



INSTITUTE FOR INTERNATIONAL BUSINESS, ECONOMICS & LAW

**COMPETITIVE LIBERALISATION IN 2003:
WTO, AUSFTA AND IMPLICATIONS FOR THE ENERGY SECTOR**

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Good afternoon. It's a real pleasure for me to be here today to talk about the state of play in some very important international trade negotiations and the implications of the resulting agreements for Australia and the energy sector. I am not going to try to cover everything in the time I have. Instead, I will be focusing my remarks on the World Trade Organization negotiations and those intended to produce a Free Trade Agreement between Australia and the United States.

The WTO's Doha Development Agenda

More than 170 countries are participating in the multilateral trade negotiations underway at the WTO. That's WTO's 148 current Member governments plus around 25 countries still negotiating their accession to the Organization. This round of negotiations was launched in November 2001 at the WTO's Fourth Ministerial Conference in Qatar. The talks are scheduled to conclude in December of next year.

I'm sure you've all heard about September's WTO meeting in Cancun. That meeting was originally designed as a mid-term checkpoint and was the target for a certain number of important interim agreements. The collapse of the Cancun meeting has thrown the negotiators into a state of confusion and while the target date for completion remains officially unchanged, many observers now doubt the WTO Round will finish before 2006.

The negotiations are complicated by the number of countries involved and also by the sheer range of issues on the table. Enhanced market access for both agricultural and industrial goods through reduced tariffs and removal of non-tariff barriers is a core objective of the round as is the reduction or elimination of agricultural export subsidies and trade-distorting domestic support programs.

Liberalisation of international trade in services is another part of the core work program. New disciplines in intellectual property rights are under discussion and the rules governing trade measures like antidumping and countervailing duties are being refined and revised.

The status of the four "Singapore issues", investment, competition policy, trade facilitation and transparency in government procurement, is unclear in the wake of the Cancun meeting where serious disagreement in these areas triggered the collapse of the talks.

If that doesn't sound complicated enough, remember that agreement in the WTO requires a consensus of all of the participants.

But if it's complex, the results of a positive outcome are likely to be worthwhile. Tariffs in developed countries today are fairly low. Here in Australia, about half of all trade enters duty free with the rest coming in at an average of about 5 percent. Developing country tariffs are higher and often impact trade with other developing countries disproportionately.

Against this background, a tariff deal in the WTO that would cut developed country tariffs to an average of one percent and developing country tariffs to an average of five percent would likely boost annual developing country income by US\$ 110 billion. The World Bank has recently published estimates that a successful outcome could raise global output by between US\$ 290 and US\$ 520 billion by 2015. These are significant numbers.

Today we're living in a services economy. Services even predominate in many developing countries. Overall, services represent the fastest growing sector of the global economy and account for 60 percent of global output, 30 percent of global employment and nearly 20 percent of all global trade. Because services are building blocks of the modern economy, the gains from services liberalisation are quite often greatest in the country that lowers its barriers to foreign services suppliers. Developing countries that have fully liberalised their telecommunications services markets have seen their overall economies grow by as much as two percent more per annum than those countries that maintain a closed system.

GATS Negotiations and Energy Services

In the WTO approach to services trade negotiations, liberalising commitments are made by governments on a "bottom-up" basis. This means that, apart from some general obligations that apply to all WTO Members for all covered services and which do not imply market access, liberalising commitments affect only those services sectors or subsectors that a government has agreed to enter into its commitments schedule.

In addition, services are considered to be supplied in four different "modes" of delivery and it is possible to agree to liberalise certain modes and restrict others. So on two levels, the negotiation produces a positive list of commitments.

Unlike trade in goods, which have been covered by the GATT & WTO system since 1947, coverage of services trade dates only from the last round of negotiations that ended in 1993. Apart from financial services and telecommunications services, which were subject to separate additional negotiations in 1997, this means that so far in the WTO, governments have had only one chance to negotiate commitments for services. Consequently, many WTO Members' current commitments on services liberalisation are not very extensive.

The current negotiation is a major – once in a decade – opportunity to pursue additional coverage and deeper reductions in barriers to services trade. As you can imagine, this has meant that there has been a lot of activity in respect of proposals for those services normally associated with international trade. Many governments have tabled negotiating texts in respect of financial services, computer services, professional services of all kinds, distribution services, tourism, transportation servicesand ...energy services.

Energy services proposals have been presented by the United States, Canada, Norway, the European Communities, Japan, Chile, Venezuela and Cuba. There are many similarities as well as a good number of differences in the approaches reflected in the papers. Of course you wouldn't

expect the Administration of George Bush to put out a proposal that looked too much like those tabled by the governments of Hugo Chavez or Fidel Castro!

Still, there are similarities. The common objective of all the proposals is the improvement of commitments in all modes, although the scope of what they have included in “energy services” varies. Canada’s paper is limited to oil and gas, while the US and Norway take a broader approach. All of the papers refer to the need to preserve regulatory ability and respect for public policy considerations. Another commonality of the proposals is that they exclude ownership of energy resources from the ambit of the negotiations.

There are a range of measures targeted for coverage in the energy services negotiations. Sector-specific barriers highlighted include exclusive rights and monopolies and restrictions on temporary access and entry of tools and equipment. Regulatory issues raised relate to non-transparent and arbitrary regulation, lack of pro-competitive disciplines and non-trade questions relating to resource conservation, environmental protection and safety concerns have also been mentioned in one or more proposals.

