

The Office of the United States Trade Representative

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USTR Zoellick Notifies Congress of Intent To Initiate Free Trade Negotiations With Australia - Senate Letter

11/13/2002

The Honorable Robert C. Byrd
President Pro Tempore
U.S. Senate
Washington, DC 20510

Dear Senator Byrd:

At the direction of the President, I am pleased to notify the Congress that the President intends to initiate negotiations for a free trade agreement (FTA) with Australia 90 days from the date of this letter. This notification is in accordance with section 2104(a)(1) of the Trade Act of 2002 (Trade Act).

As you are aware, the Administration is committed to concluding trade agreements that open markets to benefit our farmers, workers, businesses, and families. With the Congress' continued assistance, we can further advance America's trade interests.

We believe the United States has much to gain in pursuing a negotiation with Australia. Two way trade has grown significantly in the past decade, totaling more than \$19 billion in 2001. The increased access to Australia's market that an FTA would provide would further boost trade in both goods and services, enhancing employment opportunities in both countries. An FTA also would encourage additional foreign investment between the United States and Australia, adding to the many jobs that the significant investment flows between the two countries currently support. In addition, an FTA would result in greater business integration, especially in the information technology sector, increasing efficiency and the competitiveness of U.S. industry.

We plan to use our negotiations with Australia to strengthen these commercial ties and address barriers that U.S. exports face today. We recognize that an FTA with Australia is of particular interest and concern to the U.S. agriculture community. Making progress on a number of issues of concern to U.S. agriculture will be essential for the successful conclusion of these negotiations. In this regard, we will work hard to facilitate the export of U.S. food and agricultural products to the Australian market and to address the full range of issues facing U.S. agriculture exports. As an example, several U.S. agriculture interests have raised serious concerns about Australia's use of sanitary and phytosanitary (SPS) measures as a means of restricting trade. We have held extensive and detailed discussions with Australia on SPS issues throughout the past year to discuss these concerns. We have made progress on specific issues, including the opening of the Australian market to U.S. table grapes. In addition, we and Australia have agreed that SPS measures must be based on science and be fully transparent. We fully intend to continue these discussions on SPS issues even as we move forward with FTA negotiations.

In the light of the concerns that U.S. agriculture interests have raised and in accordance with the requirements of the Trade Act, we are immediately requesting a report from the U.S. International Trade Commission on sensitive agricultural products. In addition, we will consult closely with Congress and the U.S. agriculture community in developing our positions on

agricultural issues and during the negotiations.

We will also seek improved market access through eliminating high tariffs on industrial goods of export interest to the United States. As indicated in our specific negotiating objectives, we will also seek to improve protection of intellectual property rights in Australia, eliminate restrictions that make it difficult for U.S. service providers to operate in the Australian market, and address other barriers to U.S. goods and services.

FTA negotiations with Australia will further deepen the already close cooperation between the United States and Australia in advancing our objectives for the multilateral negotiations currently underway in the World Trade Organization (WTO). Australia was instrumental in helping to generate the momentum necessary to overcome the challenges we faced in launching a new round of trade negotiations last year in Doha and is continuing to play a key role in these multilateral negotiations. We believe that an FTA would further unite and strengthen the alliance of countries leading the effort toward global trade liberalization.

FTA negotiations will provide the opportunity for even closer cooperation in the WTO agriculture negotiations in particular. Australia was the first strong supporter of the WTO agriculture proposal the United States made in July. In addition, Australia, working with other Cairns Group members, was instrumental in putting forward an ambitious Cairns proposal for global reform in agriculture. Given Australia's leadership role in the Cairns Group of agricultural exporting countries, the enhanced cooperation and communication resulting from the pursuit of an FTA will help us to achieve our common agenda in the WTO on agriculture.

In addition to complementing our partnership with Australia on global and Asia-Pacific trade issues, an FTA would also further deepen the ties between our societies and strengthen the foundation of our security alliance. We are already partners in the areas of intelligence, military inter-operability, command-and-control, and security planning. An FTA would facilitate the building of new networks that enhance our Pacific democracies' mutual interests, shared experiences, and promotion of common values so that we can work together more effectively with third countries.

