

CHAPTER 4

A deal at any cost

Maybe it was oversold.

– TRADE MINISTER MARK VAILE,
NATIONAL PRESS CLUB, 12 FEBRUARY 2004

When Trade Minister Mark Vaile arrived in Washington in late January 2004 for the final round of negotiations, the Australia–US trade agreement seemed headed for certain failure. Early in the negotiations, the Howard government had identified some key criteria for an acceptable agreement with the United States. Above all, the agreement had to be good for farmers, and it needed to remove US restrictions on Australian sugar, dairy and beef. The importance of getting a good deal in agriculture was underlined again in the final week of the negotiations by the deputy prime minister, John Anderson, who declared, “I cannot see how Australia could accept a deal that did not include a fair and reasonable approach to sugar.”

In the final days of the negotiations, however, it was evident that Australia was not going to achieve this goal, and that the United States was not going to budge on its agriculture offer, which fell well short of Australian expectations and which excluded one important sector – sugar – altogether. It was at this point that Australia’s trade negotiators wanted to walk away from the agreement, on the grounds that it was a bad deal for Australia.

But when Vaile phoned Howard on 7 February to relay this message, the prime minister made it clear that he was not willing to abandon the agreement – even if it fell well short of the minimum requirements set by his own government. Vaile was instructed to conclude the negotiations, and on 8 February 2004 he and his American counterpart, Robert Zoellick, signed the Australia–US Free Trade Agreement.

Trade experts had long feared that any deal between Australia and the United States was bound to be lopsided in favour of the more powerful partner. A comparison of each government’s account of the agreement suggested that such concerns were well founded. Judging by the announcement from Zoellick’s office, it was clear that most of Washington’s objectives had been achieved. All US agricultural exports and 99 per cent of its manufactured exports to Australia would be admitted duty-free. By contrast, the deal was “sensitive to concerns that have been expressed by some members of Congress and some U.S. farm sectors,” which meant minimal liberalisation of barriers against Australian beef and dairy products, and no change at all in Australia’s sugar quota.

The US trade representative noted major achievements in other areas, especially in relation to many aspects of Australia’s domestic regulatory framework. US drug companies would benefit from changes to the pharmaceutical benefits scheme, for instance. The US film and television industry would gain from “important and unprecedented provisions to improve market access” in new media formats. Australia would further strengthen its intellectual property rules, adopting US standards in areas such as copyright. US services suppliers would be accorded “substantial access” to the Australian market and would have the right to bid for Australian government contracts. And, henceforth, all US investment in new businesses in Australia would be completely exempted from screening by the Foreign Investment Review Board.

In contrast, the Australian government was decidedly more subdued in its statements. Naturally the prime minister praised

the agreement as a “once-in-a-generation opportunity” that linked Australia to the “biggest economy in the world.” But Trade Minister Mark Vaile admitted that the deal was “a disappointment,” and suggested that its benefits would be measured in millions, rather than billions, of dollars.

In fact, it is impossible to predict with any certainty the potential economic costs and benefits of the agreement, as was evident in the results of three economic modelling exercises done after the deal was completed. The first study, commissioned by the Australian government, was undertaken by the Centre for International Economics, which had also done the earlier modelling for the government in 2001. The centre’s new study predicted gains to Australia of \$6 billion a year, about 50 per cent more than it forecast in 2001, despite the fact that the deal fell well short of the liberalising assumptions of the earlier report. Its 2004 report attributed most of the gains to minor changes in Australia’s foreign investment review screening procedures. While the prime minister praised the report, economists and trade experts were incredulous. Ross Garnaut suggested that the report failed the economic modellers’ “laugh test” – it was impossible to look at the results and not laugh.

A second study, commissioned by the Australian Senate inquiry into the trade agreement, was carried out by Dr Philippa Dee, a former Productivity Commission economist based at the Australian National University. In sharp contrast to the Centre for International Economics, Dee predicted that the annual gains to Australia would be in the realm of \$53 million a year, leading her to conclude that this was a “tiny harvest from a major political and bureaucratic endeavour.”

A third study, commissioned by the Australian Manufacturing Workers’ Union, was undertaken by the National Institute of Economic and Industry Research in Melbourne. The institute’s report adopted a different approach altogether, focusing on the opportunity costs of the agreement. It argued that the trade agreement

imposed new restrictions on the government’s ability to use procurement policy as a tool of industry policy, and would inhibit Australia’s efforts to become a “knowledge economy” in the future.

