp_e/adp_e.htm [23 April 2010].

[33] WTO document G/ADP/N/195/AUS, 23 March 2010.

[34] WTO online information. Viewed at: http://www.wto.org/english/tratop_e/scm_e/scm_e.htm [23 April 2010]; and WTO document G/SCM/N/203/AUS, 24 March 2010.

[35] The Productivity Commission's concerns with the current system focus on: the lack of consideration of wider impacts; maintaining the currency of measures; extensions of measures; appeal arrangements; alignment of the subsidies provisions with the Subsidies and Countervailing Agreement; and transparency in the decision-making process and outcomes (Productivity Commission, 2009b).

[36] Procedures for safeguard investigations are contained in *Gazette* No. S297 of 25 June 1998. Also see WTO documents G/SG/N/1/AUS/2, 2 July 1998, and G/SG/N/1/AUS/2/Suppl.1, 16 December 2005.

[37] WTO document G/SG/N/9/AUS/2, 10 April 2008.

"transitional safeguards" or "bilateral safeguards" are not global safeguards.[38] The process for these safeguards is essentially the same as for WTO safeguards; no safeguards of this type were used during the review period. No safeguard measures apply to products originating from Singapore, New Zealand, Thailand, the United States or from developing country WTO Members, provided certain conditions are met.[39]

(vii) Standards and other technical requirements

(a) Standards, testing, and certification

39. Under the Commonwealth system, the legislative, executive, and judicial powers relating to technical regulations (mandatory standards) remain shared between the Commonwealth (the Australian Central Government) and the constituent state and territory governments.[40] A 1992 Commonwealth/State Agreement on Mutual Recognition allows a product that is in conformity with requirements of at least one State or Territory (i.e. legally saleable) to be sold throughout Australia.[41] While this broad standards-setting and enforcement framework remains in place, there has been significant reform since Australia's last Review to improve national coordination and uniformity of implementation across the Commonwealth. In particular, the Council of Australian Government (COAG) adopted a best practice regulation guide in 2007 designed to promote efficient regulation among jurisdictions. In December 2007, the COAG established the Business Regulation and Competition Working Group with the aim of reducing the regulatory burden on business, including by improving regulation-making and review processes. The COAG has also commenced initiatives to increase regulatory consistency and harmonization between jurisdictions through the National Partnership Agreement to Deliver a Seamless National Economy (Chapter II). Further, a national product safety system where the Commonwealth and state and territory agencies will administer the same set of uniform product standards became operational on 1 January 2011. The single law multiple regulator (SLMR) model of Australian product safety regulation commencing on 1 January 2011 set the Australian Competition and Consumer Commission (ACCC) as the agency responsible for product safety policy development for Australia. The state and territory agencies, with the ACCC, will be responsible for the enforcement of those mandatory product safety regulations.

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[38] Department of Foreign Affairs and Trade online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/trade_remedies.html [26 April 2010]. For further details on TAFTA safeguards see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[39] Under the SAFTA, products determined to be of Singapore origin are excluded from safeguard inquiry; the two countries agreed not to apply safeguard measures against each other's products. Under AUSFTA imports of U.S. origin are exempt when they are not a substantial cause of serious injury or threat thereof; under TAFTA imports of Thai origin that are not a cause of serious injury or threat thereof, nor of serious damage or actual threat may be excluded (WTO document G/SG/N/1/AUS/2/Suppl.1, 16 December 2005).

[40] Commonwealth and national regulators have responsibility for making technical regulations in pharmaceuticals, medical devices, and therapeutic goods (Therapeutic Goods Administration (TGA)), food (e.g. Australia New Zealand Food Authority (ANZFA)), occupational health and safety, product safety, agricultural and veterinary chemicals, telecommunications and radio communications, aviation, marine and road safety (Department of Infrastructure, Transport, Regional Development and Local Government), measurement, and building codes. State and territory regulators are responsible for making technical regulations in areas such as food, power, water, public health, occupational health and safety, road transport and the environment. For more information see WTO documents G/TBT/2/Add.8/Rev.1, 29 May 2001 and WT/TPR/S/178/Rev.1, 1 May 2007.

[41] According to the Productivity Commission, mutual recognition has led to lower regulatory compliance costs for firms set in areas having jurisdictional differences; it seems that this has contributed to the expansion of interstate and trans-Tasman trade (Productivity Commission, 2009f).

40. The institutional framework for standards and conformity assessment remains unchanged. It consists of four main bodies: Standards Australia, a not-for-profit company responsible for the formulation of standards; the National Association of Testing Authorities (NATA), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), the two main accreditation bodies[42]; and the National Measurement Institute (NMI), the physical, chemical, and biological measurement and metrology government body. Since 1 July 2010, NMI has been responsible for administering the new national trade measurement system, which replaces the previous state-based arrangements with a single, nationally applicable framework, funded and administered by the Australian Government.

41. Standards Australia International (SAI) or Standards Australia, the top non-governmental standards writing body, is responsible for the formulation and publication of voluntary standards (see below); it represents by far the largest single body of formal standards being produced for Australian use. On 30 May 2008, the Department of Innovation, Industry, Science and Research (DIISR), on behalf of the Commonwealth Government, signed a new Memorandum of Understanding (MOU), largely the continuation of the previous MOU, with Standards Australia. The new MOU is subject to performance reviews at intervals not exceeding five years and remains in force until varied or terminated by the parties.[43] The new MOU requires, *inter alia,* Standards Australia to report annually on its progress in the implementation of a range of matters; and the development of new or amended standards and setting of priorities to be transparent and well-founded, and ensuring the primary decision criterion is of net benefit to the community as a whole.[44] The Accreditation Board for Standards Development Organisations (ABSDO) accredits other standards development organizations to make Australian standards; five organizations other than Standards Australia are now accredited to write Australian standards.[45]

Mandatory standards

42. Voluntary standards are often made mandatory (or regulatory) by reference in technical regulations.[46] By November 2010, Standards Australia had published 6,953 standards (6,850 in 2007), of which approximately one third (2,400 in 2007) have become mandatory; 35% of Standards Australia's catalogue are joint Australian/New Zealand Standards.

43. Since 1 January 2011, only the Commonwealth Government has had the power to introduce mandatory product safety standards and information standards. To ensure consistency of regulations operating throughout Australia, the ACCC and all state and territory agencies have committed to introduce the same set of product safety regulations prior to the date marking the introduction of the new Australian product safety system.[47] In respect of Commonwealth regulations, mandatory

[42] Another regulatory body, the Australian Quarantine and Inspection Service (AQIS), provides inspection and certification services for food imports.

[43] Standards Australia online information. Viewed at: http://www.standards.org.au/downloads/SAI-MoU-2008.pdf and http://www.standards.org.au/downloads/080825_SA_Signs_MOU_with_Commonwealth.pdf [28 April 2010].

[44] Net benefit takes into account the costs and benefits related to: public health and safety; social and community impact; environmental impact; competition; and economic impact. Standards Australia online information, *Guide to Net Benefit*, last revised on 9 March 2010. Viewed at: http://www.standards.org.au/LinkClick.aspx?fileticket=0cfqGeR1arU%3d&tabid=75 [2 December 2010].

[45] ABSDO online information. Viewed at: http://www.absdo.org.au/Home.aspx.

[46] By making compliance compulsory or optional (if the target is met through some alternative approach), mandatory (or regulatory) standards tend to be more targeted, as they are aimed at, *inter alia,* protecting the health or safety of persons, or the environment.

[47] Previously, Commonwealth and state and territory government ministers could issue mandatory safety and information standards. This had led to some differences in regulations between governments. The Council of Australian Governments (COAG) agreed that Australia would have a new single national system of

consumer product safety and information standards are still enforced by the ACCC. At the state and territory level, these regulations are enforced by government departments or agencies with portfolio responsibility for consumer affairs and fair trading. In April 2010, mandatory product safety standards affected 41 consumer items (including some on labelling)[48], and 24 unsafe goods were banned[49]; these requirements do not necessarily apply to the entire Commonwealth territory.

44. The ACCC conducts regular bi-annual product safety surveillance activities to monitor compliance levels with mandatory standards and bans, and to remedy identified breaches. Since 2007, the ACCC has conducted surveillance activities on 28 mandatory product safety and information standards, and on six banned goods. Since 2007, 431 breaches of mandatory standards have been identified; non-compliance ranged from very low technical breaches to serious breaches involving significant hazards to consumers. These breaches resulted in a range of remedial measures (including product recall, withdrawal from sale, product modification, re-labelling, etc.) or enforcement measures (prosecutions, injunctions, court orders, enforceable undertakings, administrative actions).

National, international and aligned standards

45. Australia's policy remains that standards should be compatible with relevant international or internationally accepted standards or practices, with a view to minimizing impediments to trade. In particular, mandatory standards should be consistent with Australia's international obligations. However, in the absence of a suitable international standard, national standards are developed, with transparency and consensus being two key requirements. At end-November 2010, 38% of national standards were identical or modified adoptions of international standards (40% in 2007); however, it is estimated that 97% of applied standards are identical or modified adoptions where an international standard exists. International equivalence remains high in, *inter alia*, electronic and IT products. In 2010, 70% (over 60% 2004) of motor vehicle safety, anti-theft and emission standards were aligned with the United Nations Economic Commission for Europe (UNECE) 1958 Agreement on technical standards for automotives and parts regulations; a further 10% were modified for adoption, while 20%, comprising 14 standards, are not aligned. Australian standards for which there are no international standards exist for soils, aggregates, babies' cots, nightwear, children's swimming aids.

Accreditation and quality management standards

46. The MOU between the National Association of Testing Authorities and the Australian Government was renewed in March 2008. Covering a period of five years, the MOU recognizes NATA as the national authority (except for most therapeutic goods) for accreditation of testing and calibration laboratories, suppliers of certified reference materials, and inspection bodies. However, the Australian Government is now no longer committed to using NATA accredited facilities for its own testing needs as "a matter of course".[50] In November 2010, there were 2,961 NATA-accredited laboratories and facilities.[51]

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consumer product safety laws by January 2011 (ACCC online information. Viewed at: http://www.productsafety.gov.au/content/index.phtml/itemId/970773 and http://www.productsafety.gov.au/content/index.phtml/itemId/970467 [26 April 2010]).

[48] For the full list of products covered by mandatory general consumer product safety standards requirements, see ACCC online information. Viewed at: http://www.productsafety.gov.au/content/index.phtml/itemId/970773 [26 April 2010].

[49] For a full list of the banned items, see ACCC online information. Viewed at: http://www.productsafety.gov.au/content/index.phtml/itemId/970715 [26 April 2010].

[50] NATA (2008).

[51] NATA (2009).

47. JAS-ANZ accredits certification bodies for the certification of management systems (e.g. quality, environmental, occupational health and safety, and HACCP-based food safety), products, and personnel in line with international and national standards, such as the ISO 9001, ISO 14001, AS/NZS 4801 and ISO 22000, and HACCP (Hazard Assessment Critical Control Point) food safety standards. In the absence of an international standard, JAS-ANZ may accredit certification or inspection bodies to certify the use of a regulatory or industry standard, including the Department of Foreign Affairs and Trade's Certificate of Origin Scheme, which relies on free-trade agreements to identify the specified requirements or standards. In May 2010, there were 45 certification bodies accredited to issue certificates in Australia. The use of quality management system standards such as ISO 9001 and ISO 14001 has been increasing: between 2007 and 2010, the number of Australian companies with ISO 9001 certification increased from 9,201 to 9,312; and companies certified to ISO 14001 increased from 979 to 1,629.

International cooperation

48. Since its last Review, Australia has not signed any new mutual recognition agreements (MRAs), which contribute to trade facilitation. In addition to the non-treaty 1996 Trans Tasman Mutual Recognition Agreement (in force since May 1998) and the Mutual Recognition Arrangement for measurement standards of the International Committee for Weights and Measures (CIPM MRA) (October 1999), it maintains treaty-status MRAs on Conformity Assessment with the EU (1998), the EFTA (2000), Singapore (2001), and Canada (2006), as well as a voluntary MRA with Thailand (2000).[52] In the context of APEC, Australia is a party to the MRAs on Conformity Assessment of Telecommunications Equipment (1999), Conformity Assessment of Electrical and Electronic Equipment (1999) and Conformity Assessment of Foods and Food Products (1997). NATA and JAS-ANZ have developed an extensive network of agreements (MLA)/MRAs through international and regional fora; NATA through the International Laboratory Accreditation Cooperation (ILAC) and the Asia-Pacific Laboratory Accreditation Cooperation (APLAC), and JAS-ANZ through the International Accreditation Forum (IAF) and the Pacific Accreditation Cooperation (PAC)). In the area of legal metrology, as well as the CIPM MRA, NMI is helping to establish mutual confidence within the global legal metrology environment through participation in the OIML Mutual Acceptance Agreement (MAA) for pattern approval of measuring instruments. Australia has bilateral MRAs of type approval test reports with equivalent bodies in the Netherlands, New Zealand, and the United Kingdom.

Transparency

49. Notices of technical regulations are generally published in the Commonwealth of Australia *Gazette* as well as on the websites of bodies such as the Australia New Zealand Food Authority (ANZFA). Additionally, standards and conformity assessment procedures are notified widely in national newspapers, in-house journals and other relevant Australian, state, and territory government publications. Notices on voluntary standards are also published in the journal of Standards Australia, *The Australian Standard*, while information on conformity assessment procedures are published in the quarterly NATA newsletter, *NATA News*.

50. Between 2007 and May 2010, Australia made ten notifications (including on genetically modified agricultural and food products) under the WTO Agreement on Technical Barriers to Trade (TBT). In most cases the timeliness of submission allowed for a comment period of 45-59 days.[53]

[52] For more information on MRAs in force see DIISR. Viewed at: http://www.innovation.gov.au/Section/Industry/Pages/OverviewforIndustry.aspx.

[53] WTO documents G/TBT/25, 4 March 2009 and G/TBT/23, 20 February 2008.

(b) Sanitary and phytosanitary regulations

51. Australia is a major exporter of agricultural commodities and agri-food products and, has maintained its strict sanitary and phytosanitary (SPS) regime, which the authorities consider proportionate and matching their appropriate level of protection (ALOP, see below). The authorities maintain that SPS measures are based on science and aim to reduce the risk of exotic pests and diseases to a very low level acceptable to Australia (but not zero).[54] Nevertheless, Australia has been criticized by certain trading partners on the grounds that they are unduly stringent and therefore protectionist; during the review period, complaints were related to quarantine procedures and apple imports.[55] Since 2004, an Eminent Scientists Group (ESG), a high level review group independent of Biosecurity Australia (see below), has been tasked with providing external scientific and economic scrutiny of significant import risk analyses. Its role was strengthened in September 2007, and again in July 2009, to take account of relevant new information brought to its attention, including assessing conflicting scientific views provided to it.[56] However, it appears that so far no unified analytical framework has been used to assess the costs and benefits of SPS measures for stakeholders along the supply chain, such as domestic consumers, producers and governments, or foreign suppliers, or, where relevant, foreign consumers and governments.[57] Trade effects are part of the assessment, as measures have an impact on trade as conduit of the externality, but trade effects are not the sole focus.[58] The authorities consider that the WTO SPS Agreement provisions do not require such analysis, and that the only direction as to relevant economic consequences to be taken into account in a risk assessment is found in Article 5.3 of the Agreement. Australia's risk import assessments (see below) address the issue of economic consequences to relevant stakeholders.[59]

[54] Department of Agriculture, Fisheries and Forestry online information. Viewed at: http://www.daff.gov.au/market-access-trade/sps [9 May 2010]. See also WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[55] At end-December 2009, 4 out of 15 WTO panels established to examine SPS-related dispute cases were on complaints against Australia. The cases involved complaints by: Canada and the United States against Australia's restrictions on imports of fresh, chilled or frozen salmon (mutually agreed solution, 2000); the Philippines against Australia's restrictions on fresh fruits and vegetables, including bananas (panel established in 2003); the EU against Australia's quarantine procedures (mutually agreed solution, 2007); and New Zealand against Australia's restrictions on apples (Chapter II) (WTO document G/SPS/53, 3 May 2010).

[56] As a result of the Beale Review (2008), the membership of the ESG was expanded in 2009 to include an eminent economist; until then its membership consisted of scientists. So far the ESG has issued reports on apples from New Zealand (October 2006), chicken meat (May 2008), bananas from the Philippines (October 2008), prawns and prawn products (June 2009), and apples from China (November 2009). Department of Agriculture, Fisheries and Forestry online information. Viewed at: http://www.daff.gov.au/about/contactus/corp-policy/eminent_scientists_group/esg_terms_of_reference [12 November 2010].

[57] In quarantine as in other policy areas, cost benefit principles are always relevant. Even the quest for disease-free status must pass such a test, as there would be no rationale in maintaining a barrier as extreme as this if it were to impose more economic costs on Australia than benefits. According to a 2010 study, Australian quarantine arrangements effectively transfer the costs of an extreme disease control regime from growers to domestic consumers, and recent official quarantine reviews have been unduly limited. The ban on imports of apples from New Zealand was estimated to be the equivalent of consumers directly paying growers $A 2 billion over six years. The cost of controlling an outbreak of fire blight would be minimal - no more than $A 10 million and most likely about $A 3 million. Given that Australia is due to raise quarantine spending by $A 260 million in 2010, the study suggests it could easily afford any mishaps (Bosworth and Cutbush, 2010).

[58] According to an OECD published study, this analytical framework allows comparison of alternative ways to design measures and discerns their trade and welfare effects. An import ban (or prohibitive standard) to keep the domestic market free of some undesired product characteristic can be compared to allowing trade under the condition that the foreign product be clearly identifiable (e.g. through labelling) (Van Tongeren et al, 2009).

[59] Article 5.3 of the SPS Agreement allows for cost-effectiveness analysis to be applied to evaluating alternative measures to reducing pest and disease risk to the appropriate level of protection (ALOP) in line with

Food standards setting

52. Since its previous Review, Australia has maintained many quarantine controls and food standards that are stricter than relevant standards promulgated by international bodies (e.g. CODEX Alimentarius Commission). Food Standards Australia New Zealand (FSANZ), a bi-national independent statutory authority, develops food standards, and if appropriate, joint codes of practice with industry, covering the content and labeling of food sold in Australia and New Zealand (section (c) below). All domestic and imported food products marketed in Australia must comply with relevant food standards as regulated in the Food Standards Code (the Code), which is developed and maintained by FSANZ. From 1 July 2007 to 30 June 2010, 62 applications and proposals were gazetted in the Code. FSANZ is required to take account of international standards, including those set by Codex, when developing standards. Where FSANZ has developed standards that are not consistent with international standards, it has notified the WTO through the appropriate mechanisms. Maximum residue limits (MRLs) for a number of agricultural and veterinary chemicals were revised on several occasions during the review period.

53. The Code also regulates food derived from GM plants, animals or micro-organisms, as well as the labelling of GM foods. Imported foods using biotechnology may be sold in Australia only after assessment and approval by FSANZ. In November 2010, FSANZ had completed assessments of 45 commodities produced from gene technology and approved all of them; it is currently assessing a further 6 commodities. FSANZ has also assessed and approved numerous enzymes sourced from GM micro-organisms. Imports of live and viable genetically modified organisms (GMOs) requires authorization from the Gene Technology Regulator, an independent statutory office holder, in charge of regulating all GMO issues. All dealings with GMOs must be licensed by the Regulator, unless otherwise authorized under the legislation. All licence applications are subject to case-by-case scientific risk assessment and risk management. As of 20 August 2010, the Regulator had authorized the unrestricted "commercial" release of 25 GMOs (varieties of cotton, canola, carnations, roses, and two vaccines).

Biosecurity

54. Since 2009, Australia's biosecurity system has been undergoing institutional reform in line with the recommendations of a 2008 independent review.[60] The review, *inter alia*, recognized that zero-risk is unattainable and undesired and suggested a shift from the largely negative-defensive quarantine to the pro-active biosecurity. Many of the review's recommendations are dependent on the commencement of new biosecurity legislation. A draft of this legislation would be released for public comment prior to its scheduled introduction into Parliament. A number of institutional reforms entered into effect on 1 July 2009 to strengthen the governance of the biosecurity system, including the appointment of the interim Inspector General of Biosecurity to conduct independent audits of Australia's biosecurity system. A Biosecurity Services Group was established within the DAFF, drawing together all biosecurity activities (including those of Biosecurity Australia) and AQIS,

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the objective of minimizing negative trade effects. Cost-effectiveness analysis involves an evaluation of the costs of different measures in addressing a particular benefit. A measure is chosen on the basis that it involves the least aggregated cost. Although falling short of cost-benefit analysis, the application by regulators of cost-effectiveness analysis can at least facilitate the selection of measures that are consistent with achieving a desired risk target at low cost (Binder, 2002).

[60] The Government agreed in principle with the 84 recommended reforms. Other key recommendations included better coordination of states, territories, industry and the Commonwealth to monitor biosecurity risks before and after goods enter the country (WTO documents G/SPS/R/54, 28 April 2009 and G/SPS/R/56, 28 January 2010; and Commonwealth of Australia, 2008b).

reflecting the recommendations made in the independent review.[61] A Biosecurity Advisory Council was established on 1 January 2010 to provide advice to the Minister for Agriculture, Fisheries and Forestry.

Import risk analyses (IRAs)

55. During the review period, Australia conducted science-based risk assessments, including import risk analyses (IRAs) under a regulated process, and developed recommendations on import conditions that would meet Australia's appropriate level of protection (ALOP).[62] IRAs completed during the review period included apples from New Zealand, bananas from the Philippines, capsicums from Korea, mangoes from India, unshu mandarins from Japan, apples from China, stonefruit from the United States, horse meat from approved countries, chicken meat, and prawns and prawn products.[63] In April 2010, Biosecurity Australia commenced concurrent IRAs to assess the animal quarantine risks from the importation of beef and beef products from the United States, Canada, and Japan.[64] Following a change to the 2001 policy on Bovine Spongiform Encephalopathy (BSE), as from 1 March 2010 countries that have had one or more cases of BSE have been allowed to apply for assessment for possible access to the Australian market; countries with existing access will have to apply for assessment under the new policy by 30 June 2011.[65] However, this new BSE policy is still not in line with the relevant World Organization for Animal Health (OIE) standard.[66] New IRA arrangements entered into effect on 5 September 2007 setting specific timeframes for completion of IRAs within either 24 months or 30 months.[67] Two trading partners expressed concern that this new policy would still allow for long delays in the risk assessment process.[68] The authorities indicated that the existing backlog may continue because of delays relating to the prioritization of processing of past market-access requests.

Quarantine

56. Due to differences in the status of animal and plant health across Australia, different quarantine measures may be imposed within the country. The quarantine system is regulated by Commonwealth, state and territory laws[69]; it applies to all humans, plants, animals, and associated products, including food products. Quarantine activities are pre-border, border, and post-border.

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[61] WTO document G/SPS/R/55, 23 September 2009; and DAFF online information. Viewed at: http://www.daff.gov.au/bsg/biosecurity-services-group [10 May 2010].

[62] For more information on Australia's procedures see Department of Agriculture, Fisheries and Forestry (2009a).

[63] Biosecurity Australia online information. Viewed at: http://www.daff.gov.au/ba/ira/current-plant [15 July 2010].

[64] Biosecurity Australia Advice (BAA) 2010/10, 8 April 2010. Viewed at: http://www.daff.gov.au/ba/ira/current-animal/beef_and_beef_products_for_human_consumption/commencement_of_iras_for_the_importation_of_beef_and_beef_products_from_the_united_states,_canada_and_japan [14 July 2010].

[65] WTO document G/SPS/R/56, 28 January 2010.

[66] WTO document G/SPS/N/AUS/239, 26 October 2009.

[67] WTO document G/SPS/R/46, 2 January 2008.

[68] WTO document G/SPS/R/44, 30 May 2007.

[69] Australia also has inter- and intra-state barriers in the form of quarantine restrictions. Under the Constitution, the Commonwealth Government does not have exclusive power to make laws relating to quarantine; thus Commonwealth and state laws coexist. However, the Constitution states that, if a state law is inconsistent with a Commonwealth law, the Commonwealth law prevails, and the state law is invalid to the extent of the inconsistency. A 1995 MOU on animal and plant quarantine matters between the Commonwealth and states governments remains in place. Australia has many pest- and disease-free zones, which are maintained through second-tier domestic quarantine measures affecting inter-state and local movement of products.

AQIS is responsible for administering quarantine legislation on behalf of the Commonwealth; its quarantine functions include issuing import permits, inspections, directions for treatment, and clearances. The Department of Health and Ageing (DoHA) performs risk assessments on all biological materials that are of human quarantine concern, and provides advice to AQIS before an import permit is issued. In moving away from "mandatory intervention" targets (i.e. high risk containers entering Australia) to a 'risk-return' approach (i.e. resources targeted to secure the biggest possible reduction in the risks posed by pests and disease), AQIS no longer collects data on quarantine inspection operated at airports, seaports, and mail.

57. During the review period, Australia eradicated equine influenza (December 2008) and citrus canker (January 2009); the authorities consider these as examples of the effectiveness of Australia's well developed disease and pest control capability and regulatory processes.[70]

Transparency and technical assistance

58. Between 2007 and 20 May 2010, Australia submitted 58 notifications to the WTO relating to Article 7 and Annex B of the SPS Agreement. Draft IRA reports, as well as outcomes of the IRA process are also notified to the WTO. Australia is also active in the three standard-setting organizations under the SPS Agreement: FAO/WHO Codex Alimentarius Commission, World Organization for Animal Health, and International Plant Protection Convention. Australia has continued to assist developing countries, particularly APEC members, to build quarantine infrastructure and risk analysis capacity, and to improve awareness of international standards on SPS issues in general.[71]

(c) Labelling and packaging

59. Food labelling is also regulated under the Food Standards Code (see above); all foods sold in Australia, including imported foods, must comply with the relevant regulations. In October 2009, the Council of Australian Governments (COAG) and the Australia and New Zealand Food Regulation Ministerial Council agreed to undertake a comprehensive review of food labelling law and policy; its final report was to be submitted to the Ministerial Council by the end of 2010.[72]

60. Mandatory product information standards, including care labelling for clothing and textile products, as well as for a range of other consumer products including sunglasses, cosmetics and toiletries, and tobacco products, remain in force (section (a) above). Mandatory energy consumption labelling requirements affect appliances such as refrigerators, freezers, clothes washers/dryers, dishwashers, room air conditioners, mains-pressure electric-storage water heaters, and motor vehicles. National, state, and territory information standards were to be rationalized and replaced with a single national set of standards by 1 January 2011 as part of the implementation of the Australian Consumer Law (section (4)(iii)(b)).

(viii) Government procurement

61. Despite participating in the work of the WTO Working Group on Transparency in Government Procurement and following negotiations on the revised GPA, Australia has remained one of five OECD members that is not a signatory to the Plurilateral WTO Agreement on Government

[70] WTO document G/SPS/R/54, 28 April 2009.

[71] WTO documents G/SPS/GEN/717/Add.1, 11 October 2007, and G/SPS/GEN/717/Add.2, 6 July 2010.

[72] Online information. Viewed at: http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/home [14 July 2010].

Procurement (GPA) with no intention of becoming a party to it.[73] Nevertheless, Australia is bound by principles and rules on transparency and non-discrimination in this area in the context of its FTAs (see below and Chapter II); the authorities insist that these commitments are extended to all its trading partners. Furthermore, Australia considers the GPA to be largely inconsistent with its approach of low regulation in the public sector; nevertheless, it is closely following negotiations on the Revised GPA.

62. The Commonwealth government procurement market for goods and services is estimated at 2.6% of GDP (2008/09) (Table I.1). Between 2005/06 and 2008/09, Commonwealth government contracts for the purchase of goods and services (including expenditure by agencies covered by the Financial Management & Accountability (FMA) Act 1997 and Commonwealth Authorities and Companies Act (CAC), see below) ranged from about $A 26.4 billion (2007/08) to $A 32.9 billion (2008/09). In 2008/09, ten agencies were responsible for 83.7% of the total amount; 56% of this was defence-related expenditure.[74] In 2007/08, domestically produced goods and services were estimated at 69% of the total amount spent; when procurement by the Department of Defence is excluded, the domestically produced share of contracts is 89% of the total value of contracts awarded.[75] The bulk of imports were for goods and services that are not made in Australia, such as photocopiers and specialist military equipment. These amounts do not cover procurement spending by state and territory governments, which is seemingly higher than Commonwealth government spending.[76] Reportedly, in many instances government trading enterprises (GTEs) (sections (3)(iii) and (4)(iv)(b)) at central, state, and territory government level have dominated the provision of infrastructure works, instead of opening up the provision of infrastructure and related service to competition, including to efficient private market entities.[77]

63. The core principle of Australia's procurement framework remains value for money, which is supported by open competition, non-discrimination[78], efficiency, effectiveness, and use of resources in an ethical manner.[79] At the Commonwealth level, the overall government procurement policy framework consists of three key elements: the Commonwealth Procurement Guidelines (CPGs), which form the basis of Commonwealth procurement policy and are issued by the Finance Minister[80]; finance circulars, which provide advice on key changes and developments of procurement policy and are issued by the Department of Finance and Deregulation (Department of Finance); and financial management guidance documents developed by the Department of Finance to help agencies to implement the Government's procurement policy. In 2008, the CPGs were amended to include a new text describing coordinated procurement arrangements, a revised statement on the approach to risk allocation in contracts, a clarification of the definition and scope of procurement, requirements for

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[73] Australia has maintained its observer status in the WTO Committee on Government Procurement.

[74] Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html [11 May 2010].

[75] Australian Government (2009b).

[76] In 2008/09, procurement by the Australian Capital Territory, the Northern Territory, Western Australia, South Australia, and Tasmania was $A 1.1 billion, $A 1.7 billion, $A 11.5 billion, $A 3.4 billion and $A 1 billion, respectively.

[77] Infrastructure Australia (2008).

[78] The authorities indicated that exceptions to this non-discrimination principle are specific policies to assist small and medium-size enterprises and, in limited circumstances, policies to assist indigenous Australians.

[79] For further details see WTO document WT/TPR/S/178/Rev.1, 1 May 2007 as well as Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/procurement/procurement-policy-and-guidance/procurement-policy-faqs.html [11 May 2010].

[80] The latest CPGs were issued by the Finance Minister in December 2008. For further details see WTO document WT/TPR/S/178/Rev.1, 1 May 2007, and Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/publications/fmg-series/docs/CPGs-2008.pdf [11 May 2010].

contractors to give details of subcontractors, requirements excluding suppliers with a judicial decision against them, a reordering of the mandatory procurement procedures, and an exemption for procurement of property or services from an existing business providing services to disabled persons.

64. As in the case of standards and SPS (section (a) above), each of Australia's three levels of government (Commonwealth, state and territory, and local) has its own procurement framework and policies. Under the Financial Management and Accountability Act 1997 (FMA 1997) and relevant regulations, each Commonwealth agency is in charge of its own procurement. When conducting procurement above certain thresholds, all agencies are required to follow mandatory procurement procedures[81], which provide for open tendering, select tendering, and direct sourcing.[82] However, procurement of, *inter alia*, real estate property or accommodation, R&D services, and motor vehicles[83] are exempt from mandatory procurement procedures.[84] Under the Public Works Committee Act 2009, the limit above which public works must be referred to the Parliamentary Standing Committee on Public Works was increased to $A 5 million (previously $A 2 million) in June 2009. AusTender provides multiple functions for searching data online (see below) including the breakdown of contracts (numbers of contracts and their values) under various procurement methods.[85] In 2008/09, direct sourcing represented 48.8% of total procurement value while open and select tendering accounted for 30.7% and 20.5%, respectively.[86]

65. All bidders are expected to meet requirements under the 2009 Fair Work Act, which includes obligations regarding legislated minimum standards, rights of freedom of association, and access to dispute resolution processes.[87] As from 1 January 2010, the Fair Work Principles have required Commonwealth entities to obtain information from tenderers about their compliance with their obligation to ensure fair, cooperative, and productive workplaces.[88] The authorities indicated that similarly to the AIPs (see below) these are broad legal requirements rather than aspects of the government procurement framework.

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[81] These thresholds remain unchanged at $A 80,000 for procurement by FMA agencies (government entities), other than construction services; $A 400,000 for procurements by relevant CAC Act bodies (government enterprises), other than construction services: In 2008, the threshold for procurement of construction services was raised from $A 6 million to $A 9 million. For more information on the mandatory procedures see Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/publications/fmg-series/docs/CPGs-2008.pdf [11 May 2010]; and WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[82] Open tendering involves publishing a request for tender, and accepting submissions from any potential suppliers who satisfy conditions for participation. Under the select tender process, an invitation to tender is issued to selected potential suppliers, such as suppliers granted a licence. Direct sourcing is conducted when no submission was received, or no submission or potential supplier satisfies conditions of the tender. It may also be conducted in extremely urgent situations, or exceptionally advantageous conditions.

[83] For example, in early 2010 the Department of Finance and Deregulation requested governmental agencies to consider the selection of the Australian-made Toyota Hybrid Camry car in preference to imported vehicles where it represents an operationally suitable alternative. At the same time it recalled that the Government's Green Car Challenge stipulated that by 2020, 50% of the Government fleet passenger vehicles would be Australian-made "value for money environmentally friendly" cars (Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/procurement/previous_news.html [21 May 2010]).

[84] Exemptions are listed in Appendix A of the 2008 Commonwealth Procurement Guidelines. Viewed at: http://www.finance.gov.au/ publications/fmg-series/docs/CPGs-2008.pdf [11 May 2010].

[85] AusTender online information. Viewed at: https://www.tenders.gov.au/?event=public.reports.CN.procurementMethod.form.

[86] AusTender online information. Viewed at: https://tenders.gov.au.

[87] Australian Government (2009b).

[88] Department of Education, Employment and Workplace Relations (2010).

66. AusTender provides a single portal to advertise business opportunities and to report the award of government procurement contracts. Agencies are required to publish contracts or standing offers with a value of $A 10,000 or more on AusTender. Links to the procurement operations of State Governments can be accessed via AusTender.[89]

67. Australia has maintained its target of sourcing at least 10% of purchases by value from small or medium-size enterprises (SMEs).[90] In addition, for major procurement of information and communication technology (ICT) products and services with an expected contract value of $A 20 million or more, government agencies must ensure that tenders meet the minimum SME participation levels set at 10% of contract value for hardware, and 20% of contract value for software/services. Between 2005/06 and 2008/09, the share of SMEs, in terms of the value of contracts, dropped from 35.8% to 29.1%.[91] No data on main product/services/project categories supplied by SMEs are collected by the authorities.

