

澳美自由貿易協定與服務業的自由化：對澳洲而言是否值得？

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中文摘要

澳美自由貿易協定(AUSFAT)於 2004 年 5 月正式簽署，並已在 2005 年元旦生效。雖然開啟兩國官方報告所宣稱的將對雙方經濟造成影響，並帶來經濟利益，但是爭取此項協定對澳洲言主要的利益卻是在安全、政治與外交政策目標等非經濟因素。不可避免地，這對不少人而言以經濟考量不當地交換非經濟目標將會帶來風險。澳洲過去的經濟繁榮主要是奠基於以單方面貿易自由化為主的重大經濟改革，此一作法成功地將經濟獲益與政治外交政策的因素分隔開。儘管當時的貿易部長與澳洲談判代表對美國堅持將蔗糖排除的作法持保留的看法，但是澳洲仍在前總理霍華德在最後一分鐘直接下指示後與美國簽訂雙邊 FTA 凸顯政治的考量高過經濟的考量。同時，由於澳洲外交通商部 (DFAT) FTA 委員會的報告遭到嚴重抨擊，再加上官方估算的經濟利益在簽署後也遭到進一步研究所獲得的結果所推翻，當時有幾位澳洲評論家也質疑澳洲簽署該協定的經濟獲利的潛在性。

AUSFTA 是澳洲貿易政策的重要分水嶺。當 2000 年時內閣同意與美國進行自由貿易協定的談判意味著澳洲改變其對 FTA 的貿易政策。在此之前，儘管已有許多國家青睞 FTA，但澳洲仍然堅定地其所偏愛的單邊主義與多邊主義的策略。事實上，FTA 並不算自由貿易協定，而是優惠（preferential）或歧視性的（discriminatory）貿易協定。因此與多邊主義（multilateralism）是相衝的（雖然我們常聽到兩者是互補的論調），而又對單邊自由化言更是項警訊。在此背景下，進一步檢視澳美自由貿易協定給澳洲帶來的經濟獲利就變得格外重要。本文主旨即在此，而焦點則置於 AUSFTA 裡的重要構成成分--服務業。更何況，服務業也具有在全球不斷擴大的重要性，且對澳美兩國貿易與未來經濟表現也頗具重要意義。

AUSFTA and Services Liberalization – Was it Worth the Effort?

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The Australian US Free Trade Agreement (AUSFTA) became operational from 1 January 2005 (eventually signed in May 2004). While heralded at the time as a great economic outcome for both countries by respective governments and ‘sold’ publicly on the perceived economic benefits of a report commissioned by the Australian Department of Foreign Affairs and Trade (DFAT), Australia’s main interests in clinching a trade deal with the US had more to do with non-economic factors (e.g. security, political and foreign policy objectives). While inevitable to many it has the associated dangers that economic considerations will be inappropriately traded off for non-economic goals. Australia’s past economic prosperity has rested substantially on significant reforms to the economy based on unilateral trade liberalization that successfully separated the economic gains from political and foreign policy factors. Australia signed AUSFTA, despite some major reservations held by the Trade Minister and the Australian negotiators over the US’s insistence to exclude sugar, following the last minute direction of the former Prime Minister, reflecting political rather

than economic considerations. Moreover, the perceived economic benefits to Australia were questioned at the time by several Australian commentators, with the DFAT-commissioned report severely criticized and the magnitude of the official estimated economic benefits rejected by further studies available after the “deal was done.”

AUSFTA was an important watershed in Australia’s trade policy. It signaled the change in Australia’s trade policy towards FTAs in 2000 when cabinet agreed to negotiate an FTA with the US. As with many other countries FTAs are fashionable and Australia, despite previously being one of the major resisters of such an approach in favour of unilateralism and multilateralism. For a start, FTAs are not free trade areas but rather preferential or discriminatory trade arrangements, and hence run counter to multilateralism (despite the often repeated rhetoric that they are complementary) and more alarmingly to unilateral liberalization. Thus, it is important to examine more closely the purported economic benefits to Australia of AUSFTA. The objective of this article is to do so looking at services, an important component of AUSFTA and of ever expanding significance globally and to both countries in terms of trade but more importantly to their own economic performance. It does this not by proposing new empirical evidence but examining past studies and trying to place the gains from negotiated forms of liberalization, especially from FTAs but also multilateral agreements, in their correct economic perspective. It thus tries to re-balance the importance of unilateral trade-related reforms for Australia’s future economic performance, something lost in recent years in public policy and urgently in need of being re-invigorated.

