



February 2004

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## Website

<http://www.servicesaustralia.org.au>

## New Members

**Australian Stock Exchange**

**Australia and New Zealand  
Institute of Insurance and  
Finance**

**Commercial Television  
Australia**

**Law Council of Australia**

**Council of Small Business  
Organisations of Australia**

**CPA Australia**

**Gavin Anderson and  
Company**

**Hassell Pty Ltd**

**Hawker Britton**

**IDP Education Australia**

**Institute for International  
Business Economics and  
Law, University of  
Adelaide**

**Judith King**

**Macquarie Corporate  
Telecommunications**

**Mallesons Stephen  
Jacques**

**Media, Entertainment and  
Arts Alliance**

**Worley Pty Ltd**

**Next Event:  
Global Services  
Network Meeting**

The next meeting of the  
Global Services Network

is timed to coincide with the  
March cluster of WTO  
meetings on Services.

Including dinner with the  
WTO Ambassadors, hosted  
by Sir Iain Vallance,  
Chairman, European  
Services Forum.

**March 22 – 23 2004  
All welcome  
Geneva, Switzerland**

**ASR Media  
Launch**

The Minister for Trade, the  
Hon Mark Vaile MP, officially  
launched the Australian  
Services Roundtable to the  
media at the National Press  
Club on 12 February 2004.

The event was very well  
attended and received by  
representatives from the  
services industries, the  
Government, the media and  
the general public.

The Minister emphasised “It  
is very important for the  
Government to have an  
industry body with which to  
consult on services issues, in  
addition to being able to talk  
with individual firms.



The Australian Services Roundtable, while being launched today, was founded in mid 2002, and I want to welcome the opportunity it presents of an effective voice for the services sector.

There is no question that services trade will be crucial to the future of our economy, as it will be to the global economy.”

Mr Vaile was introduced by ASR’s current Chairman, Peter Walsh, who drew attention to the poorly understood significance of the services sector: “One Japanese honeymoon couple is worth the same to Australia as 42 tonnes of coal exports to Japan and the 34,000 Chinese students studying in Australia are worth more in export dollars than all our wheat exports to China.”

Mr Vaile commented extensively on the outcomes of the AUSFTA, especially for the services sector.

He said, “The most important single outcome on services is that we received commitments that Australian service suppliers would receive ‘**national treatment**’

and would not be discriminated against in the US market.

We have achieved commitments in this area which go significantly beyond what the US has given on a most favoured nation basis in the WTO, including in areas such as **education** services.

In a range of areas, the FTA allows both countries to maintain a limited set of existing measures which are discriminatory.

However, the FTA’s services provisions include what is known as a ‘**ratchet mechanism**’.

This means that for these existing discriminatory measures, any unilateral liberalisation will be immediately bound in the FTA, and cannot subsequently be wound back.

In particular, this ratchet mechanism will apply to measures at the State level in the US, where most services regulation is to be found.

In short, this will mean that subsequent liberalisation of

discriminatory measures will be immediately locked in place by the FTA.

The FTA includes ground-breaking provisions on promoting the **mutual recognition of professional qualifications**.

As trade restrictive measures are removed, limitations on such recognition can be a restraint on trade in services.

Promoting mutual recognition has been a long-standing objective, and progress has been far too slow.

In regard to the US, it is complicated by the existence of 50 States, each with their own, often distinct, sometimes contradictory, approaches to the registration of professionals and the recognition of their qualifications.

The FTA provides for the establishment of a Working Party with a specific mandate to look at ways to promote mutual recognition and other issues relevant to professional services.

It must report to the Parties, with recommendations,



within two years of the Agreement's entry into force.

No other country has achieved such a structured, high-profile platform to pursue these mutual recognition issues with the US."

The Minister also spoke specifically on a number of other services sectors. These include:

#### **Audiovisual**

"We knew that the US would be pushing us very strongly in relation to the audiovisual sector, as this is an industry of great economic importance and political clout in the US.

The Australian Government, however, made it clear from the beginning of the negotiations that the outcome in this area could not be allowed to compromise our cultural policy objectives.

The end result on audiovisual was, in fact, an excellent outcome. It:

preserves all existing local content requirements on free-to-air and Pay TV;

allows the Government flexibility to not only maintain the existing amount of local content on free-to-air TV when it moves to digital multichannelling, but to actually increase this amount significantly;

gives the Government the right to increase the existing 10% expenditure quota on drama channels on Pay TV up to 20% if necessary, and to introduce similar expenditure quotas of up to 10% on four additional program formats (the arts, children's programming, documentaries, and educational programming);

includes provisions allowing the Government to intervene in the future on interactive media platforms, if Australian content is not readily available on those platforms.