68. Australia's bilateral free-trade agreements with Chile (as of 2009), Singapore, and the United States all include specific government procurement commitments with respect to national treatment. Amentments to the Australia New Zealand Government Procurement Agreement (ANZGPA) in 2007 consisted of refinements and did not change any fundamental principles.[92] Australia effectively extends to all suppliers the same treatment to which it has committed in its existing FTAs with government procurement commitments. No data on the share of goods, services, or public works procured by suppliers from New Zealand, Chile, Singapore, and the United States were available from the authorities.

69. While various states incorporate "buy local" and/or price preferences for local goods in their procurement policies, they maintain that they implement those preferences in a manner consistent with Australia's international government procurement commitments.[93] In addition to their Buy Local Policy (see below), certain states maintain a 10% preference (e.g. Western Australia, Tasmania and Northern Territory) or 20% preference (New South Wales, Queensland and South Australia), in the form of a nominal increase on tendered price, for procurement of domestic or New Zealand or U.S. goods and related services, to uphold industry development, social or economic objectives. Preference margins are not applied to purchases of services alone (i.e. unrelated to goods contracts).

70. During the review period, Australia has undertaken further steps in helping domestic suppliers to raise their participation in government procurement contracts. As from July 2009, the Boosting Australian Industry Participation (AIP, see below) policy has required tenderers for government works to outline their use of Australian or overseas suppliers in every bid. As from 1 January 2010, companies bidding for large Commonwealth procurement projects (generally above $A 20 million)

[89] AusTender online information. Viewed at: https://www.tenders.gov.au/?event=public.relatedlink.list [21 May 2010].

[90] An SME is a domestic or New Zealand firm with fewer than 200 full-time employees.

[91] Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html [21 May 2010].

[92] Australia and New Zealand Government Procurement Agreement Revised 2007. Viewed at: http://www.apcc.gov.au/LinkClick.aspx?fileticket=TgehzkiMiNw%3d&tabid=144&mid=489 [21 May 2010].

[93] For example the Government of Western Australia maintains a long-standing Buy Local Policy, which was last revised in December 2009 to reflect latest commitments under bilateral FTAs (State Supply Commission of Western Australia online information, "Addendum to the Buy Local Policy December 2009 – Agreements affecting the operation of the Buy Local Policy". Viewed at: http://www.ssc.wa.gov.au/files/guidelines/Buy%20Local%20Policy%20Addendum%20(December%202009).pdf [21 May 2010]). The New South Wales Local Jobs First Plan provides price preference for Australian and New Zealand SME's content.

have been required to prepare and implement AIP plans.[94] These plans must set out how suppliers give SMEs full, fair, and reasonable opportunity to supply goods and services. The Australian Industry Participation (AIP) National Framework[95], which encourages the Commonwealth, state and territory governments to adopt a consistent national approach to maximizing domestic-industry participation in major projects in Australia and overseas, was strengthened and extended by new initiatives costing $A 19.1 million over four years as from 2009. These initiatives, *inter alia,* aim to ensure that tender specifications are not designed in a way that has the effect of excluding Australian suppliers, as well as to maximize the ability of Australian industry to win work at home and abroad. An amount of $A 8.5 million over four years will be provided to the Industry Capability Network (ICN)[96] for increasing opportunities for local business, with an emphasis on connecting domestic suppliers to Commonwealth-funded infrastructure projects. The Government will appoint supplier advocates with specialized industry knowledge within the Department of Innovation, Industry, Science and Research at a cost of $A 8.2 million over four years to help domestic SMEs market their capabilities to government buyers in Australia.

71. Buy Local procurement policies have also been strengthened recently at state level.[97] From June 2009, under its Local Jobs First plan (LJFP) the Government of New South Wales reinforced measures giving local industry increased preference in major projects by expanding the definition of SME to businesses with up to 500 workers, compared with 200 workers previously and in the rest of the country (see above); every tender over $A 4 million also requires a local industry participation plan. Under the July 2009 Victorian Industry Participation Policy, local-content rules aimed at encouraging SME participation in government procurement may apply to projects designated strategically significant by Victoria's Department of Innovation, Industry and Regional Development. According to the authorities, both the New South Wales LJFP and the Victorian VIP have been designed to comply with Australia's existing commitments on government procurement.

72. As foreshadowed in July 2009 a Procurement Coordinator has been established to: provide external parties with an understanding of the Commonwealth procurement framework; review and advise on procurement practices across government on an ongoing basis; handle complaints from suppliers and interested external parties; review complaints regarding contract administration; aggregate information about Commonwealth procurement across all procurement categories; and submit an annual report on procurement matters to the Minister for Finance and Deregulation.[98] The Procurement Coordinator seeks input on how government procurement can be enhanced from a procurement consultation committee comprising industry, union, and community stakeholders.

73. The Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009 introduced criminal liability for cartel conduct, including arrangements between competitors involving bid rigging (section (4)(iii)(a)). Major construction contracts are identified as vulnerable to misconduct

[94] Department of Innovation, Industry, Science and Research online information "Australian Industry Participation Plans (AIP Plans) in Commonwealth Government Procurement", January 2010. Viewed at: http://www.innovation.gov.au/Section/Industry/Pages/AustralianIndustryParticipationPlansforCommonwealth GovernmentProcurement.aspx [23 August 2010].

[95] The AIP National Framework's strategic approaches consist of: encouraging industry to meet world best practices through capability building; early identification of opportunities for Australian industry participation in Australia and overseas; promoting Australian capability and integrating industry into global supply chains; and enhancing project facilitation and Australian industry participation (Australian Government, 2009b).

[96] The ICN operates in Australia and New Zealand and assists businesses to maximize the opportunities that arise from purchasing requirements from both the government and private sectors.

[97] United States Trade Representative (2010).

[98] Australian Government (2009b).

by suppliers. In July 2007, penalties of more than $A 9.1 million were imposed on 11 companies and 18 individuals for a series of bid-rigging and price-fixing cartels in commercial air conditioning after ACCC Federal Court action.[99]

(ix) Local-content requirements

74. Local-content requirements remain in place in government procurement arrangements for motor vehicles (see above)[100], in export finance, guarantees, and insurance provided by the Export Finance and Insurance Corporation (EFIC) (section (3)(iv)(f)), and in foreign investment requirements in the broadcasting services sector. The authorities clarified that EFIC requirements relate to "local/Australian activity".

75. During the period under review, Australia has not made any notifications of TRIMs under the WTO Agreement on Trade-Related Investment Measures, thereby indicating the absence of such measures.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

76. All goods intended for export must be registered with Customs, unless exempted.[101] Most export declarations are submitted through the Integrated Cargo System (ICS), the electronic cargo reporting tool. Customs may undertake compliance examinations on behalf of permit-issuing agencies.

(ii) Export prohibitions, restrictions, and licensing

77. Exports of acetic anhydride to Afghanistan remain prohibited[102], as are exports of certain cultural and heritage goods, and suicide devices. Exports of some other goods are restricted in compliance with, *inter alia,* international commitments, unless permission or a licence is granted.[103] In the light of Australia's reliance on agri-food exports, export controls on certain agricultural and food products are operated by certain public-sector entities with a view to, *inter alia,* ensuring importing country requirements are met (e.g. volume limitations, trade and product descriptions), and

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[99] ACCC online information. Viewed at: http://www.accc.gov.au/content/index.phtml/itemId/793552/fromItemId/2332 [1 November 2010].

[100] As indicated earlier (section on government procurement) under the Australian Government's fleet arrangements, government-procured motor vehicles must be either made in Australia by manufacturers that have a local operation in vehicle assembly or component production (Ford, Holden, Toyota, Nissan), or imported passenger motor vehicles marketed by an Australian-based manufacturer (Department of Finance and Deregulation online information. Viewed at: http://www.finance.gov.au/vehicle-leasing-and-fleet-management/fleet-guidance-and-related-material.html [25 May 2010]).

[101] Exempted goods include: personal or household effects (including motor vehicles and pets) of passengers or crew members; a consignment by post, ship or aircraft from one person to another that has an f.o.b. value not exceeding $A 2,000, except those requiring permits; dutiable (imported) goods on which duty is unpaid, excisable goods on which excise duty is unpaid, and/or goods for which a person intends to claim a drawback of customs duty or excise duty; containers, whether loaded or unloaded, that are the property of persons doing business in Australia and that are to be temporarily exported prior to re-import; and certain ship or aircraft stores (except under-bond stores).

[102] This chemical is used, *inter alia,* for the synthesis of heroin.

[103] The list of restricted items has remained unchanged since the previous Review of Australia (see Australian Customs online information. Viewed at: http://www.customs.gov.au/site/page4381.asp [22 May 2010]; and WTO document WT/TPR/S/178/Rev.1, 1 May 2007).

to maintain food safety and quality standards.[104] Export controls on wood and woodchips are for the purpose of protecting environmental and heritage values. As from 1 January 2010, no restrictions have applied on merino sheep exports; previous export quotas on merino sheep were set at a maximum of 800 rams, with an additional 100 stud rams placed on an export donor register (for trade in genetic material).

78. Export licensing to manage access-related import quotas has occurred for agricultural products that are not subject to single-desk arrangements. For example, access to the EU dairy quota for cheddar cheese, and for varietal cheeses to the United States requires the issuance of export licences; similarly a quota allocation affects the meat industry's access to the EU and U.S. beef quotas.

(iii) State trading

79. According to Australia's latest WTO notification on state trading in 2010, five state-trading entities operated in Australia during the review period, with activities largely focused on exports in bulk of: barley from the State of South Australia, by Australian Barley Board (ABB) Grain Export Limited; wheat, by Australian Wheat Board (AWB) (International) Limited; barley, lupins, and canola from Western Australia, by Grain Pool Pty Ltd; sugar from Queensland, by Queensland Sugar Limited (QSL); and rice from New South Wales, by its Rice Marketing Board.[105] The sole exporter or single-desk (i.e. monopoly) rights of ABB Grain Export Limited and AWB (International) Limited were terminated in July 2007 and July 2008, respectively. Those affecting the export of barley, canola, and lupins were terminated in October 2009, and those relating to the QSL expired in September 2009. The Rice Marketing Board is the only notified entity with export monopoly rights still in place. Nevertheless, there are still a relatively large number of public entities, with or without monopoly or exclusive trading rights in goods and services, at Commonwealth, state or territory level (section (4)(iv)(b)).[106] In 2008/09, the entities discussed in this section accounted for 91%, 39.6%, and 65.7% of total exports of wheat, barley, and canola, respectively. No data on exports of raw cane sugar and rice by the relevant state-trading entities were available.

(iv) Export assistance

(a) The Export Market Development Grants (EMDG) scheme

80. The EMDG scheme remains Australia's main financial assistance programme targeting mainly small but also medium-sized enterprises across all sectors of the economy.[107] Grants partially reimburse expenditure (up to 50% above a threshold) on specific export promotion activities to any overseas market except New Zealand, Iraq, and the Democratic People's Republic of Korea. Changes

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[104] For example, AQIS grants export licences for meat, dairy products, eggs, animals, fish, grain, vegetables, and fruit; and the TGA, under the Department of Health and Ageing, grants export licences for certain drugs and goods containing those drugs, as well as certain animal and human products. In addition, the Australian Wine and Brandy Corporation issues export licences for wine and brandy, and Horticulture Australia Ltd grants export licences for horticultural products (currently applicable to oranges, dried grapes, apples and pears) (Australian Customs Service, 2007).

[105] WTO documents G/STR/N/12/AUS, 2 July 2008, and G/STR/N/13/AUS, 13 September 2010.

[106] For more information on the extent of past government involvement in the Australian economy see WTO document WT/TPR/S/104, 26 August 2002.

[107] In 2007/08, 80% of the beneficiaries were small businesses with a turnover of less than $A 5 million. The EMDG also applies to services and to intellectual property or know-how that resulted mainly from work in Australia, but excludes legal, migration, and real estate purchasing services (Austrade, 2008).

were made to the EMDG scheme affecting expenditure incurred from 1 July 2008 and 1 July 2010.[108] Key changes in 2008 included: increasing the maximum grant by $A 50,000 to $A 200,000; raising the maximum turnover limit of recipients from $A 30 million to $A 50 million; reducing the minimum expenditure threshold by $A 5,000 to $A 10,000; allowing costs of patenting products overseas to be eligible for EMDG support; making the scheme more accessible to services exporters; allowing state, territory, and regional economic development and industry bodies to access the scheme; and introducing an EMDG payments assessment measure tied to two alternative tests (export performance test, Australian Net Benefit Requirements) for applicants who have already received two grants. Key changes in 2010 included: increasing the minimum required level of export-promotion expenditure from $A 10,000 to $A 20,000; reducing the maximum number of grants an applicant can receive from 8 to 7; reducing the maximum grant payable from $A 200,000 to $A 150,000; capping the maximum amount claimable for intellectual property expenses at $A 50,000; and extending the scheme for five years to the 2015/16 grant year (2016/17 financial year).

81. Administered by Austrade, the EMDG distributed grants worth $A 198.1 million to 4,675 exporters in 2009/10, an increase of 13.9% in grant numbers and 6.6% in grant payments compared with 2008/09. This was on top of an increase of 23.7% in grant payments in 2008/09, which was largely the result of increasing the 2008/09 budget appropriation from $A 150.4 million to $A 200.4 million to meet a shortfall in funding for claims. Budgeted funding for the EMDG for 2009/10 was also $A 200.4 million, but for 2010/11 reverted to $A 150.4 million.

82. According to an independent (Mortimer) 2008 Review, the EMDG scheme is both effective and efficient in supporting the development of Australia's exports.[109] Research undertaken by Lateral Economics and KPMG Econtech found, *inter alia,* that: for each EMDG recipient an additional 2.4 companies benefit from following the EMDG recipients into offshore markets; EMDG recipients are estimated to have a 13.2% increase in labour productivity as a result of the grant; and compared to other relevant grant programmes, e.g. the Strategic Investment Program and R&D programmes, EMDG has a benefit/cost ratio equal to or better than these other widely accepted programmes. Moreover, the proportion of export marketing expenditure is higher for EMDG recipients than for comparable non-recipient firms, and the incidence of firms developing into new exporters and becoming regular exporters is higher for EMDG recipients. Modelling indicates that each dollar of EMDG generates some $A 13.5 to $A 27 of exports.[110] The majority of EMDG exports were to traditional markets (United States, United Kingdom). The main products exported by EMDG participants were tourism, education, culture, information technology, and food and beverages. The majority of new EMDG applicants firms were relatively new to exports and used the scheme's funding to offset their cost of entry into new markets. The 2008 independent Review recommended, *inter alia,* to preserve EMDG as a capped programme, tighten the scheme's provisions by reducing the number of grants from eight to five per recipient per year and increase the minimum threshold to $A 30,000 so as to resolve funding uncertainty, arising from demand exceeding the funding available. The 2008 independent Review replaced the EMDG review scheduled for 2010; the next review may take place within 2-3 years.

(b) Trade and Export Concession Scheme (TRADEX)

83. During the review period, Australia has maintained its up-front duty and GST exemptions for imported goods intended for direct export or used, lost, or wasted in the processing of exports under

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[108] Austrade online information. Viewed at: http://www.austrade.gov.au/default.aspx?FolderID= 1436 [30 May 2010].

[109] Austrade (2008); and Productivity Commission (2009g) and (2010b).

[110] Austrade (2008); and Productivity Commission (2009g) and (2010b).

the Tradex scheme.[111] Between 2006/07 and 2008/09, the operation of the scheme, which is administered by AusIndustry, resulted in total forgone duty estimated at $A 225.6 million; the amount of duty forgone in 2008/09 dropped by about 18% compared to 2007/08, a peak year (Table III.3), and in 2009/10 it declined further to $A 51.2 million, a reduction of about 24%. These reductions were due to the impact of the global financial crisis on foreign trade as well as to the tariff reductions for the motor vehicle, textile, clothing, and footwear industries, and the entry in force of the FTA with ASEAN countries (Chapter II). The main beneficiaries of the scheme were the automotive industry, mining, and electrical/scientific/electronic equipment manufacturers. An amendment to the Tradex Scheme Act in October 2008 ensured that the scheme could stand alone without reference to duty drawback legislation; other minor administrative changes were also introduced to improve the efficiency of the scheme. Further minor changes to clarify the eligibility of partnerships in the Tradex Scheme and remove redundant provisions of the Act were expected in 2010.

(c) Duty drawback scheme

84. A legislative amendment was made to the duty drawback scheme in May 2010 to facilitate electronic lodgement of drawbacks claims. Duty drawbacks are processed on the basis of self-assessment. The amount of duty drawback must be calculated by the claimant using one of the three calculation methods available.[112] In all methods the amount of a claim for drawback of import duty must not exceed the amount of import duty paid on the goods. Exporters may obtain a refund of customs duties (not GST) paid on imported goods if these goods were treated, processed, or incorporated into other goods for export, or are exported unused after import.[113] A total of $A 110.1 million was refunded to drawback claimants in 2007/08, $A 118.4 million in 2008/09, and $A 94.6 million in 2009/10; the drop in 2009/10 was for the same reasons as the fall in Tradex benefits (section (b) above). No data on the export value involved was available from the authorities. The main beneficiaries have been the automotive, tobacco, alcohol, and heavy machinery industries.

(d) Other schemes

85. The Certain Inputs to Manufacture (CIM) scheme provides duty-free entry for raw materials and intermediate chemicals, plastic and paper goods, and metal minerals used in manufacturing directed towards "import replacement" and export enhancement.[114] CIM remains unchanged but may be subject to review in the next five years. Duty forgone from CIM since 2007 has been around $A 9 million and the main beneficiaries have been the chemicals and plastics sectors.

[111] AusIndustry online information. Viewed at: http://www.ausindustry.gov.au/importandexport/tradexscheme/Pages/TradexScheme.aspx [21 May 2010].

[112] The three calculation methods are: shipment-by-shipment basis method (when imports directly relate to exports); representative or averaging shipment basis method (for high volume low value goods), where a representative shipment for a period is picked as a sample of the values of identical items, the averaging of shipments is costed over time and must not result in an overclaim; imputation method (when import documents are generally unavailable), where the basis on which to calculate duty drawback can be 30% of the purchase price of the goods whenever these goods are fully imported and have been purchased in Australia by the exporter (Australian Customs Service online information. Viewed at: http://www.customs.gov.au/webdata/resources/files/FS_Export-Concessions-Duty-Drawback-Scheme.pdf [2 August 2010]).

[113] Australian Customs and border Protection Service online information. Viewed at: http://www.customs.gov.au/site/page4382.asp [21 May 2010].

[114] According to the authorities "import replacement" means that certain eligible goods can be imported duty free, if their use as inputs has a substantial and demonstrable performance advantage over substitutable domestic goods. For more details about the scheme see AusIndustry online information. Viewed at: http://www.ausindustry.gov.au/ImportandExport/CertainInputstoManufactureCIM/Documents/CIM%20Dec08.pdf [21 May 2010].

86. The manufacture-in-bond scheme (MiB) was terminated on 5 June 2009.[115] Under the MiB goods could be manufactured in a warehouse licensed by Customs using imported components on which duty and GST had not been paid; the scheme was never used as it was an interim measure while legislative amendments were put in place to enact Tradex, a more cost-effective option for deferring the payment of duty and GST.

(e) New exporters

87. In April 2009, the New Exporter Development Program (NEDP), which was confined to SMEs, was phased out and replaced by the Getting into Export Program, which provides, *inter alia,* advisory and training support to all new exporters. TradeStart, a coaching and action learning programme, which was scheduled to conclude at the end of the 2009/10, was extended for four years. During this period the authorities plan to invest a total of $A 14.4 million to assist SMEs, particularly those located in rural Australia, and industries that have high growth potential to commence exporting, and to convert irregular exporters to sustainable export activity.

(f) Export finance, guarantees, and insurance

88. The Export Finance and Insurance Corporation (EFIC), is a self-funding statutory authority operating in accordance with commercial principles. It provides various finance, insurance, and guarantee facilities to support Australian companies exporting or investing overseas. EFIC's support includes: direct loans (to buyers); export finance guarantees (to banks financing contracts with buyers); documentary credit guarantees (to banks confirming letters of credit); and payments insurance (against non-payment by the buyer). The terms and conditions of such products are subject to the OECD guidelines.[116] The level of official support depends on the degree of local content ("Australian activity" or "Australian content") involved: export contracts with over 50% local content may receive support for up to 85% of the eligible contract value (ECV) (sum of the imported components into the buyer's country, i.e. Australian plus third country activities plus the local cost which must be the lower of 30% of ECV or the local cost amount). Where the "Australian activity" involved is less than 50%, the level of support would normally be limited to the degree of "Australian activity". Although permitted by the EFIC Act, the EFIC does not normally provide credit insurance. Other means of support that are not subject to OECD guidelines include: contract bonds (to buyers to cover advance payment, seller's performance and warranty of products sold), working capital guarantees (to banks), and political risk insurance (to banks and/or Australian companies investing abroad). The Minister for Trade can direct or approve the EFIC's entry into transactions considered to be in the "national interest" (e.g. automotive)[117]; the Government is responsible for the financial consequences of national interest transactions.[118] EFIC's obligations to third parties are guaranteed by the Government; although this guarantee has never been used, it is potentially an additional element of assistance for exporters.

[115] Customs Amendment Regulations 2009 (No. 1), 4 June 2009.

[116] The OECD Arrangement on Officially Supported Export Credits is, *inter alia*, aimed at preserving a level playing field in officially supported export products.

[117] National interest transactions usually occur where the transaction size or risk exceeds the EFIC's commercial parameters, and where the Minister for Trade considers them to be in the national interest. For example, on the National Interest Account, in 2008/09 EFIC provided a working capital line of credit to GM Holden Limited to support its export of motor vehicles, parts, and engineering services while the Australian manufacturer established stronger market links under the newly created General Motors Company (EFIC, 2009).

[118] As a result of exchange rates movements, the national interest account recorded a loss of $A 0.2 million in 2008/09, compared with a profit in 2007/08 of $A 4.8 million (EFIC, 2009).

89. During 2009/10, the EFIC supported exports and overseas investment totalling $A 5.9 billion, well above the previous year's performance ($A 1.3 billion); this was the result of continuing economic and financial uncertainty and constrained access to credit.[119] These figures cover both the commercial account and the national interest account. In 2009/10, the mining sector was the main sector supported, accounting for 41.1% of total EFIC signings, followed by construction (40.8%) and manufacturing (15.4%). The 2009/10 commercial account profit of $A 38.3 million was up from $A 33.6 million in 2008/09.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation

90. Australia remains a relatively low-tax OECD country relying on direct taxes for around 64% of its tax revenues (Table III.5).[120] The value-added tax (Goods and Services Tax) is the main indirect tax component, followed by excise taxes; taxes on international trade contributed a mere 1.9% to total tax revenues in 2008/09, and customs duties constituted around 99.8% of these taxes on international trade (section (2)(ii)(a)).

Tabel III.5
Structure of tax revenue, 2005/06-2008/09
(% and $A million)

	2005/06	2006/07	2007/08	2008/09
Total tax revenues ($A million)	297,760	319,752	348,330	338,878
		(Percentage share)		
Direct taxes	63.6	63.7	64.4	64.4
Taxes on income	59.2	59.2	59.9	59.4
Income taxes levied on individuals	39.8	37.4	36.7	37.7
Income taxes levied on enterprises[a]	18.9	21.2	22.6	21.2
Income taxes levied on non-residents	0.5	0.6	0.6	0.5
Employers payroll taxes	4.4	4.5	4.6	5.0
General taxes (payroll tax)	4.3	4.3	4.5	4.8
Other employers labour force taxes	0.1	0.1	0.1	0.1
Indirect taxes	36.4	36.3	35.6	35.6
Taxes on provision of goods and services	25.5	25.0	24.4	25.0
General taxes (sales tax)	0.3	0.3	0.3	0.3
Goods and services tax (GST)	13.1	12.9	12.7	12.6
Excises and levies	7.7	7.4	7.0	7.4
Taxes on international trade	1.7	1.8	1.7	1.9
Taxes on gambling	1.5	1.5	1.4	1.5
Taxes on insurance	1.2	1.2	1.2	1.3
Taxes on property	8.6	9.2	8.9	8.2
Taxes on immovable property	4.5	4.6	4.5	5.2
Taxes on financial and capital transactions	4.2	4.5	4.5	3.0
Taxes on the use of goods and performance of activities	2.3	2.2	2.2	2.4
Motor vehicle taxes	1.9	1.8	1.8	1.9
Franchise taxes	0.0	0.0	0.0	0.0
Other	0.4	0.3	0.4	0.5
Total	100.0	100.0	100.0	100.0

a Includes petroleum resource rent taxes.

Source: Australian Bureau of Statistics, *Taxation Statistics 2008-09,* 5506.0, Canberra.

[119] EFIC (2010).

[120] In 2007, Australia's total tax revenue as a percentage of GDP was 30.8% while the average total tax burden for OECD countries was over 35.8% (OECD, 2010).

(a) Indirect taxation

91. During the review period Australia's reliance on indirect taxes has remained lower than other OECD countries.[121] Since 2007, Australia has increased the rates of the luxury car tax (LCT), and of excises on ready-to-drink beverages and tobacco. Non-fuel excise rates are indexed according to the Consumer Price Index in February and August each year to ensure that they are not eroded by inflation. Australia currently levies the following indirect taxes:

- a 10% GST on the value added at each point in the production and distribution chain for most goods and services (as from July 2000)[122];

- an additional Luxury Car Tax (LCT) of 33% (previously 25%) on vehicles with a retail value above a GST-inclusive and CPI-linked threshold equal to the car depreciation limit ($A 57,466 for 2010/11, $A 57,180 for 2008/09 and 2009/10, fuel-efficient cars above $A 75,375 for 2010/11, $A 75,000 for 2009/10)[123];

- a 29% Wine Equalisation Tax (WET) on grape wine, fruit wine, vegetable wine, perry, mead, sake, cider, and grape wine products including vermouth, marsala, wine cocktails and creams (since July 2000)[124]; and

- excise taxes on the production, manufacture, sale or distribution of petroleum and other fuel products, certain alcohol, tobacco, and crude oil (Table III.6).[125]

[121] In 2007, the GDP share of Australia's revenue from taxes on goods and services was 8.2%, while the OECD average was 10.9% (OECD, 2010).

[122] The valuation basis for the GST on imported goods is the c.i.f. value plus customs duties and any wine tax. The Australian Taxation Office (ATO) operates a scheme that provides for the deferral of GST on imported goods. Most educational, eligible childcare and health services, as well as medical appliances, cars for certain disabled people, basic foodstuff (meat, fruit, and vegetables), imports under certain customs concessions, and exports are among the items exempt from GST (Australian Customs Service online information. Viewed at: http://www.customs.gov.au/site/page5343.asp [25 May 2010]).

[123] No data on the sales of domestic or foreign luxury cars were available from the authorities. Australian Taxation Office online information, "Luxury Car tax - how to complete your activity statement". Viewed at: http://www.ato.gov.au/content/downloads/bus27796n7391082009.pdf [26 May 2010]; and Australian Customs Notice No. 2008/50, 15 October 2008. Viewed at: http://www.customs.gov.au/webdata/resources/notices/ACN0850.pdf [21 April 2010]; Australian Taxation Office online information. Viewed at: http://www.ato.gov.au/taxprofessionals/content.asp?doc=/content/ 00144892.htm [14 July 2010].

[124] Wine Equalisation Tax Ruling WETR 2009/1. Viewed at: http://law.ato.gov.au/atolaw/view.htm?Docid=WTR/WT20091/NAT/ATO/00001 [29 May 2010].

[125] As of 26 April 2008, the excise applying to certain spirit-based ready-to-drink (RTD) pre-mixed drinks ('other excisable beverages' having an alcoholic strength by volume not exceeding 10%) increased from $A 39.36 per litre of alcohol to $A 66.67 per litre of alcohol. Special Notice Nos 87 and 88 in the *Australian Commonwealth Government Gazette* published the Government's intention to increase the excise and customs rates, respectively. Viewed at: http://www.ag.gov.au/portal/govgazonline.nsf/(custom-spcnot-pub-view)!OpenView&Start=567 [20 August 2010]. As of 30 April 2010, the excise on tobacco products increased from $A 0.26220 to $A 0.32775 per stick of tobacco for cigarettes, and from $A 327.77 to $A 409.71 per kg of tobacco content for other tobacco (loose leaf tobacco). Special Notice Nos 63 and 62 in the *Australian Commonwealth Government Gazette* published the Government's intention to increase the excise and customs rates, respectively. Viewed at: http://www.ag.gov.au/portal/govgazonline.nsf/(custom-spcnot-pub-view)!OpenView&Start=73 [20 August 2010]. The latest increases in excise rates took place on 2 August 2010. ATO online information. Viewed at: http://law.ato.gov.au/atolaw/view.htm?Docid=PAC/BL030002/1&PiT=99991231235958 [2 December 2010].

Table III.6
Excise rates, as at 30 April 2010
($A)

Commodity	Rates applying from 1 February 2006	Current rates
Petroleum and other fuel products (per litre)		
Petroleum condensate	..	0.38143[a]
Stabilized crude petroleum oil	..	0.38143[a]
Topped crude petroleum oil	..	0.38143[a]
Gasoline (other than for use as fuel in aircraft)	..	0.38143[a]
Aviation gasoline	0.02854	0.02854[a]
Aviation kerosene	0.02854	0.02854[a]
Fuel oil	0.07557	0.38143[a]
Heating oil and kerosene (for burner use)	0.07557	0.38143[a]
Fuel ethanol	0.38143	0.38143[a]
Diesel (other than biodiesel)	0.40143	0.38143[a]
Biodiesel	0.38143	0.38143[a]
Liquid aromatic hydrocarbons consisting principally of benzene, toluene or xylene or mixtures of them	..	0.38143[a]
Mineral turpentine	..	0.38143[a]
White spirit	..	0.38143[a]
Petroleum products (other than blends) not elsewhere included	..	..
Greases (per kg)	0.05449	0.05449[a]
Oils and lubricants, excluding greases (per litre)	0.05449	0.05449[a]
Beer (per litre)[b]		
Individual container <48 litres		
Low strength	31.73	35.77[c]
Mid strength	36.98	41.68[c]
High strength	36.98	41.68[c]
Individual container >48 litres		
Low strength	6.33	7.14[c]
Mid strength	19.89	22.42[c]
High strength	26.03	29.34[c]
Other beer (produced for non-commercial purposes using commercial facilities or equipment)[b]		
Low strength	..	2.51[c]
High strength	..	2.91[c]
Other beverages, not exceeding 10% alcohol content	36.98	70.61[c]
Brandy	58.48	65.93[c]
Other spirits, exceeding 10% alcohol content	62.64	70.61[c]
Cigarettes, cigars, and tobacco (per stick)[d]	0.23259	0.32775[e]
Tobacco products (per kg)	290.74	409.71[e]

.. Not available.

a Rates applying from 1 July 2006.
b Rate applied per litre of alcohol on the amount by which the alcohol content (by volume) exceeds 1.15%.
c Rates applying from 1 February 2010.
d Rate applied per stick to cigarettes, cigars and tobaccos with tobacco content of 0.8 grams or less.
e Rates applying from 30 April 2010.

Source: Treasury (2006), *Pocket Guide to the Australian Tax System*, Canberra. Viewed at: http://www.treasury.gov.au/documents/866/PDF/Pocket_tax_guide_MYEFO%202005-06.pdf [9 May 2006]; and Australian Government (2010), Australian Taxation Office, *Excise Tariff Working Pages*, 30 April, Canberra. Viewed at: http://law.ato.gov.au/atolaw/view.htm?Docid=PAC/BL030002/1&PiT=99991231235958.

(b) Direct taxation

92. Since 2007, no major changes have been made to Australia's direct tax system, except for those relating to legislated changes to rates and thresholds, and to the implementation of reforms in taxation of financial arrangements. The progressive personal income tax rates currently range from zero to 45% for taxable income over $A 180,000 (plus a 1.5% Medicare levy).[126] Currently, a flat rate of 30% applies to corporate income taxes; although the rate is higher than for some neighbouring countries, it is not out of line with rates in OECD countries.[127] A 46.5% Fringe Benefits Tax (FBT) is levied on the value of certain fringe benefits employers provide to their employees, such as a right (including a property right), privilege, service or facility (e.g. the provision of company cars, subsidized accommodation and travel, entertainment, and the like).[128] In July 2010, new resource tax arrangements were announced, including a Mineral Resource Rent Tax. A 30% Mineral Resources Rent Tax for iron ore and coal is to be introduced and the Petroleum Resource Rent Tax of 40% is to be extended to include all onshore and offshore projects involving both oil and gas production.[129]

(c) Tax incentives appraisal

93. Australia's latest annual Tax Expenditures Statement identifies 337 (about 270 in 2005) tax expenditures provided in 2009 by the Commonwealth Government to benefit a specified activity or class of taxpayer: 110 pertain directly to business income, 21 to commodities (e.g. fuel, alcohol, beer, wine, tobacco), 4 to natural resources, 23 to GST, and 5 (as from 1 July 2011) to the Carbon Pollution Reduction Scheme, whose introduction was deferred until after the end of the current Kyoto Period in 2012 and when certain international conditions are met.[130] The main business-income-related tax incentives include the small business and general business tax break (13 December 2008 to end December 2009)[131], and the accelerated and simplified depreciation for small business (as from 2007). In November 2010, an R&D tax credit, originally scheduled to replace, as from 1 July 2010, the 125% R&D Tax Concession, the Tax Offset, the 175% Premium, and the International Premium, was under

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[126] Medicare is Australia's health care scheme, which is funded by revenue collected through this levy based on taxable income (The Treasury, 2009b).

[127] Australian Taxation Office online information. Viewed at: http://www.ato.gov.au/businesses/content.asp?doc=/content/44266.htm&pc=001/003/019/001/006&mnu=42573&mfp=001&st=&cy=1 [23 May 2010].