One of the problems that has bedevilled the energy services negotiations relates to the technical question of how services connected with the energy sector are to be classified for purposes of negotiating commitments. The United States, EC, Japan and Chile have tried to resolve this problem by proposing that energy services be broken down into four broad categories: (1) exploration and development services, (2) pipeline transportation of fuels and energy transmission and distribution services, (3) energy commercialisation services, and (4) other services important to the provision of energy, energy products and fuels.

If this approach were to be agreed, it would also be possible to segregate liberalising commitments by sub-categories of services within the broader groups. For example, in the category of exploration and development services, a commitment might be made for casing and tubular services but not for workover and well-repair services.

It’s too early to tell how the WTO round of services negotiations will turn out and how energy services might be affected. The negotiations are now in the request-offer or horse trading phase and only a few countries have publicised their offers. Australia’s current commitments on energy services are quite limited and affect only pipeline transportation of fuels and consultancy services related to the transmission and distribution on a fee or contract basis of electricity, gaseous fuels and steam and hot water.

Before I turn to the FTA with the United States, there is another very important point to make about current WTO negotiations. Outside of the multilateral negotiations some very significant countries – seen from the energy sector viewpoint – are still negotiating their accession to the WTO. These include Russia, Saudi Arabia, Vietnam and a number of the Central Asian republics. If there is something your industry wants in these markets, now is the time to tell Mark Vaile to get it for you because the leverage will never be greater than it is at the time a country is negotiating its entry into the WTO.

Australia – USA Free Trade

Debate in this country over the FTA being negotiated with the United States has shifted from whether there should be a deal to what should be the eventual content of the agreement. A deal is seen as inevitable and I think that is good because I can see a lot of benefits for both countries in this bilateral. The result will be an integrated market of close to 300 million people with substantially enhanced opportunities for new investment flows and strengthened business relationships.

Modern FTA's like this one have been called "third wave" agreements because their coverage normally goes beyond traditional GATT and more recent WTO trade agreements. Third wave or "WTO Plus" features include provisions on foreign direct investment, competition policy, environmental protection and labour standards as well as updated and enhanced protection for intellectual property rights. The Australia – US FTA will have provisions in all of these WTO Plus areas.

There is another important difference as well and it is a difference that is potentially very significant for energy services. You will remember that WTO services negotiations produce a bottom up, positive list result.

The FTA services negotiation is a top-down, negative list exercise. This means we start from the assumption that all services sectors in all modes of delivery will be covered and opened to access by firms of the FTA partner. The negotiation is about which sectors or sub-sectors are kept out of the liberalisation process. It is also about how a country's "horizontal limitations" might be modified. Horizontal limitations refer to those measures, like visa and immigration requirements, that apply across all services sectors.

So, while Australia may not have much energy services exposure through the WTO, we need to start in the FTA with the assumption that everything will be covered. Let me add here before I forget that "liberalisation" should not be equated with "deregulation". Nothing in the services agreements at either a multilateral or bilateral level obliges a country to alter its regulatory environment. Liberalisation means that suppliers from other countries are treated the same as domestic suppliers – including having to meet the same regulatory requirements on a non-discriminatory basis.

Where else is the FTA likely to produce noticeable changes in the Australia-US trading environment? For starters, the US is pushing for elimination of investment screening requirements under the FIRB.

When Ralph Ives, the Chief US negotiator came through Adelaide recently, he suggested there's not a problem with investment approvals per se but rather with certain performance requirements that have been put on foreign investors through the FIRB process.

Some other changes you can expect. Certain aspects of Australian copyright legislation will likely be strengthened, particularly in how the law applies to digital products. Government procurement markets at the Commonwealth and state level will be opened to competition.

By the way, this represents a huge opportunity for Australian firms now barred from the American government procurement market. As a part of the deal, Australian firms will be able to bid on tens of billions of dollars in government contracts at the federal level and in 36 of the 50 US states.

Naturally, another outcome of the talks will see remaining import duties on industrial and agricultural products phased out or eliminated outright.

If the environmental chapter follows past precedent, then we are likely to see a rule in the FTA providing that Australia (and the US) must not fail to effectively enforce their respective environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the US and Australia. This is more than hortatory language; it's enforceable through the agreement's dispute settlement provisions.

Probably the hardest part of the FTA negotiation is finishing the process by the end of year deadline set by the Prime Minister and President Bush. It's not so much a challenge of negotiating issues as it is of writing and agreeing hundreds of pages of legal text. But finishing at or near the deadline will be important in order to get this agreement to the US Congress for approval early in 2004 ahead of the election season.

Like the WTO negotiations, a successful outcome in the FTA is worth working hard for. You'll find a number of studies of likely outcomes, but all of these econometric exercises need to be taken with a grain of salt as the economists are still basing their projections mainly on the effects of tariff cuts on demand elasticities and this kind of analysis ignores all of the effects likely to flow from the Agreement's services and WTO Plus provisions. Available evidence at this stage suggests that third wave FTAs are likely to have investment-generating effects that may be even more significant than their trade impact. The very high level of cross-investment now found in the US-Australia context gives us a good base to build from in the future.

This has been a fairly remarkable year for international trade issues. Next year is certain to present new challenges and opportunities. I think it's important that the business community stays on top of trade developments – especially over the next six to twelve months – because there is potentially much that might happen that would affect your commercial interests directly or indirectly.

I hope what I've said today has been of interest to you. Thank you very much for your attention.