The bottom line is these commitments give Australia sufficient flexibility to not only maintain the current amounts of local content available to Australian audiences as new media platforms become more important, but to actually increase these amounts.

Given these unprecedented provisions, there can be no

question that Australian voices will continue to be readily available to Australian audiences, and that we will continue to have a vibrant Australian production industry."

#### **Government Procurement**

"Australia will be guaranteed non-discriminatory access to the US procurement market

- a market worth A\$200 billion annually at the Federal level - of which over 40% comprises the procurement of services

- with the prospect that the coverage of the Agreement will be extended to State-level procurement.

Australia will become a "designated" country for the purposes of US Federal procurement and Australia will have waiver from the Buy America Act.

For the first time, Australian companies will be competing on level terms with suppliers from other developed countries for US Government tenders.

Information Technology (IT) procurement at the Federal level in the US amounts to



about A\$60 billion in recent years – with opportunities in hardware, software and professional services.

I'm not underestimating the upfront investment required to win contracts in this market.

That is the challenge for Australian business.

But what we have done through the FTA is to remove the barriers to access so that bids from Australian firms will be considered on equal terms with the other major contenders."

### **Intellectual Property**

"Closer harmonisation of intellectual property laws with the largest intellectual property market in the world, will benefit:

- Australian exporters to the United States by creating a more familiar and certain legal environment for the export of value-added goods to the US

- Australian innovators by assisting them to attract investment from the United States because of greater familiarity with our legal system."

"Australian copyright industries (including publishing, filmmaking and music) are among the fastest growing in Australia.

These industries will benefit from stronger protection for copyright owners:

- including an increased term of protection for copyright material protecting Australia's writers, filmmakers and other creative content providers

- and an expeditious process that allows for copyright owners, Internet Service Providers and subscribers to deal with allegedly infringing copyright material on the Internet."

### **Pay TV**

"the Pay TV industry will benefit from increased criminal and civil protection against the unlawful decoding of encrypted program carrying satellite signals."

### **Patent, Trademarks and Designs**

"under the Agreement, Australia and the United States will also work to

further reduce differences in laws and practices relating to patents, trademarks and designs, to further assist our rights holders to protect their intellectual property in the United States market."

### **Financial Services**

"Here again, the FTA includes ground-breaking provisions aimed at promoting the integration of our financial services sectors.

There is agreement to establish a Financial Services Committee under the FTA, and that this Committee will consider specific issues of interest to Australia in regard to cross-border trade in securities.

In particular, Australia will be pursuing through the Committee our interests in reducing regulatory duplication in regard to cross-border access for foreign securities markets and foreign collective investment schemes.

These are issues of great relevance to:

- the future growth of the Australian Stock Exchange;



- companies listed on the exchange that wish to improve their access to funds;
- Australian investors wanting to diversify their investment options; and
- Australia's funds management industry.

If we are successful in promoting greater regulatory cooperation with the US on these cross-border securities issues, then the potential benefits to the Australian economy over the long run will be very significant.

The Minister then made a number of comments on the future of global services trade negotiations.

### **WTO Doha Round**

"Australia remains fully committed to the Doha round of trade negotiations, and indeed to the multilateral system.

Our pursuit of FTAs where this makes sense in no way diminishes our commitment to the WTO.

The WTO Doha Round remains our top trade policy priority.

Multilateral liberalisation offers the best chance for the broadest and deepest gains for our exporters.

Ultimately, of course, Australia wants to see liberalisation gains in bilateral FTAs extended to, or bettered in, the multilateral system.

That is, ultimately we aim for convergence of these bilateral initiatives and the multilateral system to create more open global markets."

### **WTO negotiations**

"All WTO Members have agreed we need to recommit to achieving conclusion of the negotiations, and Australia is working hard to re-energise the round."

"A letter from USTR Zoellick to all Trade Ministers on 11 January has signalled that the US is still engaged, despite it being a Presidential election year, and committed to ensuring that this year is not lost."

And with the re-launch of the Doha negotiating groups

expected at this week's General Council meeting in Geneva (11,12 Feb), we will be putting renewed effort into completing the Round on schedule."

### **Services and the WTO**

"In the services negotiations there are currently 40 offers on the table from WTO Members, accounting for 90 per cent of the world services trade.

But these initial offers are modest and we are working hard on improving them, particularly from key markets such as the US, EC, China, India and the ASEANs...

...and particularly in areas such as improving entry and stay conditions, investment, and joint venture requirements.

We are also seeking commitments to ensure that regulatory environments are transparent - especially in the areas of licensing, qualification recognition and the bidding processes for contracts.

So let me assure you liberalisation of the global trade in services is a key objective for the Government



and one we are negotiating hard on.”