[128] Australian Taxation Office online information. Viewed at: http://www.ato.gov.au/businesses/content.asp?doc=/content/76140.htm&pc=001/003/019/001/007&mnu=42573&mfp=001&st=&cy=1 [23 May 2010].

[129] The Government's compromise over the mining tax deal was expected to unlock a stalled pipeline of an estimated $A 3.3 billion mergers and acquisitions in the booming resources sector (*Businessinsider.com*, "Australian Miners' Tax Victory Is Horrible News For Commodity Bulls", 2 July 2010. Viewed at: http://www.businessinsider.com/australia-mining-tax-change-2010-7 [2 August 2010]; and *Reuters* "Australia mining tax deal seen unlocking M&A", 2 July 2010. Viewed at: http://www.reuters.com/article/idUSTRE6611TM20100702 [2 August 2010]).

[130] The Tax Expenditures Statement provides details of concessions, benefits, incentives and charges provided through the tax system (termed as tax expenditures) to taxpayers by the Australian Government (The Treasury, 2010e).

[131] The Small Business and General Business Tax Break was announced in December 2008 as part of the Nation Building Package response to the global financial crisis and further enhanced in February 2009 as part of the Nation Building and Jobs. It provides a tax deduction for investing in new tangible depreciating assets. The tax break varies in percentage terms. In the May 2009 Budget, it was increased from 30% to 50% solely for small businesses that: have a turnover of less than $A 2 million a year; acquire assets costing at least $A 1,000 per asset from 13 December 2008 until 31 December 2009; and installed those assets or had them ready for use by 31 December 2010 (Productivity Commission, 2010b).

consideration.[132] These measures are available to domestic and foreign firms. During the review period, the estimated GDP share of total tax expenditures dropped from 10.4% (2006/07) to 8.5% (2008/09), and is expected to decline further; this decline mainly reflects the impact of lower marginal rates of personal income tax, which reduce the value of many tax concessions, and the impact of the global financial crisis. In 2008/09, assistance to all functions (economic and non-economic activities) in the form of various tax incentives was $A 102.4 billion, an amount equivalent to less than a third of total direct expenditures (e.g. grants), which amounted to $A 324.6 billion; very few tax expenditures relate directly to production and/or trade of goods and/or services. Tax expenditure for agriculture, forestry and fishing was forecast to rise drastically as from 2011, due to the (now deferred) CPRS implementation, while tax expenditures for fuel and energy are to decline progressively as a result of the phasing-in of an excise on alternative fuels from 1 July 2011 and the abolition of the exemption from crude oil excise of condensate as of 13 May 2008. The largest positive consumption tax expenditure relates to the GST (the main indirect tax), while negative tax expenditure is involved for commodity taxes and customs duties.[133] The capital gains taxpayers are the main recipients of tax expenditures, although the amounts involved have dropped considerably since the previous review.

(ii) Production assistance

94. Since its previous Review, Australia has continued to provide wide-ranging assistance to production, not just in the form of tariff concessions and other tax incentives (sections (2)(ii)(f), (3)(iv)(c) and (4)(i)(c)), but also in form of grants and concessional loans, which are not generally included in its assistance estimates, and regulatory restrictions on competition in certain activities (section (4)(iii)(a)). No information was available from the authorities on assistance programmes containing concessional loans and their budgetary cost. Assistance generally benefits the industry receiving it, but can come at a cost to other industries, taxpayers, consumers, and competitors.[134]

95. Australia's latest notification to the WTO Committee on Subsidies and Countervailing Measures (October 2009) listed 30 federal programmes in support of sugar, dairy, forestry, passenger motor vehicles (PMV), textiles/clothing/footwear (TCF), pharmaceuticals, regional development, innovation and environmental protection activities, as well as 25 programmes at state and territory level (Table AIII.1).[135] Australia maintains sunset clauses for several incentives notified to the WTO;

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[132] According to a KPGM report, the planned R&D Tax Credit incentive (Table AIII.1) was rated the best out of 10 other national systems in terms of low total tax index ratings systems (i.e. total taxes paid by corporations as a percentage of total taxes paid by corporations in the United States) (KPGM, 2010). The planned R&D Tax Credit would double the rate of government support for R&D conducted by firms turning over less than $A 20 million, from 7.5 cents under the previous scheme to 15 cents. These firms now benefit from a 45% refundable tax credit. Larger businesses turning over $A 20 million or more also receive more assistance as they are eligible for a 40% non-refundable tax credit, which raises government assistance from 7.5 cents to 10 cents (AusIndustry Program Summary. Viewed at: http://www.ausindustry.gov.au/AboutAusIndustry/Documents/2009-AI%20Program%20Summary/Program%20Summary.pdf [2 June 2010]; and http://minister.innovation.gov.au/Carr/Pages/RDTAXCREDITBESTINWORLD.aspx [2 June 2010]).

[133] Negative tax expenditure occurs when these arrangements impose an additional charge rather than a benefit.

[134] Productivity Commission (2010b).

[135] WTO document G/SCM/N/186/AUS, 19 October 2009. In addition to WTO-notified subsidies, the Department of Innovation, Industry, Science and Research has several other programmes, including the Insulation Industry Assistance Package (IIAP), Green Building Fund (GBF), Re-tooling for Climate Change, Ethanol Production Grants (EPG), Renewable Energy Equity Fund (REEF), Innovation Investment Fund (IIF), the Pooled Development Funds (PDF), Venture Capital Limited Partnerships (VCLP), Commercialising Emerging Technologies (COMET) and TQUAL (tourism) Grants (Chapter IV), some of which may have expired by the time of finalization of this report. For example, as from 2009 Commercialisation Australia,

some of these programmes are to terminate on a specific date or were ended during the period under review, e.g. the Dairy Industry Adjustment Package (payments until April 2008, adjustment levy until February 2009), the ACIS (until end 2010), and the Pharmaceuticals Partnerships Programmes (until late 2009). Support under the notified schemes is mainly delivered by means of grants to eligible firms; other forms of assistance include duty concessions, tax exemptions, relief payments, and counselling services.

96. According to the Productivity Commission, in 2008/09 assistance to domestic production of goods and services was $A 17.2 billion, in gross terms, comprising: $A 9.5 billion in tariff assistance on output, $A 3.7 billion of budgetary outlays, and about $A 4 billion in tax concessions.[136] Total budgetary outlays to domestic production peaked at $A 4.4 billion in 2007/08, while tax-concessions-related support continued to rise. Support became less focused on R&D, i.e. 29% of total budgetary assistance in 2008/09 compared with 42% in 2004/05, as support for small business increased from 9% (2003/04) to 21% (2008/09); in addition, the share of industry-specific support was reduced considerably.[137] In 2008/09, budgetary assistance (i.e. outlays plus tax incentives) benefited mostly the services sector (45%), and to a lesser extent manufacturing (23%) and the primary sector; this is in contrast with the situation in 2007/08 when assistance was allocated almost evenly between the primary and services sectors (27% per sector), with a lower share for manufacturing (22%), due to severe drought conditions.[138] In 2008/09, the estimated budgetary assistance was higher for: grain, sheep and beef cattle farming (12% of total), mainly in the form of drought assistance payments and R&D support; property and business services (9.7%); finance and insurance (8%); and motor vehicles and parts (7.5%), mainly through the Automotive Competitiveness and Investment Scheme (ACIS).[139] In 2008/09, the effective rate (of combined) assistance (ERA) remained high for TCF (14.5%), PMV (11.8%), grain, sheep and beef cattle farming (6.3%) and horticulture and fruit growing (5.6%).[140] Australia has kept its domestic support expenditure as measured by the Aggregate Measurement of Support (AMS) well below its final bound total commitment level; its final bound total AMS ceiling has been $A 471.86 million since 2000, and its level of support, as measured by the current total AMS, dropped during the review period, from $A 206.74 million (2007/08) to zero (2008/09).[141] Nevertheless, in 2008/09, Australia provided trade-distorting domestic support, albeit below the *de minimis* levels, for milk ($A 0.17 million), sugar ($A 0.01 million), wheat ($A 0.41 million), and cattle ($A 0.08 million), as well as non-product-specific support mainly for irrigation grants ($A 161.72 million) mostly in the form of irrigation management grants. The vast

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which replaced COMET, assists innovative SMEs with the commercialization of promising research and innovation; the May 2009 Budget provided $A 196.1 million over four years for Commercialisation Australia and $A 82 million per annum thereafter to provide skills and knowledge grants, experienced executives grants, proof of concept grants, and early-stage commercialization repayable grants. For extensive information on the ongoing programmes see *AusIndustry Program Summary* online. Viewed at: http://www.ausindustry.gov.au/AboutAusIndustry/Documents/2009-AI%20Program%20Summary/Program%20Summary.pdf [2 June 2010]; and Productivity Commission (2010b).

[136] Productivity Commission (2010b).

[137] In 2008/09, industry-specific assistance for the automotive, biotechnology, and textile, clothing, and footwear industries accounted for 15% (27% in 2004/05) of total budgetary assistance, and export promotion for 8% (14% in 2004/05) (Productivity Commission, 2010b).

[138] The main reason for the increase of the services sector share is the inclusion in calculations of various small business tax concessions, a large proportion of which primarily benefit the services sector (Productivity Commission, 2010b and 2009g).

[139] Productivity Commission (2010b).

[140] The ERA measures the net subsidy equivalent (NSE) of combined tariff, budgetary, and agricultural pricing and/or regulatory assistance to a particular industry in proportion to that industry's unassisted net output (or unassisted value added). It can provide an indication of the extent to which assistance to an industry allows it to attract and hold economic resources (Productivity Commission, 2010b).

[141] WTO documents G/AG/N/AUS/73, 13 July 2009 and G/AG/N/AUS/76, 13 July 2010.

majority of Australia's domestic support to agriculture is in form of "Green Box" programmes, i.e. support that has minimal trade-distorting effects or effects on production.

97. Between 2006 and 2009, fuel excise credits of more than $A 3 million per year were available to businesses that are large energy users, on the condition that they joined the Greenhouse Challenge Plus Programme, which ceased on 30 June 2009.[142]

(iii) Competition and consumer policy

(a) Competition policy[143]

General framework

98. Reportedly, Australia's competition regime has served well the economy, consumers, and business during the recent global economic crisis, which has been seemingly used by vested interests both domestically and abroad as a justification for applying pressure to relax competition law as well as regulation and enforcement.[144] Australia's National Competition Policy (NCP) framework explicitly recognizes that competitive markets generally serve the interests of consumers and the community, by providing strong incentives for suppliers to operate efficiently, be price competitive, and innovative. A key principle is that arrangements that detract from competition should be retained only if shown to be of public interest. As part of the NCP, under the Competition Principles Agreement (CPA), Commonwealth, state and territory governments undertake to review and reform legislation that restricts competition. The Council of Australian Governments (COAG) Reform Council has monitored progress of reforms since 2007, and assessed the costs and benefits of these reforms in several areas (e.g. standards, electricity, transport, infrastructure).

99. The institutional setting for competition matters remained unchanged during the review period. National competition policy is the responsibility of the Department of the Treasury within the Commonwealth Government as well as the Premier's Department in each State and the Chief Minister's Department in each Territory. The Australian Competition and Consumer Commission (ACCC), an independent statutory authority, is charged with, *inter alia*, administering the Trade Practices Act (TPA); the ACCC and the Australian Energy Regulator (AER) are responsible for regulating the electricity, gas, telecommunications, and transport sectors.[145] The National Competition Council (NCC), also an independent authority, assesses whether third-party access should be granted to major infrastructure under the TPA access provisions, with subsequent regulation of that access conducted by the ACCC or other state-based regulators. The Australian Competition Tribunal (ACT) may re-hear or re-consider these matters; it may affirm, set aside or vary the original decision.[146]

Legislative framework

100. Competition (and consumer protection) legislation is contained in the Trade Practices Act 1974 (TPA), last amended in 2010, and is intended to promote and preserve fair and free competition

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[142] For more details about this facility see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[143] For more information about Australia's competition law and policy developments see http://www.australiancompetitionlaw.org/news.html; WTO document WT/TPR/S/178/Rev.1, 1 May 2007; and OECD (2010c).

[144] ACCC (2009a).

[145] As of 1 July 2008, the AER is responsible for regulating revenues for gas transmission and distribution networks.

[146] For more details about the ACT and its activities see http://www.competitiontribunal.gov.au/.

in the domestic market. During the review period, legislative amendments enhanced the ability of the ACCC to share information with other regulators (2007), affected misuse of market power and unconscionable conduct (2007), information sharing (2007), water trading (2007), misuse of market power – predatory pricing (2008), and cartel criminalization (24 July 2009) and search-warrant powers (2009).[147] New laws were passed in 2010, including a new Australian Consumer Law (ACL) (section (b) below), and a Competition and Consumer Legislation Bill dealing with provisions on mergers and acquisitions as well as with those on unconscionable conduct was with the Parliament; this Bill is to insert all recent amendments into the TPA (including the ACL).

101. The TPA prohibits cartel conduct by way of price fixing, output restrictions, bid rigging, and allocating customers, suppliers or territories as well as other anti-competitive conduct such as boycotts, misuse of market power, exclusive dealing, resale price maintenance, and agreements or mergers substantially lessening competition. To foster more effective compliance with the TPA, four mandatory industry codes of conduct are in place: the 1998 Franchising Code of Conduct, the 2007 Oilcode, the 2007 Horticulture Code, and the 2009 Unit Pricing Code.[148] Conduct that may raise competition concerns (see below) may be authorized on a case-by-case basis through an administrative process managed by the ACCC, and on condition that it is in the public interest. In this regard, the ACCC has authorized voluntary industry codes, including the air conditioning and mechanical contractors code, the fruit juice industry code, the Indigenous Australian art trader code, the jewellery trading code, the Medicines Australia's code of conduct, the pallet-hire industry code and the scanning code of practice.

TPA exemptions

102. The TPA covers virtually all business activities, including government business[149]; nevertheless, despite a ten-year programme of review and revision, a long list of special regimes and exemptions derogating the TPA is maintained.[150] Many of these exemptions are narrow and technical. Most arise at state and territorial levels of government where they seem difficult to reform.[151] They include specific postal mail delivery services and overseas cargo liner shipping, at the national level, and agricultural marketing boards, taxi services or pharmacies, at state or territory level. Several deal with marketing arrangements for agricultural products, by authorizing either the operation of monopolies (e.g. exports of rice grown in New South Wales) or joint action ostensibly to equalize bargaining power between producers and processors. As of 1 July 2008, the Wheat Export Marketing Act 2008 abolished a monopoly over bulk wheat exports by establishing a scheme for accrediting exporters of bulk wheat and Wheat Exports Australia (WEA) to administer it.[152]

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[147] ACCC (2010a).

[148] The Oilcode regulates the conduct of suppliers, distributors, and retailers in the downstream petroleum industry, while the Horticulture Code deals with the conduct of growers and traders of horticulture produce.

[149] It also includes telecommunication-specific competition rules.

[150] OECD (2010c).

[151] Some 10 Commonwealth and 70 state and territory Acts permit conduct that would normally contravene the TPA. Such conduct may be permitted if it is specifically authorized under those Acts, which, *inter alia*, cover farm produce, poultry meat, sugar industry, grain marketing, rice marketing, tobacco products, wine grapes marketing, liquor, coal industry, gas industry, electricity, financial, banking, gambling, health, insurance, postal, transport, water supply, and state-owned enterprises activities. The ACCC publishes the list of these enactments on its website and in its annual report (ACCC, 2009a; and OECD, 2010c).

[152] To gain accreditation, wheat exporters that own or operate port terminal facilities must provide fair and transparent access to their facilities to other accredited wheat exporters. From October 2009, accreditation requires formal access undertakings under Part IIIA of the TPA, assessed by the ACCC, or a state or territory access regime that is certified as effective after recommendation by the National Competition Council (OECD, 2010c; and Productivity Commission, 2010c).

Following recommendations by a 2005 Productivity Commission review, the authorities decided to retain TPA provisions (Part X) on international cargo liner shipping conferences, but to amend them to clarify objectives, remove discussion agreements from their scope, protect individual confidential service contracts between carriers and shippers, and introduce a range of penalties for breaches of its procedural provisions.[153] The relevant legislative amendments have not yet been implemented; and further review of Part X is scheduled for 2010-11. Conditions in agreements licensing patents, design copyrights, and trade marks are also exempt from TPA provisions as long as they are limited to permitted topics.[154]

103. Certain prohibited anti-competitive practice in industries and professions can be authorized when public benefits are deemed to exceed detriments. Businesses may obtain immunity by applying for an authorization or submitting notifications of exclusive dealing and collective bargaining to the ACCC. In 2008/09, 64 notifications covering 7 groups, included collective bargaining by: retailers of paint and related products with suppliers; operators of clubs in New South Wales with suppliers of wagering and broadcast services; and the owners of independent record labels with licensees in respect of the public performance and transmission of music videos. It granted authorization to 35 arrangements covering a wide range of industries, including recycling programmes aimed at reducing waste from agricultural and veterinary chemicals, and a capacity balancing system at the Port of Newcastle. In 2009/10, the ACCC assessed 74 collective bargaining notifications. It issued 37 authorizations including on collective bargaining by vegetable growers in Tasmania, joint marketing of gas produced by the Gorgon gas project, a long-term solution to the capacity constraints in the Hunter Valley coal chain, a Virgin Blue-Delta Air Lines joint venture, and a liquor accord in the Northern Territory.

104. The National Access Regime (Part IIIA of the TPA) provides a legislative framework for third-party access to certain services provided by essential infrastructure facilities, such as electricity networks, rail tracks, natural-gas pipelines, water, communications, port terminals, and airports. Its purpose is to promote economically efficient infrastructure use and investment, including promoting competition in markets upstream and downstream from the service, as well as to encourage new entrants into markets that rely on monopoly services (i.e. limited competition).[155] To achieve this objective, much of the ACCC/AER role in relation to access regulation may include: determining prices and access terms and conditions; monitoring and enforcing industry-specific pro-competition laws for bulk water, energy, and communications; and monitoring and reporting on prices and service quality of particular goods and services in the areas concerned. In 2010, the National Access Regime was amended to improve regulatory certainty and streamline administrative processes, including by introducing binding time limits and limiting merits review.

Mergers and acquisitions

105. The TPA prohibits acquisitions that would be likely to substantially lessen competition. Revised guidelines were issued by the ACCC in late 2008 outlining the general principles underpinning its merger analysis, with increased emphasis on the competitive theories of harm and the effect of constraints. Despite volatile economic conditions, merger activity was strong and showing no sign of significant change in the foreseeable future. Between 2004/05 and 2008/09, merger and joint ventures reviews more than doubled; they rose from 189 to 412 reviews, of which 239 were conducted confidentially and 173 were reviews of public mergers.[156] Some of the more substantial mergers considered recently fell within the banking, retail, and energy sectors. In 2008/09, substantial

[153] OECD (2010c).
[154] OECD (2010c).
[155] OECD (2010c); and ACCC (2009a).
[156] ACCC (2009a).

competition concerns were identified in 16 merger matters and resulted in ACCC decisions to oppose the merger or resolve it through an enforceable undertaking. In 2009/10, the ACCC considered 321 matters for compliance with the merger and acquisitions section of the TPA including the merger of two major pharmaceutical companies and the proposed sale of an oil company's retail assets to another oil company, which the ACCC opposed. Four mergers were allowed to proceed following acceptance of undertakings to address competition concerns. All publicly reviewed and decided mergers were published on the ACCC website.

106. To deal with 'creeping acquisitions'[157], by January 2010, the authorities intended to amend the TPA in order to ensure ACCC's power to reject acquisitions that would substantially lessen competition in any local, regional or national market.[158]

Cartel conduct

107. Following the increase of pecuniary penalties against those found to have engaged in anti-competitive conduct in January 2007, criminal offences for cartel conduct commenced in July 2009; this significant change allowed for a range of more effective responses, including financial and criminal sanctions in line with those in other OECD countries, including the United States and Canada.[159] For individuals, cartel conduct is punishable by imprisonment of up to ten years and/or fines up to $A 220,000 per contravention or under parallel civil prohibition fines up to $A 500,000 per contravention.[160] Corporations found guilty of such conduct may be fined up to $A 10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10% of the corporate group's annual turnover (whichever is greater). In addition to the ACCC, which is responsible for investigating allegations of cartel conduct and arranging civil proceedings, now the Commonwealth Director of Public prosecutions (DPP), the general centralized prosecutions agency, has responsibility for prosecutions of all indictable federal offences in Australia.[161] The cartel will be prosecuted on civil or criminal grounds depending on the facts of each case.[162] This dual criminal-civil sanctions regime could spur a significant upward trend in Australia's penalties; those for breaching the prohibitions on anti-competitive conduct have been considered low by international standards.[163] Reportedly, there are potentially substantial benefits for objectivity and independence in decision-making as a result of the separation of investigatory and prosecutorial functions between the ACCC and DPP.

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[157] "Creeping acquisitions" refer to a series of small acquisitions that individually do not substantially lessen competition in a market so as to breach section 50 of the *Trade Practices Act 1974* (Commonwealth), but collectively may have that effect.

[158] Dr. Craig Emerson Media release, "Government to secure powers to deal with creeping acquisitions". Viewed at: http://www.craigemersonmp.com/files/012110%20Creeping%20acquisitions%20media%20release%20.pdf.

[159] According to ACCC's Chairman "the financial penalties in Australia don't reflect the true damage done by anti-competitive conduct, and this reflects both the level of penalties that have been sought by the ACCC and those that have been awarded by the courts". In the recent past, there have been "cases where the profit from the conduct for the company far outstripped the reach of the penalties being sought by the ACCC and being awarded by the courts - which, ..., made anti-competitive conduct fairly good business" (ACCC, 2010a, and 2009a; and Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009, 24 July 2009. Viewed at: http://www.accc.gov.au/content/item.phtml?itemId=779417&nodeId=feda740e39f8ef706f88f67626945aeb&fn=Important%20Notice_Trade%20Practices%20Amendment%20Act%202009%E2%80%94long%20notice.pdf [11 June 2010]).

[160] ACCC (2009a).

[161] OECD (2010c).

[162] See ACCC (2009b).

[163] The TPA also offers a range of other forms of penalty or remedy such as community service orders, adverse publicity orders, and disqualification from management (OECD, 2010c).

108. In 2009, a record year for cartel litigation, proceedings were instituted in 13 cartel matters and secured over $A 20 million in fines. These included action against the air cargo cartel and the marine hose cartel, an alleged cartel involving electric cable manufacturers. Of the cartel proceedings instituted in 2009, seven have been concluded so far, with fines totalling $A 26.3 million.[164] In 2009/10, the ACCC instituted ten proceedings for cartel conduct, of which seven related to its extensive investigation into alleged cartel activity in the provision of air cargo services; the ACCC has obtained penalties of over $A 41 million to date in air cargo cases alone. Other cartel matters finalized in 2009/10 relate to marine hose companies and air conditioning companies.

Enforcement

109. Most of the investigations instituted under TPA provisions concern mergers and, to a much lesser extent, unfair competition and consumer protection, horizontal agreements, vertical agreements, and abuse of dominance.[165] The main industries subject to complaints and inquiries under TPA provisions (including those relating to consumer protection, section (b) below) in 2008/09 and 2009/10 covered: auxiliary finance and investment services; non-store retailing; electrical, electronic and gas appliance retailing; car retailing; computer and computer peripheral retailing; wired telecommunications network; lottery operation; automotive fuel retailing; credit reporting and debt collection services; and supermarket and grocery stores.[166] During the same period, the most common contraventions to the TPA provisions relating to mainly effective competition and informed markets were exclusive dealing and misuse of market power. Contraventions to the TPA provisions on predominantly fair trading and consumer protection related to misleading or deceptive conduct and retail warranties. Most TPA-related inquiries and complaints originate in New South Wales, Victoria, and Queensland. Litigations concluded in 2008/09 and relating to TPA provisions on lawful competition and informed markets involved: air cargo (price fixing in relation to fuel surcharges); baby clothing, sport compression garments, and water craft (resale price maintenance); and taxis (roster arrangement).

Price surveillance

110. Price surveillance is provided for in the TPA (Part VIIA). Three forms of price surveillance are available: price inquiries, directed to the ACCC by portfolio ministers to undertake a public inquiry; price notification, where the portfolio minister requires specific companies to notify the ACCC of a proposed price increase; and price monitoring, where the portfolio minister directs the ACCC to monitor the prices, costs, and profits of companies and government agencies relating to specific goods and services. Price surveillance may be conducted informally or formally. Under the formal price surveillance system, penalties may be applied for non-compliance actions. As indicated, the ACCC conducts formal price surveillance on aviation and airport services and facilities, fuel, electricity, telecommunications, postal services, and container stevedoring. During the review period, the ACCC undertook price monitoring of petrol and airport car parking services as well as an inquiry into the prices, costs, and profits of container terminal operator companies.

(b) Consumer protection policy

111. Consumer protection legislation, including compulsory product safety standards (section (2)(vii)(a)), is contained in the TPA. During the period under review, work was undertaken on passing a new single Australian Consumer Law (ACL) in two steps; the ACL entered into force as

[164] ACCC (2010a).
[165] OECD (2010c).
[166] ACCC (2009a).

of January 2011.[167] A Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 (ACL) was enacted on 14 April 2010[168]; it amends the TPA to establish the Australian Consumer Law (ACL) as a schedule to the TPA. This framework legislation introduces provisions regulating unfair consumer contract terms (in effect as of 1 July 2010) as well as new penalties, enforcement powers and consumer redress options (in force as of 15 April 2010). A Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010, which completes the ACL was enacted on 13 July 2010 and has been in effect since January 2011[169]; it transfers all of the consumer protection provisions of the TPA to the ACL. The second ACL Act also introduces a new national product safety regulatory framework and new national consumer guarantees replacing conditions and warranties that applied to contracts for the purchase of goods and services under the TPA.[170] Responsibility for consumer protection enforcement at the Commonwealth level is with the ACCC and the Australian Securities and Investments Commission (ASIC), which remains the primary regulatory agency responsible for consumer protection for financial services. During 2010, the ACCC and ASIC were given additional enforcement powers for consumer protection and fair trading, including the ability to issue public warnings, infringement notices and substantiation notices, and to seek orders for the payment of civil pecuniary penalties, non-party redress and the disqualification of directors and officers where there has been a breach of the law. Each state and territory has its own enforcement agency for consumer protection, and this will continue under the ACL, subject to a cooperative agreement between all Australian agencies responsible for consumer law enforcement. From 1 January 2011, all Australian consumer agencies will share common powers for the enforcement of the ACL.

112. Since 2007, the main possible contraventions to the TPA provisions relating to fair trading and consumer protection have been: misleading or deceptive conduct; retail warranties; accepting payment non-supply; misrepresentation of price; harassment and coercion; misrepresentation of performance characteristics, accessories, uses or benefits; product safety; assert right to payment of unsolicited services; assert right to payment of unsolicited goods; and misrepresentation of warranty, guarantee.[171] In 2008/09, the ACCC initiated litigation in 27 consumer protection matters and accepted 62 undertakings, which include actions to ensure product safety compliance (section (2)(vii)(a)). Increasingly, the ACCC is using market and trend analysis as a means of facilitating identification of important problems where action needs to be taken; in this context, in 2008/09 outstanding debt collection, scams proliferation, and telecommunications-related fields were dealt with. In 2009/10, the ACCC commenced litigation in 21 consumer protection and fair trading matters and accepted 45 undertakings concerning consumer protection and fair trading matters.

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[167] According to the Productivity Commission, by 2008 the division of responsibility for the consumer policy framework between the Australian and state and territory governments led to variable outcomes for consumers, added costs for businesses and a lack of responsiveness in policy making; there were gaps and inconsistencies in the policy and enforcement provisions, and weaknesses in redress mechanisms for consumers (Productivity Commission, 2008d).

[168] Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010. Viewed at: http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/843C26B5CBBAB553CA25770A0023F5A9?OpenDocument [15 July 2010]. More specifically, this first tranche of the ACL introduced national prohibitions on unfair contract terms, made companies that engage in unconscionable conduct or make false or misleading representations liable to fines of up to $A 1.1 million, and inserted a new Part IX into the TPA to facilitate the application of the ACL across the Commonwealth. Middletons online information. Viewed at: http://www.middletons.com.au/news/news.asp?id=292 [28 June 2010].

[169] The Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010. Viewed at: http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/bills/bytitle/4A2EDC3EC8F77819CA2576EA00025C24?OpenDocument [15 July 2010].

[170] The Treasury online information. Viewed at: http://www.treasury.gov.au/content/consumer_affairs.asp?ContentID=270 [28 June 2010].

[171] ACCC (2009a).

(iv) Corporate governance

(a) Private sector

113. Australia's corporate governance framework consists of parts of the Corporations Act 2001 (Corporations Act); accounting standards (which have the force of law); various market operating rules, including the Australian securities Exchange (ASX) Listing Rules and Operating Rules, and the ASX Corporate Governance Council's "Principles of Good Corporate Governance and Best Practice Recommendations"; together with voluntary self-regulatory codes of practice. The Australian Securities and Investments Commission also plays an important role in supervising corporate governance requirements set out in the Corporations Act, as does the Australian Prudential Regulatory Authority in relation to financial institutions. Legislative and non-legislative changes since 2007 concern the executive remuneration framework, requirements for disclosure to shareholders, mutual director disqualification with other countries, the short selling regulatory regime, supervision of domestic licensed financial markets, the Australian Accounting Standards, and corporate governance principles, as well as the enactment of legislation to facilitate cross-border insolvency procedures.

(b) Government trading enterprises

114. Government trading enterprises (GTEs) remain, often as monopolies, engaged in the production of goods and services; they are required to substantially or fully cover their costs.[172] GTEs established as companies are subject to the Corporations Act. However, most GTEs are established as statutory entities and may have policy objectives that place competing pressures on their commercial functions. The Government's ownership is generally represented by two "shareholder ministers", the portfolio minister (the Minister in charge of the portfolio in which the GTE is involved), and the Finance Minister. The Government may impose price controls on GTEs providing goods and services in a monopolistic market, or specify other targets such as community service obligations (CSOs).

115. In 2006/07, there were 86 government trading enterprises (GTEs) providing essential infrastructure services (section (4)(iii)(a)) in key sectors of the economy, including water (24), electricity (23), ports (19), forestry (6), rail (6), and urban transport (5).[173] The 11 largest GTEs accounted for around 50% of the total assets of these companies. These GTEs controlled about 2.8% of Australia's non-household assets and accounted for around 1.7% of GDP. Between 2005/06 and 2006/07, the profitability of GTEs increased by 36%, specifically it increased in the electricity, urban transport, and ports sectors, largely due to the performance of a single GTE in these sectors, but declined in the rail, water, and forestry sectors. In 2006/07, 12 GTEs failed to achieve a positive return on their assets. According to the Productivity Commission, the poor financial performance of many GTEs underscores a long-term failure to operate these businesses on a fully commercial basis, in accordance with Competition Policy Agreements (section (4)(iii)(a)). A number of GTEs rely heavily on government funding in order to sustain operations, and their investments are funded from taxpayers and customers.[174] Funding from governments can be either direct, through grants, asset contributions or equity injections, or indirect, via contracts with a GTE or through the provision of loans at below-market interest rates. No recent data on the performance of GTEs are available from the authorities.

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[172] GTEs are also commonly referred to as government business enterprises (GBEs); government-owned corporations (GOCs); public trading enterprises (PTEs); public corporations; state-owned corporations (SOCs); state-owned enterprises (SOEs); or territory-owned corporations (TOCs) (Productivity Commission, 2008b). Further information on the GTEs regime is available at WT/TPR/S/178/Rev.1, 1 May 2007.

[173] Productivity Commission (2008b).

[174] Productivity Commission (2008b).

(v) Intellectual property rights

(a) Overview

116. Australia has continued to provide strong intellectual property rights (IPRs) protection and enforcement. During the review period, it expanded its commitments on the protection of IPRs by becoming a party to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaties, in force as of July 2007, and the Patent Law Treaty and the Singapore Treaty on the Law of Trademarks, as of March 2009.[175] Thus, it now participates in 17 out of 24 treaties administered by the WIPO.[176] For a broad range of reasons reflecting domestic and international policy, Australia is not a contracting party to several WIPO treaties.[177] In February 2008, Australia announced its participation in negotiations for the establishment of an Anti-Counterfeiting Trade Agreement (ACTA) setting international standards on IPR enforcement; the final round of these negotiations, which were to conclude in 2010, was held in October 2010 in Tokyo.[178]

117. To, *inter alia*, implement its new WIPO treaties-related commitments and/or to reflect new policy between 2007 and 2010 (November) Australia passed or amended legislation on: patents, industrial designs, trade names, trade marks, plant varieties, integrated circuits, geographical indications, domain names, copyright, and enforcement.[179] Following the release of a public consultation paper on 22 April 2010 outlining the proposed model for implementing the WTO TRIPS Protocol in Australia, a public consultation was launched on its implementation; responses to this paper were under review in November 2010.[180]

[175] The Singapore Treaty and the Patent Law Treaty harmonize and simplify procedural requirements for the administration of patents and trade marks, making them more user-friendly, more consistent between countries, less time-consuming and less expensive (Department of Innovation, Industry, Science and Research, 2008).

[176] For more details on Australia's participation in WIPO Treaties see WIPO online information. Viewed at: http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=10C.

[177] These are: the Madrid Agreement (Indications of Source); the Nairobi Treaty on the Protection of the Olympic Symbols; the Washington Treaty on the Protection of Integrated Circuits[0]; the Hague Agreement Concerning the International Registration of Industrial Designs; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Madrid Agreement Concerning the International Registration of Marks; the Locarno Agreement Establishing an International Classification for Industrial Designs; and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

[178] By October 2010, participants in the negotiations had resolved nearly all substantive issues and produced a consolidated and largely finalized text of the proposed agreement, which was to be submitted *ad referendum* to their respective authorities. Other countries participating in the negotiations are: Canada, the EU, Japan, Korea (Rep. of), Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United States (Department of Foreign Affairs and Trade online information. Viewed at: http://www.dfat.gov.au/trade/acta/ [14 July 2010]; and European Commission Presss release, "Anti counterfeiting Tokyo - Japan, 2nd October 2010 - Joint statement from all the Negotiating parties to ACTA". Viewed at: http://trade.ec.europa.eu/doclib/press/index.cfm?id=623 [8 November 2010]).