Section 1 sets up the framework for examining the economic gains to Australia from trade agreements, including FTAs and multilaterally. Section 2 examines the extent to which AUSFTA advanced Australia's services liberalization. Section 3 looks at the empirical estimates of the economic benefits to Australia from such liberalization while Section 4 concludes the paper.

1. Economic gains from trade reforms

The economic gains from trade liberalization come mainly from one's own liberalization and not from obtaining improved market access abroad i.e. other countries' liberalization. This is central to the economic case for trade liberalization. It is access to cheaper imports that improves a country's resource-use efficiency and boosts productivity growth and economic performance rather than greater access to foreign markets from dismantling of their trade barriers. With greater efficiency comes better export performance from improved international competitiveness, the main obstacle to exports and not foreign trade barriers. The greatest barriers to exports are usually within the country in the form of its own trade barriers and other policies reducing competitiveness; a tax on imports ultimately taxes exports.

Thus, economists usually insist that the best approach to trade liberalization is as for other economic policies, namely unilateralism. Governments obviously have full control over its trade policies and since self-liberalization offers most of the economic benefits the case for unilateral liberalization is hard to

refute. Many countries e.g. Australia have followed this path to their substantial economic benefit. It effectively liberalized its highly protectionist policies since the 1980s unilaterally independent of the WTO (previously GATT). Of course trade liberalization is often difficult for governments because of domestic political pressures and the structural adjustment it entails that creates losers at least in the short term. At the cornerstone of Australia's successful reforms was government acceptance of the costs of protection and hence the economic gains from trade liberalization based on a transparent micro-reform approach underpinned by the essential work of the economists at the Australian Productivity Commission and its predecessors (Industries Assistance Commission and Industry Commission). By publicly exposing the winners and losers of protection and related vested interests it was instrumental in developing important domestic coalitions in favour of trade liberalization among efficient producers and major exporters to counter the inward-looking interests of inefficient import-competing industries.¹

However, because lowering trade protection is a political and not an economic problem governments and bureaucracies

¹ Much of the public debate at the time centered on the generally efficient and lowly assisted agricultural sector becoming an advocate for reduced protection since it bore the penalty of protection, which favoured mainly manufacturing. Rather than adopting a 'compensatory assistance' approach to compensate farmers for the penalties of manufacturing protection, the Commission supported by the agricultural sector successfully convinced government that the best approach was to lower protection all round, even including pockets of agricultural assistance.

are usually biased towards providing protection. While the winners of liberalization are dispersed, poorly organized and generally long term (with many not even existing at the time of the reforms) losers are concentrated, well organized, short term and very visible. Thus, governments are often reluctant to liberalize trade fearing the short term political consequences. Enter the role of the WTO in promoting multilateral liberalization as a means of developing domestic coalitions in favour of openness as exporters push for greater market access abroad to counter protectionist sentiments at home. Governments are seen as having to reduce protection at home to expose import-competing industries to greater import competition in return for looking after the interests of major exporters though negotiating greater access abroad. Governments are also prone to accepting this position as it places greater blame on other countries' trade policies for their economies' and exporters' poor performance rather than on their own policies that are often politically difficult to reform.

While perhaps good politics, however, the problem with this logic is that it is based on mercantilism notions that "exports are good and imports are bad" (when in fact imports are just as important and without them there would be no exports and vice versa) and that negotiating reciprocal concessions to lower trade barriers whereby concessions to lower your own trade barriers are seen as a necessary cost for achieving reciprocal market access. As indicated this is fuzzy logic economically as is the view that a country should resist negotiating its own liberalization while trying to maximize opening abroad and avoid unilateral liberalization because nothing is gained in return, are flawed (Thirlwell 2004). A country's concessions to

liberalize are not costs but rather benefits. The irony of multilateral negotiations is that each country tries to get other countries to do they should do in their own economic interests while resisting to do what is in its own economic interests i.e. liberalize trade. Of course, the rationale for the WTO is that if all countries liberalize trade simultaneously than they will be able to share in larger global gains. While true, these will also be achieved if all countries unilaterally liberalize. The danger of the WTO approach to liberalization is that the real source of economic benefits becomes lost in the negotiations and political maneuvering by governments whom end up believing in mercantilism and holding their own trade liberalization as hostage to other countries first liberalizing – a la the current suspension of the Doha Round whereby no one benefits and multilateral liberalization falls down.

The dire consequences of the failure to conclude the Doha Round is not so much the impending collapse of the multilateral system but rather the further impetus this has given to preferential trading arrangements rather than re-focusing on unilateral reforms. Services liberalization, perhaps even more than for goods, is far less about trade negotiations and more about good domestic economic policy reforms aimed at improving the country's resource-use efficiency and productivity, the ultimate source of economic growth. While the multilateral system has in the past successfully liberalized global trade evidence suggests that for most countries this has still been relatively minor compared to unilateral reforms, especially in major developing economies such as China and India. Unilateral reforms have and can work, despite the difficulties of making such reforms if seen as economically desirable. WTO has aided

these reforms by enabling members to 'lock' them in through multilaterally binding commitments.

