

**Upper Hand Down Under:
American Politics and the Australia-U.S. Free Trade Agreement**

Kim Richard Nossal
Department of Political Studies
Queen's University
Kingston, ON K7L 3N6

[nossalk@post.queensu.ca]

Paper prepared for the annual meeting of the
Australian and New Zealand Studies Association of North America
Toronto, 20-21 February 2004

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On 8 February 2004, some three years after the Australian government of John Howard had first approached the United States administration of George W. Bush to suggest the negotiation of a free trade agreement, the Australian minister for trade, and Robert B. Zoellick, the United States Trade Representative (USTR), signed a comprehensive free trade agreement in Washington.

On the United States side, it was clear that many of the negotiating objectives outlined to the United States Congress by Zoellick in November 2002 had been achieved.¹ Indeed, the announcement by the Office of the United States Trade Representative (USTR) spoke approvingly of the considerable gains made by American interests. In an eight-page release, the USTR enumerated

what American negotiators were able to take away from the table.² Henceforth more than 99 per cent of manufactured goods exported to Australia from the United States would be duty-free immediately; indeed, Zoellick characterized manufacturers as the “big winners” in the agreement.³ All US agricultural exports to Australia would be duty free; by contrast, the agreement was described as “sensitive to concerns that have been expressed by some members of Congress and some U.S. farm sectors”—there would be minimal liberalization of restrictions on the import of Australian beef and dairy products, and no change at all in the Australian sugar quota.

¹ See Robert B. Zoellick to J. Dennis Hastert, Speaker of the House of Representatives, Washington, 13 November 2002: <http://www.ustr.gov/releases/2002/11/2002-11-13-australia-hastert.PDF>

² Office of the United States Trade Representative, “Free Trade ‘Down Under’: Summary of the U.S.-Australia Free Trade Agreement,” *Trade Facts*, 8 February 2004, 2.

³ “US, Australia reach trade pact,” *Washington Times*, 9 February 2004.

The USTR claimed that American pharmaceutical companies would benefit by “improvements” that the Australian government had promised to make in the Australian Pharmaceutical Benefits Scheme that appeared to provide companies with more say in PBS decisions. American services suppliers would be accorded “substantial access” to the Australian market; US film and television would enjoy the results of “unprecedented provisions to improve market access.” All American investment in new businesses would be completely exempted from the Australian Foreign Investment Promotion Board, and thresholds for acquisitions would be raised significantly from AUD\$50 million to AUD\$800 million. American firms would have the right to bid on contracts to supply Australian government departments. Other measures of note included improvements in e-commerce, and intellectual property protections.

On the Australian side, however, the reaction to the agreement was much more muted. To be sure, John Howard, the prime minister, lauded the agreement as a “once-in-a-generation opportunity” and argued that Australia would henceforth be linked to the “biggest economy in the world.”⁴ And many business leaders expressed satisfaction with the agreement.⁵ However, there is little doubt that there was more disappointment than enthusiasm in Australian reaction: even Mark Vaile, the minister for trade who negotiated the agreement, admitted that it was

a “disappointment” (though he insisted that the deal was still “in the national interest”).⁶

The benefits that Australians would gain from the agreement were not inconsiderable, but the gains were often ambiguous.⁷ For example, while Australian auto parts manufacturers would benefit from the removal of duties on automobile parts and utility trucks, Australian high-speed “fast ferries” were still completely banned from the United States under American law⁸—although the 50 per cent tariff on ship repair and maintenance under the Jones Act would be lifted for Australian firms.

In agriculture the benefits for Australians were quite limited. Whereas some Australian producers would benefit from the removal of American tariffs on some produce, most of the protectionist measures against key Australian agricultural products remained more or less firmly in place. The United States agreed to open up American beef and dairy markets, but only marginally, and at a glacial pace: not for a full eighteen years would Australians be permitted to export beef to the United States totally duty-free. And in one sector—sugar—the free trade agreement made no concessions at all to Australian sugar producers: Australia’s sugar quota would remain unchanged.

⁴ Tom Allard and Marian Wilkinson, “US gets upper hand in trade deal,” *The Age*, 10 February 2004.