Economic modelling can be useful, but as trade economist Peter Lloyd has noted, “there are severe limitations to all models.” They are “by necessity, a gross simplification of the economy” and are built on many simplifying assumptions while leaving out many important dimensions. Hence, Lloyd argued for the importance of parliament’s making “qualitative” judgments about the agreement rather than relying on the predictions of models. But even in the qualitative judgments there was little agreement to be found, and to say that the agreement polarised the Australian community is an understatement. Many of the major business proponents of the agreement endorsed it, including the AUSTA Business Group, the Business Council of Australia, the car industry and Telstra. Other business organisations and firms were more muted in their support, seeing only modest benefits in the agreement.

For many Australians, though, the benefits to the business community are dwarfed by the costs of the agreement to Australia’s social programs, to its capacity to regulate in areas such as culture and health, and to its sovereignty more generally. In particular, there has been widespread criticism of the inclusion of the pharmaceutical benefits scheme in the trade agreement, on the grounds that important public health programs should never have been on the negotiating table in the first place.

Integration or subordination?

Although the Australia–US Free Trade Agreement was driven primarily by political considerations, it has substantial economic provisions that will most certainly promote Australia’s economic integration with the United States. Indeed this was the central objective of the agreement’s proponents. As Alan Oxley put it: “If

Australia seeks to maintain competitiveness in the global economy... and to maintain a strong relationship with the United States, there is a strong case for negotiating a comprehensive economic integration agreement... with the USA.”

John Quiggin, one of Australia’s leading economists, agrees with this claim that the deal is not about free trade but about economic integration with the United States. Economic integration usually refers to the adoption of common institutions, as in the case of the Australian federation or the European Union. But, as Quiggin notes, in this case it means Australia’s adopting the institutions of the United States. This raises important questions. In general terms, are economic and social institutions in the United States better than Australian ones? Is it desirable to have our economic institutions determined by a government that is necessarily responsive to US interest groups, rather than Australia’s social and economic welfare concerns? These questions are especially apt in light of the impact of the trade agreement on Australia’s copyright regime and on the pharmaceutical benefits scheme, or PBS.

The PBS has been a crucial part of Australia’s health system for over 50 years, and it is recognised as the “gold standard model” around the world. Through the scheme, over 600 prescription drugs are available at relatively low cost to Australians. In order for a new drug to be listed on the PBS, it must satisfy a number of criteria, including the clinical need for the product, and its costs and benefits compared to existing treatments. Decisions are made by the Pharmaceutical Benefits Advisory Committee, or PBAC, a statutory committee of independent experts (in 2001 the government replaced several longstanding members with an industry representative). When the PBAC recommends a new drug for listing on the PBS, pricing decisions are made through a stringent cost-benefit analysis, with reference to the price of similar drugs already available through the scheme.

Economists and public health experts agree that the PBS system works remarkably well in keeping the price of prescription

medicines affordable for all Australians. By contrast, Americans pay one-third to one-half more for leading prescription drugs.

The Pharmaceutical Research and Manufacturers of America, or PhRMA, has complained for many years about the PBS. PhRMA is one of the most powerful industry associations in the United States and it exercises enormous power on Capitol Hill, with 625 lobbyists in Washington and donations to the Republican Party of \$US36 million over the past four years. It claims that Australia’s price controls prevent its members from earning a proper return on their R&D, and therefore lifting drug prices in Australia was a key goal of the US negotiators.

In the face of public fears that the PBS would be subject to extreme pressure during the negotiations, the Howard government provided repeated assurances that the PBS was not on the table, and that it would not be compromised in a trade deal with the United States. In fact, the PBS was on the table from the very beginning, and Australian negotiators fought hard to protect it. Nevertheless, the deal contains a number of provisions that have potential impact on the PBS and its ability to contain drug prices in Australia. And while the Howard government claims that it has protected the PBS, the Americans have a very different view. Zoellick told a US Senate committee in March 2004 that the cost of Australian drugs would change as a result of the agreement. Indeed, he claimed that the trade agreement with Australia was the first important step in the US pharmaceutical industry’s campaign to raise drug prices across the world.