[179] See IP Australia Official Notices. Viewed at: http://www.ipaustralia.gov.au/; and WIPO online information. Viewed at: http://www.wipo.int/clea/en/search.jsp?cntryorg_id=6.

[180] The TRIPS Protocol enables least developed and developing countries deal with health crises such as an HIV/AIDS, malaria or influenza epidemic by permitting WTO Members to issue compulsory licences to manufacturers to produce patented pharmaceutical products exclusively for export to address the relevant health need (IP Australia online information. Viewed at: http://www.ipaustralia.gov.au/resources/news_new.shtml#24 [12 July 2010]; and IP Australia, 2010).

Institutional and registration issues

118. IP Australia, under the Department of Innovation, Industry, Science and Research, is responsible for the administration of patents, trade marks, designs, and plant breeders' rights; IP Australia recovers more than 95% of its costs by charging fees for its IPRs services. IP Australia provides input to FTA negotiations (Chapter II) so as to lock in transparent, high-standard protection for IPRs.[181] The Advisory Council on Intellectual Property (ACIP) and the Plant Breeders' Rights Advisory Committee advise the Minister for Innovation, Industry, Science and Research, as well as IP Australia, on matters relating to IP policy and the strategic administration of IP Australia.[182] The Attorney-General's Department has responsibility for administration and policy in relation to the Copyright Act 1968 and the Circuit Layouts Act 1989.

119. In 2008/09, as a result of the global financial crisis, firms around the world scaled back investment, and the number of applications for IPRs dropped.[183] In 2009, the average interval between the lodging and acceptance of applications for industrial property rights was: 4 months for trade marks; 46 months for designs; and 35 months for plant breeders' rights. The average interval between a patent applicant's request for examination and the issue date of the first examination report is 13 months. The average time taken to determine a wine's geographical indication depends on the application. No clear difference exists in average times between domestic and foreign applications for protection.

(b) Industrial property

Patents

120. The Patents Act 1990, last amended in 2010, provides protection for standard patents and innovation patents, with terms of 20 (up to 25 for eligible pharmaceuticals) and 8 years, respectively.[184] The Act and the Patent Regulations 1991 have been amended on a number of occasions since 2007. Most of the amendments are of a minor technical nature and consist of updating the relevant rules implementing the Patent Cooperation Treaty (PCT), aligning the various requirements for declarations in the designs, patents, and trade marks legislation, and consistency with amendments made to other Australian legislation, and removing the obligation for patents applicants to inform the Commissioner of Patents of the results of documentary searches conducted by foreign patent offices.[185] During 2008/09, in line with the relevant PCT provisions, IP Australia signed international search authority and international preliminary examination authority agreements with the United States Patents and Trade Marks Office (USPTO), and the Korean Intellectual Property Office (KIPO), which came into effect on 1 November 2008 and 30 January 2009, respectively.[186]

121. Since 2008/09, reforms have been proposed to the Patents Act and Regulations to, *inter alia,* raise patent thresholds; improve certainty about the validity of granted patents; introduce a statutory exemption from infringement for experimental activities; reduce delays in the resolution of patent

[181] Department of Innovation, Industry, Science and Research (2008).
[182] IP Australia online information. Viewed at: http://www.ipaustralia.gov.au/resources/news_new.shtml#24 [12 July 2010].
[183] Department of Innovation, Industry, Science and Research (2009a).
[184] The innovation patent, is intended to stimulate innovation in SMEs by providing them with easier access to, but a shorter term of, protection for inventions; it covers the same subject matters as the standard patent, with the exception of animals and plants, and biological processes for the generation of animals and plants.
[185] Department of Innovation, Industry, Science and Research (2008).
[186] These arrangements offer applicants the choice of which patent office to work with to achieve patent grants in both countries (Department of Innovation, Industry, Science and Research, 2009a).

applications; and streamline and modernize aspects of the patent application process.[187] Reforms are also proposed to improve the operations of the patent and trade mark attorney professions. Public consultations on the reforms was undertaken during 2009 and 2010. In February 2010, the Advisory Council on Intellectual Property reported to the Government on its review of post-grant enforcement strategies.[188]

122. As from April 2008, IP Australia has operated its new web-based patent search system (AusPat); in 2007/08, IP Australia adopted the European Patent Office Query (EPOQUE) search system as the main facility for patent examiners.[189] Patents applications originate mostly in the United States, the EU, and Australia.[190] During the review period, the number of certified innovation patents ranged from 243 (2007) to 235 (2009), and standard patents sealed increased from 11,070 (2007) to 12,410 (2009).

123. A Commonwealth, state or territory court may order the granting of a compulsory licence if it is satisfied that the reasonable requirements of the public have not been met in relation to the invention, and the patentee has not given a satisfactory reason for failing to exploit the invention.

Trade marks

124. The Trade Marks Act 1995, amended in 2009 and 2010, provides for the registration of trade marks, collective trade marks, certification trade marks, and defensive trade marks. Under the Act, registered trade marks are protected for ten years and can be renewed indefinitely, upon request and payment of the appropriate fee. Since 2007, the Act and the Trade Marks Regulations 1995 have been amended on a number of occasions. Amendments that entered into effect in March 2007 included: allowing collective marks to be owned by incorporated associations; introducing new provisions for divisional applications and series applications; clarifying amendment provisions; providing for more flexibility for the Registrar to correct clerical errors or obvious mistakes; reducing the period within which a trade mark registration may be renewed; and amending customs provisions in relation to cash security. Other amendments were of a minor technical nature and related to aligning the various requirements for declarations in the designs, patents, and trade marks legislation, and consistency with amendments made to other legislation.

125. Upon a 2008 IP Australia proposal, public consultations were held in February 2009 on the amendment of the Trade Marks Act to: raise the penalties for indictable criminal offences (i.e. maximum imprisonment period from two years to five years); introduce summary offences with lower fault requirements than those for indictable offences; and introduce additional damages provisions for civil actions.[191] In November 2010, a Bill was being drafted in this area. Further legislative changes were proposed to reduce delays in the resolution of trade mark oppositions and public consultations were held in 2009/10.

126. During the review period, trade mark registrations rose from 26,715 (2008) to 42,306 (2009); in 2009, trade mark registrations consisted of 22 certification trade marks, 15 collective trade marks, 8 defensive trade marks and 42,261 standard trade marks. Trade mark applications originate mostly from Australia.

[187] Cutler (2008); and Department of Innovation, Industry, Science and Research (2009a).
[188] Advisory Council on Intellectual Property (2010b).
[189] Department of Innovation, Industry, Science and Research (2008).
[190] Department of Innovation, Industry, Science and Research (2009a).
[191] Department of Innovation, Industry, Science and Research (2009a).

Industrial designs

127. The Designs Act 2003 provides for an initial registration for five years from the filing date of the application, and for a single renewal for a further five years, i.e. a maximum term of ten years. However, design applications filed under the Designs Act 1906 (i.e. prior to 2003) continue to have a possible maximum term of 16 years. Most applications originated in Australia (approximately half), the United States, and the EU.[192] Since 2007, the Act and the Designs Regulations 2004 have been amended on a number of occasions. Most of these amendments are of a minor technical nature. The number of registered designs rose from 5,207 in 2007 to 6,097 in 2008.

Protection of plant varieties

128. Under the Plant Breeders' Rights (PBR) Act 1994, amended in 2007 and 2010, unauthorized use of protected plant varieties, and different kinds of false representation regarding plant varieties, are criminal offences. PBRs registration lasts up to 25 years for trees and vines, and 20 years for other species. The PBR Act was amended in 2007 and 2010; the amendments relate mainly to minor technical issues relating to consistency with amendments to other legislation. In July 2008, a framework was approved that set criteria for assessing requests to extend the duration of PBRs beyond the current maximums under the Act.[193] In January 2010, the Advisory Council on Intellectual Property submitted its review of enforcement of PBR rights for the Government to respond.[194] Enforcement of PBRs is generally the responsibility of holders of the rights through civil procedures, and the Customs has no seizure powers at the border (section (d) below). Between 2007 and 2009, 727 PBR titles were issued (332 from domestic applicants). Approximately half of plant breeders' rights applications originate in Australia, while the majority of other applications originate in New Zealand, the United States, and the EU.

Geographical indications (GIs)

129. GIs are protected through the Trade Marks Act 1995, which allows for the registration of GIs as certification trade marks, provided that certain criteria are met; and the Trade Practices Act 1974, which prevents misleading conduct. In addition, the Australia New Zealand Food Standards Code contains prohibitions on infringement of GIs of spirits. Protection is also provided through labelling legislation, such as the Commerce Trade Descriptions Act 1905, which prohibits the use of false trade descriptions on labelling. GIs for wine are protected through the Australian Wine and Brandy Corporation Act 1980, which establishes a Register of Protected Names for the protection of geographical indications of Australian and foreign wine. A new wine agreement, the Australia-European Community Agreement on Trade in Wine, was signed in December 2008 and entered into force on 1 September 2010; as a result, the Australian Wine and Brandy Corporation (AWBC) Act and Regulations 1981 have been revised to provide a clear and transparent process for the determination of foreign GIs. The Geographical Indications Committee of the Australian Wine and Brandy Corporation determines GIs for wine. Since 2006, eight Australian wine GIs have been determined and entered on the Register of Protected Names; no applications for foreign GIs were received during this period.

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[192] Department of Innovation, Industry, Science and Research (2009a).
[193] Department of Innovation, Industry, Science and Research (2009a).
[194] Advisory Council on Intellectual Property (2010a).

Other

130. No changes were made to the law in relation to undisclosed information and trade secrets, which are protected under the common law and by equity.[195]

(c) Copyright and related rights

Copyright

131. The Copyright Act 1968, amended in 2007, 2008, and 2010, protects all original literary, dramatic, musical, and artistic works. The duration of a copyright varies according to the nature of the work and whether it has been published. Depending on the material, copyright for literary, dramatic, musical and artistic works generally lasts for the author's life plus 70 years from the year of the author's death or from the year of first publication after the author's death. Copyright for films and sound recordings lasts 70 years from their publication, and the term for broadcasts is 70 years from the year in which they were made.[196] Unlike for patents, trade marks, designs, and PBRs, where registration is a precondition for protection, copyright (including of circuit layouts) is granted automatically where the substantive requirements are fulfilled.

132. The 2004 amendments to the Copyright Act 1968 implemented obligations under the Australia-United States Free Trade Agreement concerning technological protection measures, rights management information, and encoded broadcasts; these are now applied to all trading partners.

Parallel imports

133. Some parallel imports are allowed under the Copyright Act 1968 and, in certain circumstances, under the Trade Marks Act 1995. The Copyright Amendment (Parallel Importation) Act 2003 (PI Act) extends parallel importation and subsequent commercial distribution to computer software, electronic books, electronic journals, and electronic sheet music, with the notable exception of films (digital video discs (DVDs)); the use of trade marks on these goods should not prevent their parallel importation. Parallel importation of liquor, branded foods, clothing, IT items (e.g. Australian computer games including their hardware) from third parties (i.e. bypassing the local licensees of the products) is common practice for some wholesale and/or retail stockists.[197] A 2009 Productivity Commission report recommended that legislation be extended to legalize the parallel importation of books, with three years notice for publishers; according to the Productivity Commission, restrictions on parallel imports result in higher local book prices.[198] In November 2009, the authorities decided not to change the parallel importation regulatory regime for books.[199]

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[195] For more details, see WT/TPR/S/104, 26 August 2002.

[196] The Copyright Act 1968 protects subject matter other than works (cinematograph films, sound recordings, broadcasts, and published editions), for 70, 50, or 25 years (Part IV, Division 4).

[197] *The Age* online information, "Retailers rock the boat with parallel imports", 15 January 2010. Viewed at: http://www.theage.com.au/business/retailers-rock-the-boat-with-parallel-imports-20100114-ma5h.html [14 July 2010].

[198] Australia's Copyright Act currently forbids parallel importation of books if an Australian publisher releases the book within 30 days of its first release elsewhere. This enables rights holders to charge prices (or obtain royalties) in the Australian market with the certainty that they cannot be undercut by commercial quantities of imports of the same titles. The average price of an Australian book was found to be 35% higher than in the United States. The PC concluded that permitting bookstores to stock copies of books imported from outside Australia would encourage lower prices (Productivity Commission, 2009e).

[199] Australian book printing and publishing is under strong competitive pressure from international online booksellers, and the Government has formed the view that this pressure is likely to intensify. In addition,

Circuit layout

134. The Circuit Layouts Act 1989 remains the major legislation for protection of layout designs (topographies) of integrated circuits (also referred to as computer chip designs or semi-conductor chips). A layout design is protected for 10 years from its first commercial exploitation, and if not exploited, 10 years from when it was made, i.e. maximum protection of 20 years. The Circuit Layout Amendment Regulations 2003 contain the list of eligible countries to which Australia extends reciprocal protection of circuit layouts designs; they were last amended in 2008 to ensure that eligible foreign countries are Members of the WTO. This mechanism enables the Regulations to self-update each time a new Member joins the WTO.

(d) Enforcement

135. The negative impact of IPRs infringement may include adverse effects on business, the national economy, and consumer health and safety. IPRs holders may enforce their IPRs by civil action against infringers, both at the federal and the state level. The Australian Federal Police and state and territory police agencies have the authority to undertake criminal investigations, with prosecutions conducted by the relevant state or Commonwealth or State/Territory office of the Director of Public Prosecutions. Penalties for offences relating to IPRs include fines and imprisonment. For copyright offences, the maximum penalty is a fine of up to $A 93,500 together with imprisonment of up to five years. For trade mark offences, penalties may take the form of fines of up to $A 55,000, and/or imprisonment for up to two years for individuals; monetary penalties for a company can be up to five times the penalty for individuals. Upon acceptance of a Notice of Objection lodged by the IPR owner, Customs may seize and hold imported goods infringing copyrights or trade marks law; by July 2010, 453 Notices of Objection had been lodged for a wide variety of items; 392 concerned trade marks and 60 copyrights and 1 concerned protected Olympic expressions.[200] Customs does not have similar seizure powers in relation to patents or PBRs; in 2009 some stakeholders argued that the lack of Customs seizure provisions in the PBR Act was a major obstacle to effective enforcement.[201] Between 2007 and 2009, Customs made 9,023 seizures of about 2.3 million items of a total retail value exceeding $A 74.3 million, mainly originating in Asia; clothing, textiles, and accessories have consistently made up the largest category, with a significant increase in seizures of food and beverage items in recent years. A number of forums facilitate discussion and improve coordination of IPRs enforcement issues among stakeholders.

136. According to a 2008 study by the Australian Institute of Criminology, while there is no suggestion that piracy and counterfeiting is non-existent in Australia, there is a lack of verifiable empirical evidence on the extent of the problem.[202] In 2008, IPRs violations in Australia consisted mainly of: the importation on a separate component basis of counterfeit goods such as clothing, luxury goods, and footwear, from South-East Asia[203]; and the domestic manufacture of goods that

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the technology of electronic books (e-books) will continue to improve, with further innovations and price reductions expected. Changing the regulations governing book imports is unlikely to have any material effect on the availability of books in Australia (Dr. Craig Emerson Media release "Regulatory regime for books to remain unchanged", 11 November 2009. Viewed at: http://www.craigemersonmp.com/files/Nov%2011%2009%20Regulatory%20regime%20for%20books%20to%20remain%20unchanged.pdf).

[200] Australian Customs Notices. Viewed at: http://www.customs.gov.au/webdata/miniSites/ipData/ [18 July 2010].

[201] Advisory Council on Intellectual Property (2010a).

[202] Australian Institute of Criminology (2008).

[203] For example, counterfeit shoes may be imported in one shipment, while items bearing the counterfeit trade mark may be in a separate shipment, with the trade mark being affixed to the shoes in Australia.

infringe copyright, such as films, music, games, and software. According to industry statistics, in 2009, Australia recorded the fifth lowest software piracy rate in the world, after the United States (20%), Japan (21%), Luxembourg (21%), and New Zealand (22%).[204] From 2005 to 2009, installations of unlicensed software on personal computers (PC) in Australia fell by four percentage points to 25%; in 2009 the commercial value of Australia's illegal software amounted to US$550 million. Those involved in IPRs infringement range from members of the general public to more professionally organized criminal networks.[205] As it appears that a significant proportion of pirated and counterfeit material is produced locally rather than imported, border control and related Commonwealth law enforcement activity is unlikely to detect this category of infringements. In 2008, in general, representatives of key industries viewed civil proceedings as time-consuming and costly, with losses frequently not recovered even when proceedings were successful.[206] Reportedly, very few IPRs crimes are pursued at a federal level and less well-resourced victims of IPRs infringement tend not to pursue either civil or criminal remedies.[207]

[204] Business Software Alliance online information. Viewed at: http://www.bsa.org/country/News%20and%20Events/News%20Archives/global/05112010-globalpiracystudy.aspx [14 July 2010].

[205] Australian Institute of Criminology (2008); Australian Crime Commission (2009); and The Allen Consulting Group (2009).

[206] Specific statistics are not maintained on civil cases of copyright infringement.

[207] These include individual creators/artists (including indigenous creators/artists), small companies and sole traders, and unincorporated businesses and associations.

IV. TRADE POLICIES BY SECTOR

(1) OVERVIEW[1]

1. Australia has maintained its relatively open trade regime since its last Review. At the same time, despite certain policy changes, it has continued to provide general and industry-specific support in different forms to the same sectors. A number of activities, including cargo liner shipping, and essential infrastructure facilities (some of which are natural monopolies), such as electricity networks, rail tracks, natural gas pipelines, water, communications, port terminals, airports, and post, continue to benefit from special regimes or exemptions that restrict competition. The fact that some sectors continued to be protected or otherwise assisted more than others constitutes a potential impediment to efficient re-allocation of resources in the economy as a whole.[2] As a result, no major improvement in multi-factor productivity, and thus international competitiveness was achieved during the period under review.

2. Despite its relatively small contribution to GDP (2.3%), Australia's market- and export-oriented agriculture remains of fundamental importance. Sectoral policy developments have focused largely on drought relief, water and land management, biodiversity, and climate change. The average level of applied MFN tariff protection for the sector (excluding forestry) remained stable and negligible, at 1.4 %, compared with 4.2% for manufacturing. Some sensitive items (e.g. cheese, certain vegetables, certain oils and fats) continue to receive tariff protection and tariff-rate quotas affect certain types of cheese. The strict quarantine and inspection regime, based on rigorous science-based import-risk assessment (but not cost-benefit analysis) and proportionate to Australia's appropriate level of protection (ALOP), remains in place. Exports and/or production of certain commodities (e.g. certain dairy, grain, horticulture, livestock, and wines/grapes) continue to be subject to levies earmarked mainly for R&D. Single-desk arrangements continue to affect rice exports; similar statutory arrangements for grains, wheat, and sugar were dismantled during the review period, although entities operating them remain in place. A new bilateral agreement on wine trade was signed with the EU. Despite a wide range of assistance programmes, the sector's overall level of support, as measured by different indicators, has remained low, equivalent to 0.1% of GDP, and the majority of this assistance was delivered in the form of non-trade distorting (Green Box) budgetary outlays rather than tax incentives; both product-specific and non-product specific AMS were within Australia's *de minimis* WTO commitments. Since 2009, no industry-specific support has been in place for the dairy sector. Budgetary assistance to commerial fisheries has dropped gradually and become increasingly focused on R&D; a policy has been put in place to address the profitability and sustainability of Australian fisheries as well as illegal fishing.

3. Mining, which operates in a competitive market environment with no apparent industry-specific restrictions on foreign investment and little government support compared with other sectors, remains critical to Australia's economic performance despite the pronounced decline in its multi-factor productivity. Mining accounts for much of the improvement in Australia's terms of trade.

4. Despite reforms aimed at creating a nationwide energy market and strengthening price signals *vis-à-vis* consumers, Australia's electricity generation, transmission, and distribution remain subject to geographical segmentation; generation capacity is largely government-owned or controlled and ceilings on retail electricity rates remain in place. A National Strategy on Energy Efficiency is being

[1] This Chapter refers to several indicators used by the Productivity Commission (Chapter II) for assessing support provided to different economic activities. For details on the definition, methodology, and scope of these indicators see Productivity Commission (2010b).

[2] The authorities indicated that assistance could target market and information failures and therefore enhance resource allocation.

implemented and renewable power generation has been the focus of government policy and assistance to the sector. Some state governments provided subsidies at the retail level to reduce the price of unleaded petrol and diesel; domestic producers of ethanol and biodiesel used in transport also receive a government subsidy.

5. Manufacturing policy has been focused largely on enhanced opportunities for innovation as a means of, *inter alia*, improving productivity and thus international competitiveness in order to reap benefits from rapid economic expansion in overseas markets. The average applied MFN tariff rate on industrial products has declined slightly as a result of unilateral tariff cuts in certain textiles, clothing, and footwear goods, and motor vehicles and parts/components. Budgetary assistance for manufacturing as a share to GDP is estimated to have remained steady at 0.1%, albeit an increase in value terms; the textiles, clothing, footwear and leather industries, as well as motor vehicles and parts activities continued to benefit from particularly high effective rates of protection, i.e. more than double the manufacturing sector's average and the highest of all goods industries. Some programmes for the automotive sector have been complemented with elements reflecting a persistent interventionist approach to the sector's adjustment; in particular, certain features of the New Car Plan's Automotive Transformation Scheme could raise some WTO-related concerns.

6. Services continued to be the largest and fastest growing sector of the economy. Budgetary assistance to the sector, mainly through tax expenditures, rose considerably and was equivalent to 0.28% of GDP in 2008/09, compared with 0.1% in other sectors. Australia's GATS and bilateral RTA commitments remain unchanged; its RTAs generally provide for greater commitments on trade in services than those under the GATS. Financial services reforms (e.g. prudential rules, Basel II) have been pursued in several areas and policies to mitigate the impact of the global financial crisis allowed Australia's banks to cope well with the financial turmoil. Action is being undertaken to remove impediments to Australia's position as a financial services centre in the Asia Pacific region. In telecommunications, the formerly government-owned Telstra has been able to retain considerable market power, an issue of concern in several areas including broadband services; efforts to address these issues are under way. Support to domestic advertisement and film producers has been maintained through local-content requirements in television broadcasting as well as film production funding. Since 2008, efforts have been made towards the development of a long-term coordinated approach to national infrastructure planning and investment, and to identify priority infrastructure projects aimed at coping with a variety of shortcomings in freight handling and co-ordination of responsibilities between the federal government the states and territories, and the private sector in this area. A new comprehensive policy framework has been established for the development of the aviation industry at all levels. A new strategy and additional support have been provided to promote innovation, infrastructure development, and growth in the tourism sector.

(2) AGRICULTURE, LIVESTOCK, FORESTRY, AND FISHERIES

(i) Features

7. Australia's agriculture sector is one of the most market-oriented among OECD countries.[3] Despite their relatively small contribution to GDP, and the impact of severe drought and exchange rate appreciation in recent years (section (2)(ii)), agricultural production and trade remain of fundamental importance to Australia, a competitive net agricultural exporter.[4] The sector has important linkages with other activities. Between 2006/07 and 2009/10, it accounted for a relatively

[3] OECD (2010a).

[4] The competitiveness of agriculture livestock and fisheries exports has been affected by the recent appreciation of the national currency (Australian Department of Foreign Affairs and Trade online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/trade_in_agriculture.html [3 August 2010]).

stable 2.3%-2.4% of GDP (including fisheries) (Table I.2) and provided work to around 3.3% of the employed population.[5] The major agricultural commodities (ranked by gross value) remain: cattle and calves, wheat, milk, and sheep and lambs.[6] Australia exports around 60% (in volume) or 67% (in gross value) of its total agricultural production.[7] The sector's share in total exports continued its decline in 2009 to 15.3% (down from 16.1% in 2007), as a result of the increase in the share of the resources sector and of the appreciation of the national currency.[8] The major agricultural exports in gross value terms remain wheat, meat, wine, dairy products, wool, and raw sugar.[9]

8. Almost 93% of Australia's food supply is produced domestically; food imports consisting largely of processed food items (e.g. processed fruit, vegetables, oil and fat, starchy roots, fish and seafood) contribute to 7.5% of the total value of domestic retail food sales.[10] Increased agricultural output has been almost entirely a result of productivity improvements. Nevertheless, average annual multi-factor productivity (MFP) growth in agriculture, forestry and fishing fell from 3.4% (1998/99-2003/04) to minus 1.4% (2003/04-2007/08)[11]; this was largely the direct outcome of severe drought as output contracted faster than employment. While some recovery is expected as drought conditions ease, the necessity of water policy changes and the potential consequences of climate change, may slow the recovery in agricultural productivity growth and this may have flow-on effects throughout the economy.[12] Higher productivity growth will be required to maintain the sector's international competitiveness and farm viability.

(ii) Main developments

9. Agricultural producers in Australia, which is predominantly export-oriented, rely mainly on world market signals to make production decisions.[13] The sector's relatively high productivity and thus international competitiveness, as well as environmental performance remain key priorities for current policies. A range of instruments is implemented to address issues related to water, land management, biodiversity, and adaptation to climate change.

10. A major policy development during the review period was the implementation in July 2008 of the Caring for our Country initiative, a set of programmes for funding improvements in the environmental management of natural resources.[14] The package supports communities, farmers, and other land managers to protect the environment and produce food and fibre in a sustainable manner. Caring for our Country replaced or incorporated programmes under the National Heritage Trust, National Landcare Program, Environmental Stewardship Program, and the Working on Country programs, which ended in June 2008.

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[5] As of November 2008, 317,730 people were directly employed on farms – 90,000 down on pre-drought levels; agriculture supports the jobs of 1.6 million people, in farming and related industries such as processing, packaging, transport, food retailing, accommodation, cafes and restaurants (National Farmers' Federation, 2009).

[6] Australian Bureau of Statistics online information. Viewed at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/7501.0 [3 August 2010].

[7] National Farmers' Federation (2009).

[8] UNSD Comtrade Database.

[9] DFAT STARS database, based on ABS Cat No 5368.0, August 2010 data.

[10] National Farmers' Federation (2009).

[11] Drought induced a fall of some 18% in the sector's value added in 2006-07, with MFP growth dropping to -19.4% that year (Productivity Commission, 2009c; and Productivity Commission, 2008a).

[12] Nossal and Gooday (2009).

[13] OECD (2010a).

[14] OECD (2010a).

11. Drought policy has shifted from natural disaster management to a recognition that drought is a normal feature of Australia's climatic variability.[15] During the review period, Australia has embarked on a comprehensive national review of drought policy. In response to this review, the authorities are conducting a $A 23 million pilot of drought reform measures in parts of Western Australia; these measures are designed to move from a crisis management approach to risk management. These pilot reform measures will be reviewed in 2011.

12. During the period under review, regulatory changes were made to wheat export marketing arrangements, fisheries legislation, agricultural and veterinary chemicals, and the domestic implementation of the Australia – European Community (EC) Wine Agreement (see below). Major institutional changes were made to the Australian Fisheries Management Authority, the Australian Pesticides and Veterinary Medicines Authority and the Wheat Export Authority (now known as Wheat Exports Australia). The Department of Agriculture, Fisheries, and Forestry (DAFF) is responsible for the development and implementation of sectoral policies and programmes.

13. Australia's bilateral and plurilateral agriculture agreements cover a range of agricultural trade issues including: exchange of scientific information, protocols for live animal trade, agricultural cooperation, dialogue on trade policy, mutual recognition, trade facilitation, and specific bilateral trade issues.

14. In 2008/09, Australia provided 94,912 tonnes (158,592 wheat equivalent tonnes) of food aid valued at $A 102 million to least developed countries and net food-importing developing countries (up from 132,687 tonnes, 216,726 wheat equivalent tonnes in 2007/08); at the same time, $A 98.5 million was provided for programmes helping these countries to develop their food security ($A 253.4 million in 2007/08).[16] All Australian food aid is provided on fully grant terms.

(a) Border measures

15. During the review period, Australia's average level of applied tariff protection for the sector (excluding forestry) remained stable and negligible at 1.4 % (Table III.1). While most products are duty free, some sensitive items, such as cheese (which is subject to a specific duty), and certain vegetables (mushrooms), nuts, fruit, oils and fats (subject to a 5% rate), continue to receive some tariff protection. Australia has maintained tariff-rate quotas for certain types of cheese in line with its WTO market access commitments and preferential arrangements (section (iii)(c), Chapter III). Imports of all agricultural (and food) products remain subject to a strict quarantine and safety regime; domestically produced and imported food products must meet the requirements of the Food Standards Code of the FSANZ.

16. Exports and/or production of certain dairy, grain, horticulture, livestock, and wines/grapes commodities remain subject to levies.[17] Rice is the sole item subject to single-desk arrangements exempt from competition policy provisions. As of 2008, the marketing of bulk wheat exports was effectively deregulated (section (2)(iii)(b)). On 24 October 2009, the Government of Western Australia deregulated the export of barley, canola, and lupins.[18] The Queensland Sugar Limited (QSL) authorization to negotiate commercial export contractual arrangements with milling companies

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[15] This and other programmes discussed below (section on domestic support) were notified through WTO document G/AG/N/AUS/77, 13 July 2010 (Productivity Commission, 2009).

[16] WTO document G/AG/N/AUS/75, 8 December 2009.

[17] See DAFF online information. Viewed at: http://www.daff.gov.au/agriculture-food/levies/other_levies.

[18] Prior to 23 October 2009, Grain Pool Pty Ltd held the main export licence to export bulk barley, lupins, and canola from the State of Western Australia.

and cooperatives expired on 30 September 2009 (section (2)(iii)(a)). In 2009, Australia notified that it provided no export subsidies for dairy products for the period 2001/02-2007/08, or for pears from 2004 to 2007.[19] A new agreement on wine trade, including new rules for the protection and use of geographical indications, wine making technique and labelling requirements entered into force between the EU and Australia in September 2010, replacing their 1994 agreement.[20]

(b) Domestic support measures

17. Agriculture is estimated to have received 22% of total budgetary assistance (i.e. outlays plus tax concessions) made available to all sectors of the economy in 2008/09; this assistance represents 0.1% of GDP (Table IV.1).[21] Domestic support for agriculture remains the second lowest amongst OECD countries; in 2009 Australia's producer support estimate (PSE) was estimated at just 3% of gross farm receipts or just over one seventh of the OECD average, thus making Australian farmers among the most efficient and therefore most self-sufficient in the world.[22] According to OECD estimates, between 2007 and 2009 Australia's total support (TSE) to agriculture dropped from 0.3% to 0.1% of GDP, the lowest among all OECD countries.[23] In 2008/09, grain, sheep, and beef cattle farming, as well as horticulture and fruit growing were among the activities benefiting from the highest effective rates of (combined) assistance in the primary production (Table AIV.1).[24] Domestic producer and consumer prices have remained roughly aligned with world prices; Australia's OECD Nominal Protection Coefficient (NPC) has been 1.00 since 2001.[25]

18. The sector has continued to receive assistance from a wide range of programmes, mainly in the form of budgetary outlays (Table IV.1), particularly drought-related support, although this type of support declined in 2008/09. Budget financed programmes are used mainly for structural adjustment, rural research (with matching contributions from industry) and for natural resources and environmental management.[26] Expenditure on research and development is co-financed by funds collected through industry levies, supplemented by funding from the Commonwealth budget. Estimated support for general services increased from 38.8% of TSE in 2007 to 46.8% in 2009[27]; most of the general services support was for R&D, directed mainly towards the Commonwealth

[19] Australia has export subsidy commitments for butter and butter oil, cheese, skim milk powder and other milk products (financial year basis) and pears (calendar year basis) (WTO document G/AG/N/AUS/72, 24 March 2009).

[20] The agreement, *inter alia*, provides for EU recognition of an additional 16 Australian winemaking techniques, simpler arrangements for the approval of future winemaking techniques, simplified labelling requirements for Australian wine sold in the EU, and revised rules for the protection for Australia's and the EU's 112 registered geographical indicators. Australian producers will not use more than 2,500 European names such as 'champagne', 'port', 'sherry', 'chablis', 'burgundy', and 'tokay'. The authorities provided $A 500,000 to help affected fortified Australian wine producers to rebrand their products (MAFF online information. Viewed at: http://www.maff.gov.au/media/media_releases/2008/december/european_deal_improves_trade_access_for_australian_wines [3 August 2010], and http://www.daff.gov.au/agriculture-food/hort-wine/wine-policy [10 November 2010]; and OECD, 2009a).

[21] Productivity Commission (2010b).

[22] The PSE decreased from 4% in 2008, mainly due to reduced budgetary payments (OECD, 2010a; and National Farmers' Federation, 2009).

[23] OECD (2010a).

[24] Assistance for grain, sheep, and beef cattle farming was delivered almost entirely through non-industry-specific measures, and in particular to those set for exceptional circumstances (interest rate subsidy, relief payments) (Productivity Commission, 2010b).

[25] The NPC is the ratio between the average price paid/received at farm gate and the border price at farm gate (OECD, 2009a).

[26] OECD (2009a).

[27] OECD (2010a).

Scientific and Industrial Research Organisation (CSIRO).[28] Off-road diesel fuel, used in agricultural production, qualifies for rebates on excise taxes, as part of a scheme of rebates for diesel fuel used in a number of industry sectors, including primary production activities.[29] In 2008/09, spending in the form of an exceptional circumstances interest rate subsidy accounted for 27.4% of total budgetary assistance, or twice the amount of total support in the form of tax expenditures.[30]

Table IV.1
Budgetary assistance to primary industry, 2005-09
(% and $A million)

	2005/06	**2006/07**	**2007/08**	**2008/09**
Share in total budgetary assistance (%)				
Dairy cattle farming	9.5	11.3	13.3	7.4
Grain, sheep and beef cattle farming	41.5	42.8	46.3	55.3
Horticulture and fruit growing	9.3	7.0	5.9	10.7
Other crop growing	16.2	10.7	8.2	4.1
Other livestock farming	2.1	1.8	1.7	1.8
Fisheries	5.8	16.2	8.9	5.8
Forestry and logging	5.3	2.2	1.4	-4.2
Other primary production[a]	1.8	1.4	1.4	1.4
Unallocated primary production[b]	8.5	6.7	12.9	17.7
Total outlays ($A million)	1,097.5	1,554.9	1,878.1	1,440.0
Total tax expenditures ($A million)	299.1	201.8	292.2	228.8
Total budgetary assistance ($A million)	1,396.6	1,756.6	2,170.2	1,668.8
Share of total budgetary assistance to GDP (%)	0.14	0.16	0.18	0.13

a Other primary production includes "services to agriculture" (including hunting & trapping) and "poultry farming".
b Unallocated includes general programmes where details of beneficiaries are unknown.

