



2009 Fulbright Symposium
United States-Australia Free Trade Agreement:
the last 5 years, the next 5 years
24-25 August 2009, Canberra

The 2009 Fulbright Symposium, *The US-Australia Free Trade Agreement: the last five years, the next five years*, was held on 24-25 August, 2009, at Old Parliament House, Canberra. The Symposium was proudly hosted by the TC Beirne School of Law at the University of Queensland.

This report summarises the outcomes of the Symposium.



Professor I.M (Mac) Destler, Saul Stern Professor of Civic Engagement, School of Public Policy, The University of Maryland and Fellow of the Peterson Institute for International Economics (IIE), Washington DC

This report was prepared by the Symposium convenors:

Robert Burrell, Associate Professor, and Kimberlee Weatherall, Senior Lecturer,
TC Beirne School of Law, University of Queensland

Aims of the Symposium

Five years after the signing of the US-Australia Free Trade Agreement (AUSFTA) and following changes of government in both countries, both the AUSFTA specifically, and the trade relationship between the United States and Australia more generally, were ripe for reassessment. It was hoped that convening the Symposium with the benefit of 5 years' distance would also enable participants from the debate back in 2004 to reassess the extent to which both their hopes, and fears, for the Agreement, expressed in the heat of the debate in 2004, had been realised.

The Symposium set out to examine the following questions:

- Why did the Agreement come about, and what might this tell us about the negotiation of future free trade agreements?
- How successful has the Agreement been in facilitating trade between the two countries?
- Have fears about trade diversion been realised?
- How do some of the more controversial provisions of the Agreement (for example, those relating to pharmaceuticals, intellectual property and local content rules) appear with the benefit of distance?
- Has the Agreement assisted in cementing the political relationship between the two countries?
- Where is (Australian and American) trade policy going now given that we are in a very different economic and political climate?
- How should the Agreement be seen in the context of trade relations and negotiations in the Asia-Pacific region generally?

In order to answer these questions the Symposium brought together academics, policy-makers, industry leaders and commentators to review the economic and political impact of the Agreement and to consider the future of the trade and political relationships between the two countries.

Two key organising principles lay behind the selection of speakers and topics. First, that the event should try to provide an honest assessment of the impact of the Free Trade Agreement and to use this as a platform from which to think about how the trade relationship between Australia, the United States and third party countries in the Asia-Pacific region is likely to evolve over the next few years. The Symposium therefore tried to bring together both supporters of the Agreement and sceptics and did not shy away from the more controversial aspects of the



Professor Geoffrey Garrett, Chief Executive Officer, US Studies Centre, The University of Sydney

Agreement. A second key motivation behind the event was to cover the range of issues and topic areas covered by the Agreement, with a view to seeing whether there were common insights across different areas of trade.

The Conference was opened by Professor Paul Greenfield, Vice-Chancellor of The University of Queensland and Mr Daniel Clune, *Chargé d'affaires* at the United States Embassy. Invaluable insights into the negotiation of the Agreement were provided by the Hon. Mark Vaile, former Deputy Prime Minister & Minister for Trade and Mr Stephen Deady, formally of DFAT, and negotiator of AUSFTA. All of the other speakers were experts in their field and were drawn from a range of professional and disciplinary backgrounds, including from government, the private sector, academia, and public policy think tanks; lawyers, economists, international relations experts and others.

Findings and Themes

One aim of the Conference was to look back at the signing of the US-Australia Free Trade Agreement, to try to understand how it came about. The thing that came across most strongly in this respect was that it had taken a very particular constellation of events and personalities to produce the Agreement and it was widely agreed that, for better or worse, the signing of the Agreement had represented a 'once in a generation' opportunity. Both Mark Vaile and Stephen Deady remained convinced that, whatever the bases for criticism of the Agreement, it was the best possible agreement that could be obtained at the time, and worth doing both for the direct benefits and the longer term opportunities to grow the trade relationship which it represented.