In Australia, independent experts, including health economists and medical professionals, and many consumer and medical groups, believe that the trade agreement has the potential to undermine the PBS in a number of ways. For instance, the agreement provides a new process that allows US drug manufacturers to ask for an independent review of PBAC decisions. This appears to create an avenue for drug companies to challenge decisions by the PBAC. While the Commonwealth Department of

Health and Ageing disputes this, arguing that the proposed review process will not be able to overturn a PBAC decision, many other public health and trade experts reject such a benign interpretation. Health policy specialist Ken Harvey believes that “This interpretation is unsupportable. If reviews cannot result in PBAC decisions being overturned then what is the point of them? It seems inevitable that reviews of negative PBAC decisions will allow the numerous lawyers, large budgets, and formidable public relations machines of US pharmaceutical companies to wear the PBAC down.”

The agreement also sets up a new Medicines Working Group, comprising health officials from both countries. Its work is meant to “promote discussion and mutual understanding of issues... including the importance of pharmaceutical research and development.” There is no mention of the importance of consumer access to affordable drugs, and the omission of this language is at odds with the WTO declaration that trade agreements should be interpreted and implemented to protect public health and promote universal access to medicines. Once again, Australian officials see the working group as a consultative committee without any authority. But many independent experts believe that it simply provides another platform for the United States to pressure the Australian government to pay more for pharmaceuticals. Such a view appears to be confirmed by US Senator Jon Kyl, who sees the working group as a means of allowing the United States to continue to press its concerns about Australia’s pricing mechanisms.

The trade agreement also contains a clause relating to the provision of pharmaceutical information on the internet. While the Department of Health and Ageing believes this reflects existing law in Australia, others fear that it will open the door to direct-to-consumer advertising in Australia. This form of drug promotion has grown rapidly in the United States, where companies spent \$US2.5 billion on direct-to-consumer advertising in 2000. While it has led to increased use of the advertised products

(and therefore increased health care costs), there is no evidence to show that direct-to-consumer advertising has contributed to “improved drug utilisation, improved doctor-patient relations, or reductions in hospitalisation rates.”

The trade agreement also includes a number of new provisions to change Australian patent laws in ways that could delay access to cheaper generic medicines. Because the PBS price control system relies in part on comparisons with cheaper generic drugs, any delay in the introduction of generic drugs will contribute to higher prescription drug prices in Australia.

Perhaps Australia should pay higher prices for pharmaceuticals? PhRMA argues that Australia “free rides” on the R&D costs of the innovative drug companies, but they provide little evidence to support this view. The largest price differences between Australia and the United States are for “me too” drugs, aggressively marketed new products involving minor variations on existing drugs. By contrast, PBS prices on genuinely new drugs with significant benefits are much closer to the US prices. Moreover, much of the basic research for new drugs is done by public institutions such as universities, not by the drug companies themselves. In 2001 all but one of the nine major US drug companies spent more than twice as much on marketing, advertising and administration as they did on R&D (\$US45 billion compared to \$US19 billion combined). The pharmaceutical industry has been the most profitable in the United States for more than a decade, and it does not appear that R&D has been constrained by a lack of money. For all of these reasons, it is very hard to support PhRMA’s claim that Australia free rides on its innovations.

In addition to the PBS, another area in which Australia has agreed to adopt American institutions as a result of the trade agreement is copyright. Copyright, like other forms of intellectual property rights such as patents, is designed to give the creators of intellectual property exclusive control of their creations for a fixed period of time. Rules governing intellectual property need to

balance private monopoly rights against social welfare and other considerations. Australian copyright policy has always worked towards balancing public and private considerations, whereas in the US intellectual property laws increasingly reflect the interests of private monopoly holders. Indeed, the US Copyright Extension Act – also known as the “Mickey Mouse Act” because whenever the copyright on Mickey is about to expire Disney presses to have it extended – recently lifted the copyright term to 99 years.

By world standards, Australia is considered to have a strong regime in place for the protection of intellectual property. Indeed, Australia’s intellectual property rights regimes have been subject to many government reviews over the years. Most recently, a major report to the federal government in 2000 found that there was no economic evidence to support the extension of the copyright term in Australia. In keeping with Australia’s international obligations as a member of the World Intellectual Property Organization, the current copyright term extends to 50 years after the author’s death. During this time, the author, or his/her estate, receives compensation through royalty payments. After 50 years, the copyright material enters the public domain.