⁵ See, for example, Alan Oxley’s commentary in *The Age*, 10 February 2004; likewise, Hugh Morgan, president of the Business Council of Australia, argued that the deal would create “long-term economic growth.” Allard and Wilkinson, “US gets upper hand,” *The Age*, 10 February 2004. For the reactions of the Australia United States Free Trade Agreement Business Group, see <http://www.austa.net/>

⁶ “Vaile’s bittersweet moment of success without sugar,” *The Age*, 10 February 2004.

⁷ See the summary posted on the Department of Foreign Affairs and Trade website: http://www.dfat.gov.au/trade/negotiations/us_fta/outcomes/02_key_outcomes.html

⁸ Most commentary on this matter cites Section 27 of the Merchant Marine Act of 1920 (more colloquially known as the Jones Act), which, *inter alia*, reserves all waterborne cargo movements between US ports for vessels owned, built, flagged and manned in the US. Actually, it is the Passenger Vessel Act of 1886 that places limitations on passengers on foreign-built vessels operating between US ports. See Margaret Kipling, “Aspects of Jones Act Reform,” *Maritime Cabotage Task Force* (September 2003).

In some areas, there was little agreement about whether the side Australian had given or taken. While some commentators argued that the Australian government had given in to American demands to open up the Australian television and film sector and to make changes to the Pharmaceutical Benefits Scheme, these claims were denied by the government in Canberra. In at least one area, however, the United States side agreed to accept an Australian suggestion that it was not necessary to include state-investor protection provisions comparable to the rights granted to investors under Chapter 11 of the North American Free Trade Agreement.

Given these decidedly mixed results for Australian interests, it is perhaps little wonder that the reception to the deal in Australia was also decidedly mixed. The president of the Business Council of Australia, Hugh Morgan, claimed that “The agreement will provide massive opportunities” for Australian firms;⁹ by contrast, Ann Capling of the University of Melbourne characterized the benefits to Australia as “crumbs off the table.”¹⁰ The opposition parties were all critical. The Australian Labor Party (ALP), which had provided bipartisan support for the negotiations in March 2001,¹¹ was

⁹ “Exports set to be long-term winner,” *The Australian*, 10 February 2004.

¹⁰ Ann Capling, “The selling out of Australia,” *The Age*, 10 February 2004.

¹¹ In early March 2001, the US Trade Representative, Robert Zoellick, had demanded a demonstration of bipartisan support, so that the administration of George W. Bush would not be bushwhacked by domestic Australian politics as his father had been in 1992. Within twenty-four hours, Zoellick had a response: on 8 March 2001, the minister for trade, Peter Vaile, and the ALP shadow minister, Peter Cook; the ALP announced that it agreed in principle to a free trade agreement with the United States. Paul Kelly, “Meeting paves the way for Howard-Bush talks” *The Australian*, 9 March 2001. For an examination of the history of the ALP on free trade issues, see Andrew Leigh, “Trade Liberalisation and the Australian Labor Party,”

openly skeptical. Mark Latham, the leader of the opposition, said that the ALP was “very, very disappointed” in the deal, which he claimed “doesn’t appear to be in Australia’s national interests.” Others were more blunt: Bob Brown, leaders of the Greens, termed the deal “a disaster for Australia.”¹²

What many in Australia—and some in the United States¹³—have called the lopsided nature of the agreement raises three interesting puzzles. First, why did the Howard government go into negotiations in 2001 promising farmers that if a free trade deal with the United States did not include free trade in agriculture, Canberra would walk away from the negotiating table? Second, why was the Bush administration so unwilling to try to do the Australian government a favour, given the robust support that Howard had provided the United States in the war on terror and Iraq? And third, why did the Howard government, facing a refusal of the United States to bend on agriculture, not simply walk away from the table?

The purpose of this paper is to explore these three puzzles. It examines the impact that Congress had on the outcome, and why Congressional efforts to sustain American protectionism in agricultural products was so successful. It also explores why there was no linkage in Washington between the Australian support for the war in Iraq and the free trade negotiations. Finally, the paper explores what kept the Howard government at the table—even though it was clear that the United States was not going to grant it any meaningful concessions in agriculture.

Australian Journal of Politics and History 48 (December 2002), 487-508.

