



18 May 2004

The Honourable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, DC. 20508

Dear Ambassador Zoellick

In connection with the signing on this date of the Australia–United States Free Trade Agreement, I have the honour to refer to discussions between our delegations concerning Australia's entry in its schedule to Annex I ("Annex I entry") relating to its foreign investment policy under the *Foreign Acquisitions and Takeovers Act 1975 (FATA)* and implementing policies and regulations. During those discussions, the Government of Australia provided extensive background on its current and past practice and policy relating to the screening of foreign investments.

The Government of Australia values the contribution that foreign investment has made and continues to make in Australia's development. Australian Government policy over recent decades has been to welcome foreign investment. In particular, that policy supports an open, contestable economy, and recognizes that foreign ownership of firms in Australia can result in a range of benefits, such as injections of capital, access to new skills and technologies, and enhanced competitive pressure on the domestic market.

Consistent with its welcoming policy toward foreign investment, the Government of Australia has historically rejected very few proposals for acquisitions or arrangements by foreign investors on grounds inconsistent with national treatment, reflecting the Government's commitment to competitive markets. Excluding residential real estate, over the past five years, the Government has only rejected four out of 2,285 proposals for foreign investments under the FATA. In addition, 64 percent of all proposed investments were decided within ten days, and 93 percent of all proposed investments were decided within 30 days.

Where the Government of Australia has rejected a foreign investment proposal, other than those concerning routine cases involving urban land, the Treasurer has made the final decision in each case. If the Government has potential concerns regarding a proposed foreign investment, the practice has been to enter into

discussions with the investor to reach an outcome that addresses these concerns (including the use of conditions of approval) rather than reject an investment.

Except in this context, the Government of Australia has not imposed additional conditions on foreign investors or their investments.

In accordance with the principles of natural justice, the foreign investor has been informed if its proposal was inconsistent with Australia's foreign investment policy and the reasons why, so that the investor has an opportunity to modify or withdraw its proposal prior to the Treasurer making a final decision. Australia's government regulators may also contact relevant government agencies in the investor's home country to help address concerns about proposals and investors, where this may assist in resolving inconsistencies between the proposal and Australia's foreign investment policy.

The Government of Australia confirms that its approach to foreign investment in the future will be consistent with the approach described above, which has served Australia well in gaining the benefits of foreign investment consistent with community interests. The Government of Australia also recognizes the importance the Government of the United States attaches to U.S. investors' liberal access to the Australian market in relation to the U.S. Government's acceptance of this non-conforming measure.

With reference to Australia's non-conforming measures relating to the FATA, in the event of a U.S. investor's proposed investment (other than those relating to acquisitions of urban land), which in the judgment of Australia's Government, raises serious concerns likely to require it to impose conditions on, reject, or require the unwinding of the investment, the Government of Australia shall, with the consent of the investor, inform the Government of the United States of the reasons why the proposed investment may be problematic and provide the U.S. Government an opportunity to consult with the Government of Australia on the matter. The Australian Government notes that this will need to be done in a manner which balances the need for an expeditious consideration of the investment proposal with the objective of allowing sufficient time for the U.S. Government to consult with the Australian Government, if it so chooses.

Furthermore, the Government of Australia and the Government of the United States will consult periodically on the operation of their respective investment policies, in particular as they relate to their non-conforming measures with respect to investment under the Agreement.

The Honourable Robert B. Zoellick
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I would be grateful if you would confirm that your Government shares this understanding and have the honour to propose that this understanding shall constitute an integral part of the Agreement.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Mark Vaile', written in a cursive style.

Mark Vaile
Minister for Trade

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 18, 2004

The Honorable Mark Vaile MP
Minister for Trade
Parliament House
Canberra ACT 2600

Dear Minister Vaile:

I have the honour to acknowledge receipt of your letter of this date, which reads as follows:

"In connection with the signing on this date of the Australia-United States Free Trade Agreement, I have the honour to refer to discussions between our delegations concerning Australia's entry in its schedule to Annex I ("Annex I entry") relating to its foreign investment policy under the *Foreign Acquisitions and Takeovers Act 1975 (FATA)* and implementing policies and regulations. During those discussions, the Government of Australia provided extensive background on its current and past practice and policy relating to the screening of foreign investments.

The Government of Australia values the contribution that foreign investment has made and continues to make in Australia's development. Australian Government policy over recent decades has been to welcome foreign investment. In particular, that policy supports an open, contestable economy, and recognizes that foreign ownership of firms in Australia can result in a range of benefits, such as injections of capital, access to new skills and technologies, and enhanced competitive pressure on the domestic market.