In late 2003 Mark Vaile promised to defend the 50-year copyright term, particularly because of the costs that would be imposed on libraries and educational institutions should it be extended under the terms of the Australia–US trade negotiations. Despite these promises, Australia capitulated to American demands that the copyright term be extended to 70 years.

So what will these changes mean for Australia? The Australian Library and Information Association was unequivocal in its response: “The outcome is bad for libraries. It is bad for students. It is bad for researchers. It is bad for all information users... People who have been using information that is in the public domain will suddenly have to pay for it.” Similarly, the Australian Vice-Chancellors’ Committee expects the trade agreement to cause a significant increase in the copyright fees paid by universi-

ties, which are close to \$20 million a year. Along with increased costs, universities believe that there will be significant additional costs relating to auditing and implementation.

Apart from the additional costs that will be imposed on Australians, there are other important points worth noting. First, the effect of the copyright extension in Australia will be to set a standard of protection that is effectively higher than in the United States. This is because the United States has “fair use” provisions that are much broader than similar rules in Australia, giving US educational institutions greater privileges than their Australian counterparts have in using copyright material.

It is also noteworthy that the government did not undertake any analysis of the economic impact of copyright extension before agreeing to its inclusion in the trade agreement. And even though the government paid hundreds of millions of dollars to the Australian sugar industry as compensation for the exclusion of sugar from the deal, it has ruled out any form of compensation for libraries and universities to offset the increased costs associated with the copyright extension.

The trade agreement will affect Australia’s cultural policies in other ways as well; for instance, in relation to its treatment of local content rules in film, television and new media formats. The Howard government could have excluded the culture industries from the agreement altogether, just as it did in the Australia–Singapore trade agreement. Significantly, it chose not to and instead granted the US film and television industry improved access to the Australian market in new media formats, including cable TV, satellite and internet broadcasts.

The changes to the PBS, copyright and local content rules demonstrate a number of important points. First, the Australia–US trade agreement has reached deep into Australia’s domestic regulatory framework in ways that affect national policies relating to public health, education and culture. Second, the benefits in both these areas are heavily weighted towards the United States,

especially its major drug companies and the global entertainment corporations.

Agriculture, manufacturing and services

Of course, in order to get something in trade agreements, you have to give something up. So, it is important to ask whether Australia has made gains in other parts of the trade agreement that might warrant the costs that are being borne in areas such as the PBS and copyright. For instance, did the agreement include gains for Australia's agriculture, manufacturing and services industries that might offset these costs?

When it was setting Australia's objectives for the trade deal with the United States, the Howard government emphasised a key objective. The deal had to be good for Australian farmers. It was understood that a bilateral trade deal could not address the worst barriers and distortions in the US agricultural sector – namely the billions of dollars of production and export subsidies that prop up US farmers each year. Nonetheless Canberra expected to secure substantial reductions in US protection for sugar, dairy and beef. This was Australia's view as early as March 2001, when Foreign Minister Alexander Downer said that a deal without free trade in farm products would be unacceptable. And it was still the government's view as late as January 2004, when the deputy prime minister, John Anderson, declared that it would be "un-Australian" to accept a deal without sugar.

It is difficult to understand why the Howard government believed that it could secure these concessions. History shows that previous attempts to bargain bilaterally with Washington on agriculture always ended in failure. Australia simply does not have the negotiating clout to take on domestic protectionism in the United States, where agriculture is regarded as a "special sector" and is supported by a panoply of trade-distorting assistance measures including high tariffs and import quotas, domestic subsidies to production, and export subsidies. This is why Australia has always

pursued trade liberalisation in agriculture through the multilateral trade system, where bigger trade-offs are possible and where the European Union is seen to share the burden of liberalisation with the United States.

Some media commentators – and some politicians – seemed to believe that the Bush administration would "reward" Australia for its decision to go to war in Iraq. There was a reward, and it had come in the form of President Bush's agreement in November 2002 to negotiate the trade agreement with Australia. But it was not within the president's gift to provide Australia with good outcomes in the agreement itself, as the substance of the agreement was always going to be determined by congressional politics. Had Bush supported a generous deal on agriculture as a reward for his valued ally in the war on terror, Congress would have sunk the agreement. As it turned out, the deal on agriculture was designed to cause the least offence to the most highly protected sectors of US agriculture.