In terms of the broad impact that the Agreement has had thus far, the economists who spoke were all of the view that 5 years is too short a timeframe in which to reach any definite views about the impact of a trade agreement. This was particularly true in this case for two reasons. First, because some of the provisions (in particular, in the agricultural sphere) have yet to come into operation or only came into



Panel from left: Bryan Mercurio (Chinese University of Hong Kong); Justin Hughes (Cardozo Law School, Yeshiva University); Tim Yeend (First Assistant Secretary, Officer of Trade Negotiations, Australian Department of Foreign Affairs and Trade)

operation very recently and, secondly, because a number of external factors, including in particular changes in the foreign exchange rate, have intervened that make it difficult to interpret the data that is available. Nevertheless, while being wary of drawing any definite conclusions, in their papers both Andrew Stoler and Lee Davis suggested that the Agreement seemed to have had some small net benefits for Australia, or, at the very least, had not had significant negative effects as had been feared in 2004. In particular, significant increases in Australian trade with East Asia tended to suggest that at least to date, trade diversion has not been an outcome of the Agreement.

Views on the political impact of the Agreement were somewhat mixed. Looking to the future, one of the themes that came across most strongly in the opening and early sessions was that the US-Australia Free Trade Agreement needs to be seen not as a single event but rather as part of an ongoing dialogue between the two nations. For example, in his remarks Mark Vaile stated that institutional arrangements created by the Agreement are a vital but often overlooked component of the Agreement. Specifically, he pointed to Article 21 of the Agreement which creates a Joint Committee to supervise the implementation of the Agreement and which creates an annual opportunity for dialogue between the United States Trade Representative and the Australian the Minister for Trade. A number of speakers drew attention to the introduction of the new E-3 visa as a longer-term outcome of the Agreement. This is a new category of visa introduced by the United States that is only available for Australian nationals, allowing them to work in the U.S in specialty occupations. Stephen Deady made reference to the trend towards protectionism brought on by the financial crisis, and pointed out that an agreement like AUSFTA is not only about removing existing barriers to trade but also to preventing the erection (or reinstatement) of new barriers. According to Deady, 'locking the US in' to certain liberal trade rules was as important an outcome as some of the changes, particularly as there is evidence of protectionist moves in the US.

On the other hand, participants also heard from Nicholas Gruen and Patricia Ranald, who expressed concerns about the day-to-day impact of the Agreement on political processes in Australia, and, in particular, its impact on policy debates and policy freedom. Patricia Ranald pointed to debates over blood products and government procurement as evidence that the AUSFTA constrains Australia's policy choices, while Nicholas Gruen outlined how the AUSFTA IP and pharmaceutical provisions prevented certain specific investments in Australian production of generic medicines. During the discussions which followed, it became clear that views concerning the Agreement remain divided.

The need to understand the Agreement as part of an ongoing process was also very much in evidence in the parallel session on Agriculture. A number of speakers in this session pointed out that if the expected gains of the Agreement for Australian farmers are to be realised there needs to be an active focus on ensuring that non-tariff barriers to trade are removed. In particular, this means addressing difficult quarantine issues barriers remembering that quarantine risks are easily exaggerated, but also, as David Adamson reminded delegates, that quarantine measures are aimed at dealing with some very real threats to human and animal health and to the broader environment.

The need to build on the Agreement moving forward was also a theme that was very much in evidence in the parallel session on Services and Public Procurement. In relation to public procurement, speakers and delegates stressed that if Australian businesses are going to be able to take advantage of the opportunities offered by the Agreement much more needs to be done to ensure that they are equipped to deal with the byzantine public procurement system in the United States. Similarly, it was stressed that success in the services field would depend in part on professional qualifications being recognised, something that has to be part of an ongoing process. Services will clearly be an area to watch in terms of identifying, in



*Dr Michael Fullilove,
Lowy Institute and
Brookings Institution*

the longer term, any benefits from the Agreement; Andrew Stoler also pointed to negotiations in the Working Group on Professional Services, in accounting, engineering and legal services as important signs of progress in relation to the 'qualitative economic impact' of the Agreement, and, as noted above, the E-3 Visa was mentioned a number of times.

As was noted above, at the time the Agreement was signed, the provisions of the agreement dealing with intellectual property, pharmaceuticals and local content rules were (alongside the provisions dealing with Agriculture) the most contentious parts of the Agreement. The organisers therefore took the view that a re-examination of these aspects of the Agreement was particularly important.