Source: Productivity Commission (2010), *Trade & Assistance Review 2008-2009*, 22 June, Canberra. Viewed at: http://www.pc.gov.au/__data/assets/pdf_file/0007/98998/tar0809.pdf [23 August 2010].

19. In addition to the Caring for our Country package (see above)[31], during the review period Australia has implemented a new exit grant package for the Murray-Darling Basin, which has been affected by drought and climate change.[32] As from 2008/09, a four-year $A 130 million Australia's Farming Future (AFF) initiative has been implemented, comprising national programmes to help primary industries adapt and adjust to the impact of a changing global climate and manage greenhouse pollution. The initiative includes a $A 46.2 million Climate Change Research Program (June 2009), and programmes on soil carbon ($A 22 million), nitrous oxide ($A 10.8 million), and reducing

[28] In February 2010, a $A 70 million CSIRO Sustainable Agriculture Flagship Initiative was launched to raise productivity and reduce carbon emissions intensity across Australia's agricultural and forestry sectors (Productivity Commission, 2010b).

[29] OECD (2009a).

[30] Productivity Commission (2010b).

[31] Caring for our Country is an integrated package promoting: a business approach to investment; clearly articulated outcomes and priorities; and improved accountability. An initial investment of $A 2.25 billion for the first five years (1 July 2008-30 June 2013), is to be focused on six national priority areas: (i) the national reserve system, (ii) biodiversity and natural icons, (iii) coastal environments and critical aquatic habitats, (iv) sustainable farm practices, (v) natural resource management in remote and northern Australia, and (vi) community skills, knowledge and engagement (OECD, 2009a).

[32] Programmes to assist farmers to manage the impact of climate change, including re-establishment support to those who choose to leave farming, should also improve the long-term financial health of the sector (OECD, 2009a).

livestock emissions ($A 28.7 million).[33] An emissions "cap-and-trade" Carbon Pollution Reduction Scheme (CPRS), currently under consideration, would raise tax expenditures in the sector progressively, due to the exemption of agriculture and deforestation from CPRS coverage; this exemption is due to practical considerations in accounting for the sector's diffuse emission sources.[34] As from 2007, the authorities have been investing $A 12.9 billion in a ten-year Water for the Future initiative to secure the long-term water supply to both rural and urban areas; several programmes under this initiative relate to the use of irrigation water in agriculture, including water use efficiency on farms, purchase of water entitlements from farmers to preserve the environment, and grants to exit from irrigation-based rural production.

20. In 2008/09, current total AMS dropped to zero; trade-distorting domestic support product-specific AMS-related expenditure has been used mainly for milk and to a much lesser extent for sugar, wheat, and cattle; both product- and non-product specific AMS were within Australia's *de minimis* commitments.[35] Green-box type support accounted for about 93.4% of total support notified to the WTO.

(iii) Selected subsectors

(a) Sugar

21. Sugar remains a leading farm export commodity. Australia is a low-cost sugar producer and the world's third largest exporter of raw sugar; it exports around 80% of its total production. Sugar producers are directly dependent on developments in the raw sugar world market; therefore, international competitiveness is of outmost importance.[36] The sugar industry remains a major feature of many towns, particularly in Queensland, which produces around 95% of total raw sugar. Following the 2006 deregulation and the expiry of the QSL exemption from the TPA on 20 September 2009, sugar trade is no longer subject to statutory arrangements (section (2)(ii)(a)).[37] Despite a zero import duty on cane sugar, tariff protection for other sweeteners, such as maple sugar, fructose, and syrups thereof, are relatively high, at rates of 4% or 5%. The cane-growing industry has benefited from specific and non-specific industry support (sections (2)(ii)(a) and (b)). The five-year Sugar Industry Reform Program (SIRP) was completed in 2009 with total expenditure of $A 334.7 million. The SIRP has resulted in: a reduction in long-term costs through improved production practices, transport, and technology; improved efficiency and production through improvements to infrastructure; and strengthened industry networks and more effective long-term mill business planning. The levy on domestic sugar sales, including imported sugar, to partly fund the SIRP, was abolished in November 2006 to offset rising input costs for sugar refiners.[38] Between 2004/05 and 2008/09, estimated budgetary assistance for the SIRP fell from $A 129.4 million to $A 4.5 million; a similar type of assistance for R&D through to the Sugar Research and Development Corporation increased from an estimated $A 3.8 million to $A 6.1 million.[39] According to OECD

[33] For more information on the Australia's Farming Future programme see DAFF online information. Viewed at: http://www.daff.gov.au/climatechange/australias-farming-future; and OECD (2009a) and (2010a).

[34] The Treasury (2010e).

[35] WTO documents G/AG/N/AUS/73, 13 July 2009, and G/AG/N/AUS/76, 13 July 2010.

[36] Since 2006, Australia has remained involved in a quadripartite sugar-monitoring mechanism involving Australia, Thailand, Brazil, and the EU, following the panel recommendations of the WTO Dispute Settlement Body implementation with respect to the EU sugar subsidies case. WTO online information. Viewed at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds265_e.htm. In February 2010, they expressed concern about the decision by the EU to expand its out-of-quota sugar exports by 500,000 tonnes.

[37] WTO document G/STR/N/13/AUS, 13 September 2010.

[38] OECD (2007).

[39] Productivity Commission (2010b).

estimates, between 2007 and 2009 the producer Single Commodity Transfers (SCT) for sugar dropped from $A 5 million to zero.[40]

(b) Wheat

22. Australia is a small producer of wheat (i.e. average 3% of world production); it exports 70% of its crop and contributes 12% to the world wheat trade.[41] Wheat is the most significant crop grown in terms of area sown, volume of grain produced, and value. Production remains highly concentrated. Half of wheat growers account for less than 10% of production, and 10% of growers account for almost half of the industry's production. Border protection and domestic support have been virtually nil during the review period; between 2006/07 and 2008/09, the sole industry-specific support measures were the "unallocated" Tasmanian wheat freight subsidy[42], amounting to $A 1.8 million for the entire period, as well as a $A 2 million Wheat Export Authority Supplementation in 2007/08.[43] In 2008, the authorities deregulated the marketing of bulk wheat exports by removing the long-standing single-desk regime (i.e. the sole exporter rights) operated by AWB (International) Limited (section (2)(ii)(a)). Wheat Exports Australia (WEA), a government agency within DAFF, was established under the Wheat Export Marketing Act 2008 to administer the Wheat Export Accreditation Scheme 2008 for bulk wheat exporters. As from July 2008, traders seeking to export bulk wheat require accreditation from WEA, which assesses the 'fit and proper' standing of the applicant. Bulk handling companies that also operate port terminals are required to pass an additional access test, which guarantees fair and transparent port access to rival exporters; by 30 June 2010, 28 exporters were accredited.[44] Foreign companies may apply for accreditation provided it is through an Australian subsidiary and hence subject to Australian law.[45] The scheme, aided by an assistance package of $A 9.4 million, has facilitated a smooth transition from a highly regulated market to deregulation as the exporting of bulk wheat has opened up to competition.[46] Deregulation has spurred productivity and innovation in Australia's bulk wheat export industry. Competition has already resulted in greater demand for Australian wheat, development of new products and services, extension of existing international markets, and the opening up of new overseas markets for Australian wheat.[47]

(c) Dairy

23. Australia's position in the world dairy market remains unchanged since its last TPR; it accounts for around 2% of world milk production, and ranks fourth (behind New Zealand, the EU, and the United States) in world dairy trade, with an 11% share.[48] The volume of dairy exports varies depending on raw milk production; in recent years, production has been stable or declining and about 55% of raw milk production has been consumed domestically with the remaining 45% exported.[49] During and following the termination of the nine-year Dairy Industry Adjustment Package (DIAP)

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[40] The SCT is the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policies linked to the production of a single commodity such that the producer must produce the designated commodity in order to receive the payment (OECD, 2010a).

[41] Productivity Commission (2010c).

[42] The term "unallocated" refers to programmes where details of beneficiaries cannot be readily identified.

[43] Productivity Commission (2010b).

[44] Wheat Exports Australia (2009).

[45] APEC (2009).

[46] Productivity Commission (2010c).

[47] Wheat Exports Australia (2009).

[48] Dairy Australia online information. Viewed at: http://www.dairyaustralia.com.au/Our-Dairy-Industry/Industry-Statistics/Export-Summary.aspx.

[49] Dairy Australia (2010).

(2000-09),[50] multi-factor productivity rose as a result of a reduction in dairy farm numbers, investment in R&D, and an increase in milk yields per cow. Moreover, the domestic retail and wholesale markets have become more concentrated, changing the price dynamics between farmers, processors, and retailers.[51] Tariff protection remains at zero for dairy items, except for a 4% tariff on dairy spreads, and a specific duty rate coupled with a TRQ for five cheese and curd items (Chapter III). Since 2009, no industry-specific support has been in place for the dairy sector. In response to concerns over reductions in farm gate prices in the more concentrated production pattern, and Tasmanian dairy farmers' alleged suffering from abuses of market power, the Senate Economics Reference Committee launched an inquiry into competition and pricing in the Australian dairy industry; its May 2010 report addressed perceived deficiencies in national competition policy, the role of the ACCC, and the provisions of the TPA. In November 2010, the authorities were considering the Committee's recommendations.

(iv) Forestry

24. Timber harvesting occurs mainly in about 26% of Australia's 149.4 million hectares of forest area, and less than 1% of native production forest is harvested each year.[52] Australia's 2020 Vision aims to treble the 1996 area under forest plantation by 2020 through the development of appropriate structures, and by providing better information to maintain foreign and local investor confidence in the plantation sector.[53] Private ownership of plantations increased from about 30% in 1990 to more than 64% in 2008.[54] Australia has traditionally had a deficit in the trade of forest and wood products, mostly on paper products and sawn wood, which prompted the authorities to consider how the sector's international competitiveness could be improved. In May 2008, a three-year $A 20 million Preparing Australia's Forestry Industry for the Future package was launched. As part of the package, Australia committed $A 9 million to a Forest Industries Development Fund, a grant programme encouraging increased investment in activities designed to add value to forest resources. These include new uses for wood, new wood processing initiatives, and increased employment in the sector.[55] Grants under the Fund represent a maximum of 30% of total project costs and generally no more than $A 500,000. Furthermore, as part of the forestry industry package, a $A 5 million Forest Industries Climate Change Research Fund was established in August 2009 offering grants of up to $A 500,000 to support innovative forestry research projects focusing on climate change adaptation and mitigation, along with the development of sustainable bio-energy initiatives. On 6 November 2009, the National Climate Change and Commercial Forestry Action Plan 2009-12 identified knowledge gaps and proposed actions to assist forest industries to respond to climate change.[56] Legislation was before the Parliament in November 2010 making it an offence to import any products of illegally harvested timber, as well as a code of conduct requiring suppliers who first place timber into the Australian market to carry out proper tests to ensure wood entering the country is legal. These measures will be supported by the use of a trade description to give consumers confidence that they are purchasing legal wood.

25. A licence is required for exports of 2 tonnes or more of woodchips intended for further processing following export, and for sandalwood (from Queensland and Western Australia).[57] Material from plantations covered by an approved code of practice (except from Queensland and

[50] For details about the DIAP see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.
[51] The Senate (2010).
[52] Bureau of Rural Sciences (2010) and (2007).
[53] Plantations 2020 (2002).
[54] DAFF online information. Viewed at: http://www.daff.gov.au/forestry.
[55] DAFF online information. Viewed at: http://www.daff.gov.au/forestry.
[56] Department of Agriculture, Fisheries and Forestry (2009).
[57] DAFF online information. Viewed at: http://www.daff.gov.au/forestry.

Northern Territory) or from the ten areas covered by regional forest agreements (RFAs)[58] are exempt from export licence requirements; exports of hard wood woodchips from native forest areas outside RFA regions are prohibited.

26. Between 2006/07 and 2008/09, the effective rate of (combined) assistance (Table AIV.1) to forestry and logging passed from 5.1% to -2.4%;[59] this negative rate reflects the reversal in the estimate for the accelerated write-offs on forestry-managed investments from positive assistance in 2007/08 (the acceleration stage) to increased taxation (the pay-back stage). This is due to the harvesting of products from the forestry managed investment schemes, which results in tax being paid on these products.

(v) Fisheries

27. Fisheries and aquaculture[60] remain Australia's fifth largest rural industry, consisting primarily of low-volume high-value species for export. This is despite the negative effects of a number of important variables, like rising fuel prices, the appreciation of the Australian dollar, and increased competition in the domestic market from low-value imports.[61] Australia has been a net exporter of fisheries products in value terms but a net importer in volume terms as it exports mostly high-value products. The recent appreciation of the Australian dollar increased the cost of landed Australian exports of fisheries products, and has closed the gap between imports and exports in value terms; since 2007/8, Australia has been a net importer of fisheries products in value terms.

28. All components of the Securing our Fishing Future (SOFF) package, including business exit assistance, business advice assistance, assistance for skippers and crew, onshore business assistance, fishing community assistance and the Australian Fishery Management Authority (AFMA) Levy Subsidy, were completed by 30 June 2010.[62] The SOFF package delivered 144 projects, which allowed the industry to better adjust, adapt, redevelop, restructure, improve processes, introduce new product lines, and generally move forward following the buyback of fishing concessions. Adjustment assistance has been used only in special circumstances on a case-by-case basis (e.g. 100% buy-back of Torres Strait finfish entitlements) to facilitate the introduction of new fisheries management arrangements. From 2007/08 to 2009/10, $A 48.549 million was appropriated to the SOFF programme for the 144 approved projects and the buyback of fishing concessions. As a result of these developments, between 2006/07 and 2008/09 budgetary assistance to commerial fisheries gradually dropped and became increasingly focused on R&D (Table IV.1).[63] In November 2007, the authorities committed $A 17 million over four years in an expanded research programme to support the expansion of the research conducted by DAFF.[64]

[58] For details on the RFAs see WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[59] Productivity Commission (2010b).

[60] Aquaculture now accounts for approximately one third of the gross value of Australia's fisheries production; this is largely due to the ongoing adoption of innovative and sustainable farming practices as well as increased marketing in overseas markets. According to OECD, its continuing growth is likely to provide the major impetus for medium to long-term growth in the value of Australia's seafood production (OECD, 2010e).

[61] OECD (2010e).

[62] From 2006/07 to 2008/09, the authorities provided a total of $A 15 million to subsidize the AFMA's fisheries management fees for those remaining in the industry; a further $A 6 million was granted for science, compliance, and data collection to improve the management of Commonwealth fisheries (DAFF online information. Viewed at: http://www.daff.gov.au/fisheries/domestic/fishingfuture; and WTO document WT/TPR/S/178/Rev.1, 1 May 2007).

[63] Productivity Commission (2010b).

[64] OECD (2010e).

29. To address the issue of profitability and sustainability, Australia has taken steps to change the operating environment of Commonwealth fisheries. In 2007, it adopted a Harvest Strategy Policy aimed at stopping overfishing, allowing overfished stocks to recover, and promoting the longer term profitability of the fishing industry.[65] In 2009, 12 stocks were overfished and 10 were classified as subject to overfishing.[66] AFMA implemented additional management measures intended to halt overfishing and bring about recovery of overfished stocks; the number of stocks assessed as not subject to overfishing increased from 12 in 2004 to 73 in 2009. In line with the National Fisheries Compliance Strategy 2005-2010[67], enforcement was strengthened through, *inter alia,* the Fisheries Legislation Amendment, passed on 24 June 2008, which reinforced the powers of border protection officers to apprehend ships involved in illegal fishing. It also extended new offences for Australian citizens if involved in and/or supporting illegal fishing in Australian jurisdictional waters in areas governed by an international agreement, and on the high seas. Vessel monitoring systems, which provide real-time position reporting of boats, became mandatory on all Commonwealth licensed fishing vessels in 2007. The Government has continued its fight against illegal, unreported, and unregulated (IUU) fishing in various global and regional initiatives, including the development of the FAO-supported United Nations Port State Measures Agreement to Prevent, Deter and Eliminate IUU Fishing, the Regional Plan of Action to Promote Responsible Fishing Practices Including Combating IUU Fishing in the South East Asia Region, and international guidelines for the management of deep sea fisheries on the high seas.[68] Despite significant enforcement patrolling, illegal foreign fishing vessels remain a threat to sustainable fisheries management in Australian waters. The overall reduction in apprehensions of illegal vessels is a result of surveillance, apprehensions, vessel forfeiture, prosecutions, and detention as well as the public information campaign in eastern Indonesia about the severe consequences of illegal fishing and the importance of sustainable fisheries management practices.[69]

(3) MINING AND ENERGY

(i) Mining

30. Australia remains one of the top five producers and exporters of most of the world's key minerals.[70] In 2009/10, mining accounted for 8.4% of GDP and 1.6% of total employment (Table I.2), and 57.2% (51.7% in 2007) of total merchandise exports (Table AI.2). It follows that labour productivity is roughly five times the level in the rest of the economy, presumably due in large part to its high capital intensity. However, the sector's average MFP growth rate dropped to minus 4.8% (2003/04-2007/08), the lowest of all sectors of the economy.[71] According to the Productivity

[65] Department of Agriculture, Fisheries and Forestry (2007); and OECD (2010e).

[66] Wilson et al (2010).

[67] Fisheries management costs increased significantly from $A 29 million in 2002/03 to $A 43.5 million in 2006/07, largely due to major efforts to control foreign fisheries compliance (OECD, 2010e).

[68] Australia and Indonesia developed, the Regional Plan of Action to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated (IUU) Fishing (RPOA), agreed by ten other South-East Asian countries in 2007. Australia has taken a strong stand in WTO discussions concerning the contribution of fisheries subsidies to overcapacity and overfishing, and trade distortions (OECD, 2010e).

[69] During 2008/09, 27 interceptions occurred compared with 156 in 2007/08, although sightings "above" the Provisional Fisheries Surveillance and Enforcement Line and just north of the Australian Exclusive Economic Zone remain high (Australian Customs and Border Protection Service, 2009).

[70] For example, Australia is the world's leading producer of bauxite, alumina, rutile, and tantalum as well as the largest exporter of alumina, metallurgical coal, iron ore, and lead (Minerals Council of Australia, 2010).

[71] Higher prices make it economic to mine resources with lower mineral yields. High prices have also stimulated investment in existing and greenfield sites. Mining was marked by declining resource quality and

Commission, this drop was the consequence of the combined effects of depletion of *in-situ* mineral resource deposits (particularly in relation to coal mining and oil and gas extraction) and the export prices boom, which led to lags between capital expenditures and corresponding increases in mining output.[72] In recent years, the strong price increase in mining products has made it profitable to extract minerals that are more difficult and costly to produce.[73] The sector is critical to Australia's economic performance, and over the next five years it is forecast to realise the full benefit of recent high levels of investment.[74] A 30% Mineral Resources Rent Tax for iron ore and coal as well as an extension of the Petroleum Resource Rent Tax of 40% will be in place by July 2012[75]; mining-related taxes contributed about 18% of the revenue from corporate income tax during 2008-09.[76] Mineral and petroleum resources are owned either by the Commonwealth, or state, or territory governments.[77]

31. The mining sector continues to operate in a competitive market environment with no industry-specific restrictions on foreign investment, although, as for all sectors, prior approval or notification is required for investment above certain thresholds (Chapter II). Mining receives relatively little budgetary assistance, equivalent to 5% (2008/09) of the total available to all sectors of the economy; nevertheless, from 2006/07 to 2008/09 it rose by 36.4% to $A 420.1 million.[78] Between 2006/07 and 2008/09, the estimated effective rate of (combined) assistance from tariff and budgetary assistance for mining remained negligible (0.1%) (Table AIV.1, Chapter III). Budgetary assistance is almost evenly allocated between budget outlays and taxation concessions; virtually all industry-specific budgetary assistance was delivered through the National Low Emissions Coal Initiative, with minimal amounts channelled through the Renewable Energy Development Initiative. R&D-related tax concessions represented 68.9% of total budgetary assistance to mining in 2008/09.

(ii) Energy

32. Australia is richly endowed with natural energy resources (uranium, coal, natural gas); it produces about 2.4% of world energy and is a major supplier to world markets.[79] Coal plays a much larger role in Australia's primary fuel mix than in many other OECD countries and world energy

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large capital investment that has not yet translated into output (Productivity Commission, 2009c, Table 2.2, and 2008a).

[72] MFP is a function of labour and capital costs. According to the authorities, due to higher labour rates compared with some of their key competitors, Australian mines gain a competitive advantage through high capital intensity. With both MFP inputs being high, it is likely that Australia will appear high in comparison to some of its competitors. The authorities indicated that this is due to the stage of the investment cycle and capital lag rather than the result of government intervention.

[73] The main driver for improved terms of trade is increased demand for raw materials in key export destinations such as China, which has driven up prices in key commodities, e.g. iron ore. Australia has a competitive advantage due to the quality of its natural resources, and its proximity to those markets. However, in recent months, whilst the terms of trade for established mining commodities and commodities that are harder to mine (e.g. rare earths) have improved due to higher prices, the appreciating Australian dollar has cancelled out some of the gains from price increase (OECD, 2008).

[74] Department of Resources, Energy and Tourism online information. Viewed at: http://www.ret.gov.au/resources/mining/Pages/Mining.aspx.

[75] Output-based royalties are levied for most mining projects, either in the form of specific royalties (flat rate per unit of production) or on an *ad valorem* basis (levied as a percentage of the value of production). The Commonwealth's Petroleum Resource Rent Tax, a profit-based royalty applied to petroleum produced in offshore areas, is the main exception (OECD, 2008).

[76] Businessweek online information "Rudd Makes Australian Mining Tax Mainstay of Election Platform", 2 May 2010. Viewed at: http://www.businessweek.com/news/2010-05-02/rudd-makes-australian-mining-tax-mainstay-of-election-platform.html [16 August2010].

[77] See WTO document WT/TPR/S/178/Rev.1, 1 May 2007.

[78] Productivity Commission (2010b).

[79] Geoscience Australia and ABARE (2010).

markets, reflecting its large, low-cost resources located near demand centres and close to the eastern seaboard.[80] Factors expected to affect Australia's energy market include the expanded Renewable Energy Target (section (a) below), the rate of economic and population growth, energy prices evolution, and costs and developments in alternative energy technologies. Domestic use of nuclear power is not envisaged in the near future. As a result of, *inter alia*, large increases in capital and labour inputs coupled with significantly reduced output growth, the average MFP growth rate for electricity, gas, and water supply activities dropped to -4.2% (2003/04-2007/08), the second lowest after that of mining[81]; separate data on MFP for electricity and gas are not available.

(a) Electricity

33. The majority of Australia's electricity is produced from coal, which accounted for 76.3% of total electricity generation in 2007/08, followed by gas (15.9%) and hydro-power (4.5%); as a result, carbon dioxide emissions per unit of output are high by international standards.[82] Despite progress with reforms aimed at creating a nationwide energy market and strengthening price signals *vis-à-vis* consumers, Australia's electricity generation, transmission, and distribution remain subject to geographical segmentation in two major blocks, the six southern and eastern Australia jurisdictions[83]; and Western Australia and the Northern Territory. Of the 52 major firms in the Australian electricity market 11 are entirely foreign-owned, and a further 8 are either joint ventures with foreign-owned companies or partly foreign-owned, with foreign ownership ranging from 37% to 91%.[84]

Southern and eastern Australia

34. During the review period, the Australian Energy Regulator (AER) of all electricity networks and covered gas pipelines in southern and eastern Australia completed its first determinations for the electricity distribution sector, and its first access arrangement reviews in gas distribution (section (b) below).[85] A new body, the Australian Energy Market Operator (AEMO), began operations on 1 July 2009 as the single electricity and gas market operator in southern and eastern Australia only.[86] It is also coordinating high level national transmission planning and will report on investment opportunities in electricity and natural gas.[87]

35. The National Electricity Market (NEM) is a wholesale market through which generators and retailers trade electricity in the six jurisdictions of eastern and southern Australia; these jurisdictions are physically linked by an interconnected transmission network. The electricity produced by major generators in the NEM is sold into a gross pool market through a central dispatch process managed by the AEMO. Across the NEM, around two thirds of generation capacity is government owned or

[80] In 2007/08, the Australian primary energy consumption mix consisted of black and brown coal (40%), petroleum products (34%), natural gas (22%), and renewables (5%) (Department of Resources, Energy and Tourism, 2010).

[81] Higher prices make it economical to mine resources with lower mineral yields. High prices have also stimulated investment in existing and greenfield sites. Mining was marked by declining resource quality and large capital investment that has not yet translated into output (Productivity Commission, 2009c and 2008a).

[82] Department of Resources, Energy and Tourism (2010); and OECD (2008).

[83] These jurisdictions are: Queensland, New South Wales, the Australian Capital Territory (ACT), Victoria, South Australia, and Tasmania.

[84] Energy Supply Association of Australia (2010), pp. 74-6.

[85] The AER's first access review for gas distribution set the prices and other access terms and conditions for covered networks in NSW (Country Energy) and the ACT (ActewAGL). The final determinations can be accessed online (www.aer.gov.au). The AER has also begun its next schedule of gas distribution access reviews for Queensland and South Australia.

[86] The AEMO replaced the National Electricity Market Management Company Limited (NEMMCO).

[87] Australian Energy Regulator (2009).

controlled. At present, the NEM has around 270 registered generators, 6 state-based transmission networks (linked by crossborder interconnectors)[88], and 13 major distribution networks that collectively supply electricity to end-use customers. The NEM is the largest interconnected power system in the world.

Western Australia and the Northern Territory

36. Western Australia and the Northern Territory have their own electricity generators. In Western Australia 39% of generating capacity is state-owned.[89] In the small Northern Territory market the industry is dominated by the state-owned corporation Power and Water.[90] Their electricity markets are not interconnected with the NEM. Western Australia has operated a wholesale electricity market since 2006, but there is no wholesale market competition in the Northern Territory.[91] Western Australia's electricity market retains a relatively concentrated ownership structure, with state-owned utilities being prominent across the supply chain, especially in the South Western Interconnected System[92]; therefore, full retail competition does not exist in the jurisdiction. The Economic Regulation Authority (ERA), which is the AER equivalent for the region, considers that the absence of a clear timetable for full retail contestability may deter new entries in retail and generation.[93] The Office of Energy commenced a review in 2008 of the costs and benefits of introducing full retail contestability. The Western Australian authorities expected that new entries and the phasing out of vesting contracts, which impose on the generations companies an obligation to produce a specific quantity of electricity at a specified price, would reduce the market share of state-owned corporations over time.

Other issues

37. Since 2006/07, industry-specific budgetary assistance to the entire electricity, gas, and water supply, which in 2008/09 accounted for 51.9% of total assistance to the sector, has increased and has been delivered mainly through programmes such as the Remote Renewable Power Generation Programme.[94] In 2007, the authorities decided to expand the previous Mandatory Renewable Energy Target (MRET) to ensure that the equivalent of 20% of Australia's projected electricity supply comes

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[88] Electricity transmission networks are capital intensive and incur declining marginal costs as output increases. This gives rise to a natural monopoly industry structure; networks are regulated to manage the risk of monopoly pricing (Australian Energy Regulator, 2009).

[89] Figures supplied by the Office of Energy (Western Australia).

[90] Australian Energy Regulator (2009).

[91] Given the scale of the Northern Territory market, a wholesale electricity spot market was not considered feasible. The Territory uses a 'bilateral contracting' system whereby generators are responsible for dispatching the power their customers require. The industry is dominated by a government-owned corporation, Power and Water, which owns the transmission and distribution networks. Power and Water is also the monopoly retail provider and generator. In addition, it is responsible for power system control. Six independent power producers in the resource and processing sector generate their own requirements and also generate electricity under contract with Power and Water (Australian Energy Regulator, 2009).

[92] In the South West Interconnected System (SWIS), Western Australia's principal electricity system, the state-owned Western Power owns the bulk of transmission and distribution systems. Another state-owned utility, Verve Energy, owns about two thirds of generation capacity. The balance is privately owned and mainly dedicated to resource projects. In contrast to the NEM, which is a gross pool where the sale of all wholesale electricity occurs in a spot market and participants may also enter formal hedge contracts to manage spot market risk, energy in the SWIS is traded mainly through bilateral contracts outside the pool (Australian Energy Regulator, 2009).

[93] The ERA has described the current arrangements in generation and retail as leading to a "quasi bilateral monopoly market structure" (Australian Energy Regulator, 2009).

[94] Productivity Commission (2010b).

from renewable sources by 2020.[95] From 1 January 2010, a national Renewable Energy Target (RET) scheme has been in place bringing both the MRETs and existing state-based targets into a single national scheme.[96] Legislation passed in June 2010 and in force from 1 January 2011 is to enhance the RET scheme by separating it into two parts: the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme; this scheme will cease in 2030. As from October 2009, the Australian Centre for Renewable Energy (ACRE) has managed funding of more than $A 560 million drawn from previous programmes plus $A150 million for new measures.[97] ACRE will also develop and implement a funding strategy, including a venture capital mechanism.

38. Australia's electricity prices remain low compared with most other OECD countries, reflecting, *inter alia*, its abundant and low-cost coal supplies.[98] Since the beginning of 2008, the difference/spread in the growth rate of household (higher) and business prices has been more significant. Price regulation is maintained in all Australian states and territories other than Victoria, and tariffs are set by individual state and territory regulators according to varying methodologies. Therefore, the tariffs applying to a customer class in one jurisdiction are not comparable to those in another. Ceilings on retail electricity rates remain in place. In 2007, the COAG decided to authorize the lifting the ceilings applied to low-volume consumers in states where there is effective competition in the retail market; in response, the State of Victoria phased out price regulation for small energy customers as from 1 January 2009. Electricity prices have risen faster in New South Wales, where there is still a public monopoly, than in other states in eastern and south-eastern Australia since the creation of the NEM.[99]

39. In July 2009, the Council of Australian Governments (COAG) agreed to a National Strategy on Energy Efficiency aimed at developing a nationally consistent approach to energy efficiency policy, reducing red tape, and helping businesses and households invest in modern cost-cutting technologies.[100] The strategy involves: phasing out inefficient electric hot water systems (as from 2010); legislation for appliance energy ratings and labels; mandating all new homes to achieve energy rating standards from 2011 (from 2010 for commercial buildings) onwards; and accelerating the phasing out of inefficient lighting, including a ban on incandescent light bulbs since November 2009.

40. According to a 2008 OECD survey, implementation of a competitive domestic energy market needs to be accelerated, with companies still under government control privatized and the ceiling on electricity retail prices removed.[101] Stronger efforts should be devoted to obtain full retail contestability by, *inter alia*, abolishing existing retail price regulation, improving grid interconnection, intensifying competition in electricity generation, and resolving outstanding regulatory inconsistencies arising from the co-existence of state and national regulators in the electricity and gas sectors. The National Electricity Law and the National Electricity Rules have been amended to transfer economic regulation of electricity distribution to a national framework. In November 2010,

[95] OECD (2008).

[96] Renewable energy target schemes have been in place since 2001 and create a market for additional renewable energy deployment using a mechanism of tradeable renewable energy certificates, which should limit the distortions and increased costs of emission inherent to promoting the use of renewable energy (Office of Best Practice Regulation, 2009).

[97] Productivity Commission (2010b).

[98] For example, in 2008, average Australian electricity prices were below those in most European countries (Department of Resources, Energy and Tourism, 2010).

[99] OECD (2008).

[100] Productivity Commission (2010b).

[101] OECD (2008).

they were to be further amended to transfer non-price national retail, and non-economic distribution regulation from the states and territories into a new National Energy Customer Framework.

(b) Gas

41. During the period under review, changes were made to the rule-making powers of the Australian Energy Market Commission (AEMC) on three occasions.[102] In addition to AER's role as the regulator for pipelines outside Western Australia since 2008[103], new Gas Law and Gas Rules for the gas transmission sector commenced on 1 July 2008 in all jurisdictions except Western Australia, which was expected to implement the pipeline access provisions of these regulations in the second half of 2009. As of January 2009, 91% of Australia's demonstrated conventional gas resource was located off the north-west coast; the eastern gas market is the largest consumer of natural gas, accounting for 57% of Australian gas consumption, followed by the Western Australia and Northern Territory markets.[104] Wholesale gas is mostly sold under confidential, long-term contracts of up to 20 years, argued as being essential to the financing of new projects; the trend in recent years has been towards shorter term supply, but most contracts still run for at least 5 years.

(c) Petrol

42. According to the ACCC, movements in the price of petrol in Australia are overwhelmingly determined by international market prices. Although the industry is concentrated at the refining and wholesale levels, the level of concentration need not give rise to concerns about the state of competition. Nevertheless, the operation of the buy–sell arrangements and the low potential for large-scale independent imports have a bearing on the functioning of competition.[105] Price competition remains active at the retail level although some cases were brought to the ACCC. The pre-tax component of Australian gasoline prices remains among the lowest in the OECD and the tax-inclusive gasoline price is the fifth lowest, following Mexico, the United States, Canada, and New Zealand.[106]

43. Although most state government fuel subsidies to consumers were abolished (New South Wales, Queensland, Victoria, Northern Territory, Tasmania), some state governments continue to provide subsidies at the retail level to reduce the price of unleaded petrol and diesel paid by consumers (Queensland, New South Wales, South Australia, Northern Territory).[107] The petroleum subsidy scheme in South Australia, which provides subsidies of up to 3.3 cents per litre for diesel and unleaded petrol purchased in "regional areas", was to be abolished as of 1 January 2011.[108] Since

[102] On 1 July 2008, they were expanded to include economic regulation of gas transmission and distribution services, access to natural gas pipeline services, and other elements of broader natural gas markets. On 1 July 2009, the AEMC powers were expanded to gas retail functions in certain jurisdictions. On 1 January 2010, when Western Australia became a participating jurisdiction in the National Gas Law, the role of the AEMC was expanded to include elements of the natural gas market in Western Australia, such as the economic regulation of natural gas pipeline services.