¹² “US gets upper hand,” *The Age*, 10 February 2004.

¹³ See, for example, George Will, “This is free trade?” *Washington Post*, 10 February 2004; “A triumph for Big Sugar,” *The New York Times*, 14 February 2004.

Dreaming in Technicolor[®] about Congress?

The most puzzling aspect of the process is that the Howard government entered the negotiations with the openly stated goal of securing greater access for Australian agricultural products in the highly protected markets of the United States. Moreover, ministers constantly repeated the promise that if the deal was not “in the national interest”—which Downer himself at one point implied had to include better access to American markets for Australian farmers¹⁴—the government would walk away from the table. The argument here is not that the Australian government did not know that the US system of government in general and Congress in particular would pose a major obstacle to the achievement of Australian goals in its free trade negotiations with the Bush administration. On the contrary: virtually every commentary on Australia-US free trade predicted that the entrenched protectionism in Congress would pose serious difficulties for reaching an agreement, particularly on agriculture.¹⁵

In the event, members of Congress did not disappoint. Faced with the possibility that a free trade agreement would see the elimination of subsidies and quotas, sugar growers throughout the United States and their peak association, the US Sugar Alliance, launched protests against the two free trade agreements being negotiated by the Bush administration—with Australia and with the countries of Central America. Senators and representatives from both sugar-beet and sugar-cane states, including Minnesota, Florida, Louisiana, Idaho and

Montana, lobbied both the US Trade Representative Robert Zoellick, and the White House itself, urging Bush’s chief of staff, Andrew Card, and the president himself to keep sugar out of the free trade agreement. Senator Kent Conrad of North Dakota, a member of the Senate committee on agriculture, also pressed the sugar lobby’s case.

Such attempts to defend parochial interests is both understandable and predictable, reflecting that overly-quoted aphorism of Thomas “Tip” O’Neill, speaker of the House of Representatives from 1977 to 1987, that “all politics is local.” Members of Congress make a careful calculation of the public interest that is unabashedly local in definition: “What benefit will be derived by—or what harm will be inflicted on—the people in my congressional district, or my state?” A closely related question involves the calculation of electoral self-interest: “And what will that mean for my re-election prospects?” And, if there are no apparent implications, then the question becomes the classic log-roller’s calculus: “How can I turn my vote on this issue—one that doesn’t affect my constituents and my electoral prospects—to good advantage? How can I pick up IOUs from other members of Congress on this issue for use over some issue in the future that may affect me and my constituents?”

Such dynamics, which have kept (and will keep) Congress so parochial, are perfectly natural given the structure of the United States Constitution and the evolution of American institutions of governance since the late 1700s. Moreover, how one sees the parochialism of Congress depends entirely on one’s perspective. The autonomy of the United States legislature tends to annoy foreigners intensely, particularly those from countries where the legislature plays a very different role in national politics. But, from an American perspective, the separation of powers is surely an advantage in dealing with foreigners. After all, it provides the American government with the structural power understood by every car dealership: the ubiquitous manager who must approve the deal negotiated and signed by the sales

¹⁴ “Powell backs Canberra—free trade deal a good idea, says Secretary of State,” *The Australian*, 24 March 2001.

¹⁵ See, for example, Kim Richard Nossal, “Bilateral Free Trade with the United States: Lessons from Canada,” Special Issue: “An American-Australian Free Trade Agreement?” *Policy, Organisation and Society* 20:1 (2001), 47-62.

agent and the customer on the showroom floor.

Was the Australian government working on the assumption that the protectionist forces in Congress could not only be managed, but overcome, either by its own diplomatic efforts, or with the assistance of the Bush administration?

On the one hand, it seems improbable that the government in Canberra did not have a good sense of how deeply entrenched protectionist forces in Congress were, and how easy it would be for them to defeat efforts to open the American market up to Australian produce.