The full text of the Minister’s speech can be found at:

<http://www.servicesaustralia.org.au>

## Services Aspects of the FTA with the US

Until we see the actual detail of the text itself, including importantly the provisions on consultation and dispute settlement, the deal remains rather opaque in some areas. We expect the text to be available on Monday 1 March. So watch this space.

As the Minister for Trade pointed out at our media launch, the barriers to trade in services do not necessarily lie at the border. Services businesses are constrained by a myriad of internal regulatory and business practices including standards and qualification registration that affect who can do business and how, when and where.

For services firms, getting a visa and getting over the border is merely the beginning. Especially in the

US, where there are differences in regulatory practice in each of the 52 States, and even in local Government.

Our American counterpart body, the US Coalition of Services Industries has expressed regret that it did not achieve all the key US objectives in the FTA negotiations.

Some members of the Australian Services Roundtable have serious regrets of their own. Some of our cultural industries are deeply worried. It is clear the Government has shifted considerable ground on intellectual property and seemingly on certain aspects of e – commerce and audiovisual services.

Many other services sectors are content, or consider the potential impact of the Agreement benign.

For many service industry issues, what the FTA has delivered is a process. This is the case for example, in telecommunications, financial services, standards and conformance and the professions. Processes whereby both parties can continue to talk in an

ongoing effort to resolve bilateral differences.

The FTA also delivered important processes in relation to Investment and Competition Policy. Below is a brief description of the outcomes in these areas.

### Investment

The outcome on investment involves significant reform to the FIRB.

Firstly, all US investment in new businesses is now exempt from screening.

Secondly, the threshold for acquisitions by US investors has been raised significantly, in nearly all sectors from AUS \$50 million to AUS \$800 million.

The Government has retained the right to screen all investments by Foreign Governments and all investments in urban land (including residential) and media. Investment in telecommunications, transport (airlines, airports, shipping) and defence (CSL) will continue to be screened after the \$50million threshold.



We hope that the Government will implement these reforms on a non-discriminatory basis ie to insure they apply to inward investment from all destinations, not only the United States. Such an approach would be most consistent, not only with Australia's treaty obligations to eg Japan and New Zealand, but also with Australia's interests in a fast globalising world economy.

A work programme will be initiated to discuss whether it might be possible to further limit the kinds of investment transactions, such as passive investments, that are subject to review.

There is no Investor/State Dispute Settlement Provision in the FTA. This US proposal was highly politically sensitive for Australia. Mr Vaile explained at our media launch that none of the State Governments were in favour of it. Without it, the FTA would seem to have greater chances of passing the Australian Senate.

Economically, it probably, doesn't make much difference but certainly the Agreement is simpler with

out this provision. Investors in both countries can pursue their legal rights with or without it, including through international arbitration.

It is not yet clear exactly what other changes have been made to Australia's investment regime, eg investment performance criteria.

### **Competition Policy**

Again the FTA has delivered an important process. A process whereby the ACCC and the US Federal Trade Commission can consult and exchange information through a joint working group set up under the FTA umbrella.

The ACCC has achieved an improved basis for pursuing companies based in the US. The US is committed to discipline US monopolies and state enterprises

### **Australia – China FTA Study**

Implementation of the recently agreed Australia-China Trade and Economic Framework including work

on a joint feasibility study on a possible FTA has begun.

The study will present a basis for both governments to consider the benefits and costs of an FTA prior to any decision to commence negotiations. Public submissions will be called in March.

The Australian Services Roundtable is participating in the Business Forum on Economic Relations with China and will shortly distribute a questionnaire to assist in preparing a submission to government.

China is already the world's sixth largest economy and Australia's third largest trading partner.

Our commercial relationship is expanding more rapidly than with any other major trading partner. Australia-China two-way merchandise trade has trebled since 1996-97 to over \$22 billion in 2002-03.

34,000 students from China are now studying in Australia (more than from any other country) and more than 190,000 Chinese tourists visited Australia in 2002 alone.



## To Manage it, you have to Measure it.....

All around the world, trade in services is notoriously under-measured. Services are difficult to measure and difficult to define.

For many services, a physical presence is required between supplier and customer. So many service providers find it necessary to establish a commercial presence through a foreign affiliate in countries where they wish to sell.

Data on foreign affiliates' trade in services are beginning to be collected – the ABS is due to release its foreign affiliate trade survey in March 2004. Recent US data show that sales of majority US-owned service affiliates outside the US now exceed cross-border US service exports.

Informed guesses place world trade in services at around 33% of world trade, rather than the recorded 23%. This figure still does not take indirect embedded services into account.

Remapping the economy to deal with this information deficit will help improve the policy environment for services industries.

Look at our statistical card at [www.servicesaustralia.org.au](http://www.servicesaustralia.org.au)

## 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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