Perhaps the most publicly controversial parts of the Agreement in 2004 dealt with the Pharmaceutical Benefit Scheme (PBS); it being well known that the US' negotiating objectives included the elimination of government measures such as price controls and reference pricing, and an increase in the transparency of the system for listing pharmaceuticals by the Pharmaceutical Benefits Advisory Committee. There was concern, when the text of the Agreement was released, that new mechanisms for 'review' of PBAC decisions and references to the relevance of 'innovation' as an objective of the scheme, coupled with ongoing pressure through the Medicines Working Group, would lead to increases in prices for drugs in Australia. Speakers offered two different empirical analyses designed to test these concerns: Bryan Mercurio from the Chinese University of Hong Kong showed data that suggested that overall, the cost of the PBS has not increased since 2004 (although costs for consumers have risen). Tom Faunce of the ANU sought to show that the 2007 division of pharmaceuticals into two different 'formularies' for the purposes of the PBS meant higher prices for some patented drugs. Commentators in the panel discussion that followed disputed some of the figures and



Panel from left: Innes Willcox (Australian Industry Group); Professor Geoffrey Garrett (US Studies Centre), Michael Fullilove (Lowy Institute and Brookings Institution), Mac Destler (University of Maryland), Robert Burrell (University of Queensland)

assumptions, and the relationship between the changes to the system, government policy-making, and the AUSFTA itself; again it is early days given significant amendments to the system in 2007. One observation is worth noting, however: that while the PBS remains vulnerable to pressure, the increased transparency required by the AUSFTA was not necessarily a bad thing for the system overall. The picture therefore on pharmaceuticals is a mixed one, and a long way from some of the more extreme concerns outlined in 2004 – but one which requires constant monitoring and vigilance.

In a subsequent session on other areas of Intellectual Property, there was strong debate over the impact of the AUSFTA. Michael Handler pointed out the various ways in which elements of the United States' strong protections for trade marks had not made their way into the Agreement;

Justin Hughes highlighted some ways in which the Agreement had arguably not been implemented by Australia; Kimberlee Weatherall pointed out that the changes to copyright were, perhaps, not as dramatic as was thought at the time in terms of their direct impact. Another participant, however, Peter Gallagher, disputed some of these perspectives, arguing during discussion that by 'locking Australia in' to a high protection regime, the AUSFTA was part of an overall international 'ratcheting up' of intellectual property protection, setting an ever-higher baseline for all. In the session on Culture and Local Content, Jock Given painted a picture of a complicated picture of an industry in a state of flux, with changing consumer demands and preferences; industry shifts and consolidation; the emergence of significant new players in the media and content market (such as user-generated content and the sites which host such content) and of new global players in the form of India and China. It was interesting to learn that in some areas where Australia had retained policy flexibility (such as the ability to impose some quotas in the area of Pay Television) that flexibility had not been taken up by any policy measures: reflecting, perhaps, a shift away from the strong regulation of quotas and content in favour of various forms of industry support. One note of warning was sounded, however: that the issues will be revisited and, perhaps, new pressures brought to bear in future plurilateral negotiations such as those in furtherance of a Trans-Pacific Partnership.

The last two sessions of the Symposium sought to broaden the focus by looking at how the Agreement might sit within ambitious attempts to liberalise trade within the Asia-Pacific Region generally and how the Agreement might come to be seen by the Obama Administration and the Rudd Government, both of which have rather different foreign policy and trade priorities to their respective predecessors. In these final sessions it was noted that many aspects of the Obama Administration's trade focus have yet to be settled, in no small part because attention has understandably been focussed elsewhere. Mac Destler outlined the current politics of trade in the US, highlighting the difficulties facing any attempt to negotiate new Agreements; a holding pattern, it seems, is more likely – perhaps conflicting with Australia's more ambitious goals of negotiating more plurilateral agreements including a Trans-Pacific Partnership, including the US, as outlined by Tim Yeend from DFAT. Nevertheless, a number of the Speakers agreed that the Agreement may be important in ensuring that Australia is included in future American plans for trade policy in the region generally.