[103] The ERA remains the regulator of covered pipelines in Western Australia (Australian Energy Regulator, 2009).

[104] The Eastern gas market comprises Queensland, New South Wales, Australian Capital Territory, Victoria, South Australia, and Tasmania (Geoscience Australia and ABARE, 2010).

[105] The refiner-marketers accounted for about 93% of the petrol imported into Australia in 2007/08; this high share is because the refiner-marketers control most terminals capable of receiving imports. Imports account for around 18% of unleaded petrol sold in Australia, with most sourced from Singapore (ACCC, 2008).

[106] Department of Resources, Energy and Tourism (2010).

[107] ACCC (2009c).

[108] For details about this measure see South Australia State Budget Papers 2010/11. Viewed at: http://www.treasury.sa.gov.au/dtf/budget/publications_and_downloads/current_budget.jsp [10 November 2010].

September 2002, grants have been available to producers of fuel ethanol used in transport, under the Commonwealth Government's Ethanol Production Grant Program; the government subsidy is equal to the fuel excise of 38.14 cents per litre; this means that E10 petrol is effectively excise free for the ethanol component (which is 10%).[109] As from 1 July 2011, excise will be phased in for all alternative fuels, including gaseous fuels, on an energy-content basis, with a further 50% discount. The Fuel Tax Credit Scheme, which applies to diesel fuel and fuel oil, was extended from 1 July 2008 to include petrol for a number of end users, including agriculture, fishing, forestry, mining, marine transport, rail transport, nursing and medical emergency vehicles. Since 1 July 2008, eligibility for Fuel Tax Credits was also expanded to include diesel and petrol used for other activities, machinery, plant and equipment in a range of industries including construction, manufacturing, wholesale/retail, property management and landscaping.

(4) MANUFACTURING

44. Manufacturing accounted for 9.3% of GDP and employment (10.3% and 9.9%, respectively in 2006/07) (Table I.2), and for 14.9% of total merchandise exports (about 6.1% of which machinery and transport equipment), down from 18.8% in 2006/07.[110] Average annual MFP growth fell to -0.8% over 2003/04-2007/08 (from 1.8% in 1998/99-2003/04).[111] The authorities indicated that lower growth in output (in terms of gross value added), combined with increased growth in both labour and capital have contributed to the overall decline in MFP growth in the sector; however, the underlying factors that have driven the decline remain unclear.

45. During the period under review, Australia's policy objective has been largely focused on business innovation and growth as a means of improving MFP and thereby strengthening international competitiveness and reaping benefits from rapid economic growth in overseas markets. A $A 3.1 billion package, Powering ideas: An Innovation Agenda for the 21st Century, introduced in May 2009, provides an ambitious and comprehensive policy framework for the development of Australia's innovation system over ten years; "future industries" such as nanotechnology, biotechnology, and information technology, received a substantial share of a $A 1.1 billion Super Science initiative in the 2009/10 Budget.[112] Nevertheless, changes to the assistance provided to certain activities, e.g. to the automotive industry, do not appear to have fully taken on board the new realities (sections (i) and (ii) below).[113]

46. Manufacturing activities continue to receive the largest part of assistance from a wide range of policy instruments aimed at funding innovation and venture capital as well as supporting specific industries; in 2008/09, the sector accounted for 91.7% of the estimated net combined assistance made available to all sectors of the economy.[114] In 2008/09, manufacturing received 78.7% of its estimated net combined assistance ($A 8.3 billion) mainly through import tariffs protecting motor vehicles and

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[109] ACCC (2009c).

[110] Reportedly, the main cause of the decline in manufacturing employment is the shift of consumption towards services, which means that there is less demand for manufactured goods relative to services. At the same time it is claimed that the high level of productivity growth in manufacturing relative to services means that manufacturers can meet demand with fewer workers (Centre for International Economics, 2009; and UNSD Comtrade database).

[111] The authorities indicated that these figures have been updated since the Productivity Commission's report was published; revised figures were due by early December 2010. According to the ABS Experimental Estimates of Industry Multifactor Productivity (ABS cat no 5260.0.55.002), MFP in manufacturing declined on average 0.9% per year in the 2003/04-2007/08 productivity cycle and increased at an average rate of 1.7% per year in 1998/99-2003/04 (Productivity Commission, 2009c, Table 2.2).

[112] Department of Innovation, Industry, Science and Research (2009a).

[113] OECD (2010d).

[114] Productivity Commission (2010b), Table 2.5.

parts activities, metal product manufacturing, and food, beverages and tobacco activities, thus raising costs to consumers and to industries that use manufactured and other inputs subject to tariffs.[115] The sector's estimated effective rate of (combined) assistance has been around 4.6% since 2004/05 (Table AIV.1); the textiles, clothing, footwear and leather, and motor vehicles and parts activities continued to benefit from particularly high effective rates, i.e. more than double the manufacturing sector's average in 2008/09 and the highest of all goods industries of the economy.[116]

47. Australia's average applied MFN tariff on industrial products has declined slightly since its last Review (Table III.1) as a result of unilateral tariff cuts in certain textiles, clothing, and footwear goods, and motor vehicles and parts components; further unilateral tariff cuts are expected in 2015. According to Productivity Commission estimates, most tariff assistance on outputs remains directed towards the manufacturing sector, and in particular food, beverages and tobacco ($A 1.6 billion), metal product manufacturing ($A 1.9 billion), and motor vehicles and parts ($A 1.5 billion) activities.[117]

48. Budgetary assistance for manufacturing is estimated to have risen slightly to about $A 1.8 billion; however, its share to GDP remained relatively stable at around 0.1% (Table IV.2). This assistance was mostly delivered in form of tax concessions (58.9%) and to a lesser extent by means of outlays.[118] Despite a drop, the motor vehicles and parts industries have remained the main recipient of budgetary assistance (Table IV.2). In 2008/09, support targeted at small businesses accounted for about 21% of budgetary assistance, and was dominated by capital gains tax concessions.[119] Arrangements that may have assistance implications but are not part of these estimates include the effects of government purchasing preferences and local-content arrangements affecting, *inter alia*, manufacturing activities. As for sectors discussed elsewhere in this report, the extent of domestic support provided by state or territory governments cannot be fully appraised.

Table IV.2
Budgetary assistance to manufacturing, 2005-09
(% and $A million)

	2005/06	2006/07	2007/08	2008/09
Share in total budgetary assistance (%)				
Food, beverages, and tobacco	7.5	6.6	6.4	7.0
Textiles, clothing, and footwear	9.7	7.9	7.5	7.3
Wood & paper products	2.7	2.6	4.1	4.7
Printing, publishing, and media	0.7	0.6	1.2	0.7
Petroleum, coal, and chemicals	7.9	9.2	10.7	10.9
Non-metallic mineral products	1.1	1.2	1.4	1.3
Metal product manufacturing	10.0	12.0	10.9	9.4
Motor vehicles and parts	35.2	37.0	33.6	32.5
Other transport equipment	2.2	1.6	1.8	2.2
Other machinery and equipment	10.4	10.3	10.5	11.1

Table IV.2 (cont'd)

[115] The net combined assistance is defined as the net tariff assistance plus budgetary outlays and tax concessions.
[116] The effective rate of combined assistance is measured as the dollar value of assistance as a proportion of (unassisted) value added. The calculations of combined assistance comprise budgetary, tariff, and regulatory assistance (Productivity Commission, 2010b, Table 2.6).
[117] Productivity Commission (2010b), Table 2.2.
[118] Productivity Commission (2010b), Table 2.3.
[119] Productivity Commission (2010b).

	2005/06	2006/07	2007/08	2008/09
Other manufacturing	2.8	2.2	2.8	1.6
Unallocated manufacturing[a]	9.8	8.9	9.0	11.2
Total outlays ($A million)	800.5	721.0	759.5	723.8
Total tax expenditures ($A million)	848.3	956.6	1,023.4	1,041.7
Total budgetary assistance ($A million)	1,648.9	1,677.5	1,782.9	1,765.6
Share of total budgetary assistance to GDP (%)	0.16	0.15	0.15	0.14

a Unallocated includes general programmes where details of beneficiaries are unknown.

Source: Productivity Commission (2010), *Trade & Assistance Review 2008-2009*, 22 June, Canberra. Viewed at: http://www.pc.gov.au/__data/assets/pdf_file/0007/98998/tar0809.pdf [23 August 2010].

(i) Automotive

49. Despite its progressively declining contribution to total merchandise exports value[120], and its relatively high degree of concentration[121], the automotive industry, the major recipient of government assistance across sectors remains a relatively important part of the Australian economy.[122] In 2007/08, the industry's output was $A 6.2 billion or 5.8% of manufacturing output; the automotive industry represents 4.8% of manufacturing employment. While the sector has enjoyed strong growth in export volume terms since 2006 (except in 2009), its share of the domestic market continued to fall steadily from 19% in 2007 to 15.7% in 2009 (147,680 units) despite wide-ranging industry-specific support at Commonwealth and state level; this development was in line with a 34.8% production cut for the same period.

50. The authorities consider Australia as one of the most open and competitive automotive markets in the world. During the review period, the market was further liberalized as a result of unilateral tariff cuts. By 2010, Australia claimed to apply the third-lowest applied MFN tariffs for new vehicles amongst the world's major automotive-producing economies.[123] Nevertheless, the average applied MFN tariff for the industry remains significantly higher than the average rate for the manufacturing sector; used vehicles remain subject to a high compound tariff rate (whose AVE is as much as 302.4%).[124] The luxury tax (LCT) on cars over a certain price is seen to effectively discriminate against foreign-made vehicles of this type, which usually have higher prices than domestically produced luxury vehicles and are estimated to provide 97% of the revenue from this

[120] In value terms, the share of the automotive sector contracted from 2.7% to 1.3% of total exports between 2007 and 2009 (UNSD Comtrade database).

[121] The industry, consisting of 3 car manufacturers (Ford, Holden, Toyota) and approximately 190 component, tooling, design and engineering firms, is largely based in Victoria and South Australia, with a small share of activity in New South Wales. It now employs over 50,000 people directly, compared with 81,000 in 2005 (Department of Innovation, Industry, Science and Research online information, "Outlook for the Automotive Manufacturing Industry Fact Sheet". Viewed at: http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/OutlookfortheAutomotiveManufacturingIndustryFactSheet.aspx [12 August 2010]).

[122] Department of Innovation, Industry, Science and Research online information, "Outlook for the Automotive Manufacturing Industry Fact Sheet". Viewed at: http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/OutlookfortheAutomotiveManufacturingIndustryFactSheet.aspx [12 August 2010]; and Department of Innovation, Industry, Science and Research (2009b).

[123] Automotive Review Secretariat (2008).

[124] According to the authorities, the rarely applied non-*ad valorem* component of the duty on imported used cars is not an industry protection measure, but was introduced to reinforce Australia's vehicle emission and safety standards by limiting the full volume importation of vehicles near the end of their useful life and the consequent environmental impact of their disposal. They also consider that Australia's balanced approach to used-vehicle imports is less restrictive than economies that prohibit imports of used cars.

tax.[125] The authorities are not of this view as the LCT applies to both domestic and foreign cars. Government procurement of motor vehicles remains exempt from the Mandatory Procurement Procedures of the Commonwealth Procurement Guidelines.

51. In addition to benefits arising from the general stimulus tax measures provided to businesses since 2009[126], several industry-specific programmes are ongoing. New programmes remain focused on innovation and development of more environmentally friendly products, while older programmes have been complemented with additional elements reflecting a persistent interventionist approach to the sector's adjustment.[127] Since November 2008, the $A 5.8 billion New Car Plan for a Greener Future has assisted the industry to prepare for a low-carbon future and to further orientate to global markets and supply chains. The Plan consists of: $A 3.4 billion to the industry Automotive Transformation Scheme (ATS) from 2011 to 2020/21[128]; an expanded $A 900 million Green Car Innovation Fund of over ten years; $A 79.6 million worth of changes to the Automotive Competitiveness and Investment Scheme (ACIS) ensuring a smooth transition to the ATS[129]; an $A 116.3 million Automotive Industry Structural Adjustment Programme promoting adjustment through mergers and consolidation in the components sector, and facilitating labour market adjustment; a $A 20 million Automotive Supply Chain Programme since 2009/10 to help suppliers improve their capabilities and their integration in complex national and global supply chains; $A 6.3 million of support for an enhanced Automotive Market Access Programme from 2009/10; and a Liquefied Petrol Gas (LPG) Vehicle Scheme Enhancement. The production support provided by the ATS has already raised WTO-consistency concerns domestically[130]; the authorities indicated that all

[125] OECD (2010d).

[126] According to the Federal Chamber of Automotive Industries, the business tax break had led to a tangible increase in business vehicle purchases throughout 2009; overall, business car sales for 2009 were down just 1.2% on 2008 figures, compared with a 7.4% decrease in total sales (Department of Innovation, Industry, Science and Research online information, "Outlook for the Automotive Manufacturing Industry Fact Sheet". Viewed at: http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/OutlookfortheAutomotiveManufacturingIndustryFactSheet.aspx [12 August 2010].

[127] OECD (2010d).

[128] ATS assistance is paid, subject to conditions, for eligible investment in plant and equipment and research and development, and for eligible production for motor vehicle producers. The authorities indicated that there are no local content or export performance requirements for participants. Assistance will be paid in cash rather than as duty credits to offset customs duties as under ACIS. For more information on the ATS regulatory framework, implementation, and differences with the ACIS, see Department of Innovation, Industry, Science and Research online information. Viewed at: http://www.innovation.gov.au/Industry/Automotive/Pages/ATSRegulationsandOrderPublicComment.aspx; and Automotive Transformation Scheme Act 2009, No 93 2009, 29 September. Viewed at: http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/DF7E217AEED4A428CA257648007447D3/$file/93-2009.doc [15 August 2010].

[129] Expenditure by participants until 31 December 2010 may be eligible under ACIS; as of 1 January 2011, it may be claimed under the ATS. ACIS Stage 2 (2006-10) funding includes a capped component of $A 2 billion credits available to all participants, and an uncapped component of approximately $A 800 million credits available only to motor vehicle producers. The value of assistance under the ACIS takes into consideration the applicable production and investment rates (assistance for production at 10% of production value of passenger motor vehicles for domestic use and 25% for exports, plant and equipment at 25% of claims and R&D at 45% of claims), a three-year rolling average, which aims to smooth ACIS benefits over the vehicle model cycle, and modulation which operates to ensure that the two billion credit funding cap over each five-year stage of the scheme is not breached. Stage 3 of the ACIS is set for 2011-15 (Department of Innovation, Industry, Science and Research, 2009a).

[130] Reportedly, concerns about the WTO consistency of the ATS under the Agreement on Subsidies and Countervailing Measures arise from, *inter alia*, the fact that Australia aims to become one of a small group of countries capable of designing and building environmentally cleaner cars, pursuing export markets for its assisted automotive producers, and providing production incentives to output directed to export. In the 1990s, encouraged by the Export Facilitation Scheme, exports displayed their strongest growth until the scheme was

programmes under the scheme A New Car Plan for a Greener Future are WTO-compliant. In November 2008, a $A 10.5 million expansion of the LPG vehicle scheme doubled payments to purchasers of new private use vehicles that are factory fitted with LPG technology. Financial support not related to A New Car Plan for a Greener Future has been provided to, *inter alia*, assist local communities in adjusting to announced plant closures[131] or stabilize the automotive market (e.g. the OzCar scheme).[132]

52. According to the OECD, the unilateral tariff reductions on passenger motor vehicles are linked with the continued support available through the New Car Plan for a Greener Future; this support, which effectively provides subsidies to the automotive industry, risks hindering structural adjustment and the necessary reallocation of resources in response to relative price changes.[133] The authorities disagree with OECD's observations. As a result of the November 2008 additional assistance provided to the automotive and car-finance sectors, until June 2009 Australia's total assistance package for the automotive sector ranked as the second largest programme in per capita terms among OECD countries (after Sweden); the authorities pointed out that since then other countries have introduced automotive assistance measures.[134] The Productivity Commission considers that further reductions in assistance to the automotive industry would generate net benefits for the entire economy through improved usage of resources; the associated contraction in automotive activity would be more than offset in the long run by gains to other industries.[135]

(ii) Textiles, clothing, and footwear (TCF)

53. During the review period, the share of textiles and clothing in total merchandise export value remained stable at 0.3%.[136] Its shares in GDP and employment were 0.41% and 0.42%, respectively. In 2009, the industry's value added was around 4.6% of total manufacturing value added, and import value was almost six times more than that of exports; the continued decline in the TCF workforce reflects, *inter alia*, the government policy objective of moving labour-intensive production offshore.[137]

54. Compared to other industries, TCF activities continued to benefit from considerable government support as reflected by several assistance indicators discussed in this report. Unilateral tariff cuts undertaken in 2010 and those planned for 2015 will further reduce border protection to TCF producers; nevertheless, these rates remain significantly higher than the average applied MFN tariff

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replaced by the more WTO acceptable ACIS. The WTO consistency of the Export Facilitation Scheme was examined by a WTO Panel in the Howe Leather case in 1999 (Priestley, 2009).

[131] For example, in 2008/09, 21 grants totalling almost $A 22.9 million were granted, under the South Australia Innovation and Investment Fund and the Geelong Investment and Innovation Fund, to Mitsubishi Motors Australia Limited (Tonsley Park, Adelaide) and Ford Australia (Victoria) to support job-creating and innovation-related investment proposals by these firms, which had decided to close their manufacturing operations (Department of Innovation, Industry, Science and Research, 2009a).

[132] With the support of the Commonwealth Government and the leading Australian banks, since December 2008 the OzCar scheme has helped to provide critical wholesale floorplan financing to viable car dealers that were financed by GE Money Motor Solutions and GMAC, prior to their withdrawal from the market (Department of Innovation, Industry, Science and Research online information, "Outlook for the Automotive Manufacturing Industry Fact Sheet". Viewed at: http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/OutlookfortheAutomotiveManufacturingIndustryFactSheet.aspx [12 August 2010]).

[133] OECD (2008).

[134] Productivity Commission (2009a).

[135] Productivity Commission (2008c).

[136] UNSD Comtrade database.

[137] OECD (2010d).

for the sector. The industry remains characterized by a high degree of tariff escalation (Chapter III(2)).

55. During the review period, the TCF Post-2005 Assistance Package, including the TCF Post-2005 Strategic Investment Programme Scheme 2005, and the TCF Structural Adjustment Programme, provided various types of assistance to promote high-value-added production and product diversification as well as to improve international competitiveness. In response to the 2008 review of the Australian TCF Industries, a $A 401 million TCF Innovation Package was launched to improve the effectiveness of assistance to the sector's industries by reducing complexity and uncertainty and placing greater emphasis on innovation.[138] The package, which runs from 2009/10 to 2015/16, includes a five-year $A 30 million TCF Strategic Capability Programme (as from 2010/11) and a $A 112.5 million Clothing and Household Textile Building Innovative Capability Programme[139], and the establishment of a TCF Industries Innovation Council and a National TCF Innovation Network. As of June 2010, other ongoing programmes, some of which were notified to the WTO, included: the Textile, Clothing and Footwear Corporate Wear Scheme (tax concessions, since 1993), the TCF Expanded Overseas Assembly Provisions Scheme (tax concessions, 1999-2010), TCF Product Diversification Scheme (duty credits, 2006/07-2010/11), the TCF Post-2005 Strategic Investment Programme Scheme (grants, 2005-11); and the TCF Small Business Programme (grants, 2006-16). As from May 2009, a TCF Industries Innovation Council has brought together business, unions, researchers, and government to consult on innovation and provide strategic advice.

56. According to the OECD, the range of benefits provided to the TCF, a very small economic sector, appears disproportionately expensive and economically distortive.[140] Similarly to its automotive industry conclusions, a Productivity Commission’s modelling study suggests that there would be net gains to the overall economy from implementing a programme of reductions in assistance to the TCF sector; the bulk of the benefits would flow from the unilateral tariff reductions while the sector would decline further and the effects would be minor relative to other factors affecting the sector's viability.[141]

(iii) Pharmaceuticals

57. A significant part of the supply of pharmaceuticals remains sourced overseas, while both multinational and domestic manufacturers participate in the export of pharmaceuticals.[142] The pharmaceuticals sector employs 40,000 people.[143] The value of pharmaceuticals exports has grown steadily since 2007, to around $A 4.1 billion in 2009/10, making the pharmaceuticals industry one of Australia's major manufacturing exporters.[144] The biomedical research community has developed links with multinational companies and to a lesser extent with Australian companies, while most of the R&D done by companies in Australia is clinical trials. Australia aims to improve the long-term sustainability and international competitiveness of its pharmaceuticals industry, stimulate investment,

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[138] Commonwealth of Australia (2008); and Department of Innovation, Industry, Science and Research (2009a).

[139] The Clothing and Household Textile Building Innovative Capability Programme will commence in 2010/11 and replace the TCF Post-2005 Scheme and the TCF Product Diversification Scheme.

[140] OECD (2010d).

[141] Productivity Commission (2008c).

[142] Sweeny (2007).

[143] ABS Cat No. 8104.0, 2006-07; ABS Unpublished data; IBISWorld *Pharmaceuticals Product Manufacturing in Australia 2010*; IBISWorld *Pharmaceutical Wholesaling in Australia, 2010*; and DIISR *Biotech Business Indicators 2008*.

[144] ABS Cat No. 5368.0, Table 12a, Standard International Trade Classification, 2005-2010 *International Trade in Goods and Services.*

and develop Australia as a regional centre for R&D, manufacturing, and export. Recommendations by a 2008 Pharmaceuticals Industry Strategy Group report were focused on attracting investment, increased clinical trials, and specialized manufacturing activity.[145] Following these recommendations, legislation including the possible introduction of an R&D Tax Credit was before the Parliament in October 2010.[146] No industry-specific support seems to be in place at Commonwealth level, but the generous general R&D incentives are of major assistance; the Pharmaceuticals Partnerships Programme was terminated in June 2009.

58. Australia has maintained its long-standing Pharmaceutical Benefits Scheme (PBS), under which most prescription pharmaceuticals are subsidized in order to be sold at an affordable price. If a medicine is unsuccessful in obtaining a listing on the PBS, it may still be sold at a higher price on the private market although this is often not a commercial proposition in Australia.[147] As of 1 June 2010, the PBS covered 756 drug substances (generic drugs), available in 1,886 forms and strengths (items) and marketed as 3,675 different drug products (brands). The amount of the subsidy varies depending on the price of the drug. Government expenditure on the PBS doubled from $A 4.3 billion in 2000/01 to $A 8.4 billion in 2009/10; 105 separate firms (2009/10) were listed as suppliers to the PBS while only 10 accounted for almost 66.4% of the value of total sales made to the PBS; 14.4% of total sales were attributed to Pfizer.[148]

(5) SERVICES

(i) Features

59. Services continue to be the largest and fastest growing sector of the Australian economy. The share of services (including construction, energy, electricity, and water supply) in GDP remains stable at about 80% (Table I.2); the sector's share in total employment rose slightly from 85.4% in 2006/07 to 86% in 2009/10. Finance and insurance, wholesale and retail trade, and ownership of dwellings have been by far the leading activities in GDP terms; other important activities were construction, professional, scientific and technical services, health care and social assistance, and transport, storage and communications services. During the review period, virtually all services industries with measurable MFP[149] attained positive productivity growth rates through innovative use of new technology, while the rates in all goods' sectors were negative. More specifically, the communications and the finance and insurance sectors' average MFP growth rates (2003/04-2007/08) rose to 3% and 2.2%, respectively.[150] Future productivity growth in the sector is likely to be boosted by a focus on improved technical progress rather than on capital deepening.[151]

60. While not always producing a direct export, the performance of the services sectors remains a key component of the country's overall export competitiveness.[152] Australia is the world's 22nd largest

[145] Department of Innovation, Industry, Science and Research (2009a); and Pharmaceuticals Industry Strategy Group (2008).
[146] Department of Innovation, Industry, Science and Research (2009a); and Pharmaceuticals Industry Strategy Group (2008).
[147] Sweeny (2007).
[148] Department of Innovation, Industry, Science and Research online information, "Australian Pharmaceuticals Industry Fact Sheet". Viewed at: http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/AustralianPharmaceuticalsIndustryFactSheet.aspx [12 August 2010].
[149] There is a difficulty in measuring productivity growth accurately in many services industries where outputs are not necessarily expressed in increasing volumes but may be seen in improved quality (Parliament of the Commonwealth of Australia, 2010).
[150] Productivity Commission (2009c).
[151] Parliament of the Commonwealth of Australia (2010).
[152] Department of Innovation, Industry, Science and Research (2009c).

exporter and importer of services (2009).[153] Trade in services remains an important component of Australia's foreign trade; in 2009/10, exports of commercial services represented about 21% of total exports of goods and services (Table I.3). Since 2007/08, services trade has recorded continuous deficits as a result of strong growth in travel expenses and a significant fall in transport earnings. Between 2006/07 and 2009/10, exports (credits, receipts) of non-factor services, consisting mainly of education-related travel, professional services, and transport, rose by 14.8% to $A 52.8 billion, equivalent to some 26% of merchandise exports. In 2009/10, imports (debits, payments), consisting largely of travel and transportation, were about $A 53.5 billion. In 2008/09, the United States, the United Kingdom, and Singapore were Australia's largest individual two-way services trading partners.[154]

(ii) Domestic support

61. In 2008-09, the services sector was estimated to have received around 45% of estimated budgetary assistance available to all sectors of the economy, up from around 27% in 2007/08, and equivalent to 0.28% of GDP; between 2006/07 and 2008/09, total budgetary assistance to the services industry increased by 43.9%, to almost $A 3.5 billion, delivered mainly through tax expenditures (Table IV.3). These increases were due mainly to the introduction of various small business tax concessions, a large proportion of which primarily benefit the services sector. In 2008/09, industry-specific assistance accounted for 13.2% of total budgetary assistance to the services industry. Property and business services, and finance and insurance were the second and third largest recipient industries of budgetary assistance ($A 744 million and $A 613 million, respectively) available to all sectors of the economy[155]; assistance to these activities was delivered mainly through small business capital gains tax concession measures, the offshore banking unit tax concession programme, and R&D tax concessions. Arrangements that may have assistance implications, but are not part of these estimates include: the effects of local-content arrangements as they affect, *inter alia*, broadcasting (section (vi)(b), and Chapter III); regulatory restrictions on competition (e.g. pharmacy, air services, importation of books, media, broadcasting); and government programmes affecting mainly the provision of health, education, and community services.[156]

Table IV.3
Budgetary assistance to the services industry, 2005-09
(% and $A million)

	2005/06	2006/07	2007/08	2008/09
Share in total budgetary assistance (%)				
Electricity, gas, and water supply	5.2	3.4	2.7	2.7
Construction	3.8	5.4	5.1	6.2
Wholesale trade	5.7	5.3	5.4	6.4
Retail trade	5.1	9.9	9.9	11.3
Accommodations, cafés, and restaurants	5.1	3.7	3.9	4.8
Transport and storage	5.4	4.3	3.7	4.0
Communication	7.1	7.0	5.2	4.5
Finance and insurance	13.2	15.0	16.8	17.7

Table IV.3 (cont'd)

[153] WTO trade profiles online. Viewed at: http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=AU.
[154] For more detailed statistics on Australia's trade in services see Department of Foreign Affairs and Trade (2010b).
[155] Productivity Commission (2010b).
[156] Productivity Commission (2010b).

	2005/06	2006/07	2007/08	2008/09
Property and business	19.5	19.1	18.5	21.5
Government administrations and defence	0.8	0.9	0.6	0.9
Education	1.2	1.0	0.8	0.9
Health and community	7.4	8.2	6.4	6.5
Culture and recreation	9.8	8.0	14.5	5.6
Personal and other services	1.9	2.1	2.2	2.5
Unallocated services[a]	8.7	6.8	4.3	4.6
Total outlays ($A million)	938.1	1,084.0	1,390.7	1,181.2
Total tax expenditures ($A million)	1,020.7	1,324.9	2,008.4	2,285.7
Total budgetary assistance ($A million)	1,958.8	2,408.9	3,399.1	3,466.9
Share of total budgetary assistance to GDP (%)	0.20	0.22	0.29	0.28

a Unallocated includes general programmes where details of beneficiaries are unknown.

Source: Productivity Commission (2010), *Trade & Assistance Review 2008-2009*, Tables A.2 and A.7, 22 June, Canberra. Viewed at: http://www.pc.gov.au/__data/assets/pdf_file/0007/98998/tar0809.pdf [26 August 2010].

(iii) Commitments under the General Agreement on Trade in Services

62. Australia's commitments under the GATS remain unchanged.[157] Its comprehensive Schedule of Specific Commitments, covers most services sectors, with the exception of audiovisual, postal-courier, and rail transport services. Apart from a revised services offer submitted in May 2005, no new offer has been tabled within the context of the current GATS negotiations. During the review period, Australia participated in two sets of negotiations with the EU under GATS Article XXI, relating to EU schedule modifications; those relating to 13 new EU Member States were concluded while those concerning the accession of two more countries (Bulgaria and Romania) were initiated in 2007 but have yet to be concluded.[158] Australia also made submissions to the review meetings of the GATS Annex on Air Transport.[159]

(iv) Regional and bilateral agreements on services

63. Australia's regional trade agreements (RTAs) with ASEAN (and New Zealand), and FTAs with Chile, New Zealand, Singapore, Thailand, and the United States include provisions on services (Chapter II(6)(ii)).[160] Some FTAs use negative-list approach to scheduling services commitments (e.g. the FTA with the United States), while others use positive-list modalities (e.g. FTA with Thailand).[161] While the levels of commitments undertaken by Australia vary from one FTA to the

[157] More information on Australia's GATS commitments and latest submitted offers may be found, *inter alia*, in WTO documents GATS/SC/6, 15 April 1994; GATS/EL/6, 15 April 1994; GATS/SC/6/Suppl.4, 26 February 1998; WT/TPR/S/104, 26 August 2002; TN/S/O/AUS/Rev.1, 31 May 2005; and WT/TPR/S/178/Rev.1, 1 May 2007.

[158] Following the completion of the first set of these negotiations, Australian exporters of telecommunications, engineering, and legal services were expected to have new and more secure access to the EU's enlarged market (Department of Foreign Affairs and Trade online information. Viewed at: http://www.dfat.gov.au/trade/negotiations/services/access_services_eu.html, and http://www.dfat.gov.au/trade/negotiations/services/wto_article_XXI_update.html); and WTO document S/L/370, 22 February 2010).

[159] WTO document S/C/28, 19 November 2007.

[160] More information on Australia's commitments under these regional agreements are available, *inter alia*, in WTO documents TN/S/O/AUS/Rev.1, 31 May 2005, and WT/TPR/S/178/Rev.1, 1 May 2007.

[161] Agreements that adopt a negative list approach (including ANZCERTA, SAFTA, and AUSFTA) cover a more extensive range of services than agreements that adopt a positive list approach (such as TAFTA).

other, they often tend to go significantly beyond GATS commitments.[162] These bilateral FTAs commitments are not applied on an MFN basis. Australia undertook, especially in its agreement with the United States, commitments that go beyond not only its GATS commitments, but also its revised services offer, for example in relation to review of foreign investments, and in such sectors as business, audiovisual, financial, tourism, and transport services. Despite the budgetary assistance provided to the sector, Australia's bilateral FTAs exclude subsidies from their application, consistent with the absence of specific disciplines on services subsidies in the GATS.[163] Australia maintains services-related mutual recognition arrangements (MRAs), including one with the U.S. Securities and Exchange Commission (SEC) on U.S. and Australian securities regulation; an MRA was concluded in September 2008 between relevant Australian and U.S. (Texan) professional bodies on engineering services.

(v) Financial services

64. The contribution of finance and insurance services to GDP dropped slightly from 11% in 2006/07 to 10.6% in 2009/10 (Table I.2) while shares of other sectors, e.g. mining, increased. The sector employs 3.6% of the labour force, which is indicative of labour productivity roughly three times the level in the rest of the economy. Australia's financial services sector is based on three main institutional groups: authorized deposit-taking institutions (ADIs), which include banks, building societies, and credit unions; non-ADI financial intermediaries, including money market corporations, finance companies, and securitization vehicles; and funds managers and insurers, including life and general insurance companies, and superannuation and approved deposit funds (ADFs) (Table IV.4). The banking sector remains Australia's largest holder of prudentially regulated financial assets with an increasing share in total financial assets (Table IV.4); in June 2010, it accounted for more than half of the total assets of the financial system.[164] The importance of superannuation funds, public unit trusts, general insurance offices, and securitization vehicles has fallen during the review period.

65. The effects of the recent financial crisis have been less severe on Australia's financial sector than in most other countries. Australia's major banks have retained their credit ratings[165]; no private-sector bank has failed for decades.[166] According to the Productivity Commission, the relative resilience of Australia's financial sector is due, *inter alia,* to the country's coordinated and centralized framework for the regulation of most financial enterprises, policy settings insulating Australia from the trends that emerged in other financial markets (including the "four pillars" policy)[167], and the Government's prompt response to the crisis, including with guarantees of deposits and wholesale funding for ADIs, along with other support for the financial sector (section (a) below).[168]

For more details on the way trade in services is dealt with in each of Australia's preferential trade agreements see Productivity Commission (2010a).

[162] OECD (2010d).

[163] WTO document S/WPGR/W/46/Add.1, 11 May 2009.

[164] Australian Prudential Regulation Authority (APRA) regulated institutions account for approximately 80% of financial system assets (Reserve Bank of Australia, 2010a).

[165] Four of the world's nine AA-rated banks, as rated by Standard & Poor's, are Australian (Productivity Commission, 2009a).

[166] The community has a presumption that failure to pay bank creditors would not be permitted by the authorities (IMF, 2010c).

[167] Australia's "four pillars" policy prevents mergers between the four major banks; these banks are among the world's top 12 banks, as a result of recent collapses of large banking corporations elsewhere.

[168] Productivity Commission (2009a).

