



December 2003 Highlights

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Website

Visit our new website
<http://www.servicesaustralia.org.au>

**Upcoming
Events: ASR
Media Launch**

Roundtable Media Launch
National Press Club
Televised luncheon address

by Hon. Mark Vaile, Minister
for Trade
Thursday 12 February
12 – 2.30pm
Canberra

**Senate Report on
the GATS**

The Senate Committee on Foreign Affairs, Defence and Trade released its report on The General Agreement on Trade in Services and an Australia-US Free Trade Agreement on 26 November 2003.

Of particular interest are the recommendations on treaties and parliamentary processes and the implications of the GATS for public services. The Committee's recommendations include:

- The Government, prior to making an offer for further market liberalisation under any agreement, should table a document setting out its priorities and objectives and the impacts that are expected to arise on the economy as a whole as a result of entering into such commitments.
- The Government should commission research to

evaluate the socio-economic impact of the trade liberalisation in Australia.

- The Department of Foreign Affairs and Trade (DFAT) should consult widely with different industry groups prior to preparation of Australia's offers and requests under the GATS and provide feedback to all affected organisations.

- The Government should not make any offers or commitments under the GATS that will adversely affect postal services, public health services, public education, cultural industries, and the ownership of water.

The full Committee report can be found at:
http://www.aph.gov.au/Senate/committee/FADT_CTTE/gats/report/index.htm

**Free Trade
Agreement with
the US**

Service industries face continued uncertainty as to the final outcome of the AUSTFA negotiations, with the final Round now



scheduled for 19 January 2004.

As far as services are concerned, the most sensitive outstanding issues are:

- investment screening
- digital content
- investor state dispute settlement

,the outcomes on which will remain a matter of last minute domestic politics and trade diplomacy.

ASR has attended several briefing sessions arranged by the DFAT negotiating team. General assurances have been offered that Australia's service industries' concerns are being heeded. As a treaty, AUSFTA may have significant effects arising from the minute details of texts that we may not have seen before they are agreed.

The negotiating framework has been complex, with separate DFAT teams negotiating on each of the proposed Chapters of the agreement, and each team conducting its own separate consultations with industry representatives. ASR has attended "stakeholder"

meetings with DFAT on the proposed Services chapter, which covers matters of market access (i.e. the terms on which an entity is allowed to provide a service in the other country). That Chapter will cover some important issues such as recognition of professional qualifications and conditions of temporary working visas, and should offer some benefits to Australian firms seeking to provide services in the USA.

Issues of major concern to service industry providers are also under discussion in several other Chapters being negotiated by different DFAT teams, with less consistent patterns of service industry consultation.

Service industry interests will be affected by the separate Chapters on Investment, on Telecommunications and Electronic Commerce and on Intellectual Property. In each of these areas the USA negotiators have pursued very aggressive objectives.

On Investment, the US has sought removal of all requirements for company directors to be resident in Australia, which could potentially limit the ability of Australian governments to

enforce company directors' accountability through Australian law.

They have also sought removal of a wide range of "performance requirements" that Australian governments and regulators such as the ACCC may now impose when they approve a foreign investment.

Such requirements may be particularly significant in the case of takeovers of Australian companies, where the competitiveness of the Australian market may be affected, or there may be a public interest in the intellectual property (e.g. publicly funded research) or other aspects of the takeover target.

Other Australian companies that are suppliers or customers of the takeover target, and whose business might be affected by a move to foreign ownership, could lose capacity to make an effective case for assurances (such as local supply requirements) in the case of a foreign takeover.

The DFAT negotiators are aware of these concerns. The outcome of the negotiation will remain



unclear until the actual text is made public.

Many service industries would also be affected if the Australian government accepted the US proposals on Electronic Commerce - particularly the proposal to treat "digital products" quite differently from the same basic information product or service that is delivered by another means.

The "digital product" concept is seen, potentially, as a Trojan Horse by which information-based services of many kinds supplied from overseas could bypass whatever regulatory conditions normally applied to such a service in Australia.

The scope potentially includes IT services, professional services, publication, education, entertainment, or any service based upon knowledge or transfer of information.

Australian negotiators in the WTO, together with European parties, have been resisting the same US agenda in the context of current WTO negotiations. It is likely that the Australian AUSFTA negotiators will

continue to seek clear definitional boundaries to any application of "digital product" references within an AUSFTA. Once again, we await the final text before we can estimate the likely impact on Australia's service industries.

Potential bypass of Australian legal process is also foreshadowed in US proposals that the AUSFTA give private companies the right to seek extra-legal arbitration against adverse regulation on the part of the other country's government.

On the face of it, such provisions might give effective appeal rights to a foreign company that were not enjoyed by a local company. The provision would be bilateral, but the ability of Australian firms to avail themselves of this facility in the USA is unfathomable.

This is in part because nobody knows the extent to which a Free Trade Agreement will bind the governments of the 50 States of the USA, each of which have much more extensive regulatory powers over service industries than Australian state

governments. Australia's constitutional and legal structures give greater powers to our Federal government, so the effect of FTA provisions is considerably clearer (once text is available for scrutiny) with regard to Australian obligations than with regard to USA obligations.