Also, the domestic consensus facilitated by WTO negotiations from exporters in favour of liberalization has also helped governments sell reforms at home. However, the value of this "fruitful lie" that the benefits from liberalization come mainly from increased market access abroad may have outlived its usefulness as countries have end-up believing their own propaganda and have focused more on achieving liberalization abroad rather than at home. Coalitions supporting liberalization built on untruths are likely to be far less durable and effective than those built on correct economic understandings, even if more difficult to achieve. Those built on FTAs are also likely to be less effective and durable than those built on exports to all markets that centre on efforts to improve overall competitiveness rather than obtaining preferential access to earn rents in individual markets and products. Exporters obtaining preferential access can end up becoming opponents of multilateral liberalization as they try to hold onto their preferential access.

Mis-guided mercantilist sentiments are often even stronger in FTAs than multilaterally because reciprocity is more direct and often bilateral trade imbalances incorrectly become a focus of attention. Reciprocity trade negotiations have serious liberalization limitations, in particular they 'mis-inform and mis-educate everyone (including trade officials) about the basic argument for liberal trade' (Viravan 1987). Consequently they tend to concentrate in cutting already low protection or where its significance to domestic industry is least important (being

largely redundant by exceeding the level of protection needed for firms to compete with imports), thereby reducing the adjustment costs but also the potential economic gains from improved resource-use efficiency by shielding protected “sensitive” domestic industries.

It is generally acknowledged that FTAs are more political than economic, even though governments generally go at great length to sell them domestically based on perceived economic rather than the political benefits. This was the case in Australia, including the signing of AUSFTA in which other factors, such as security and political goals, dominated. Some Australian commentators have suggested that the political decision in 2000 to launch FTA negotiations with the US coincided with Australia’s trade policy going backwards away from unilateralism and multilateralism that had served Australia’s economic interests well to a pre-occupation with FTAs at great risk to Australia’s economic performance (Carmichael 2005, Garnaut 2003, 2004 and 2004a, Garnaut and Bhagwati 2003). FTAs are not the solution but part of the problem, especially given how they are currently negotiated.

2. Achieving services liberalization

Liberalizing services to avoid discrimination against foreign suppliers necessitates removing both national treatment (all measures, whether border or non-border discriminating against foreign suppliers) and market access (six, predominantly quantitative measures irrespective of whether they discriminate against foreign suppliers or apply to both foreign and domestic

suppliers on a non-discriminatory basis) restrictions.² While all are significant empirical studies have shown that the major benefits to countries liberalizing services are likely to come from removing market access, especially non-discriminatory barriers since these most directly stifle or eliminate competition (e.g. state monopoly).

Negotiated liberalization entails mainly liberalization commitments i.e. liberalization ‘on paper’ as opposed to actual liberalization i.e. liberalization ‘on the ground.’ While liberalizing commitments may usefully ‘lock in’ reforms they will generate no economic benefits unless leading to actual liberalization. The value of this ‘lock in’ effect is reduced the more these commitments are below the status quo (i.e. less liberal than current measures). It is widely acknowledged that GATS (and the Doha offers) was at best a standstill agreement that generated very little actual liberalization, at best focusing on commitments often below the status quo. This also seems to be the case for Australia’s FTAs. More generally, even if FTAs do liberalize commitments beyond GATS this does not mean that they are more liberalizing ‘on the ground’ if there is large binding overhang or will not become quickly outdated over time as countries change their policies unilaterally without varying their commitments until next negotiated, which even then may remain below the status quo.

The ‘lock in’ value would seem far less effective in FTAs than multilaterally since they only cover one or the few trading

² A third component to ensure liberalization is that measures be applied on a Most-Favoured-Nation (MFN) basis i.e. non-preferential or do not discriminate against trading partners.

partners covered by each agreement. Governments can thus still raise barriers to other trading partners assuming as seems most likely that the measures in question can be implemented preferentially. Because FTAs exchange preferences their focus is on national treatment measures at the border that discriminate against imports and can be applied preferentially (i.e. non-MFN). Thus, since many unilateral reforms will involve liberalization of 'behind the border' national treatment and especially market access measures that cannot be applied preferentially in FTAs the capacity to later consolidate unilateral reforms in a FTA in exchange for concessions to encourage unilateral reforms in the first place seems to be overstated.