Parallel Session: Agriculture

Outcomes

Media Coverage

The Symposium was discussed at length in an article in the *Australia Financial Review* published on 25 August 2009 and Professor Mac Destler, one of the speakers at the Conference, was interviewed about the future of US Trade Policy by ABC Television News on the morning of the 24 August 2009.

Dissemination of Papers

A selection of papers from the Symposium will be published in 2010 in a special edition of the *University of Queensland Law Journal*. Papers and PowerPoint presentations will also be made available via the Symposium website: <http://www.law.uq.edu.au/fulbright2009>

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- The Embassy of the United States of America
- The Vice Chancellor of the University of Queensland
- The TC Beirne School of Law, University of Queensland



From left to right: Dr Joe Hlubcek, Executive Director, Australian-American Fulbright Commission; Ms Kimberlee Weatherall, University of Queensland; Dr Robert Burrell, University of Queensland; The Hon. Mark Vaile, former Member for Lyne and former Deputy Prime Minister & Minister for Trade; Professor Paul Greenfield, Vice-Chancellor, University of Queensland

PROGRAM

Day 1 (Monday 24 August 2009)	
Registration (8.15 - 8.50am)	
8.50 - 9.30am	<p>Plenary Session: Introduction</p> <p>Welcome:</p> <p>Associate Professor Robert Burrell, The University of Queensland Professor Paul Greenfield, Vice-Chancellor, The University of Queensland Mr Daniel Clune, <i>Chargé d'Affaires</i>, Embassy of the United States of America Ms Kimberlee Weatherall, The University of Queensland</p>
9.30 - 10.50am	<p>Plenary Session: The Origins of the AUSFTA: Background and Context</p> <p>Chair:</p> <p>Associate Professor Robert Burrell, The University of Queensland</p> <p>Speakers:</p> <p>The Hon. Mark Vaile, former Deputy Prime Minister & Minister for Trade Mr Stephen Deady, formally of DFAT, and negotiator of AUSFTA</p> <p>Panellist:</p> <p>Mr Mark Davis, Political Correspondent (Canberra), Sydney Morning Herald</p>
Break (10.50 - 11.20am)	
11.20am - 12.40pm	<p>Plenary Session: Political Impact of the AUSFTA: Perceptions of the Agreement within Australia and the US</p> <p>Chair:</p> <p>Professor Justin Hughes, Cardozo Law School, Yeshiva University</p> <p>Speakers:</p> <p>Dr Patricia Ranald, Research Associate, The University of Sydney Dr Nicolas Gruen, CEO, Lateral Economics</p> <p>Panellists:</p> <p>Professor I.M (Mac) Destler, School of Public Policy, The University of Maryland Dr Michael Fullilove, Lowy Institute and Brookings Institution</p>
Lunch (12.40 - 1.40pm)	

Day 1 (Monday 24 August 2009) (cont)		
1.40 - 3.00pm	<p>Plenary Session: Economic Impact of the AUSFTA</p> <p>Chair: Mr Edgard Kagan, Economic Counselor, Embassy of the United States of America</p> <p>Speakers: Professor Andrew Stoler, The University of Adelaide Mr Lee Davis, Director, Centre for International Economics</p> <p>Panellist: Dr Hazel Moir, The Australian National University</p>	
Break (3.00 - 3.30pm)		
3.30 - 4.50pm	<p>Parallel Session 1A: Services and Public Procurement</p> <p>Chair: Mr Michael Handler, University of New South Wales</p> <p>Speakers: Mr Andrew McCredie, Executive Director, The Australian Services Roundtable (ASR) Mr Mike Rombouts, Department of Finance and Deregulation</p> <p>Panellists: Mr Patrick Fazzone, Butzel Long Tighe Patton Attorneys and Counselors Associate Professor James Stellios, The Australian National University</p>	<p>Parallel Session 1B: Health Policy, Patents and Pharmaceuticals</p> <p>Chair: Ms Cathy Raper, Assistant Secretary, Trade Commitments Branch, Department of Foreign Affairs and Trade</p> <p>Speakers: Professor Bryan Mercurio, The Chinese University of Hong Kong Associated Professor Tom Faunce, The Australian National University</p> <p>Panellists: Dr Ruth Lopert, Principal Medical Adviser, Therapeutic Goods Administration Ms Kate Lynch, CEO, Generic Medicines Industry Association of Australia Dr Brendan Shaw, Executive Director, Health Policy and Research, Medicines Australia</p>
Drinks (5.00 - 6.00pm)		

