

**EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF
THE UNITED STATES OF AMERICA TO AMEND ANNEX 2-B (TARIFF
SCHEDULE OF AUSTRALIA), ANNEX 4-A AND ANNEX 5-A OF THE
AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT (AUSFTA)
TO ENSURE COMPLIANCE WITH CHANGES TO THE HARMONIZED
COMMODITY DESCRIPTION AND CODING SYSTEM**

Documents tabled on 6 September 2006:

**National Interest Analysis [2006] ATNIA 39
with attachment on consultation**

Texts of the proposed treaty action

Background information:

**Political briefs and economic fact sheets on the
United States of America**

Lists of other treaties with the United States of America

Lists of treaties of the same type with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to Amend Annex 2-B (Tariff Schedule of Australia), Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007

Nature and timing of proposed treaty actions

1. It is proposed to bring into force an Agreement to amend the Australia-United States Free Trade Agreement (AUSFTA) of 18 May [2005] ATS 1. The Amending Agreement will replace the following annexes of AUSFTA amending tariff line numbers to comply with the 2007 changes to the Harmonized Commodity and Description and Coding System (HS): AUSFTA Annex 2-B (Tariff Schedule of Australia), Annex 4-A and Annex 5-A. Amendments relating to Annex 4-A and Annex 5-A were tabled in Parliament on 8 August and considered by JSCOT on 14 August 2006. The amendments the subject of this National Interest Analysis contain amendments to Annex 2-B and further amendments to Annex 5-A.

2. These amendments are being made pursuant to the amendment provisions in Article 23.3 of AUSFTA. The Amending Agreement containing all amendments to AUSFTA Annex 2-B, Annex 4-A and Annex 5-A is proposed to come into force on 1 January 2007 by an exchange of Diplomatic Notes. The Notes will be exchanged once Australia's internal processes are completed and before the Agreement comes into force.

Overview and national interest summary

3. The Harmonised Standard (HS) is an international system for classifying all goods traded on the international market. The HS is overseen by the World Customs Organization of which Australia and its free trade agreement (FTA) partners are members. Every five years, the HS is amended to reflect changes in the kinds of goods that are traded on the international market. The next set of amendments will come into effect on 1 January 2007 (these amendments are referred to as HS2007). The changes made to the HS involve the creation of new HS tariff line numbers to reflect a new product coming onto the market, the deletion of a number where a good is no longer traded or the movement of a tariff line number from one sub-heading (or category of goods) to another to account for change in the use of the good.

4. AUSFTA includes annexes that detail how specific goods will be treated when they are traded between Australia and the United States. These goods are identified by their HS number. The purpose of the Amending Agreement is to ensure AUSFTA continues to reflect the internationally agreed HS as amended by HS2007. If AUSFTA is not amended to reflect these changes, discrepancies will exist between the internationally recognised tariff line numbers used to describe some goods and the tariff line numbers that are used in AUSFTA. This could lead to delays in processing some goods through customs, when they are traded between Australia and the United States, because it will be unclear how these goods should be treated under the terms of AUSFTA as the case may be.

Reasons for Australia to take the proposed treaty action

5. The purpose of the proposed action is to ensure that the tariff line numbers identifying goods in AUSFTA accurately reflect the internationally agreed descriptions of goods as defined in the HS. Differences between the numbers used to classify goods in AUSFTA and those used to classify goods under the HS could lead to confusion for importers, exporters and customs services when processing goods through customs, which in turn could result in delays. The amendments to AUSFTA seek to avoid possible confusion and subsequent delays in processing by customs authorities.

6. The proposed amendments to AUSFTA have been agreed to by the Government of the United States of America.

7. As HS2007 will come into effect on 1 January 2007, it is proposed that the Amending Agreement also come into force on 1 January 2007.

Obligations

8. The proposed changes to AUSFTA will not impose any additional obligations on Australia. Australia's obligation continues to be to impose the correct tariff rate on goods described in each tariff line. Goods in newly described tariff lines will not attract any change of tariff rates.

Implementation

9. Changes to AUSFTA Annex 2-B and Annex 5-A will require importers and exporters who trade goods between Australia and the United States to ensure that the tariff line number they use to describe their goods for customs purposes remains current after 1 January 2007.