On the other hand, if Canberra had a good idea that freer trade in agriculture was a non-starter, why set the farm sector up to be “duded,” as Latham put it?¹⁶ Why as late as January 2004 did John Anderson, the deputy prime minister, express the view that it would be “un-Australian” to accept a deal that did not give on sugar? Why did Mark Vaile, as he departed for the final round of negotiation in January 2004, promise that if the deal was not good for Australian farmers, then “we won’t do it”?¹⁷

Given the persistent promises that the government in Canberra kept making to Australian farmers, it is indeed possible that there was some optimism in Canberra that Congress could in fact be moved. Indeed, it could be argued that a good manifestation of this optimism that the parochialism in Congress could be managed was the expenditure of approximately \$600,000 per year engaging two Washington lobbying firms—Mayer, Brown, Rowe and Maw, and Bergner Bockorny—to carry the Australian message on Capitol Hill. This was a departure for Australian diplomacy, born of the belief that experienced lobbyists in Washington would know better than the diplomats in the Australian embassy which pressure

points in Congress should be worked, and what message should be delivered.

However, it can be argued that when foreign governments spend public funds to employ Washington lobbyists to press their case on Capitol Hill, it is a mug’s game of the first order.¹⁸ The only beneficiaries of this game are the lawyers themselves, for in fact lobbyists are able to do little more (at least legally) on behalf of their foreign clients than make legislators aware of the harm that American action (or inaction) is likely to cause—a task that an embassy with a well-organized Congressional liaison section can do just as well, and probably much more cheaply. But there is nothing that either a lobbyist or a foreign diplomat can do or say that will alter the parochial structure of interests of members of Congress; after all, if members of Congress routinely ignore the interests of other Americans in other districts or other states in favour of their own constituents, the interests of foreigners are unlikely to fare any better.

Because the relentless parochialism of members of Congress is well known; the highly mixed record of Washington lobbyists (at least those who do not break the law) to alter that parochialism on behalf of foreign clients is equally well known. So the question is: why did Australian policy-makers appear to believe that the Australian case, either in and of itself, or as presented by high-priced Washington lawyers, would be sufficiently compelling to prompt members of Congress to abandon their protectionism?

¹⁶ “US gets upper hand,” *The Age*, 10 February 2004.

¹⁷ Allard and Wilkinson, “US gets upper hand in trade deal,” *The Age*, 10 February 2004.

¹⁸ For a discussion of the role of Congress in Canadian-American relations, see Kim Richard Nossal, “The Imperial Congress: The Separation of Powers and Canadian-American Relations,” *International Journal* 44 (Autumn 1989), 863-83; and Kim Richard Nossal, “Congress and Canada,” in Robert A. Pastor and Rafael Fernández de Castro, eds., *The Controversial Pivot: The U.S. Congress and North America* (Washington: Brookings Institution Press, 1998), 50-69.

Linkage Politics?

One possibility is that the Howard government believed that American policy-makers at both ends of Pennsylvania Avenue would engage in linkage politics on this issue: in other words, they would link policy in one sphere to policy in another.

Certainly the Howard government was accused right from the outset of the free trade process of engaging in linkage politics on the free trade issue. While Howard himself always argued that the free trade agreement with the United States was about free trade,¹⁹ there was widespread speculation that the real purpose of the agreement was not trade-related at all but strategic. In other words, the Howard government was embracing a free trade agreement with the United States in order to entrench Australia's strategic ties with the US. As early as March 2001, the Australian Labor Party's shadow minister for trade, Peter Cook, was expressing concern that the Howard government was more interested in using a free trade agreement for foreign policy purposes than it was in seeking a "hard-nosed commercial agreement."²⁰

The importance of strengthening the strategic relationship with the United States received a particular fillip shortly after the free trade process was launched—after the terrorist attacks of 11 September 2001, and the Bali bombings of October a year later. Indeed, the strategic relationship with the United States assumed even more prominence in the Howard government's foreign

¹⁹ In other words, the purpose of the agreement was to produce benefits for Australians that would come with more secure access to the American market. A related argument sometimes heard was that a bilateral free trade agreement would have a positive impact on global trade negotiations: as Australia's ambassador to the United States, Michael Thawley, put it in March 2001, "An FTA would help generate the momentum needed for the start of a [new] global round [of trade negotiations]." *Australia Report* (Washington), Spring 2001, 1.

²⁰ *The Australian*, 30 March 2001.

policy after 9/11; the role of the free trade agreement in cementing that relationship did not diminish in importance.