Despite John Anderson's declaration, and despite a personal plea from the prime minister to President Bush for even a token concession on Australian sugar exports to the United States, sugar was excluded from the deal completely. This presented an immediate political problem for the Howard government. Having raised false expectations among cane farmers and fearing a political backlash in a handful of key marginal seats in New South Wales and Queensland as a result, the government rushed through a \$444 million compensation package to sugar farmers – the equivalent of \$70,000 for each of Australia's 6500 sugar growers.

The deal on beef was equally disappointing and the National Farmers' Federation, Meat and Livestock Australia, and the Cattle Council all expressed their frustration with these aspects of the agreement. Australia's quota for beef exports to the United States remains, but the tariffs on above-quota beef exports will be phased out – over a period of eighteen years. While this appeared

to represent a significant liberalisation of Australia's access to the US market, at least over the long term, the deal includes a mechanism that allows the Americans to apply temporary import restrictions (safeguards) against Australian beef whenever there is a surge in imports or a drop in US beef prices. Trade experts believe that these safeguards will kick in every other year, effectively negating the extra access benefits on beef. Moreover, the deal has set a very poor precedent that will make it much more difficult for Canberra to resist efforts by Japan to impose similar safeguards on imports of Australian beef.

These provisions were deeply disappointing to the Australian government and here too the prime minister asked the president to intervene. But ever sensitive to congressional protectionism, especially in an election year, Bush rejected Howard's requests for a modest reduction of the phase-in period from eighteen to fifteen years and for an additional increase in the beef quota of 30,000 tonnes. Still, as one source close to the negotiations told Christine Wallace of the *Australian*, "It caught all of us off-guard that the relationship wasn't worth 30,000 tonnes of beef. If the Yanks weren't prepared to do that, it really soured our view."

The dairy industry fared better than sugar and beef, and it will benefit from an expanded quota to the US market. This will give Australia the opportunity to export to the United States for the first time products such as cheese, butter, milk and ice cream. But the full extent of these benefits is not clear, partly because of the complexity of the arrangements that govern US imports of dairy products. And even with these improvements, Australia's dairy exports to the United States will still be a fraction of what it sells to Japan.

In promoting the deal, the government made much of the US agreement to cut tariffs on Australian horticultural exports like cut flowers, macadamia nuts and olives. But many of these products will also be subject to safeguard measures if American growers believe that they are adversely affected by Australian

imports. More to the point, some of these tariff concessions will have no effect at all, as quarantine restrictions currently prevent Australia from exporting many stone fruits to the United States. There are also seasonal restrictions that limit some horticultural imports to particular amounts at particular times. The United States only allows avocado imports, for instance, during Australia's off-season when no avocados are harvested.

The Australian wine industry was a major proponent of the deal from the outset, but there has been disappointment there as well. Although US import tariffs on wine will be phased out over eleven years, other issues such as labelling and distribution were not addressed to the satisfaction of the industry, and "remain significant barriers to wine exports."

Since signing the deal, Mark Vaile has acknowledged that the cuts to agricultural tariffs achieved in this agreement are slower and smaller than those in the free trade agreements that the United States has with seven other countries, including Canada, another significant agricultural producer. Moreover, billions of dollars of domestic and export subsidies were not on the negotiating table at all. As the president of the National Farmers' Federation, Peter Corish, put it: "The US has simply not come to the party on agriculture in these negotiations. They were never on the same page."

Did Australian manufacturing do better? Certainly, the only part of the agreement that comes close to genuine free trade is in manufacturing, where US tariffs were already very low. But, again, the deal is lopsided. While Australia has agreed to remove all of its tariffs on manufactured imports from the United States, Washington will retain its ban on imports of Australia's high-speed ferries. And the deal will likely have an adverse impact on Australia's motor vehicle and component industries as a result of Australia's agreement to eliminate tariffs on imports from the United States. Separate studies commissioned by the state governments of Victoria and South Australia predict that competition

from US imports will lead to significant job losses in the vehicle and component industries. This seems to tally with the assessment of the US car industry, which expects its exports to Australia to grow strongly as a result of the agreement.

But what of Australia's exports to the United States and, in particular, the elimination of the 25 per cent tariff on utility vehicles? The government claimed this as a considerable gain for Australia, but the head of General Motors in North America, Bob Lutz, has said that it will not antagonise US trade unions by importing utes from Australia. And if exports of the Australian-built Monaro are a success, GM plans to shift production from Australia to the United States.