Day 2 (Tuesday 25 August 2009)		
Arrival and Coffee (8.30-9.00am)		
9.00 - 10.20am	<p>Parallel Session 2A: Developments in Investment and Trade in Financial Services</p> <p>Chair:</p> <p>Mr Steven Bardy, Senior Executive, International Strategy, Australian Securities and Investments Commission</p> <p>Speakers:</p> <p>Mr Patrick Fazzone, Butzel Long Tighe Patton Attorneys and Counselors</p> <p>Dr Kyla Tienhaara, The Australian National University</p> <p>Panellist:</p> <p>Mr Martin Codina, Senior Policy Manager for Global Markets, Investment Financial Services Association</p>	<p>Parallel Session 2B: Intellectual Property</p> <p>Chair:</p> <p>Ms Helen Daniels, Assistant Secretary, Copyright and Classification Branch, Attorney Generals Department</p> <p>Speakers:</p> <p>Professor Justin Hughes, Cardozo Law School, Yeshiva University</p> <p>Mr Michael Handler, The University of New South Wales</p> <p>Panellists:</p> <p>Professor Bryan Mercurio, The Chinese University of Hong Kong</p> <p>Ms Kimberlee Weatherall, The University of Queensland</p>
Break (10.20 - 10.50am)		
10.50am - 12.10pm	<p>Parallel Session 3A: Specific Issues in Agriculture and Quarantine</p> <p>Chair:</p> <p>Dr Simon Hearn, Australian Centre for International Agricultural Research</p> <p>Speakers:</p> <p>Mr Peter Gallagher, Trade and Policy Analyst, Inquit</p> <p>Mr Paul Morris, Executive Manager, Technical Market Access, Department of Agriculture, Fisheries and Forestry</p> <p>Mr David Adamson, The University of Queensland</p> <p>Panellists:</p> <p>Mr Tony Battagelene, General Manager, Strategy and International Affairs, Winemakers Federation of Australia</p> <p>Mr Chris McElhone, Manager, Economics and Trade, National Farmers' Association</p>	<p>Parallel Session 3B: Culture and Local Content Rules</p> <p>Chair:</p> <p>Dr Milton Church, Free Trade Agreement (FTA) Unit, Department of Foreign Affairs and Trade</p> <p>Speakers:</p> <p>Professor Jock Given, Swinburne University</p> <p>Mr Richard Harris, Chief Executive Officer, South Australian Film Corporation</p> <p>Panellist:</p> <p>Ms Catherine Griff, Manager of Strategy, Screen Australia</p>
Lunch (12.10 - 1.10pm)		

Day 2 (Tuesday 25 August 2009) (cont)	
1.10 - 2.30pm	<p>Plenary Session: The AUSFTA, Bilateral and Regional Trade Policy in the Asia-Pacific</p> <p>Chair: Professor Kent Anderson, The Australian National University</p> <p>Speaker: Associate Professor Nick Bisley, La Trobe University</p> <p>Mr Tim Yeend, First Assistant Secretary, Officer of Trade Negotiations, Department of Foreign Affairs and Trade</p> <p>Panellist: Professor Brian Mercurio, Faculty of Law, The Chinese University of Hong Kong Professor Justin Hughes, Cardozo Law School, Yeshiva University</p>
Short Break (2.30 - 2.40pm)	
2.40 - 4.30pm	<p>Final Plenary Session: Where to now for Australian and US Trade Policy?</p> <p>Chair: Associate Professor Robert Burrell</p> <p>Speakers: Professor Geoffrey Garrett, Chief Executive Officer, US Studies Centre, The University of Sydney Professor I.M (Mac) Destler, School of Public Policy, The University of Maryland Dr Michael Fullilove, Lowy Institute and Brookings Institution</p> <p>Panellist: Mr Innes Willox, Director, Australian Industry Group</p>
4.30 - 4.45pm	Concluding Remarks and Conference Close
Drinks hosted by the US Embassy (5.00 - 6.30pm)	