Since mid-2002, the Administration has consulted with Members of Congress regarding the broad concept of a U.S.-Australia FTA. Our decision to move ahead with negotiations with Australia was strongly influenced by the many expressions of interest we have received in initiating an FTA with Australia. The Administration will continue to consult closely with Congress in accordance with the letter and spirit of the Trade Act. Moreover, to ensure that interested stakeholders are informed of the negotiations and have ample opportunity to provide their views, the negotiations will be conducted in a way that enhances transparency and accessibility.

Our specific objectives for negotiations with Australia are as follows:

- *Trade in Industrial Goods and Agriculture:*

- Seek to eliminate tariffs and other duties and charges on trade between Australia and the United States on the broadest possible basis, subject to reasonable adjustment periods for import-sensitive products.

- Seek elimination of Australian government export monopoly arrangements for wheat, barley, sugar and rice. In particular, by requiring Australia to eliminate exclusive export rights for its state-trading enterprises (STEs), end any special financing privileges for these enterprises, provide more information on the activities of and special rights or privileges they accord to STEs and to require STEs to provide information on their operations.

- Seek to eliminate Australian government practices that adversely affect U.S. exports of perishable or cyclical agricultural products, while improving U.S. import relief mechanisms as appropriate.

- Coordinate with Australia so as to support achieving the U.S. objective in the WTO negotiations of eliminating all export subsidies on agricultural products, while maintaining the right to provide *bona fide* food aid and preserving U.S. agricultural market development and export credit programs.

- Pursue fully reciprocal access to Australia's market for U.S. textile and apparel products.

- *Customs Matters, Rules of Origin, and Enforcement Cooperation:*

- Seek rules to require that Australia's customs operations are conducted with transparency, efficiency, and predictability and customs laws, regulations, decisions, and rulings are not applied in a manner that would create unwarranted procedural obstacles to international trade.

- Seek rules of origin, procedures for applying these rules, and provisions to address circumvention matters that will ensure that preferential duty rates under the FTA with Australia apply only to goods eligible to receive such treatment, without creating unnecessary obstacles to trade.

- *Sanitary and Phytosanitary (SPS) Measures*

- Seek to have Australia reaffirm its WTO commitments on SPS measures and eliminate any unjustified SPS restrictions.

- Seek to strengthen cooperation between U.S. and Australian SPS authorities.

- Seek to strengthen collaboration with Australia in implementing the WTO SPS Agreement and to enhance cooperation with Australia in relevant international bodies on developing international SPS standards, guidelines, and recommendations.

- *Technical Barriers to Trade (TBT):*

- Seek to have Australia reaffirm its WTO TBT commitments, including those relating to labeling requirements on U.S. food and agricultural products produced through biotechnology, and eliminate any unjustified TBT measures.

- Seek to strengthen collaboration with Australia on implementation of the WTO TBT Agreement and create a procedure for exchanging information with Australia on TBT-related issues.

- *Intellectual Property Rights:*

- Seek Australia's ratification of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

- Seek to establish standards that build on the foundations established in the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement) and other international intellectual property agreements, such as the WIPO Copyright Treaty and Performances and Phonograms Treaty.

– Seek to enhance the level of Australia’s protection for intellectual property rights beyond TRIPS in new areas of technology, such as internet service provider liability.

– In other areas, such as patent protection and protection of undisclosed test data and other information, seek to have Australia apply levels of protection and practices more in line with U.S. law and practices, including appropriate flexibility.

– Seek to strengthen Australia’s domestic enforcement procedures, such as increasing criminal penalties so that they are sufficient to have a deterrent effect on piracy and counterfeiting.

• *Trade in Services:*

– Pursue disciplines to address discriminatory and other barriers to trade in Australia’s services market. Pursue a comprehensive approach to market access, including enhanced access for U.S. services firms to telecommunications and any other appropriate services sectors in Australia’s market.

– Seek improved transparency and predictability of Australia’s regulatory procedures, specialized disciplines for financial services, and additional disciplines for telecommunications services and other sectors as necessary.