'On paper' liberalization of services at or close to the status quo may be in reality about the best negotiated commitments (whether bilaterally or multilaterally) can achieve, especially in services where significant actual liberalization in practice may only be possible from unilateralism. It can be difficult to actually liberalize as a direct consequence of FTA (or multilateral) negotiations given that services trade barriers involve 'behind-the-border' measures that are generally part of domestic regulatory national treatment and market access arrangements that exist usually to meet various economic and non-economic objectives. However, this may not be a bad outcome. Negotiating such regulatory policies as part of a FTA (and even multilaterally) is likely to become very messy and uncertain, and the strong possibility will be that economically non-sensible and costly policies end up negotiated, especially if other trade or non-economic factors become priority. Such domestic policies should be set based on economically sound unilateral policies; setting trade policies by negotiation promotes ad hoc policy.

Services trade impediments are more difficult to measure than those in goods, which tend to be tariffs or other border barriers. Several researchers have recently attempted to quantify the extent of services liberalization in FTAs compared to GATS by examining the extent to which they broaden and/or deepen liberalization commitments (Dee 2005, Roy et al 2006, Fink et al 2007, Ochiai et al 2007, Dee et al 2007). These studies generally agree that FTAs that have liberalized 'on paper' most beyond the WTO are those involving the US, and that if these are excluded the liberalizing success of FTAs in services is pretty disappointing.³ The extent to which FTAs actually liberalize services is far less certain and usually unknown from such studies.

As for goods the adverse effects of trade diversion from FTAs on national welfare also need to be taken into account since although services involve no tariff revenue preferential rent-creating measures can redistribute rents abroad just like tariffs, thereby adversely affecting welfare (Dee et al 2007). For example, allowing FDI in a domestic statutory monopolist will distribute rents overseas and to the preferential partner if done under a FTA, thereby reducing the country's national welfare. Similarly, the domestic efficiency effects of providing preferential access through commercial presence can be

³ The generally more liberal commitments on services in FTAs with the US tend to be made by the other partner. It is unclear whether this outcome is due to the US's insistence on using a negative list approach or because of other factors, such as its political and economic clout which presumably gives it substantial leverage in the negotiations, especially against smaller countries.

substantial and long term since the advantages of being “early into the market” are significant in many major services.

3. AUSFTA and services

The Australian gains from bilaterally relaxing the FDI screening thresholds are uncertain. These preferential measures for US investors consist of mainly of a higher threshold for acquiring a substantial interest in an Australian business, namely A\$871 million instead of A\$100 million for other foreign investors (except for sensitive sectors prescribed in AUSFTA⁴ or for investments by an entity controlled by the US government where the same threshold of A\$100 million applies).⁵ Proposals by US investors (except US Government-controlled entities) to establish new businesses do not require notification but are subject to other relevant policy requirements; those from non-US investors exceeding A\$10 million require prior approval. For takeovers of Australian offshore firms, the \$871 million threshold applies to US investors (A\$200 million for other foreign investors), except for takeovers involving prescribed sensitive sectors or a US Government controlled entity, for which the threshold is \$200 million. An \$871 million threshold also applies to developed non-residential commercial real estate (instead of A\$50 million), where the property is not subject to heritage listing.

⁴ The sensitive service sectors are media; telecommunications; transport; supply of training or human resources; the development, supply, or provision of services relating to encryption, security technologies and communications systems; and operation of nuclear power facilities.

⁵ \$831 million during the calendar year 2006. Thresholds under AUSFTA are indexed annually while others are not.

The ex-post DFAT-commissioned report that quantified the economic benefits of AUSFTA to Australia (CIE 2004) relied on large benefits being generated from reducing the risk premium for US investors and boosting investment through lowering Australia's cost of capital.⁶ These estimated gains represented 60% of the projected economic benefits to Australia from AUSFTA. Small gains were estimated from services trade liberalization in line with the minimal actual services liberalization resulting from AUSFTA. The study projected that the reduction from liberalization in Australia's services trade barriers, as measured by the cost reduction in supplying services would rise only marginally from a very low 0.01% at AUSFTA's commencement to 0.06% by 2011 (corresponding to a maximum of 8% of the total estimated gains). These estimates also overstate the gains from AUSFTA because they included estimated benefits from as yet non-introduced policy changes and from commitments already agreed multilaterally (Dee 2004).⁷ The CIE concluded that there was no substantive change

⁶ Two studies were commissioned by DFAT. The first was a scoping study into the economic impact of a US Australia FTA that evaluated such impacts under a range of trade liberalization scenarios, from complete to partial liberalization phased in over a number of years (CIE 2001).