But there was another side to the linkage between the trade agreement and strategic relations: the idea that it was possible to link strategic policy for gains in the free trade negotiations.

In this view, what Owen Harries has termed the Howard government's "unhesitating, unqualified and—given the attitude of many other states—conspicuous support for the United States in its wars against terrorism and against Iraq"²¹ can also be understood as being driven partly by a concern to be—and to be seen by Americans to be—firmly on side with the United States in the struggle against terrorism. This involved not only providing rhetorical support, but also the contribution of military forces to the campaigns in Afghanistan and Iraq.

And, in return, Americans would express their appreciation of this Australian support when it came time for the many compromises and trade-offs that are so necessary for the negotiation of a comprehensive free trade agreement.

The Impossibility of Magnanimity

Despite the claims of critics in Australia that Howard was trying to play linkage politics, it is not at all clear that the Australian government was in fact predicating its strong support for American global policy in 2002–2003 on the expectation that its position in the free trade negotiations would be strengthened. But it *is* clear that no such linkage was at work in Washington—or anywhere else in the United States.

On the contrary: whatever sentiments of friendship they might have had towards Australians in general or towards the Coalition government in particular, all policy-makers in Washington—the president, the USTR, the secretary of state, members of Congress—proved wholly unsympathetic to the acute embarrassment that Howard would

²¹ Owen Harries, "Howard's dangerous design," *The Age*, 19 December 2003.

have to suffer domestically as a result of a lop-sided free trade agreement that featured the perpetuation of deep protectionism in agriculture. That this embarrassment was being caused to one of the closest and most loyal allies of the United States in the contemporary period appeared to make little difference.

Why did the Bush administration not act more magnanimously towards Howard on the free trade issue, moving to ensure that the Australian prime minister had something to take back to Australian farmers that was a little more attractive than a promise that in eighteen years beef farmers could export duty free to the US market?

Some, like Owen Harries, would explain this clear lack of gratitude in Washington by reference to realist assumptions about world politics. Noting that “in international politics, expectations of gratitude rest on shaky foundations, Harries reminds us that it was George Washington himself who stated that “no nation can be entrusted further than it is bound by its interests” and that “there can be no greater error than to expect or calculate on real favours from nation to nation.”²²

I would not disagree that generally in international relations self-interest trumps “real favours,” but it is important to examine how this actually works in the American case. For the historical record suggests that in the conduct of international relations and foreign policy United States presidents and their administrations are by no means incapable of acts of magnanimity and generosity (just as they are not incapable of acts of pettiness and meanness) towards other countries, governments, and leaders.

Thus, it would not be entirely beyond the realm of possibility that, had the Bush administration wished to do so, it could have engaged in linkage politics: it could have noted Howard’s domestic political plight and his need for something to sell Australians, particularly in the bush; it could have recognized Howard’s record of robust support for the American project in Iraq in

2003; and it could have simply done Howard a favour. It could have given him some kind of agricultural “sweetener” in the free trade agreement, and dealt with domestic opposition in the US farm sector by arguing the importance of the national interest in dealing with allies in the war on terror.

However, it can be argued that there were two reasons why the Bush administration did not do Howard any favours in the negotiations. First, the role of Congress in the making of trade policy raises the political price for any president who might be inclined to engage in such acts of generosity. For the 535 members of Congress might *individually* be capable of sentiments of generosity and high-mindedness or be sufficiently sympathetic to some broader notion of the national interest to be willing to do some foreigner a favour.

But in the broader context of Congressional politics, it is extraordinarily difficult to overcome the parochial dynamics of the institution. The “linkages” that would need to be made to actually get Congress *as an institution* to sacrifice the parochial interests of a minority in an act of national magnanimity are simply too numerous and too complex.

The consequence is that since magnanimity is virtually impossible, everyone in the American game is constrained to play hardball, squeezing as much advantage as possible from friends (and even more from foes), basically with little regard to the interests of others,²³ *even when Americans have the wherewithal to be generous*. In this dynamic, acts of friendship and support, such as the Howard government’s willingness to go to war against Iraq, do not go unnoticed in the United States, but they must go unrewarded—simply because the American system of government does not provide a mechanism to permit gratitude in action.