Table IV.4
Structure of the financial system assets, June 2006-June 2010
(% and $A billion)

	Main supervisor/ regulator	June 2006	June 2007	June 2008	June 2009	June 2010
Total ($A trillion)		**3.3**	**4.1**	**4.4**	**4.5**	**4.6**
				(% of total)		
Banking sector						
Reserve Bank (RBA)		3.3	3.3	2.4	2.5	1.9
Other banks	APRA	47.8	46.3	52.6	57.5	57.3
Other authorized deposit-taking institutions (ADIs)						
Permanent building societies	APRA	0.5	0.5	0.5	0.5	0.5
Credit unions	APRA	1.1	1.0	1.0	1.0	1.1
Registered Financial Corporations (RFCs)						
Money market corporations	ASIC	2.4	2.6	2.8	2.1	1.4
Finance companies	ASIC	2.9	2.9	2.9	2.7	2.2
Life offices and superannuation funds						
Life insurance offices	APRA	5.6	5.1	4.1	3.6	3.9
Superannuation funds	APRA	17.4	19.4	17.6	16.5	19.1
Other managed fund						
Public unit trusts	ASIC	7.5	7.4	6.2	5.5	5.6
Cash management trusts	ASIC	1.2	1.2	1.1	1.0	0.8
Common funds	State authorities	0.3	0.3	0.3	0.1	0.1
Friendly societies	APRA	0.1	0.1	0.1	0.1	0.1
Other financial institutions						
General insurance offices	APRA	3.3	3.4	3.0	2.8	2.8
Securitization vehicles	ASIC	6.5	6.7	5.4	4.3	3.2

Source: Reserve Bank of Australia online information. Viewed at: http://www.rba.gov.au/statistics/tables/xls/b01hist.xls [16 December 2010].

66. The financial system remains supervised by three institutions: the Reserve Bank of Australia (RBA), Australia's central bank; the Australian Prudential Regulation Authority (APRA) (deposit-taking institutions, general and life insurance companies, and superannuation funds (i.e. pension funds))[169]; and the Australian Securities and Investments Commission (ASIC) (overall market conduct, consumer protection, and competition in financial services). The Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) 2010, in force since 29 June 2010, provided the APRA with greater investigative and monitoring powers in its dealings with the regulated financial services sector, as well as to direct ADIs and insurers to recapitalize.[170]

(a) Banking

67. The Australian market remains dominated by four major nation-wide full service banks (accounting for about 77% of total banking assets). At present there are 56 authorized banking groups, 44 of which are foreign-owned (9 subsidiary banks incorporated locally, 35 branch operations). Foreign banks, which accounted for 14% of domestic banking assets in August 2010, have a more significant presence in merchant banking rather than in retail banking. There are no

[169] APRA is funded largely by the industries it supervises.

[170] Gadens Lawyers Sydney online information. Viewed at: http://www.nsw.gadens.com.au/clientaccess/newsletters/Updates%202010/update_insurance_012910.htm#update.

government-owned banks.[171] Nearly half of Australian bank funding comes from wholesale borrowings in domestic and offshore capital markets.[172] In addition, banks source over 40% of funds from deposits by households, businesses, and government and other organizations; the share from deposits has risen about 5 percentage points since mid 2007.

68. Foreign banks operating both branches and subsidiaries may conduct banking business through locally incorporated subsidiaries or through branches; in either case, authorization is required from the APRA. Foreign banks may raise funds in Australia by issuing debt securities offered or traded in parcels of not less than $A 500,000. Although authorized branches of foreign banks are not required to maintain endowed capital in Australia, they are not permitted to accept initial deposits of less than $A 250,000 from Australian residents and non-corporate institutions.[173] This requirement is aimed at protecting retail depositors.

69. Under relevant legislation, foreign investment in financial-sector companies (including banks, general insurers, and life insurers) remains subject to a 15% shareholding limit, although the Treasurer may approve a higher percentage on "national interest" grounds.[174] Any proposed foreign takeover or acquisition of an Australian bank is considered on a case-by-case basis, and must be approved by the APRA. In 2008/09, 60 proposals were approved in the finance and insurance sector, with proposed investment of $A 10.9 billion; 39 proposals were approved in 2007/08 with investment of $A 9.2 billion. Under the AUSFTA (Chapter II(6)(ii)), acquisition of interests by U.S. investors in financial sector companies are exempt from notification requirements.

70. The structure and performance of the Australian finance sector is shaped by a variety of government policy measures, including recent global financial-crisis-related measures, sector-specific taxation concessions, superannuation taxation concessions, and GST treatment of financial supplies.[175] The Productivity Commission considers that although taxation concessions are intended to encourage additional activity in the sector, including relocation to Australia, they may reduce tax revenue from offshore banking activity, which would occur if "normal" corporate tax rates were to apply, and encourage the diversion of Australian labour and capital away from other activities (including other financial services).[176] Such policies are also believed to risk diverting business effort into seeking support, and add to compliance and administrative costs.

71. Australia's banks have coped well with the global financial turmoil so far, largely because of robust supervision and regulation, though they are exposed to significant risks from sizable short-term wholesale funding.[177] The key policy measures implemented to mitigate the impact of the global financial crisis were the Guarantee Scheme for Large Deposits and Wholesale Funding (the Guarantee Scheme, closed to new liabilities in March 2010), the Financial Claims Scheme (FCS) and the Australian Office of Financial Management's (AOFM) $A 16 billion investment in residential mortgage-backed securities (RMBS). Furthermore, in 2008 an exclusion from the TPA was enacted,

[171] In Australia, Commonwealth-owned entities that may conduct financial operations are guaranteed by the Commonwealth Government. Although the Commonwealth Government sold its shareholdings in the Commonwealth Bank of Australia (CBA) in 1996, one of the four major banks, a transitional Commonwealth guarantee has been provided for all the liabilities of the CBA. The length of the guarantee depends on the characteristic of the liability (WTO document TN/S/O/AUS/Rev.1, 31 May 2005).

[172] Productivity Commission (2010b).

[173] WTO document TN/S/O/AUS/Rev.1, 31 May 2005.

[174] Legislation in this area includes the Banking Act 1959, the Financial Sector (Shareholdings) Act 1998 (FSSA), and other provisions, including prudential requirements.

[175] For more details about government support to the finance sector see Productivity Commission (2010b).

[176] The Treasury (2010b); and Productivity Commission (2010b).

[177] IMF (2009a).

allowing for distressed banking assets to be disposed of quickly, without merger-control review by the ACCC, where the stability of the financial system or the interests of depositors could be jeopardized by delay. This amendment has enabled the APRA to intervene quickly in light of the ongoing consolidation in the industry through mergers and acquisitions.[178]

72. The authorities are about to formulate and implement a number of measures intended to promote Australia's financial services sector and remove remaining obstacles to Australia becoming a financial services centre for the Asia Pacific, including: cutting the withholding tax on certain foreign distributions from managed investment trusts from 30% to a final rate of 7.5% by 2012; changing the attribution rules and providing deemed capital account treatment to eligible managed investment trusts; repealing and replacing the Foreign Investment Fund provisions with a narrowly defined anti-avoidance rule, and modernizing the Controlled Foreign Company rules; transferring the supervision of financial markets from the Australian Securities Exchange (ASX) to ASIC; the introduction of an Investment Manager Regime; the establishment of an online regulatory gateway; the development of an Asia Region Funds Passport; and the phase down from 10% to 5% of the interest withholding tax (IWT) incurred by local subsidiaries and branches of financial institutions when they pay interest on borrowings from their overseas parents.[179]

73. Australian banking requirements include compliance with international prudential standards; the banking system remains well-capitalized.[180] According to the IMF, APRA followed a rigorous process and adopted a more conservative approach in implementing the Basel II framework in 2008; the four major banks, adopted the advanced approaches for assessing credit, market, and operational risk.[181] Since 2007, several prudential standards have been revised, primarily as part of the implementation of the Basel II framework in 2008: in December 2009, APRA undertook consultation on further revisions to the Basel II framework in Australia; and in 2010, APRA incorporated the Financial Stability Board principles on compensation into its prudential standards on governance. Other revisions related to governance and audit matters. During the review period, banks have had relatively low leverage and high capital adequacy ratios, with Tier 1 capital ratios rising from 7.2% in December 2007 to 9.54% in September 2010.[182] Between 2003 and 2008, Australia's rate of non-performing bank loans to total bank loans was 0.3%, the lowest of all 23 countries reviewed by the IMF.[183] Nevertheless, according to the IMF, non-performing loans could rise further (albeit from a low base) for as long as unemployment increases and growth remains weak.[184] Banks have increased provisioning against such losses, and raised equity from private capital markets in early 2009. However, in late 2009, banks wound back some of their provisions as markets stabilized.

74. Between 2006 and 2010 (June), Australia's major banks' interest rate spread (difference between interest rate received and interest rate paid) oscillated around 3.3 percentage points

[178] The authorities indicated that this TPA exclusion applies to compulsory transfers of business under the Financial Sector (Business Transfer and Group Restructure) Act, and no such transfers have occurred since 2008. Instead mergers have taken place under the voluntary transfer of business powers under this Act, and have been subject to ACCC review (IMF, 2010c; and OECD, 2010c).

[179] Productivity Commission (2010b).

[180] IMF (2010c).

[181] A 20% loss given default (LGD) floor was adopted for residential mortgages that comprise over half of the large banks' loans, which is higher than the Basel II 10% floor. Higher risk weights were required for certain residential mortgages under the standardized approach. Moreover, reduced risk weights, which are permissible in the Basel II framework's standardized approach, have not been introduced for retail lending. Banks' capital requirements under the advanced approaches continue to be subject to the 90% floor of the Basel I capital requirement, instead of the 80% floor applicable in the second year (IMF, 2009a).

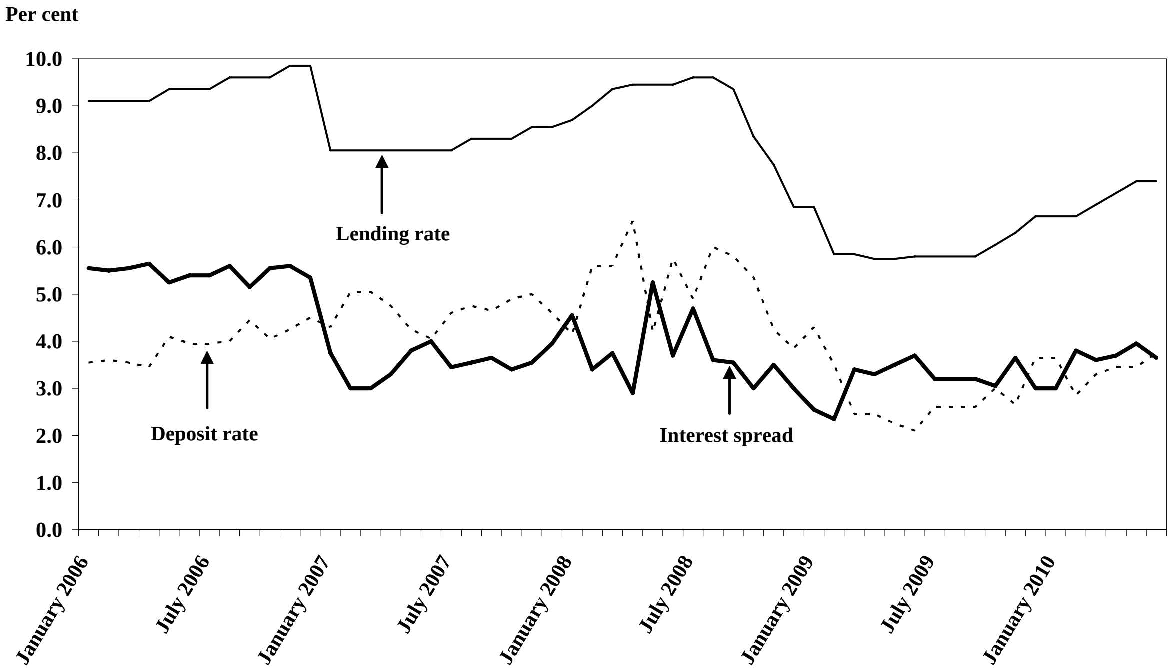
[182] Takáts and Tumbarello (2009); and IMF (2009a).

[183] IMF (2009b), Statistical Appendix, Table 24.

[184] IMF (2009a).

(Chart IV.1) reflective of risk based pricing and competitive dynamics. Spreads contracted during an intensification of competition during the credit boom. However, they increased during the global financial crisis, when Australian house prices remained robust and most credit losses resulted from business lending.

Chart IV.1
Interest rate spread, January 2006 - June 2010



Source: IMF, *International Financial Statistics*.

(b) Insurance

75. Australia's insurance market is the world's 12th largest, with premiums for 2007 exceeding US$60 billion, an increase of almost 75% in ten years; insurance premium income has grown, on average, by around 5.7% per annum since 1997 in U.S. dollar terms.[185] As of June 2010, there were 132 private and 14 public general insurers, with assets worth $A 94.2 billion; within this group there were 17 reinsurers. Public general insurers accounted for around 23% of the sector's premium revenue; these insurers, which are not subject to the Insurance Act nor regulated by APRA, remain regulated by state-level legislation. The 66 foreign-owned general insurance firms hold around 22% of total insurance sector assets. There were 32 private life insurers with assets worth $A 233 billion at end-December 2009; 15 foreign-owned/non-resident life insurers accounted for 11.6% of total life insurance assets.[186] Australia has no public life insurers.

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[185] Austrade (2009).

[186] APRA's online list of registered life insurance companies as of 17 June 2010. Viewed at: http://www.apra.gov.au/Life/Registered-Life-Insurers.cfm?RenderForPrint=1 [2 December 2010]. Non-resident life insurers must be subsidiaries of foreign companies. Australia's GATS commitments also specify that sub-national guarantees may be provided by some state and territory insurance offices (WTO documents

76. Both the life and general insurance sectors remain relatively concentrated. In June 2009, the top four general insurers held 70% of premium business and 63% of the industry's assets. In December 2009, the top five life insurers held approximately 79% of the industry's assets. As at December 2007, bank-owned groups accounted for 37% of liabilities and 39% of total premiums.[187]

77. With respect to general insurance, there are no restrictions on the number, size or mix of operations of foreign-owned subsidiaries or foreign insurers operating in the Australian market. Foreign-owned subsidiaries and foreign insurers are subject to similar legislative and prudential requirements to Australian-owned and incorporated insurers. The prime responsibility for oversight of the Australian operations of a foreign insurer rests with its local management and head office. While a foreign insurer's home regulators will play a role in supervising the insurer, to protect the interests of Australian policyholders, the local operations of a foreign insurer are subject to APRA prudential supervision. Since 1995, Australia has not permitted foreign life insurers to operate local branches. As a result foreign life insurers seeking to establish a commercial presence in Australia must establish an Australian subsidiary, which must then apply to APRA for registration. In 2004, under the AUSFTA, Australia agreed to allow U.S. life insurers to apply for registration to operate through branches but so far there has been no such case.

78. All insurers must be authorized either by APRA or, in the case of private health insurers, an industry-specific regulator.[188] In addition, state-based licensing is required for insurers offering certain classes of compulsory insurance, such as workers' compensation and third-party motor insurance. Prudential regulation governs many areas, including the solvency and risk-management practices of insurance companies. As from 1 July 2010, new prudential standards have aligned general insurance prudential reporting with statutory reporting by providing a simplified reporting process by general insurers to APRA; a clearer view of insurer performance; and enhanced quality of discussions between APRA and individual insurers concerning their performance.[189]

(vi) Communications

(a) Telecommunications

79. Telecoms remains among the essential infrastructure sectors subject to special competition rules; the ACCC is the regulator that applies these sector-specific competition rules while the Australian Communications and Media Authority (ACMA), has responsibilities for numbering, industry codes and standards, frequency management and licensing, and some consumer topics, such as controlling internet spam and universal service obligations (USO).

80. Telstra, which was formerly owned by the Government, has been able to retain considerable market power, despite the adoption of measures such as the unbundling of the unconditioned local loop services (ULLS)[190], and the imposition of accounting and operational separation of its

TN/S/O/AUS/Rev.1, 31 May 2005 and TN/S/O/AUS/Rev.1, 31 May 2005; and Life Insurance Act 1995, Section 16ZE).

[187] Austrade (2009).

[188] Austrade (2009).

[189] For details of these changes see APRA online information. Viewed at: http://www.apra.gov.au/Policy/Proposed-changes-to-general-insurance-prudential-reporting-June-2010.cfm.

[190] Local loop unbundling (LLU or LLUB) is the regulatory process of allowing multiple telecommunications operators to use connections from the telephone exchange's central office to the customer's premises. The physical wire connection between customer and company is known as a local loop, and it is owned by the incumbent local exchange carrier or an independent telephone company. To increase competition, other providers are granted unbundled access. In some countries local loop unbundling has played a major role in the development of broadband markets. The authorities indicated that there is no technical impediment to

functions.[191] According to the OECD, it remains one of the most vertically integrated providers in the world, with dominant positions in the fixed-line, mobile, broadband, and pay-TV segments. Much of the ACCC's enforcement has been about access to Telstra's wires by other providers of digital subscriber line (DSL) data service. Moreover, cable TV is a less competitive alternative to DSL in Australia, because Telstra has a controlling share (50%) in the largest cable TV provider (Foxtel). Australia's Future Fund, which provides for superannuation and pensions for Australia's civil servants, reduced its share of Telstra from 17% to 10.9% in August 2009, and to 10% in October 2010; foreign equity limits in Telstra are still capped at 35% and up to 5% individually. Concerns remain about Telstra's potential to take advantage of its monopoly power in wires, and its aggressive use of litigation to delay regulatory outcomes[192]; this prompted the Australian Government to introduce legislation in 2009 to reform the telecommunication regulatory regime (see below). During the review period, the ACCC investigated whether Telstra has prevented competitors or other users from installing equipment and interconnecting with the local loop and line sharing services (LSS) at certain exchanges; as from 11 July 2008, Telstra has been required to report monthly on queued exchanges and decisions on capped exchanges. In March 2009, the ACCC instituted proceedings against Telstra for inappropriately restricting the ability of other telecommunications providers to access a number of Telstra's exchanges for the purpose of accessing the unbundled local loop and line sharing[193]; as a result in July 2010 Telstra was subject to a pecuniary penalty of $A 18.5 million.

81. Information media and telecommunications services still account for 3.4% of GDP (Table I.2). Despite persistent competition-related concerns, Australian consumers seem to derive significant benefit from an increasing choice in communication services.[194] As of June 2009, there were 391 fixed-line telephone service providers, 3 mobile network operators operating one GSM and one 3G carrier network each, 638 Internet service providers, 287 wireless service providers and 47 satellite broadband providers. As from May 2009, when the ACCC decided not to oppose the merger of the Vodafone and Huthinson "3" mobile networks in a joint venture called Vodafone Huthinson Australia Ltd (VHA), the mobile telephony market shares of the three current mobile network operators in terms of number of subscribers were approximately: 41% Telstra, 33% Optus, and 26% VHA. The number of fixed-line standard telephone services in Australia declined as a result of continuing substitution of these services with other technologies such as 3G or Voice over Internet Protocol (VoIP); 4% of SMEs did not have a fixed-line telephone service in 2008/09, and 20% of them were using VoIP in April 2009, up from 17% in 2008. During 2008/09, mobile network coverage increased, with GSM providing coverage to 96.22% of the population and 3G networks covering 99.06% of the population. The Internet is increasingly seen as a critical business communications channel to improve operational effectiveness, productivity, and market reach. The value of goods and services sold online rose from $A 57 billion in 2006/07 to $A 81 billion in

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unbundling at all locations. While all local exchanges in Australia are subject to a requirement to unbundle local loops on request, access seekers have only taken advantage of their right to access the ULLS in over 10% of Telstra's local exchanges, which are generally exchanges in metropolitan areas serving large numbers of premises, whereas the other 90% of exchanges include many small exchanges in rural, regional, and remote areas where it is commercially unfeasible to utilize the ULLS. Local loop pricing principles were updated in November 2007, and indicative prices were set in June 2008 and last updated in December 2009 (OECD, 2009b; and http://en.wikipedia.org/wiki/Local-loop_unbundling).

[191] OECD (2010c).

[192] United States Trade Representative (2010).

[193] For more details about recent ACCC cases involving Telstra see ACCC (2009).

[194] Overall, the increase in consumer surplus (the measure of the benefits people gain from the consumption of goods and services) attributable to the telecommunications industry in Australia was approximately $A 957 million in 2008/09. Number portability allows consumers to change carriage service providers without changing their telephone number, thus allowing for the development of more competitive service offerings. For more data and details about developments in the communications industry see Australian Communications and Media Authority (2009).

2007/08, while 56% of businesses were estimated to derive up to 10% of their total goods and services income from sales via the Internet.

82. All telecommunications carriers are required to make a proportionate contribution based on their eligible revenue towards the cost of providing the universal service obligation (USO), which benefits from a subsidy; in 2008/09, $A 145 million was budgeted for this subsidy. The number of public payphones (part of the USO) was reduced from 45,114 in 2007/08 to 39,328 in 2008/09, 52.6% of these are operated by Telstra.[195] On 20 June 2010, the Australian Government announced that it is developing a new institutional, regulatory, and funding framework for the delivery of the USO and other public-interest services to support the development of the National Broadband Network. The details of these arrangements and decisions about further regulatory changes to apply in the longer term will be announced following public consultation. As from July 2002, a Satellite Phone Subsidy Scheme has been in place for people living or working outside of the terrestrial mobile phone coverage to purchase satellite mobile phones; in March 2009, the subsidy increased from 60% to 85% of the handset cost, including the replacement of handsets purchased more than three years previously.[196] The scheme provides up to $A 1,000 for eligible applicants who live in areas without terrestrial mobile coverage or up to $A 700 for eligible applicants who live in areas that have coverage, but spend more than 180 days across a two-year period in non-coverage mobile areas. In 2009/10, 97% of satellite phones subsidized under the scheme were supplied by two firms (Motorola, Thuyara). From 2007 to 2009, over $A 4 million were appropriated for the scheme under the Connect Australia set of programmes. From 2010 to 2013, funds are being appropriated as part of the Government's response to the Regional Telecommunications Review, which also includes an Indigenous Communications Program; in 2009/10 subsidy payments attained $A 1.2 million.

83. In 2009, the authorities launched a wide-scale review of the regulatory regime, examining ways of promoting greater competition across the industry, including measures to better address problems arising from Telstra's vertical integration of wholesale and retail services, and the horizontal integration of telephone and cable networks and telecommunications and media assets.[197] In September 2009, the Australian Government introduced legislation in the Parliament to reform the telecommunications regulatory regime, which it reintroduced in October 2010 and passed on 29 November 2010. The legislation contains measures to encourage and facilitate the structural separation of Telstra's fixed line telecommunications network; imposes strong functional separation on Telstra in the event that it does not structurally separate; empowers the Minister to require Telstra to divest its cable network and its 50% interest in Foxtel in certain circumstances; streamlines the operation of the telecommunications access regime to provide quicker outcomes and reduce opportunities for regulatory gaming; enables the ACCC to set regulated access prices up front for all regulated telecommunications services to improve regulatory certainty and enable quicker access;

[195] As part of its license conditions, Telstra is required to maintain a local presence in regional, rural, and remote Australia; as of June 2009, a new three-year local presence was approved. USO subsidies are paid to Telstra each year in arrears to compensate it for loss-making services provided under its USO obligations. The amount of the subsidy is determined for each financial year by the Minister based on advice from the ACMA. The payphone component of the $A 145 million subsidy is a relatively small 9.6% (Australian Communications and Media Authority, 2009).

[196] Australian Communications and Media Authority (2009).

[197] Reportedly, failure to do so could result in Telstra being forced to divest its cable network and its half-share in pay television broadcaster Foxtel or face being denied the wireless spectrum it needs to evolve its mobile business and roll out fourth generation mobile technology. Telstra has opposed the draft legislation that would implement structural separation within its telecommunications network. For more information about Telstra's market share in all communications areas and position taken on this and other issues see http://en.wikipedia.org/wiki/Telstra; United States Trade Representative (2010); OECD (2010c); and Productivity Commission (2010b).

streamlines enforcement of the prohibitions against anti-competitive conduct; and strengthens protections for consumers of telecommunications services.

84. As the broadband sector is dominated by Telstra[198], in April 2009, the Australian Government announced the establishment of a company to build a national broadband network (NBN), to operate on a non-discriminatory wholesale-only basis. The authorities intend to introduce legislation ensuring full government ownership of the NBN during the network roll-out process and that once the NBN is built and fully operational, any privatization would be subject to the approval of the Parliament.[199] The company will invest up to $A 43 billion over eight years to build a state-of-the-art fibre-to-the-premises telecommunications network, which will serve 93% of Australian residential and business premises; fast broadband services will be delivered to the remaining 7% of premises to be delivered through wireless and satellite technologies; the NBN network will effectively supersede Telstra's copper network. The ACCC is to have strict regulatory oversight of NBN Co's wholesale-only access, non-discrimination and transparency obligations, as well as private ownership and control restrictions, under regulations to be made in the context of the privatization of NBN Co.[200]

85. Given the processes leading to and following the establishment of NBN Co, the Australian Government has not undertaken a formal cost-benefit analysis of the NBN, even though such analysis should arguably be the prime guide of public infrastructure decisions.[201] Nevertheless, the Government did commission independent advisers to conduct a detailed implementation study, which included detailed modelling of the revenues and costs that could be expected from the project given the Government's objectives.[202] On 24 November 2010, the Government released a summary of the business plan and committed to releasing NBN Co's business plan, with the exception of commercial-in-confidence material. The Government considers that the NBN is a transformative investment in Australia's infrastructure for the future; and that its benefits, which will extend over decades across the economy and society and into new areas of innovation, are such that they cannot be practically or usefully quantified. However, on the basis of existing studies into the benefits of high speed broadband[203], the Government considers the benefits will far exceed the quantified and published costs.

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[198] Telstra's domination of all platforms (except satellite, which is mainly used in remote areas) made it difficult to establish effective competition between the various types of infrastructure. In 2008, Telstra had more than two-thirds of the market and played a major role on all platforms for access to these services. As owner of most of Australia's fixed-line local access network, Telstra had a dominant position in the supply of wholesale level fixed-line broadband services, including the unbundled local loop. Telstra controlled over 80% of the copper lines used to supply digital subscriber line (DSL) broadband. The authorities indicated that the access regime requires Telstra to allow competing providers to access those lines (via the ULLS and LSS) on regulated terms, and that, by virtue of such regulatory measures competing, ISPs have a market share of retail DSL broadband significantly higher than 20%. In 2008-09, Telstra had a market share of 44% in retail fixed-line broadband (DSL and cable), and 46% in retail mobile broadband (ACCC, 2010b; and OECD, 2008).

[199] OECD (2010c).

[200] The ACCC's role in regulating the NBN could also extend to oversight of governance, ownership, and control restrictions, to ensure that the current incentives for vertically integrated operators to favour their own operations do not arise in the new NBN environment (ACCC, 2009a).

[201] The Treasury (2010f). A similar view was expressed by the Governor of the Reserve Bank of Australia, in response to a question posed by a member of the Standing Committee on Economics of the House of Representatives on 26 November 2010.

[202] McKinsey of Company and KPMG (2010).

[203] UN/ITU Broadband Commission for Digital Development (2010).

(b) Broadcasting, advertisement, and film production

86. Despite the legislative goal of media viewpoint diversity, the number of providers remains small and unchanged.[204] There are three significant free over-the-air television broadcasters licensed to operate in any licence area, and the pay-TV market is concentrated, as Foxtel, which captures the majority of metropolitan area subscribers, is owned 50% by Telstra. Australia's free-to-air commercial television networks remain subject to at least 55% Australian content between 6:00 a.m. and midnight on their main channels (with sub-quotas for first-release Australian drama, documentary, and children's programme), and 80% of Australian advertising.[205] All the commercial and national television broadcasters that are required to transmit the high definition television quota complied with this requirement. Licence fee rebates equivalent to 33% of licence fees payable in 2010 and 50% in 2011 were introduced to assist commercial broadcasters to continue to broadcast high levels of Australian content production; these rebates are temporary and not cumulative.[206] Australian commercial radio broadcasters are required to ensure that up to 25% of all music broadcast between 6:00 a.m. and midnight is performed by Australians.

87. In August 2009, the Productivity Commission found that Australia's television anti-siphoning scheme imposed regulatory burdens because of the protracted commercial negotiations required for the events included on the anti-siphoning list, and recommended that the anti-siphoning list be substantially reduced.[207]

88. The Australian film-production industry continues to receive government support in several ways. During the review period, industry-specific measures involved direct funding and grants to Australian Government film agencies, public broadcasters, and not-for-profit organizations, as well as indirect support via tax concessions and rebates. Up to 30 June 2008, approximately $A 112 million was provided in direct funding to three key film agencies each year: the Australian Film Commission (excluding the National Film and Sound Archive); the Film Finance Corporation Australia; and Film Australia Ltd. On 1 July 2008, these agencies merged into Screen Australia, which received $A 102.9 million in 2008/09, $A 93.6 million in 2009/10, and $A 89.4 million in 2010/11. The majority of this funding has been used for investment and loans for feature films, TV drama, and documentaries; in 2009/10, Screen Australia was to provide $A 86.8 million in direct support to the industry. Under the 2007 Australian Screen Production Incentive (ASPI), additional financial incentives for the production of film, television, and other audiovisual projects in Australia are in place through three offsets: the Producer Offset, the Location Offset, and the Post, Digital and Visual Effects (PDV) Offset. The Producer Offset is a refundable tax offset (rebate) for producers of eligible Australian audiovisual projects and is paid through the Australian company tax system at 40% of qualifying Australian production expenditure (QAPE) incurred on a feature film and 20% of QAPE incurred on other types of eligible programmes. The Location Offset offers a 15% offset on the

[204] OECD (2010c).

[205] In the AUSFTA, Australia has reserved the right to intervene in the future on interactive media platforms to ensure Australian content is available on newer media or means of transmission. The commitments on audiovisual services do not apply on an MFN basis (United States Trade Representative, 2010; Australian Communications and Media Authority, 2009; and OECD, 2009b).

[206] These rebates take account of the level of licence fees in other countries as well as cost implications for commercial broadcasters of new technologies and commercial pressures, including the switch to digital television (Productivity Commission, 2010b).

[207] The anti-siphoning scheme prevents subscription television broadcasters from buying the rights to televise events on the anti-siphoning list before free-to-air television broadcasters have purchased the rights. It also prohibits free-to-air broadcasters from showing a listed event on their digital television multi-channels unless the event is simultaneously shown, or has been shown, on their main channels. While the scheme is not limited to sporting events, to date non-sporting events have not been listed under the scheme (Productivity Commission, 2010b).

QAPE of a large-budget non-Australian film, and the PDV Offset offers a 15% offset on the QAPE that relates to PDV production. Tax rebates made under the ASPI (Producer, Location and PDV Offsets) peaked in 2007/08, at a total of $A 69 million.

(vii) Transport

89. Transport accounted for 5.2% of Australia's economy in 2009/10 (Table I.2, section (i)). High-performance freight infrastructure is crucial, given the size of the country, the geographic dispersion of the population and production centres, and their remoteness from other markets.[208] The export-driven rapid rise in the demand for freight has put strains on infrastructure; there is a growing problem of road congestion and bottlenecks persists in certain bulk ports. Freight handling is hampered by a variety of shortcomings affecting sea freight in particular.[209] Certain ports suffer from inadequate loading facilities, dock shortage, excessively shallow canals, and lack of adequate connections to rail and highway systems. Left unaddressed, these constraints could undermine the pursuit of national goals.[210]

90. Due to constitutional limitations, coordination of transport infrastructure development remains a challenge as responsibilities are shared between the Commonwealth Government (for the interstate rail network, under the supervision of the Commonwealth Government-owned Australian Rail Track Corporation), the states and territories (for roads, intrastate railway systems and most ports) and the private sector (for certain railway networks, certain ports, and a number of toll roads).[211] In 2008, the Commonwealth Government established Infrastructure Australia, which developed a list of priority infrastructure projects. A Building Australia Fund, a part of the Nation-Building Funds package, was set up in 2008/09; allocations from the Fund were to be guided by Infrastructure Australia's national audit and infrastructure priority list. Clear assessment plans have been developed and the prioritization methodology has been published. Infrastructure Australia's detailed assessments are also supported by a series of external and independent experts, along with rigorous cost-benefit ratio analyses; the cost-benefit ratios of the initial nine priority projects identified in May 2009 were all found to be significantly above 1:1. The Commonwealth Government signed National Partnership Agreements with the states and territories in 2009 to administer the majority of its land transport funding over the period 2008/09 to 2013/14. The Australian Government's Nation Building Program (formerly known as Auslink) is investing some $A 37 billion over the six-year period to 2013/14. Funding for land transport infrastructure was 0.4% of GDP in 2008/09, 0.5% in 2009/10, and 0.3% in 2010/11. A draft National Ports Strategy, including a National Freight Policy, was prepared by Infrastructure Australia and the National Transport Commission, and released in May 2010.[212]

91. A number of micro-economic reforms have also been embarked upon through the COAG Infrastructure Working Group, to improve coordination and best practice in the way the country plans, finances, builds, and uses infrastructure. For instance, the National Pre-Qualification Scheme, in operation as of January 2011, is aimed at reducing barriers to competition in the construction industry by ensuring mutual recognition of prequalification status across jurisdictional boundaries. This reform will increase competition in the construction industry, leading to reduced construction costs and is also expected to reduce administrative costs for states and territories.

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[208] OECD (2008).
[209] OECD (2008); and Infrastructure Australia and the National Transport Commission (2010).
[210] Infrastructure Australia and the National Transport Commission (2010).
[211] OECD (2008).
[212] Infrastructure Australia and the National Transport Commission (2010).

(a) Maritime services

92. During the review period, the Australian merchant trading fleet has decreased in size, from 96 to 77 licensed and Australian flagged vessels.[213] Around 87% of Australia's total port throughput (volume) comprised exports; in 2009/10, despite the impact of the global financial crisis, the total port throughput increased to over 900 million tonnes of goods, compared with around 875 million tonnes in 2008/09.[214] In 2008/09, the bulks (mainly iron, and coal) accounted for 90%, containerized general cargo for 6.5%, and other non-containerized general cargo for 3.5% of total cargo volume. In terms of trade direction, 59% of the loaded containers were imports, and 41% exports. There are over 60 ports in Australia, but more than 95% of volume is handled in 20 ports.