As for the value of the deal for Australia's manufacturing industries overall, there is a considerable divergence of opinion between Australian and US assessments. While the Centre for International Economics predicted that Australia's manufactured exports to the United States would rise by \$A2 billion a year, US modelling predicted a much smaller increase in imports from Australia, in the realm of \$US550 million a year.

The deal on trade in services is not so much lopsided as it is disappointing overall. Services are traded in many ways, but most services rely on the ability of service providers to move easily across borders. Thus, one of Australia's major objectives was to make it easier for business and professional people to get temporary visas for the purpose of delivering services in the United States. The agreement failed to do this, impeding the ability of Australians to export professional services to the US. Moreover, Australian services exporters gained no new access to US markets as a result of the agreement. In fact, US modelling predicted that imports of services from Australia would decline slightly under the agreement.

Investment

Those who argued most forcefully for a trade agreement with the United States claimed that the focus on trade benefits (or the lack of trade benefits) missed the point. Indeed, the most vocal proponents of the deal argued that the main game was really about investment. And there was considerable substance to those claims, given the importance of the investment links between the two countries. While most Australians would be aware that the biggest source of foreign investment in Australia is the United States, they are probably not aware that Australian companies also have a major presence in the United States. Fifty per cent of Australia's direct investment overseas is located in the United States, and Australia is the eighth-largest foreign owner of US assets, with major interests in property development, transport, natural resources and media.

The Australian business lobby for the trade agreement, AUSTA, headed by Alan Oxley, had very clear objectives in relation to investment. It wanted an agreement that removed existing impediments to investment and granted new rights to foreign investors, with a view to attracting new US investment in the Australian economy. As Oxley put it, the agreement was an instrument for "deep economic integration based on neoliberal economic principles." In fostering deep integration of the Australian and US economies, one of AUSTA's principal aims was securing new rights for foreign investors, including the right for a corporation to launch a unilateral claim against a government and the right to have that claim heard in an international tribunal rather than in the domestic court system of the country where the alleged infringement occurred.

AUSTA believed that a trade agreement granting these additional rights and guarantees to US corporations in Australia would encourage greater US investment here. To that end, it pressed for strong investor rights provisions, similar to those in Chapter 11 of the North American Free Trade Agreement, or NAFTA.

Chapter 11 had generated considerable controversy and widespread opposition in North America, and it is one of the most widely criticised aspects of NAFTA. Non-government organisations and jurists in particular argued that Chapter 11 processes lacked transparency, threatened sovereignty and constituted a gross imbalance between private rights and the public interest. These debates came to Australia's shores in the form of the Multilateral Agreement on Investment, or MAI, a multilateral version of NAFTA's Chapter 11 that was being negotiated by western industrial countries in 1997–98. In Australia, as elsewhere, the MAI generated high levels of public concern and hostility, and it was eventually torpedoed, in large part because of the strong community campaign against the agreement. But such concerns did not deter Oxley, who claimed that there were clear economic benefits to be gained from giving corporations the right to sue governments in international tribunals – benefits that outweighed community concerns about the loss of sovereignty and the privileging of corporate rights.

The Howard government appeared to be less than convinced – and rightly so. A recent World Bank report concluded that Australia was one of the top five countries in the world for ease of doing business. In addition to low business tax rates, Australia has a strong system of property rights, a robust and fair legal system, a lack of burdensome regulation, a highly educated and skilled workforce, and a flexible labour market. Oxley's arguments appeared to be driven by an ideological position, not by any demonstrated shortcomings in Australia's attractiveness for US foreign investors. Thus the government's position on investment was quite moderate, and it aimed to ensure that the negotiations took account of "the need for appropriate policies to encourage foreign investment, while addressing community concerns."

The United States has always opposed Australia's Foreign Investment Review Board screening processes, on the grounds that it opposes any potential restriction on its ability to invest

overseas. In the past, the Foreign Investment Review Board has screened proposals from foreign investors wishing to acquire Australian companies valued in excess of \$50 million. Under the trade deal, that minimum threshold has been lifted to \$800 million, but Australia retains the right to maintain limits on foreign investment in "sensitive" sectors such as the media, Telstra, Qantas, airports and urban land. Notably, the trade agreement does not include a NAFTA-style investor–state dispute mechanism. It is impossible to know whether the investment provisions of the Australia–US trade agreement will deliver significant benefits to Australia. The US International Trade Commission does not believe that the trade agreement will generate "significant new investment," but it does not seem likely to cause much harm either.