²² Harries, “Howard’s dangerous design.”

²³ See Kim Richard Nossal, “‘Without Regard for the Interests of Others’: Canada and American Unilateralism in the Post-Cold War Era,” *American Review of Canadian Studies* 27 (Summer 1997), 179-97.

But there was an additional reason for a lack of generosity in this case: by early 2004, the Bush administration had no incentive to absorb the domestic/electoral costs of doing Howard a favour—for the simple reason that they knew that the Australian government was not going to leave the table at that juncture. Given this, and given the strength of opposition to agricultural liberalization in the United States, it was an easy calculation for the American side to simply hold out, keep any meaningful measures that would have dismantled American agricultural protection off the table, and know that the Australians would still be there in the morning.

Stuck to the Table

Between October 2000, when the initial decision was made to approach the United States to negotiate a free trade agreement, to January 2004, when the negotiations had to be revived at the political level after they had stalled over the issues of agriculture and pharmaceuticals, the Howard government appears to have made a radical shift in policy—from a position where a free trade agreement was desirable but not absolutely essential to a view that even a free trade agreement with some serious flaws was better than no agreement at all.

The degree of this policy shift should not be understated. To be sure, after the collapse of Canberra's 2000 free trade initiative with the Association of Southeast Asian Nations (ASEAN), the Howard government's enthusiasm for an agreement with the United States was unmistakable. This reflected the widespread belief in Canberra that George W. Bush would win the US presidential election, and would be favourably disposed to a free trade agreement. But a careful reading of the rhetoric of the key ministers—Howard, Vaile, and the minister for foreign affairs, Alexander Downer—in early 2001 suggests that the enthusiasm for a deal was not absolute. Early on the government decided to lay down some key markers on the minimum requirements for an acceptable agreement. The most important marker focused on what even then was regarded as

the most contentious area—agriculture. As Downer put it in March 2001, a deal without free trade in farm products would be unacceptable: “it must be a free trade agreement that is absolutely in Australia's interests.”²⁴

But when the chips were down, and Vaile called Howard on 7 February to tell him that the Americans were not going to move on agriculture, the prime minister was no longer willing to walk away from a deal that did not meet initially established requirements. Rather, it would appear that the agreement itself had become the primary policy objective, rather than what the agreement actually contained. Indeed, a commentary in *The Australian* in February 2001 captured the dynamic with extraordinary prescience given the final outcome in February 2004:

The other danger is that the Government is so seduced by the mere idea of an FTA with the US that it accepts a shoddy outcome on agriculture. It is clear no US president could ever deliver full, unfettered access for Australian agricultural producers, but any FTA must contain real, tangible, significant improvements for Australian agricultural exporters or it would not be worth doing. Indeed, while we must not make the perfect the enemy of the good, it would diminish Australian self-respect to be so keen for an agreement that we accepted something second rate from the Americans.²⁵

Howard's evident desire to have a free trade agreement with the US—even one that did not meet initial desiderata—begs an obvious question: why was an FTA so important to the prime minister and his government that he was willing to accept a less than ideal agreement, “dudding” Australian farmers in the process? Why was he willing to absorb the considerable domestic political

²⁴ Roy Eccleston, “Powell backs Canberra—Free trade deal a good idea, says Secretary of State,” *The Australian*, 24 March 2001.

²⁵ “US trade pact must not be at Asia's expense,” *The Australian*, 2 February 2001.

costs of not having gotten more from the Americans?

First, Howard understood that if other free trade agreements are any indication, Australians, at least in the aggregate,²⁶ will derive more economic benefits from the very existence of an agreement than they would have had Howard ordered Vaile to pack his bags and return to Australia on 7 February.