10. The Australian Customs Service will issue an Australian Customs Notice before these amendments come into force to formally notify affected parties of the changes. The Australian Customs Service will also directly notify those importers and exporters who will be affected by the changes and who have previously sought formal advance rulings as to the correct tariff line number pertaining to their particular goods. These importers and exporters will be provided with new advice, before the changes comes into force, as to the amended tariff line number that applies to their goods after 1 January 2007.

11. Amendments to the *Custom Tariff Act 1995* will be required to implement the amendments to Annex 2-B. The Australian Customs Service will progress this legislation through Parliament. To implement Annex 5-A, amendments to the *Customs (Australia-US Free Trade Agreement) Regulations 2004* will be required.

Costs

12. The cost to the Australian Customs Service to provide this service will be negligible.

13. The cost of the amendments to AUSFTA to Australian business will be negligible.

Regulation Impact Statement

14. The Office of Regulation Review has advised the Department of Foreign Affairs and Trade that a Regulation Impact Statement is not required in relation to these proposed amendments to AUSFTA.

Future Treaty Action

15. AUSFTA contains provisions for consultation in Article 21.5 and amendment in Article 23.3.

16. The amendment provision requires the parties to agree in writing to amendments. Once all necessary domestic requirements are complete, amendments will then come into force on the date specified in the Diplomatic Notes. AUSFTA will need to be amended each time the HS is updated. The next scheduled date on which any further HS amendments will come into force will be 1 January 2012.

Withdrawal or denunciation

17. AUSFTA contains provisions for unilateral termination of the Agreement by either Party in Article 23.4.

18. Termination by Australia would be subject to our domestic treaty process, including tabling in Parliament and consideration by JSCOT.

Contact details

US Trade Section
United States Branch
Department of Foreign Affairs and Trade.

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend Annex 2-B (Tariff Schedule of Australia), Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System

Consultation

1. The HS2007 changes have been under discussion in the World Customs Organization (WCO) since changes were last made to the HS in 2002. Because changes are made to the HS every five years, the Australian Customs Service has consulted with the Department of Industry, Tourism and Resources and other relevant Government agencies if and when issues pertaining to particular industries have been raised for consideration by members of the WCO. Outcomes from these *ad hoc* consultations have then fed into Australia's input into decisions taken in the WCO regarding changes to the HS.
2. No specific consultations have been held with the States and Territories on HS2007 because of the negligible impact of the changes.
3. Australian industry was consulted by the Government early in the evaluation processes for changes to Annexes 4-A and 5-A, particularly the chemicals and automotive parts industries, to ensure the required changes to the relevant tariff line numbers remained workable. No negative responses were received in these consultations.

AUSTRALIA-UNITED STATES BILATERAL BRIEF

Bilateral Relations Overview

Vital Australian national interests are advanced through our strong and robust relationship with the United States. Australia engages with the United States closely, advocating our views across a broad range of international issues. While Australian and American interests converge on a majority of international policy issues, we do not agree on everything. Where this is the case, Australia pursues its interests separately from the United States.

Defence and Security

At the heart of government relations between Australia and the United States is the ANZUS Treaty, signed in 1951. Defence cooperation increases Australia's ability to protect itself and its interests by providing access to world-leading defence hardware and technologies and to vital intelligence capabilities. Interoperability with US forces and the ability to contribute to multinational coalitions are central to Australia's defence policies, acquisition and training.

Trade and Investment

The United States is Australia's single most important economic partner. It is one of our top merchandise trading partners, our largest services trading partner and the major source of foreign direct investment (FDI). Australia is the eighth largest provider of FDI to the United States. The Australia-United States Free Trade Agreement (AUSFTA) builds on our A\$41.6 billion two-way trading relationship and delivers significant gains across all sectors of the economy. After a decline since 2001 linked to the strong Australian dollar, Australian exports for FY2005-2006 have demonstrated growth of 3 per cent, in part driven by the FTA. Imports from the United States have also increased in this period in the order of 10 per cent.

US Economy

The United States' economy represents more than one quarter of global GDP. The United States is a major driver of the global economy and is number one in the world in terms of international trade and investment, research and development expenditure, stock market capitalisation and its share of large global corporations. Annual US GDP growth has averaged more than 3 per cent over the past two decades, however real GDP growth is forecast to slow to an estimated 2.4 per cent in 2007. Current predictions are for the federal budget deficit to expand significantly over the next two fiscal years as government spending on defence and homeland security remains strong and the pace of economic growth continues to slow. The current account deficit (6.4 per cent of GDP in 2005), fiscal deficit and high level of private sector debt are the major weaknesses in the US economy.