⁷ For example, it included the estimated gain from the inclusion of what amounted to little more than 'best- endeavour' clauses for an established committee to look at negotiating improvements in mutual recognition of qualifications in professional services, when evidence suggested that both countries maintained relatively low barriers in professional services anyway. The gains also included an estimate of the greater certainty supposedly resulting from AUSFTA in financial services (there being no actual changes) when this was already available under Australia's WTO commitments. Similarly, it also included estimates of the benefits from supposedly greater certainty and the framework established for greater dialogue on trade liberalization in transport services, when in fact no liberalization was achieved and this was mainly available under the WTO.

in Australia's barriers to services in other sectors, where barriers have been traditionally low anyway and what barriers that did exist have remained (CIE 2004).

The DFAT-commissioned CIE report was heavily criticized as being "non-credible" imaginative empirical economics not passing the "laugh" test (Garnaut 2004a). Its impartiality has also been questioned, especially being conducted after the negotiations when the 'point of no return' politically had been reached and AUSFTA had clearly become a high government priority. Dee (2004) also heavily criticized the report as unrealistically over-stating the economic gains to Australia, in particular from the increased FDI screening thresholds for the US, and on services where the gains were inappropriately modeled (e.g. inappropriate treatment of licensing restrictions). Dee's report argued that screening FDI was an ex ante factor in investment decisions while equity risk premiums captured the effects of events ex post, and it was highly doubtful that FIRB screening had any general effects on Australia's risk premiums. Although the screening may have stopped investment proposals so that their relaxation may have generated additional FDI from the US, it is uncertain from the statistics.⁸ Moreover, higher screening thresholds do not apply to all US investment, but only that from US residents. Thus, a US firm located offshore would be excluded while say a Japanese firm resident in the US would

⁸ The FIRB screening laws appear to have had little restrictive impact on business applications, with no such proposals having been rejected since 2001 (WTO 2007). AUSFTA also seems not to have increased investment from the US (WTO 2007a).

be covered.⁹

In services, Dee (2004) concluded that AUSFTA was mainly a standstill agreement and that only a small but significant number of services went beyond GATS commitments. For example, AUSFTA committed Australia to allow life insurance branches to operate in Australia. However, the liberalizing impact of this in practice seems relatively small as no US branch has located in Australia. Its liberalizing impact was substantially reduced by Australia allowing foreign subsidiaries to operate unrestrictedly domestically subject to them meeting the same prudential requirements as Australian companies; several foreign, including US, insurance companies operate subsidiaries in Australia. There were also no specific MFN reservations in AUSFTA that mirror two MFN exemptions in the GATS (though there was a general Annex II reservation).

In other areas, Australia's commitments under AUSFTA were both broadening and deepening compared to its UR commitments. The share of sectors unbound fell from 63.7% to 25.2%. New sectors committed were mainly fully liberalized, especially in Modes 1 and 2. Mode 4 remained 99.3% unbound and were not negotiated in AUSFTA. Again, the mainly partial commitments in new sectors under Mode 3 mainly reflected the inclusion of sectors in the negative list of services under

⁹ A 'US investor' is a national or permanent resident of the United States of America; a US enterprise; or a branch of an entity located in the United States of America and carrying on business activities there. Moreover, US government investors are now required to notify investments above \$ 100 million – this does not apply to investors from other countries.

Australia's FDI laws that are excluded from Australia's positive GATS list. Broadening of sectors subject to partial and full liberalization commitments were spread across all service sub-sectors, especially other services n.e.s., health related and social services, transport services and environmental services. Deepening of commitments represented both partial and full liberalization commitments in Modes 1 and 2, and partial commitments in Mode 3. The main sectors affected were educational services, recreational, sporting and cultural services, transport services and financial services.

4. Conclusions

AUSFTA resulted in minimal Australian services liberalization, especially on the 'ground' and has done little to advance services liberalization in Australia. On this criterion it would therefore seem to have been hardly worth the effort. In the two cases often stated where some liberalization may have occurred, namely in raising FDI screening levels for US investors and permitting US life insurance branches to operate in Australia, the benefits appear to have been largely exaggerated. Moreover, Australia has not it seems taken steps to multilateralize these measures or include them in other FTAs being negotiated. Thus, AUSFTA has resulted in Australia's FDI and prudential life insurance measures being applied discriminately in favour of US entities, something which is difficult to justify economically and that may be more harmful than the minimal benefits associated with these preferential measures. Australia must return to unilateral non-preferential reforms to safeguard its own economic interests – these must again become the main game in town and would seem to imply a

lesser role for FTAs. It will be interesting to watch the new Government's performance (elected in December 2007) in this regard.

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