Second, as Alan Oxley has noted, the free trade agreement's most egregious flaws from the point of view of Australian interests were primarily in the agricultural sector—a sector of the economy that over time has been steadily declining in importance to Australians. As Oxley argued: “We are an advanced industrialised economy with significant agricultural and mineral resources and a modern, open services economy. Australia is a microcosm of the US economy.” The free trade agreement's focus on services, investment and information, Oxley argues, makes it appropriate for future growth.²⁷ It is doubtless that calculation that led Howard to the view that on balance the deal was positive for Australia. As he put it, “If I'd walked away from this because of sugar, that wouldn't have advantaged the sugar people at all and it would have, I believe, robbed many other Australian indus-

tries of advantages that they are entitled to have.”²⁸

Third, there were domestic political reasons for accepting *any* free trade agreement with the United States that contained at least some benefits for Australians. With this agreement in hand, the Coalition could more readily portray the achievement of a free trade agreement with the US to the Australian electorate as evidence of the greater experience that the Howard government brought to foreign affairs than the newly-selected leader of the ALP opposition, Mark Latham. Moreover, Howard could more readily attack Latham himself as too unpredictable on the relationship with the United States and too willing to sacrifice Australian jobs and Australian interests. In this way, Howard could turn the ALP's own stinging attacks on Coalition policy towards the United States—for example, in early February Latham dismissed Howard and his cabinet as “a conga-line of suckholes”²⁹—back on the opposition.

Finally, and most importantly, by 2004 the broader strategic environment had changed dramatically, with the prime minister's policy of attempting to deepen and strengthen the relationship with the United States taking on greater importance since the terrorist attacks of September 11 and the Bali bombings a year later. The resulting “war on terror” saw the intermingling of all aspects of Australian foreign policy: the trade agreement was a means to tie Australia more closely to the United States, and Australian support for the global policies of the Bush administration was seen as crucial for cementing American support for a free trade agreement. By 2004, it simply was not possible to extract the free trade agreement from the mixture: had Howard ordered Vaile to walk away from the table, he would have

²⁶ The qualifier is of course crucial, since gains from free trade are rarely distributed evenly throughout the community. Moreover, liberalized trade inevitably produces “winners”—and “losers”.

²⁷ Alan Oxley, *The Age*, 10 February 2004; for an extended argument, see Oxley, “Free Trade Agreements in the Era of Globalisation—New Instruments to Advance New Interests—the Case of Australia,” *Australian Journal of International Affairs* 57:1 (2003), 165–186; this article was in part a response to Ross Garnaut, “An Australian-US Free Trade Agreement,” *Australian Journal of International Affairs* 56 (April 2002), 23–141.

²⁸ “US gets upper hand,” *The Age*, 10 February 2004.

²⁹ Australia, Parliament, *Commonwealth Parliamentary Debates*, House of Representatives, 5 February 2004.

been admitting that his overall policy towards the United States since 9/11 was seriously flawed.

However, while Howard's decision not to walk away is understandable, there can be little doubt that this made it virtually impossible for Australian negotiators to secure a more advantageous deal from the United States. The Americans knew that Howard wanted an agreement more than they did, and were not shy about using that to full advantage, simply stonewalling on crucial points, and counting on the Australians to come around in the fullness of time.

Conclusion

The Australia-United States free trade agreement poses an interesting case study of international negotiation in action. It demonstrates, once again, the structural weaknesses that all other countries have in trade negotiations with the United States, for no other country in the international system organizes its political authority in such a way as to provide the community with the negotiating power that Americans have in the division of authority between the executive and the legislature.

It also demonstrates how (and why) Americans are, despite their generous proclivities, structurally incapable of acts of generosity in trade negotiations. In the broad scheme of things, a sweeter agricultural deal

would have been a trifle for Americans as a whole to have given Australia, if nothing else an appropriate recognition for the degree to which the Australian prime minister put himself out to offer much-needed legitimacy and support in the war against Iraq. But given the structure of the American state, there is no institutional way for Americans as a whole to engage in not-so-random acts of kindness. Instead, Congressional politics demand that all players press for advantage, no matter how minute.

And finally, this case suggests that asymmetry in trade negotiations outcomes inevitably mirrors an asymmetry in the stakes for each side. In this case, those on the United States side knew that the Australians wanted a deal more than the United States did; moreover, they could be reasonably sure that the Australian prime minister would not walk away from a deal that provided some benefits. Thus it came down to the asymmetries of power between the two sides. Canberra could have tried to play as though it were not the *demandeur*, but the costs to Howard, and to Australians in the aggregate, of walking away from the table in February 2004 were simply too huge. So in the end, the strong did what they had the power to do, and weak accepted what they had to accept.