US Politics

Republicans currently hold a majority in both the Senate (55-44-1) and the House (233-201-1), but Democrats retain blocking power in the Senate. Mid-term elections will be held on 7 November 2006. All 435 seats in the House of Representatives will be contested with Republicans currently holding a 30 seat advantage. Democrats would need to gain 16 seats to take control of the House, which has had a Republican majority since 1995. In the Senate, there are marginally more Democratic seats up for re-election in 2006 (18) than Republican (15). The Democrats would need a six-seat gain to take control of the Senate.



UNITED STATES

Fact Sheet

General information:

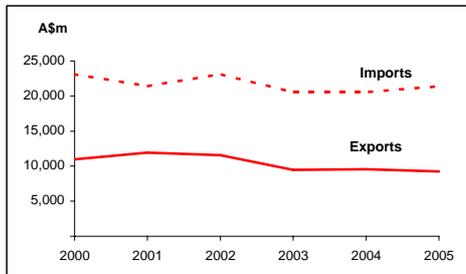
Fact sheets are updated biannually; May and September

Capital	Washington D.C.
Surface area:	9,364 thousand sq km
Official language:	English
Population:	296.4 million (2005)
Exchange rate:	A\$1 = US\$0.7633 (May 2006)

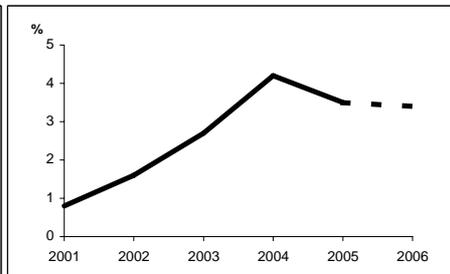
Head of State and Head of Government:
President The Hon. George W Bush

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	10,128.0	10,469.6	10,971.3	11,734.3	12,485.7	13,228.4
GDP PPP (US\$bn) (c):	9,985.8	10,322.6	10,817.2	11,569.5	12,277.6	12,939.3
GDP per capita (US\$):	35,506	36,336	37,702	39,938	42,101	44,168
GDP per capita PPP (US\$) (c):	35,007	35,826	37,173	39,377	41,399	43,203
Real GDP growth (% change YOY):	0.8	1.6	2.7	4.2	3.5	3.4
Current account balance (US\$m):	-389,455	-475,204	-519,678	-668,082	-804,951	-864,189
Current account balance (% GDP):	-3.8	-4.5	-4.7	-5.7	-6.4	-6.5
Goods & services exports (% GDP):	10.2	9.6	9.5	10.0	10.4	10.8
Inflation (% change YOY):	2.8	1.6	2.3	2.7	3.4	3.2

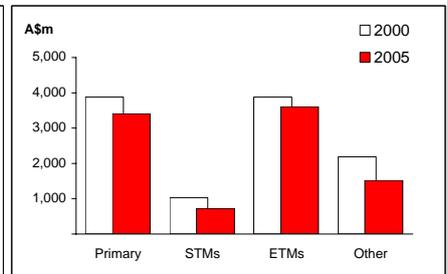
Australia's merchandise trade with the United States



Real GDP growth



Australia's merchandise exports to the United States



Australia's trade relationship with the United States:

Australian merchandise trade with the United States, 2005:

Exports to the United States (A\$m):	9,260
Imports from the United States (A\$m):	21,404
Total trade (exports + imports) (A\$m):	30,664

Total share:	Rank:	Growth (yoy):
6.7%	4th	-3.0%
13.7%	1st	4.3%
10.4%	3rd	2.0%

Major Australian merch. exports, 2005 (A\$m):

Bovine meat	1,208
Alcoholic beverages	907
Meat (excl. bovine)	421
Passenger motor vehicles	368

Major Australian merch. imports, 2005 (A\$m):

Aircraft & parts	1,572
Measuring and controlling instruments	813
Medicaments (incl. veterinary)	773
Telecommunications equipment	728

Australia's trade in services with the United States, 2005:

Exports of services to the United States (A\$m):	4,431
Imports of services from the United States (A\$m):	6,489

Total share:

11.9%
16.9%

Major Australian service exports, 2005 (A\$m):