ASR has been concerned that many Australian parties in the services industries remain largely unaware of the possible long-term effects of items on the table in the AUSFTA negotiations. Despite DFAT's efforts, industry consultation has been fragmented and sporadic.

The economic analyses provided on DFAT's own website indicate that Australia's only significant benefits would arise if the USA were to deliver real concessions in market access for agricultural products, particularly in the highly-protected US dairy and sugar markets.

By contrast, the USA's major negotiating objectives are in services, investment and the "digital economy". Service industries are a much larger slice of the Australian



economy than agriculture, but Roundtable members are acutely aware that they do not exert comparable political leverage.

Service industries need to remain vigilant that they are not put at a long-term disadvantage in global and domestic markets by any political imperative to cut a deal under pressure of time.

Australia's professional negotiators are aware that the Government is keen to deliver something that looks significant in the agricultural market, and they are under great pressure to offer the United States some significant concessions on service industries in return.

We will provide a full report in the New Year, when the final text becomes available.

China announces Reforms in Banking

Consistent with the agreed timetable for implementation of its WTO commitments, China has announced a series of reforms aimed at strengthening supervision of the domestic banking

industry while further opening up the sector to greater foreign participation.

From 1 December 2003, foreign banks are able to offer local currency services to Chinese corporate clients in those cities where foreign banks are allowed to operate.

A further 4 cities, (Jinan, Fuzhou, Chengdu & Chongqing) were opened to foreign banks.

Capital requirements have been reduced for wholly foreign-owned financial institutions to open additional branches as follows:

- capital required to undertake the full range of foreign currency and local currency services was reduced from RMB 600 million (US\$72 million) to RMB 500 million (US\$60 million).

- capital required to undertake a range of foreign currency services only was reduced from RMB 500 million (US\$60 million) to RMB 400 million (US\$48 million).

The capital requirements for locally incorporated foreign owned banks and Sino-foreign joint-venture banks were also simplified and capitalisation levels decreased.

The Chairman of the China Banking Regulatory Commission (CBRC) Lui Mingkang, also made a renewed call for "Qualified foreign strategic investors" to take stakes in Chinese financial institutions and backed this up by increasing the maximum foreign equity shareholding from 20% to 25%.

By way of background, there are 62 foreign banks with approved establishments in China from 19 different countries. Their combined registered assets account for 1.4% of China's total banking assets. Outstanding loans provided by foreign banks account for 13% of the national total. HSBC and Citigroup remain the front-runners, with Standard Chartered also well established.



WTO; An Offer from China on Services

China submitted its offer in the current WTO services negotiations on September 15.

China has offered the sectors of **passenger transportation** and **building cleaning** to foreign participation.

China has also offered to extend its existing commitments in **software implementation and data processing** services to a larger range of services.

China has offered to remove restrictions on commercial presence in **translation and interpretation**.

In some sectors, China has affirmed its commitments to permit wholly foreign owned subsidiaries, but removed the option of setting up a joint venture with foreign majority ownership.

The sectors affected are **packaging, road transport, maintenance and repair services, rental and leasing services,**

construction and engineering services, and storage and warehousing.

New Insurance regulations in Singapore

The text of the proposed new Singaporean regulations on Insurance is available at:

http://www.mas.gov.sg/mas/mcm/bin/pt1Reports_and_Consultation_Papers.htm

The Financial Leaders Group to which ASR belongs, is writing to the Singaporean authorities expressing concern about the proposed regulations. An analysis of the proposed regulations is available on request to: services@tesol.com.au

WTO; Progress on Freight Logistics

The Friends of Freight Logistics (Australia, Switzerland, Hong Kong (China), New Zealand and Singapore) have prepared an informal non-paper setting out a complete check

list of potential liberalisation commitments in freight logistics services which together would cover the full chain of logistics operations, including;

- cargo handling,
- storage and warehousing
- transport agency services
- freight transport services (maritime, internal water ways, air, rail and road),
- testing and analysis,
- courier services,
- wholesale trade and
- retailing.

The checklist also includes documentary requirements, customs clearance, customs inspection and electronic clearing.

The Friends of Freight Logistics have commenced the process of consulting with the wider group of WTO members and expect to submit the non-paper for consideration by the WTO Council on Services by March/April next year.

Global services industry support will be critical to negotiating success in this sector. Copies of the non-paper are available on request to: services@tesol.com.au



Australian Services
Roundtable

NEWSLETTER

About the Roundtable

The Australian Services Roundtable is the peak industry body representing the services industries in Australia.

The Roundtable covers financial services (banking, insurance, securities), the professions (consultants, accountants, lawyers, engineers, architects), health, education, environment and energy services, logistics, tourism, computer and IT, telecommunications, transport, standards and conformance, audio-visual, media, entertainment, cultural and other business services.

The Roundtable aims to identify the domestic regulatory obstacles to international competitiveness and highlight the need for domestic policy reform. ASR is contributing actively to strategies for negotiating services trade and investment issues in the global, regional and bilateral arenas.

Become a Member

To find out more about the Roundtable, attend events, or enjoy Membership Benefits, contact the Roundtable Convenor.

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New Members

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Louise Cox AM

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