93. Liner shipping conferences are regulated by a separate section of the Trade Practices Act (TPA) (Chapter III), which permits shipping lines to collectively discuss freight rates, capacity levels, and liner scheduling.[215] Despite a 2005 review by the Productivity Commission recommending repeal of this exemption from TPA provisions, the authorities decided to retain and amend the exemption to clarify its objectives; remove discussion agreements from its scope; protect individual confidential service contracts between carriers and shippers; and introduce a range of penalties for breaches of its procedural provisions. These amendments were put on hold pending a further review proposed for 2011/12 to enable consideration of changes in liner shipping regulation internationally, the effect of the global financial crisis, and competition policy reforms. Plans were announced in August 2010 for introducing measures to strengthen Australia's shipping industry wih respect to its international competitors as well as other modes of transport domestically.[216] They would include a new tonnage tax, the implementation of existing coastal shipping principles consistent with the Navigation Act, the introduction of mandatory training requirements, and the establishment of an Australian International Shipping Register and a Maritime Workforce Development Forum. These measures would be at a cost to revenue of $A 41.5 million and a departmental cost for implementation of $A 8 million.

94. Australia's cabotage regime remains unchanged. Coastal operations are carried out through a system of licences and permits available to both Australian and international operators. During the review period, foreign vessels carried approximately 29% of Australia's domestic cargo under the permit system.[217] Financial assistance is provided to alleviate the costs of shipping freight between Tasmania and the mainland under the Tasmanian Freight Equalisation Scheme (TFES); some 1,430 claimants benefited from the scheme in 2007/08, 1,621 in 2008/09, and 1,666 in 2009/10.

(b) Aviation services

95. Over 23 million people travelled by air in Australia in 2008/09; almost half were tourists visiting from overseas.[218] A total of 53 airlines operated international passenger flights in July 2010; the top three, Qantas, Singapore Airlines, and Air New Zealand, accounted for 36.9% of total passengers to and from Australia. The majority of scheduled air freight is carried on passenger aircraft. Around 22.9% of freight traffic was accounted for by Australian designated airlines in 2009/10.

[213] Bureau of Infrastructure, Transport and Regional Economics (2010).
[214] Infrastructure Australia and the National Transport Commission (2010).
[215] OECD (2010c).
[216] ALP online information, "Stronger shipping for a stronger economy", 13 August 2010. Viewed at: http://www.alp.org.au/federal-government/news/stronger-shipping-for-a-stronger-economy/ [6 December 2010].
[217] Bureau of Infrastructure, Transport and Regional Economics (various years).
[218] Department of Infrastructure, Transport, Regional Development and Local Government (2009).

96. The Air Navigation Act 1920 and Air Navigation Regulations 1947 (ANR) were amended in 2008 and 2009 to simplify the International Airline Licenses (IAL) regulatory structure and improve the oversight of the IAL system. These reforms introduced a simple audit scheme and allowed for IALs to be updated, suspended, and cancelled as necessary; as a result, over 70 international airlines were re-licensed.

97. A 2009 National Aviation Policy White Paper combined various strands of aviation policy into a single document to provide planning, regulatory, and investment certainty for the aviation industry.[219] This document provides, *inter alia,* a policy framework for the development of the aviation industry at all levels (international, domestic, regional, and general aviation), including through skills and productivity improvements. Under the White Paper, Australia envisages, *inter alia,* to: move to a new generation of "open skies" agreements[220]; provide opportunities for regional areas to attract international services; seek fully open arrangements for dedicated cargo services to support Australia's air freight export industries; and retain the basic restriction of 49% on foreign investment in Australia's international airlines, but remove the additional restrictions on foreign ownership of the national carrier Qantas (i.e. 25% for foreign individual shareholdings and 35% for total foreign airlines shareholdings) by amending the Qantas Sale Act 1992.[221] Significant capacity increases have been negotiated with China and Indonesia, and in November 2010 discussions were under way for a proposed comprehensive air transport agreement with the EU.

98. Although Australia does not permit cabotage in aviation services[222], where demonstrable benefits can be gained through the granting of cabotage rights, and provided safety and other concerns are satisfied, the authorities may consider trading cabotage rights strategically, e.g. to help achieve a comprehensive open skies agreement with a major trading partner (e.g. the EU) or to gain reciprocal cabotage rights in a significant market (e.g. the United States). Furthermore, the authorities may consider unilateral cabotage in some exceptional circumstances (i.e. emergency situations); several authorizations of this type were granted during the review period. The authorities consider that the expansion of seventh freedom rights[223] for passenger and cargo services should also be used in a strategic manner and only agreed on a case-by-case "national interest" basis. Australia has negotiated a number of air services agreements with other countries since 2007 and some of these countries have access to seventh freedom cargo rights (Bangladesh, Croatia, Czech Republic, Kenya, Pakistan, Sri Lanka, Turkey, United Arab Emirates, and the United States).

99. Australia maintains a fully deregulated interstate domestic aviation market allowing up to 100% foreign ownership of domestic airlines, subject to meeting Foreign Investment Review Board requirements.[224] Assistance for regional and remote air services and airports is being improved and

[219] Department of Infrastructure, Transport, Regional Development and Local Government (2009).

[220] These agreements would go further than the traditional exchange of traffic rights to include open capacity, beyond and intermediate rights, safety, security, environment, competition, and investment provisions (Department of Infrastructure, Transport, Regional Development and Local Government, 2009).

[221] By applying the same investment regime to all airlines, the authorities expect to increase Qantas's ability to compete for capital and to have more flexible equity arrangements (Department of Infrastructure, Transport, Regional Development and Local Government, 2009).

[222] Cabotage is the transport of goods or passengers between two points in the same country by a vessel or an aircraft registered in another country (Department of Infrastructure, Transport, Regional Development and Local Government, 2009).

[223] The seventh freedom right is the right to carry passengers or cargo between two foreign countries without any continuing service to one's own country.

[224] As a result of increased competition from the entry of low cost airlines, such as the majority foreign-owned Virgin Blue, Jetstar, and the 100% Singapore-owned Tiger Airways in 2008/09, Australia's domestic and regional airlines carried 49.6 million passengers, up from only 16.8 million in 1988/89; this represents average annual growth of 5.5%. In addition, the two largest independent regional airlines (Regional

better targeted at those routes that are unable to sustain commercial operations.[225] The Australian Government has consolidated the Remote Air Services Subsidy (RASS) Scheme, Remote Aerodrome Inspection (RAI) Program, the Remote Aerodrome Safety Program (RASP) and the Remote Aviation Infrastructure Fund (RAIF) into a single programme, the Regional Aviation Access Program (RAAP). The funding allocation under RAAP over the four years beginning 2010/11 totals $A 61.7 million. Support for remote air services and aerodromes is expected to be better coordinated and to provide greater flexibility in allocating funding based on the greatest need. Assistance for regional and remote aviation has been provided through a four-year $A 14 million Payment Scheme for Airservices Australia Enroute Charges since 2010.

100. The ACCC remains in charge of monitoring the prices, costs, and profits regarding aeronautical and related services at Australia's five major airports (Chapter III). Major shareholders of these airports are investment and fund management companies. Most of Australia's 310 licensed airports are owned and operated by local government organizations. The third inquiry by the Productivity Commission since the privatization of Australia's major federal airports into airport economic regulation will be initiated in the near future.

(c) Land transport

101. Rail and road transport are complementary rather than substitutable, and have accounted for similar, and steadily growing, shares of the domestic freight market; only a small proportion of land freight (10%-15%) is subject to competition between road and rail. Thus, it would be difficult to raise the proportion of railway freight at the expense of road freight.[226] In the December 2008 Australia Building Fund (see above), the Government provided the Australian Rail Track Corporation (ARTC) with around $A 1.2 billion in additional equity to allow it to deliver on its massive work programme across the National Rail Network. An additional $A 1 billion equity injection into ARTC was announced in the 2010/11 Budget to fund seven new rail productivity enhancing projects on its interstate network; in addition to significant positive environmental impacts, these projects are designed to reduce transit times, provide trains with more overtaking opportunities, ensure fewer delays due to heat-related speed restrictions, and allow increased axle loads for heavier trains. Railroads remain exempt from TPA provisions; the ACCC's role in this sector includes assessing codes and undertakings about rail infrastructure access, arbitrating disputes between operators and infrastructure providers, and analysing mergers and acquisitions.[227]

102. Regulatory reform in the transport sector is one of the key areas identified to increase future transport productivity and efficiency. The regulation of heavy vehicles is carried out by nine governments, and there are seven rail regulators across Australia; despite past work to harmonize regulation across Australia, different approaches between states and territories are a considerable burden for freight and passenger-transport operators who operate across state borders. In July 2009, the COAG agreed to implement national regulators for rail safety and heavy vehicles (and for maritime safety), and work is under way to implement national laws and the new regulators by 2013. The COAG has also initiated a review of pricing options for heavy vehicles to ensure the more efficient, productive, safe, and sustainable use of freight infrastructure. A future pricing regime, which may be adopted by 2014, is aimed at recouping the cost of wear and tear to roads more directly, from heavy vehicle freight movements, in order to ensure maintained access and availability of roadways for freight movement, in an open, transparent, and economically efficient manner.

Express, Skywest) are currently majority foreign-owned (Department of Infrastructure, Transport, Regional Development and Local Government, 2009).

[225] Department of Infrastructure, Transport, Regional Development and Local Government (2009).

[226] OECD (2008).

[227] OECD (2010c).

(viii) Tourism

103. Tourism is Australia's largest services export and a significant and vital industry. In 2008/09, it contributed over $A 33 billion to GDP, and directly employed around half a million people.[228] Domestic tourism accounts for around 75% of the industry.

104. In addition to increasing general support measures in the form of tax expenditures, industry-specific support has been provided to the tourism sector.[229] A TQUAL Grants Program, of up to $A 8.5 million in new funding, replaced the Australian Tourism Development Program in April 2009.[230] Under the new programme innovative tourism projects are eligible for grants of $A 5,000 to $A 100,000, national or sectoral tourism initiatives are eligible for grants of $A 25,000 to $A 500,000, and integrated tourism development projects are eligible for grants of $A 100,000 to $A 500,000. At end-December 2009, 70 projects had been approved for funding, totalling $A 8.3 million; an additional $A 40 million of funding is intended for TQUAL Grants from 1 July 2011. Tourism Australia, the government agency responsible for the international and domestic marketing of Australia as a destination for leisure and business travel, receives an annual appropriation from the Government of about $A 130 million; its latest priority was to promote domestic business travel and stimulate travel from overseas locations within ten hours of flying time, including China, Japan, Malaysia, Singapore, New Zealand, and the Middle East. As from December 2009, a National Long-Term Tourism Strategy has aimed to promote innovation, infrastructure development, and growth in the industry, as well as to improve industry capacity to meet demand and expectations created through marketing campaigns; the authorities committed $A 2.2 million for 41 measures to fund the implementation of the Strategy over the following 18 months. Under the Strategy, the Tourism Quality Council of Australia (TQCA) has been established to administer the National Tourism Accreditation Framework (NTAF), an umbrella framework for, *inter alia,* building consumer purchasing preference. On 11 May 2010, the Australian Government announced funding of $A 5.5 million over four years to support the implementation and operation of the NTAF.

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APPENDIX TABLES

Table AI.1
Net foreign debt structure, 2005-10
($A million, end-period)

	2005/06	2006/07	2007/08	2008/09	2009/10
Net foreign debt	494,866	539,760	600,441	624,274	671,885
Public sector	5,993	-15,619	32,775	39,348	108,592
General government	24,420	25,504	28,398	35,721	84,118
Financial corporations	..[a]	..[a]	..[a]	..[a]	..[a]
Reserve Bank	-62,867	-79,092	-35,183	-49,962	-41,798
Central Borrowing Authorities	40,280	44,782	48,360	59,063	72,577
Other financial corporations	..[a]	..[a]	..[a]	..[a]	..[a]
Non-financial corporations	..[a]	..[a]	..[a]	..[a]	..[a]
Private sector	488,873	555,379	567,666	584,926	563,293
Financial corporations	397,211	443,474	435,855	420,554	404,599
Non-financial corporations	91,662	111,905	131,811	164,372	158,695

.. Not available.

a Included in totals where applicable but not available for publication.

Source: Australian Bureau of Statistics (2010), *Balance of Payments and International Investment Position - 5302.0*, June.

Table AI.2
Merchandise exports by group of products, 2006-09
(US$ and %)

	2006	2007	2008	2009
Total exports (US$ million)	123,322.8	139,122.2	186,853.0	153,766.6
		(% of total)		
Total primary products	69.3	67.8	73.8	72.5
Agriculture	18.0	16.1	14.0	15.3
Food	14.5	12.7	11.5	13.0
0412 Other wheat (including spelt) and meslin, unmilled	2.0	1.2	1.7	2.3
0112 Bovine meat, frozen	1.6	1.4	1.3	1.2
1121 Wine of fresh grapes (including fortified wine)	1.7	1.8	1.1	1.2
0111 Bovine meat, fresh, chilled	1.4	1.2	1.0	1.0
0121 Meat of sheep or goats	0.8	0.8	0.6	0.8
0222 Milk concentrated or sweetened	0.7	0.6	0.6	0.5
Agricultural raw material	3.4	3.4	2.4	2.3
2681 Wool, greasy (including fleece-washed wool)	1.2	1.4	0.9	0.8
Mining	51.4	51.7	59.9	57.2
Ores and other minerals	19.7	20.8	22.2	22.9
2815 Iron ores and concentrates, not agglomerated	8.8	9.5	13.5	15.2
2852 Alumina (aluminium oxide)	3.6	3.5	2.8	2.4
2831 Copper ores and concentrates	2.5	2.3	1.8	1.9
2877 Manganese ores and concentrates	0.3	0.4	0.9	0.5
Non-ferrous metals	7.6	8.1	5.6	4.8
6841 Aluminium and aluminium alloys, unwrought	3.3	3.2	2.4	1.9
6821 Copper anodes; alloys; unwrought	1.6	1.5	1.2	1.0
Fuels	24.0	22.7	32.0	29.5
3212 Other coal, whether or pulverized, not agglomerated	14.2	12.4	21.0	20.1
3431 Natural gas, liquefied	3.1	3.0	4.2	3.9
3330 Crude oils of petroleum and bituminous minerals	4.1	4.8	4.7	3.7
Manufactures	18.0	18.8	15.5	14.9
Iron and steel	0.6	0.7	0.8	0.4
Chemicals	4.2	4.7	3.8	4.1
5429 Medicaments, n.e.s.	1.7	1.9	1.4	1.7
Other semi-manufactures	2.1	2.0	1.6	1.6
Machinery and transport equipment	8.0	8.2	6.9	6.1
Power generating machines	0.3	0.2	0.2	0.2
Other non-electrical machinery	2.0	2.1	1.8	1.9
Agricultural machinery and tractors	0.1	0.1	0.1	0.1
Office machines & telecommunication equipment	1.4	1.4	1.2	1.1
Other electrical machines	0.8	0.9	0.7	0.7
Automotive products	2.6	2.7	2.3	1.3
7812 Motor vehicles for the transport of persons, n.e.s.	1.8	1.7	1.7	0.8
Other transport equipment	0.8	0.9	0.8	0.9
Textiles	0.3	0.2	0.2	0.2
Clothing	0.1	0.1	0.1	0.1
Other consumer goods	2.7	2.8	2.2	2.4
Other	12.7	13.4	10.7	12.6
Gold	5.6	6.8	6.4	7.7
9710 Gold, non-monetary (excl. gold ores and concentrates)	5.6	6.8	6.4	7.7

Source: UNSD, Comtrade database (SITC Rev.3).

Table AI.3
Merchandise imports by group of products, 2006-09
(US$ million and %)

	2006	2007	2008	2009
Total imports (US$ million)	132,650.7	155,656.8	191,583.9	158,941.1
		(% of total)		
Total primary products	19.9	20.2	22.7	20.0
Agriculture	5.5	5.7	5.4	6.2
Food	4.7	4.9	4.7	5.5
0989 Food preparations, n.e.s.	0.5	0.5	0.5	0.6
Agricultural raw material	0.8	0.8	0.7	0.7
Mining	14.5	14.4	17.2	13.9
Ores and other minerals	0.4	0.5	0.5	0.3
Non-ferrous metals	0.8	1.0	1.0	0.9
Fuels	13.2	13.0	15.7	12.7
3330 Crude oils of petroleum and bituminous minerals	7.6	7.8	7.9	6.1
3432 Natural gas, in the gaseous state	0.3	0.4	0.6	0.9
Manufactures	76.2	75.8	71.4	72.2
Iron and steel	1.9	2.0	2.4	1.8
Chemicals	10.6	10.7	10.4	10.8
5429 Medicaments, n.e.s.	3.1	3.0	2.7	3.3
5157 Other heterocyclic compounds; nucleic acids	0.8	0.8	0.6	0.6
Other semi-manufactures	7.0	7.0	6.6	6.9
Machinery and transport equipment	42.5	42.1	39.0	38.2
Power generating machines	1.3	1.3	1.5	1.8
Other non-electrical machinery	9.6	9.5	9.0	9.8
7439 Parts of machines and apparatus of 743.5 and 743.6	0.1	0.3	0.1	0.8
Agricultural machinery and tractors	0.7	0.5	0.7	0.8
Office machines & telecommunication equipment	11.7	11.2	9.4	10.7
7643 Radio or television transmission apparatus	1.8	1.4	1.1	1.4
7611 Color television receivers	1.1	1.1	1.0	1.4
7522 Digital automatic data processing machines (..)	1.1	1.2	1.1	1.3
7638 Sound/video recording/reproducing apparatus	0.9	0.8	0.7	0.8
7523 Digital processing units (..)	0.8	0.9	0.7	0.7
7599 Parts and accessories of 751.1, 751.2, 751.9 and 752	1.2	0.7	0.5	0.5
Other electrical machines	4.0	4.0	3.7	4.0
Automotive products	11.8	12.6	11.3	9.5
7812 Motor vehicles for the transport of persons, n.e.s.	7.1	7.4	6.5	5.8
7821 Goods vehicles	2.5	2.9	2.8	2.1
7843 Other motor vehicle parts and accessories of 722, 781 to 783	1.3	1.3	1.1	1.0
Other transport equipment[a]	4.2	3.7	4.0	2.3
Textiles	1.4	1.3	1.2	1.2
Clothing	2.5	2.4	2.2	2.6
Other consumer goods	10.4	10.3	9.7	10.8
8722 Instruments used in medical, surgical or veterinary sciences	0.6	0.6	0.6	0.7
8943 Articles for funfair, table or parlour games	0.3	0.4	0.5	0.6
8996 Orthopaedic appliances; artificial parts of the body, etc.	0.6	0.6	0.5	0.6
Other	3.9	4.0	5.9	7.8
Gold	3.3	3.3	4.3	4.6
9710 Gold, non-monetary (excl. gold ores and concentrates)	3.3	3.3	4.3	4.6

a Please note that most aircraft imports were made confidential in Australian Bureau of Statistics trade data from September 2008 onwards and from that date are therefore excluded from 'Other transport equipment' and included in 'Other'.

Source: UNSD, Comtrade database (SITC Rev.3).

Table AI.4
Merchandise exports by destination, 2006-09
(US$ and %)

	2006	2007	2008	2009
Total exports (US$ million)	123,322.8	139,122.2	186,853.0	153,766.6
		(% of total)		
America	8.7	8.4	7.6	6.9
United States	6.2	6.0	5.5	4.9
Other America	2.6	2.4	2.2	2.1
Canada	1.0	1.1	0.7	0.7
Europe	13.1	12.8	11.2	9.2
EU(27)	12.5	11.4	10.5	8.7
United Kingdom	5.0	4.2	4.2	4.6
The Netherlands	1.7	1.7	1.6	1.0
Germany	0.8	0.8	0.8	0.7
France	0.8	0.9	0.8	0.6
EFTA	0.3	1.1	0.3	0.3
Other Europe	0.3	0.3	0.5	0.2
Commonwealth of Independent States (CIS)	0.5	0.5	0.7	0.4
Africa	2.5	2.4	2.0	1.7
South Africa	1.4	1.5	1.1	0.8
Middle East	3.8	4.1	4.0	3.4
United Arab Emirates	1.2	1.8	1.8	1.1
Saudi Arabia	1.3	1.2	1.1	0.9
Asia	70.1	70.5	73.1	77.5
China	12.5	14.0	14.6	21.7
Japan	19.8	19.0	22.9	19.5
Six East Asian Traders	20.5	20.2	20.3	19.2
Korea, Rep. of	7.5	8.0	8.3	8.0
Chinese Taipei	3.8	3.5	3.7	3.3
Singapore	2.8	2.4	2.8	2.7
Thailand	2.6	2.6	2.4	2.2
Malaysia	1.7	1.9	1.8	1.6
Hong Kong, China	1.9	1.7	1.4	1.5
Other Asia	17.4	17.3	15.4	17.1
India	5.4	5.5	6.1	7.4
New Zealand	5.5	5.6	4.2	4.0
Indonesia	2.7	2.3	1.9	2.1
Papua New Guinea	0.9	1.0	0.7	0.9
Viet Nam	1.0	0.8	0.7	0.7
Other	1.4	1.4	1.3	1.0
Memorandum:				
APEC	71.7	71.6	73.1	75.3
ASEAN	11.5	10.8	10.3	10.0

Source: UNSD, Comtrade database (SITC Rev.3).

Table AII.1
Principal notifications under WTO Agreements, 2007-20 December 2010

Agreement	Requirement/content	Document symbol and date of latest notification
Agreement on Agriculture		
Articles 10 and 18.2	Table ES.1, ES.2 and ES.3 – Export subsidies	G/AG/N/AUS/80, 13 August 2010
Article 16.2	Table NF.1 - Monitoring of the Follow-Up to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries	G/AG/N/AUS/81, 27 August 2010
Article 18.2	Table MA.1 – Tariff quotas	G/AG/N/AUS/1/Rev.1, 27 August 2010
Article 18.2	Table MA.2 – Imports under tariffs quotas	G/AG/N/AUS/78, 13 August 2010
Article 18.2	Table DS.1 and the relevant supporting tables – Domestic support	G/AG/N/AUS/76, 13 July 2010
Article 18.3	Table DS.2 – New or modified domestic support measures exempt from reduction	G/AG/N/AUS/77, 13 July 2010
Article 5.7 and 18.2	Table MA.5 – Use of special safeguard provisions	G/AG/N/AUS/79, 13 August 2010
General Agreement on Tariffs and Trade (GATT) 1994		
Article XVII:4(a)	Notification of the understanding on the interpretation of Article XVII on State-trading	G/STR/N/13/AUS, 13 September 2010
Article XXIV:7(a) – Free-trade Areas	Free-trade agreement between Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand, and Viet Nam	WT/REG284/N/1, S/C/N/545, 9 April 2010
	Free-trade agreement between Australia and Chile	WT/REG263/N/1, S/C/N/484, 5 March 2009
Article XXVIII:5	Modification of schedules (reserve the right to modify schedules for a three-year period)	G/MA/209, 1 October 2008
Agreement on Implementation of GATT Article VI of the GATT 1994 (Anti-dumping)		
Article 16.4	Ad hoc reports of anti-dumping actions	G/ADP/N/200, 21 May 2010
	Semi-annual reports of anti-dumping actions (taken within the preceding six months)	G/ADP/N/202/AUS, 7 September 2010
General Agreement on Trade in Services		
Article III:3		S/C/N/542, 1 April 2010
Article V:7(a)	Free-trade agreement between Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Viet Nam	WT/REG284/N/1, S/C/N/545, 9 April 2010
	Free-trade agreement between Australia and Chile	WT/REG263/N/1, S/C/N/484, 5 March 2009
Article VII:4	Existing Article VII:1 recognition measures	S/C/N/538, 18 March 2010
Agreement on Rules of Origin		
Article 5.1	Preferential rules of origin	G/RO/N/51, 1 June 2007
Agreement on Safeguards		
Article 12.1(a) and (b)	Information to be notified to the Committee where a safeguard investigation is terminated with no safeguard measure imposed	G/SG/N/9/AUS/2, 10 April 2009
	Preliminary determination – findings	G/SG/N/8/AUS/2, 21 December 2007
	Initiation of an investigation and the reason for it	G/SG/N/6/AUS/2, 30 October 2007
Agreement on the Application of Sanitary and Phytosanitary Measures		
Article 7 and Annex B	Transparency of regulations	68 notifications made during period 2007-10 (the latest in: G/SPS/N/AUS/257, 17 November 2010)
Agreement on Subsidies and Countervailing Measures		
Article 25.1	Notification of subsidies	G/SCM/N/186/AUS/, 19 October 2009

Table AII.1 (cont'd)

Agreement	Requirement/content	Document symbol and date of latest notification
Article 25.11	Ad hoc reports on countervailing duty actions	G/SCM/N/209, 20 May 2010
	Semi-annual report on countervailing duty actions	G/SCM/N/212/AUS, 8 September 2010
Agreement on Technical Barriers to Trade (TBT)		
Articles 2.9, 10.6 and other	Proposed and adopted technical regulations	11 notifications made during period 2007-10 (the latest in: G/TBT/N/AUS/64, 28 May 2010)
Agreement on Trade-Related Aspects of Intellectual Property Rights		
Article 63.2	Laws and regulations	IP/N/1/AUS/3, 27 June 2008
Article 69	Contact points	IP/N/3/Rev.9/Add.3, 16 February 2007

Source: WTO documents.

Table AIII.1
Subsidies notified under WTO provisions, 2007/08 and 2008/09
($A million)

	Type of subsidy	Expiry date	2007/08	2008/09
I. Federal Programme				
Agriculture				
Dairy Industry Adjustment Package (DIAP)	Grants	23 February 2009	206.5	0.169[a]
Environment				
LPG Vehicle Scheme	Grants	30 June 2014	163.42	169.78
Forestry				
Tasmanian Forest Industry Development Programme	Grants	30 June 2009	21.23	25.35
Tasmanian Country Sawmills Assistance Programme	Grants	30 June 2009	1.77	1.42
Tasmanian Softwood Industry Development Programme	Grants	30 June 2009	3.00	8.49
Innovation				
Commercial Ready	Grants	2011-12	135.94	84.58[b]
Climate Ready	Grants	30 June 2012	..	15.58[b]
Renewable Energy Development Initiative	Grants	2010-11	17.22[b]	18.33[b]
Biotechnology Innovation Fund[c]	Grants	30 September 2004	0.01[b]	..
Innovation Access Programme	Grants	2007-08	1.14[b]	0.00
Industry Cooperative Innovation Programme (ICIP)	Grants	June 2011	4.53[b]	4.88[b]
Commercialising Emerging Technologies (COMET)	Grants	30 June 2011	13.97[b]	11.35[b]
International Science Linkages Programme	Grants	Undefined	..	1.36[d]
Intermediary Access (Pilot) Programme (IAP)	Funding of services	30 June 2008	0.49[b]	0.12[b]
Manufacturing industry				
Automotive Competitiveness & Investment Scheme (ACIS)	Duty credit	31 December 2010	506.93	479.15
Automotive Transformation Scheme (ATS)[e]	Grants (for eligible expenditures)	31 December 2020	..	..
Green Car Innovation Fund	Grants	10 years as of 2009-10	..	..
Automotive Industry Structural Adjustment Programme (AISAP)	Grants	30 June 2011	..[f]	..[f]
Automotive Supply Chain Development Programme	Grants	30 June 2013	..	..
Pharmaceuticals Partnerships Programme (P^3)	Grants	30 June 2009	24.6[b]	..
Sugar Industry Reform Programme 2004 (SIRP)	Grants, welfare relief payments, counselling services and tax exemptions	30 June 2008	35.0	4.47
Textiles, Clothing & Footwear Post-2005 Strategic Investment Programme Scheme 2005 (TCF Post-2005 (SIP) Scheme)	Grants	30 June 2011	..	..
Textile, Clothing and Footwear Restructuring Initiative Grant Scheme (TCF RIG Scheme)	Grants	30 June 2015	..	..
TCF Small Business Programme	Grants	30 June 2016	..	..
Product Diversification Scheme	Duty concessions	30 June 2011	..	..
Regional development				
Murray Darling Basin Irrigation Management Grants Programme	Taxable grants	31 December 2009	144.88	55.44[a]
Structural Adjustment Fund for South Australia (SAFSA)	Grants	30 June 2009	..[f]	..[f]

Table AIII.1 (cont'd)

	Type of subsidy	Expiry date	2007/08	2008/09
Innovation and Investment Fund for South Australia (IIFSA)	Grants	30 June 2010	..[f]	..[f]
Geelong Investment and Innovation Fund (GIIF)	Grants	30 June 2010	..[f]	..[f]
South Australia Innovation and Investment Fund (SAIIF) – Industry Development Programme	Grants	30 June 2011	..[f]	..[f]
II. Sub-Federal Programme				
Total			111.7	66.0
No. of companies/packages offered			318	526
Australian Capital Territory				
Investment Facilitation Programme	Waivers of payroll tax liability	Undefined	..	..
Innovation Connect (ICON)	Grants	Undefined	..[f]	..[f]
New South Wales				
Industries Assistance Fund (IAF)	Partial rebates of states taxes	Undefined	..	..
Regional Business Development Scheme	Grants	Undefined	5.19	5.59
Hunter and Illawarra Advantage Funds	Financial assistance or tax concessions	Undefined	1.81	2.37
Biotechnology Initiatives	In-kind assistance and/or direct financial assistance	Undefined	2.44	2.37
Northern Territory				
Industry & Business Assistance	Grants	Undefined	..	..
Queensland				
Queensland Investment Incentives Scheme	Refunds, grants	Undefined	..	..
Business and Industry Transformation Incentives	Grants	Undefined	0.99	1.80
Queensland Industry Development Scheme	Grants	September 2007	1.00	0.09
Smart Mining – Future Prosperity Programme grant initiatives	Grants	2010	0.39	1.90
Tasmania				
Investment Attraction Programme and Industry Development Programme	Grants, concessional loans, payroll tax exemptions, rental assistance, reduced stamp duty, workforce training and development or feasibility/technical studies	Undefined	..	..
Victoria				
Investment Support Programme	Financial assistance	Undefined	..	..
Industry Transition Fund	Financial assistance	June 2010	..	..
Community Regional Industry Skills Programme	Grants and training assistance	Partially terminated in June 2010	1.20	0.80
Regional Inward Buyer Mission Programme	Grants	30 June 2010	..[f]	..[f]
Brown Coal Research and Development	Taxable R&D grants	Undefined	..[f]	..[f]
Carbon Capture and Storage Large Scale Demonstration Programme	Taxable grants	Undefined	..[f]	..[f]
Large Scale Demonstration Programme	Taxable grants	Undefined	..[f]	..[f]
Sustainable Energy Large Scale Demonstration Programme	Taxable grants	Undefined	..[f]	..[f]
Sustainable Energy Research & Development (SERD) Grants Programme	Taxable R&D grants	30 June 2010	..[f]	..[f]

Table AIII.1 (cont'd)

	Type of subsidy	Expiry date	2007/08	2008/09
Best Practice in Business Energy Efficiency	Financial assistance	2009/10	0.14	0.23
Commercial and Industrial Resource Recovery	Competitive funding for infrastructure establishment or upgrades	2009/10	2.22	1.60
Clean Technology Investment	Financial assistance	2009/10	0.46	0.55
Renewable Energy Support Fund	Taxable grants	2009/10	0.83	0.34
Western Australia				
Investment Ready Programme (IRP) – National and Global Development Module	Grants	Undefined	..	0.01

.. Not available.

a Estimate.
b Financial outlay.
c The programme was absorbed by the Commercial Ready Programme on 1 October 2004 with all continuing funding commitments being made from the Commercial Ready Programme allocation.
d This amount is the total value for financial years 2007/08 and 2008/09.
e Programme will only commence on 1 January 2011.
f Annual subsidy not available, only the total value of the programme is available.

Source: WTO document G/SCM/N/186/AUS, 19 October 2009.

Table AIV.1
Effective rate of combined assistance by industry grouping, 2005-06 to 2008-09[a]
(%)

Industry grouping	2005-06	2006-07	2007-08	2008-09
Primary production[b]	**4.9**	**7.1**	**7.5**	**4.9**
Dairy cattle farming	11.7	16.8	15.4	4.4
Grain, sheep and beef cattle	4.1	7.5	8.1	6.3
Horticulture and fruit growing	4.7	4.6	4.8	5.6
Other crop growing	7.0	5.9	5.0	1.8
Other livestock farming	2.5	2.8	3.7	2.4
Fisheries	4.1	16.1	10.0	4.5
Forestry and logging	7.9	5.1	4.4	-2.4
Other primary production[c]	0.4	0.5	0.5	0.3
Mining	**0.1**	**0.1**	**0.1**	**0.1**
Manufacturing[b]	**4.6**	**4.6**	**4.6**	**4.6**
Food, beverages and tobacco	3.4	3.3	3.3	3.4
Textiles, clothing and footwear	15.3	14.6	14.4	14.5
Wood and paper products	4.9	4.9	5.2	5.3
Printing, publishing and media	1.4	1.4	1.5	1.5
Petroleum, coal and chemicals	3.5	3.6	3.7	3.7
Non-metallic mineral products	2.5	2.6	2.6	2.6
Metal product manufacturing	4.7	4.7	4.6	4.5
Motor vehicles and parts	12.2	12.4	12.0	11.8
Other transport equipment	2.0	1.7	1.8	2.0
Other machinery and equipment	3.7	3.7	3.7	3.8
Other manufacturing	5.3	5.2	5.3	5.0

a Combined assistance comprises budgetary, tariff and agricultural pricing and regulatory assistance.
b Sectoral estimates include assistance to the sector that has not been allocated to specific industry groupings.
c Other primary production includes services to agriculture (including hunting and trapping) and poultry farming.

Source: Productivity Commission (2010), *Trade & Assistance Review 2008-2009*, Table 2.6, 22 June, Canberra. Viewed at: http://www.pc.gov.au/__data/assets/pdf_file/0007/98998/tar0809.pdf [12 July 2010].