Other business services	954
Personal travel excl. education	824

Major Australian service imports, 2005 (A\$m):

Personal travel excl. education	1,576
Royalties & license fees	1,236

United States' global merchandise trade relationships:

United States' principal export destinations, 2005:

1	Canada	23.4%
2	Mexico	13.3%
3	Japan	6.1%
14	Australia	1.7%

United States' principal import sources, 2005:

1	Canada	17.2%
2	China	14.6%
3	Mexico	10.2%
35	Australia	0.4%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity.

LIST OF OTHER TREATIES WITH THE UNITED STATES OF AMERICA

- Air Transport Agreement
[1946] ATS 8
- Exchange of Notes constituting an Agreement regarding the Extension of Time for Copyright
[1949] ATS 17
- Exchange of Notes constituting an Agreement regarding Reciprocal Waiver of Visa Fees
[1950] ATS 2
- Exchange of Notes constituting an Agreement relating to Mutual Defence Assistance
[1951] ATS 22
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Gifts
[1953] ATS 4
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on the Estates of Deceased Persons
[1953] ATS 4
- Exchange of Notes constituting an Agreement relating to Non-Immigrant Passport Visas
[1955] ATS 18
- Agreement concerning Cooperation regarding Atomic Information for Mutual Defence Purposes
[1957] ATS 13
- Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defence Purposes, and Exchange of Notes
[1958] ATS 2
- Exchange of Notes constituting an Agreement relating to Non-Immigrant Visa Procedures
[1959] ATS 32
- Mutual Weapons Development Program Agreement
[1960] ATS 11

- Exchange of Notes constituting an Agreement concerning a Program of Cooperation to Facilitate Space Flight Operations contributing to the advancement of Mutual Scientific Knowledge of Man's Spatial Environment and Its Effects
[1961] ATS 9
- Exchange of Notes constituting an Agreement for Co-operation in a Transit Navigational Satellite Programme
[1961] ATS 10
- Exchange of Notes constituting an Agreement relating to Procedures for the Reciprocal Filing of Classified Patent Applications under the Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defence Purposes of 24 January 1958
[1961] ATS 25
- Agreement concerning the Status of United States Forces in Australia, and Protocol
[1963] ATS 10
- Agreement for the Funding of Certain Education and Cultural Programs [Fulbright Agreement]
and
Exchange of Notes amending the Agreement for the Financing of Certain Educational and Cultural Exchange Programmes of 28 August 1964 (Canberra, 27 May 2003)
[1964] ATS 15
- Exchange of Notes constituting an Agreement regarding the Reciprocal Granting of Authorisations to Permit Licensed Amateur Radio Operators of Either Country to Operate their Stations in the Other Country
[1965] ATS 8
- Agreement relating to the Establishment of a Joint Defence Space Research Facility [Pine Gap, NT]
[1966] ATS 17
- Exchange of Notes constituting an Agreement to amend the Agreement for the Funding of Certain Education and Cultural Programs of 28 August 1964 [Fulbright Agreement]
[1967] ATS 12
- Exchange of Notes constituting an Agreement relating to Reciprocal Acceptance of Airworthiness Certifications
[1975] ATS 21
- Treaty on Extradition
[1976] ATS 10

- Exchange of Notes extending the Agreement relating to the Establishment of a Joint Defence Space Research Facility [Pine Gap]
[1977] ATS 24
- Exchange of Notes constituting an Agreement concerning the Establishment, Maintenance and Operation of a Solar Observatory
[1977] ATS 25
- Exchange of Notes constituting an Agreement regarding the Management and Operation of the Joint Geological and Geophysical Research Station at Alice Springs
[1978] ATS 3
- Exchange of Notes constituting an Agreement concerning Space Vehicle Tracking and Communication Facilities, 1980
[1980] ATS 15
- Agreement concerning Peaceful Uses of Nuclear Energy
[1981] ATS 4
- Agreement relating to Cooperation on Antitrust Matters
[1982] ATS 13
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
[1983] ATS 16
- Exchange of Notes constituting an Agreement to amend the Agreement regarding Management and Operation of the Joint Geological and Geophysical Research Station at Alice Springs of 28 February 1978
[1984] ATS 9
- Exchange of Notes constituting an Agreement on Employment Opportunities for Dependants of Officials Overseas
[1984] ATS 33
- Exchange of Notes constituting Agreements concerning the Application of the Agreement concerning Peaceful Uses of Nuclear Energy of 5 July 1979
[1985] ATS 22
- Exchange of Letters constituting an Agreement to amend the Air Transport Agreement of 3 December 1946
[1987] ATS 24