Consistent with its welcoming policy toward foreign investment, the Government of Australia has historically rejected very few proposals for acquisitions or arrangements by foreign investors on grounds inconsistent with national treatment, reflecting the Government's commitment to competitive markets. Excluding residential real estate, over the past five years, the Government has only rejected four out of 2,285 proposals for foreign investments under the FATA. In addition, 64 percent of all proposed investments were decided within ten days, and 93 percent of all proposed investments were decided within 30 days.

Where the Government of Australia has rejected a foreign investment proposal, other than those concerning routine cases involving urban land, the Treasurer has made the final decision in each case. If the Government has potential concerns regarding a proposed foreign investment, the practice has been to enter into

discussions with the investor to reach an outcome that addresses these concerns (including the use of conditions of approval) rather than reject an investment.

Except in this context, the Government of Australia has not imposed additional conditions on foreign investors or their investments.

In accordance with the principles of natural justice, the foreign investor has been informed if its proposal was inconsistent with Australia's foreign investment policy and the reasons why, so that the investor has an opportunity to modify or withdraw its proposal prior to the Treasurer making a final decision. Australia's government regulators may also contact relevant government agencies in the investor's home country to help address concerns about proposals and investors, where this may assist in resolving inconsistencies between the proposal and Australia's foreign investment policy.

The Government of Australia confirms that its approach to foreign investment in the future will be consistent with the approach described above, which has served Australia well in gaining the benefits of foreign investment consistent with community interests. The Government of Australia also recognizes the importance the Government of the United States attaches to U.S. investors' liberal access to the Australian market in relation to the U.S. Government's acceptance of this non-conforming measure.

With reference to Australia's non-conforming measures relating to the FATA, in the event of a U.S. investor's proposed investment (other than those relating to acquisitions of urban land), which in the judgment of Australia's Government, raises serious concerns likely to require it to impose conditions on, reject, or require the unwinding of the investment, the Government of Australia shall, with the consent of the investor, inform the Government of the United States of the reasons why the proposed investment may be problematic and provide the U.S. Government an opportunity to consult with the Government of Australia on the matter. The Australian Government notes that this will need to be done in a manner which balances the need for an expeditious consideration of the investment proposal with the objective of allowing sufficient time for the U.S. Government to consult with the Australian Government, if it so chooses.

Furthermore, the Government of Australia and the Government of the United States will consult periodically on the operation of their respective investment policies, in particular as they relate to their non-conforming measures with respect to investment under the Agreement.

The Honorable Mark Vaile MP
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I would be grateful if you would confirm that your Government shares this understanding and have the honour to propose that this understanding shall constitute an integral part of the Agreement."

I have the further honor to confirm that my Government shares this understanding and that it shall constitute an integral part of the United States—Australia Free Trade Agreement.

Sincerely,


Robert B. Zoellick



UNITED STATES OF AMERICA



FEDERAL TRADE COMMISSION
Washington, DC 20580

DEPARTMENT OF JUSTICE
Washington, DC 20530

May 18, 2004

Mr. Ken Henry
Secretary
Department of the Treasury

Mr. Graeme Samuel
Chairman
Australian Competition and Consumer Commission

Dear Mr. Henry and Mr. Samuel:

In the course of the United States-Australia Free Trade Agreement negotiations, both Governments expressed the desire to strengthen bilateral cooperation on antitrust and competition-related matters. In that context, the U.S. Department of Justice and the U.S. Federal Trade Commission, on behalf of the United States, with the participation of other U.S. Government agencies, affirm their interest in pursuing discussions with Australia with a view to strengthening cooperation and enforcement assistance concerning antitrust and competition matters, including developing, reviewing and updating, as appropriate, relevant cooperative arrangements, as well as appropriate procedures for consideration of requests to initiate or expand enforcement activities. Such discussions can begin at the earliest mutually convenient date.

Sincerely,

Timothy J. Muris
Chairman
Federal Trade Commission

R. Hewitt Pate
Assistant Attorney General
Antitrust Division, Department of Justice



18 May 2004

Timothy Muris
Chairman
Federal Trade Commission

R. Hewitt Pate
Assistant Attorney General
Antitrust Division, Department of Justice

Dear Mr Muris and Mr Pate

We have the honour to confirm receipt of your letter of this date, which reads as follows:

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The Australian Department of the Treasury and the Australian Competition and Consumer Commission share the interest expressed by the US Department of Justice and US Federal Trade Commission in pursuing discussions concerning the strengthening of cooperation and enforcement assistance in antitrust and competition matters.

The Department of the Treasury and the Australian Competition and Consumer Commission confirm their willingness for these discussions to begin at the earliest mutually convenient date.

Sincerely

Dr Ken Henry
Secretary
Department of the Treasury

Mr Graeme Samuel
Chairman
Australian Competition and
Consumer Commission