A deal at any cost

Australia's trade negotiators knew how difficult a negotiation with the United States would be, but even they were shocked at the lousy deal Washington offered Australia. Yet their recommendation that the deal not be signed was overridden by the prime minister, who was clearly of the view that a bad deal was better than no deal at all. So what accounts for Howard's willingness to commit Australia to a trade agreement that fell so dramatically short of his own expectations?

The prime minister believed that the trade agreement with the United States would bring long-term benefits to the Australian economy, especially in manufacturing, services and investment. He described it as a deal that was "very much about the future rather than the past" and that would "link Australia's economy with the biggest economy of the world." In that sense, the sectoral exclusions and the intrusions into Australia's social programs were never going to be deal-breakers, despite statements by senior ministers to the contrary. For the government, the issue was not so much about specific costs or benefits for particular

industries or social programs, or even the net economic benefits overall. It was about the “head-turning” effect that this agreement would have in Australia, the United States and the rest of the world.

More importantly, there were very strong domestic political reasons behind the prime minister’s decision to accept the deal. Howard’s triumph in bringing home a deal from Washington could be promoted as evidence of his economic and foreign policy credentials, especially compared to the new leader of the Labor Party, Mark Latham. This was especially important in the face of growing criticism of the Coalition’s policies towards the United States and its closeness to the Bush administration, and the perception that Washington rather than Canberra was driving Australia’s foreign policy. Latham had landed a number of telling blows in this regard, most notably his characterisation of the Howard cabinet as “a conga-line of suckholes.” But his refusal to pledge Labor’s support for the trade deal provided the government with an opportunity to turn these criticisms on their head. Any move by Labor to block the trade deal, according to the Coalition, was evidence of anti-Americanism and its willingness to pander to its trade union supporters to the detriment of Australia’s future prosperity. Moreover, it showed that a Latham Labor government could not be trusted to manage Australia’s relationship with the United States, especially the alliance. As Health Minister Tony Abbott put it, Latham “would be a danger in the Lodge because he has this anti-American hang-up.”

As a political tactic, this appeared to work well for the Howard government. In a Senate committee report on the trade agreement issued in August 2004, the Labor senators outlined a number of areas “that require action to ameliorate many of the downsides or threats that flow from the Agreement,” and included a list of 43 recommendations aimed at remedying many of its defects. But their principal recommendation was that the Senate agree to pass

the implementing legislation that was needed to give effect to the trade agreement. Although the Labor Party was deeply divided on the merits of the agreement, Latham was not willing to torpedo it. Labor certainly gained some tactical advantage by forcing the government to agree to two amendments relating to local content rules and drug patents. The amendments to the patent legislation underscored Labor’s message that it was stronger on health policy, while Labor’s support for the trade agreement as a whole helped to neutralise Coalition claims that Latham and Labor were anti-American. But the left wing of the parliamentary Labor Party clearly would have preferred to join the Greens and Democrats in opposing the trade agreement as a whole.

Putting aside the domestic political considerations, there was one reason above all why Howard was never going to allow Australia’s negotiators to return home empty-handed. Australia’s pursuit of the trade agreement was driven by Howard’s desire to strengthen Australia’s political and strategic links with the United States, an objective that had assumed even greater importance with the “war on terror.” Howard saw the trade agreement as an important means of binding Australia closer to the United States. As Mark Vaile put it at the signing ceremony, “This is the commercial equivalent of the ANZUS Treaty.” Moreover, Australian support for the Bush administration’s foreign policies was clearly crucial in securing US support for the agreement. In the US congressional debates, those who spoke in favour linked the agreement to Australia’s support for US military actions. As Representative Jennifer Dunn declared, “Australia has been a true friend and ally. They’ve been there when it counted the most, on the shores of Normandy, on the streets of Baghdad.”

But this linking of trade, foreign and defence policies had its downside as well. The meshing of Australia’s economic, political and security agendas made it impossible to extract the trade agreement from the mix. As the Canadian political scientist Kim Nossal has noted, “had Howard ordered Vaile to walk away from

the table, he would have been admitting that his overall policy towards the United States since 9/11 was seriously flawed.” As a result, Australia has been lumbered with a trade agreement that is clearly a dud.