- Exchange of Notes constituting an Agreement Amending and Further Extending in force the Agreement on the Establishment of a Joint Space Research Facility of 9 December 1966 [Pine Gap]
[1988] ATS 36
- Exchange of Notes constituting an Agreement regarding access to the Australian Fishing Zone
[1988] ATS 44
- Exchange of Notes constituting an Agreement to amend the Air Transport Agreement of 3 December 1946
[1989] ATS 6
- Exchange of Notes constituting an Agreement concerning Airline Capacity
[1989] ATS 7
- Agreement concerning Cooperation in Defence Logistic Support
[1989] ATS 28
- Exchange of Notes constituting an Agreement concerning the Transfer of Australian Ores containing Uranium, Thorium, Monazite and Xenotime
[1989] ATS 31
- Exchange of Notes constituting an Agreement to further Amend and Extend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980
[1990] ATS 15
- Agreement concerning NAVSTAR Global Positioning System
[1991] ATS 11
- Exchange of Notes constituting an Agreement to bring International Obligation Exchanges under the Coverage of the Agreement concerning Peaceful Uses of Nuclear Energy, and Agreed Minute, of 5 July 1979
[1991] ATS 48
- Exchange of Notes constituting an Agreement to amend the Agreement for the Funding of Certain Education and Cultural Programs of 28 August 1964 [Fulbright Agreement]
[1992] ATS 8
- Protocol amending the Treaty on Extradition of 14 May 1974
[1992] ATS 43
- Exchange of Notes constituting an Agreement to amend the Air Transport Agreement of 3 December 1946 and the Agreement concerning Capacity of 23 March 1989
[1994] ATS 8

- Agreement concerning Cooperative and Collaborative [Defence] Research, Development and Engineering
[1994] ATS 35
- Memorandum of Agreement concerning Reciprocal Defence Procurement
[1995] ATS 20
- Exchange of Notes constituting an Agreement concerning Certain Mutual Defence Commitments [Chapeau Defence Agreement]
[1995] ATS 35
- Agreement concerning [Defence] Acquisition and Cross-Servicing
[1999] ATS 18
- Treaty on Mutual Assistance in Criminal Matters
[1999] ATS 19
- [Supplementary] Agreement on Mutual Antitrust Enforcement Assistance
[1999] ATS 22
- Agreement for Cooperation concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation (SILEX Agreement), Agreed Minutes and Exchange of Notes
[2000] ATS 19
- Exchange of Notes Constituting an Agreement to further extend in force the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap of 9 December 1996, as amended
[2000] ATS 27
- Exchange of Notes constituting an Agreement to further Amend and Extend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980, as amended
[2000] ATS 32
- Agreement by Exchange of Notes to Amend and Extend the Agreement on Cooperation in Defence Logistics Support [CDLSA] of 4 November 1989
[2001] ATS 13
- Exchange of Notes constituting an Agreement concerning Cooperation in the Application of Non-Proliferation Assurances on Retransfer to Taiwan
[2002] ATS 9
- Agreement on Social Security
[2002] ATS 18

- Agreement for the Enforcement of Maintenance (Support) Obligations
[2002] ATS 24
- Agreement concerning Security Measures for the Protection of Classified Information
[2002] ATS 25
- Protocol Amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 6 August 1982
[2003] ATS 14
- Agreement on the Promotion of Aviation Safety
[2005] ATNIF 8
- Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities
[2005] ATNIF 17
- Agreement on Cooperation in Science and Technology for Homeland/Domestic Security Matters
[2005] ATNIF 34

September 2006

TREATIES OF THE SAME TYPE WITH OTHER COUNTRIES

- Australia New Zealand Closer Economic Relations - Trade Agreement (ANZCERTA)
[1983] ATS 2
and amendments:
[1988] ATS 17
[1988] ATS 18
[1988] ATS 20
[1988] ATS 27
[1992] ATS 27
[1994] ATS 39
- Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea (PATCRA II)
[1991] ATS 37
- Singapore-Australia Free Trade Agreement (SAFTA)
[2003] ATS 1
- Australia-Thailand Free Trade Agreement (TAFTA)
[2005] ATS 2