– Seek appropriate provisions to ensure that Australia will facilitate the temporary entry of U.S. business persons into its territories, while ensuring that any commitments by the United States are limited to temporary entry provisions and do not require any changes to U.S. laws and regulations relating to permanent immigration and permanent employment rights.

• *Investment:*

– Seek to establish rules that reduce or eliminate artificial or trade-distorting barriers to U.S. investment in Australia, including investment screening by the Australian Government, while ensuring that Australian investors in the United States are not accorded greater substantive rights with respect to investment protections than U.S. investors in the United States, and to secure for U.S. investors in Australia important rights comparable to those that would be available under U.S. legal principles and practice.

– Seek to ensure that U.S. investors receive treatment as favorable as that accorded to domestic or other foreign investors in Australia and to address unjustified barriers to the establishment and operation of U.S. investments. Provide procedures to resolve disputes between U.S. and Australian investors that are in keeping with the goals of making such procedures expeditious, fair and transparent.

• *Electronic Commerce:*

– Seek to affirm that Australia will allow goods and services to be delivered electronically on terms that promote the development and growth of electronic commerce.

– Seek to ensure that Australia does not apply customs duties in connection with digital products or unjustifiably discriminate among products delivered electronically.

• *Government Procurement:*

– Seek to establish rules requiring that Australia's procurement practices be fair, transparent, and

predictable for suppliers of U.S. goods and services who seek to do business with the Australian government.

– Seek to expand access for U.S. goods and services to Australian government procurement markets.

• *Transparency/Anti-Corruption/Regulatory Reform:*

– Seek to ensure that Australia's procedures for administering trade-related measures are fair and transparent, including by ensuring that interested parties can have timely access to information on measures and Australia's procedures for administering them.

– Seek to ensure that Australia applies high standards prohibiting corrupt practices affecting international trade and enforces such prohibitions.

• *Competition:*

– Address issues of anticompetitive business conduct, state monopolies, and state enterprises.

– Seek cooperation and consultation provisions that foster cooperation on competition law and policy, and that provide for consultations on specific problems that may arise.

• *Trade Remedies:*

– Provide a bilateral safeguard mechanism during the transition period.

– Make no changes to U.S. antidumping and countervailing duty laws.

• *Labor, including Child Labor:*

– Seek an appropriate commitment by Australia to the effective enforcement of its labor laws.

– Establish that Australia will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its labor laws.

– Establish procedures for consultations and cooperative activities with Australia to strengthen its capacity to promote respect for core labor standards, including compliance with ILO Convention 182 on the worst forms of child labor.

• *Environment:*

– Seek to promote trade and environment policies that are mutually supportive.

– Seek an appropriate commitment by Australia regarding the effective enforcement of its environmental laws.

– Establish that Australia will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its environmental laws.

– Seek to develop ways to work with Australia, including through consultative mechanisms, to address environmental issues of mutual interest.

- *State-to-State Dispute Settlement:*

- Encourage the early identification and settlement of disputes through consultation.
- Seek to establish fair, transparent, timely, and effective procedures to settle disputes arising under the agreement.

In addition, the FTA will take into account other legitimate U.S. objectives including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests.

We are committed to concluding these negotiations with timely and substantive results for U.S. workers, ranchers, farmers, businesses, and families, by pursuing these specific objectives and the overall and principal U.S. negotiating objectives set out in the Trade Act. We look forward to continuing to work with Congress over the coming weeks and after negotiations with Australia begin. Working together, we can reach a successful conclusion that will benefit the United States and Australia and support our broader objectives.

In addition to launching FTA negotiations with Australia, we are hoping to conclude our FTA with Singapore this year, for consideration by Congress early next year. We also have recently announced a new Enterprise for ASEAN Initiative, under which we hope to enhance our trade and economic ties to ASEAN countries. Given the integration of the economies of Australia and New Zealand, New Zealand has been advocating its case to the Administration, as well as to Congress, that an FTA with New Zealand would complement our FTAs with Singapore and Australia. We will be soliciting the views of the Congress on this matter as we move forward with the Australia FTA. In any event, we of course will continue to work closely with New Zealand in the WTO, APEC, and bilaterally to promote our common interests in trade.

Sincerely,

Robert B. Zoellick

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