

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND
CONSISTENCY
MARCH 1, 2004

Exchange of Letters on Foreign Investment in the Financial Services Sector

The Honourable Robert B. Zoellick
United States Trade Representative
Washington, D.C. 20508

The Honourable Randal K. Quarles
Assistant Secretary for International Affairs
U.S. Department of the Treasury
Washington, DC 20220

Dear Ambassador Zoellick and Mr. Quarles:

I have the honour to refer to the Australia-United States Free Trade Agreement (the "Agreement") signed this day. During the course of discussions concerning Australia's non-conforming measure relating to foreign investment the Government of Australia provided extensive background on its current and past practice and policy relating to foreign investment in the financial services sector.

The Government of Australia values the contribution that foreign investment has made and continues to make in the development of Australia. Australian Government policy over recent decades has been to welcome foreign investment. In particular, that policy supports an open, contestable financial sector, and recognizes that foreign ownership of financial sector companies 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.

The Australian Government's approach to foreign participation in the financial system is to encourage investment consistent with community interests. In accordance with the Treasurer's policy statement of April 9, 1997, each proposed foreign takeover in the financial system is considered on a case-by-case basis. In assessing such foreign participation, the Australian Government applies the principle that any large-scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest, but there is no blanket prohibition on foreign ownership of any particular financial institution. The Government of Australia takes into account the fact that the financial system in Australia has grown and diversified to include not only banks and insurance companies, but also a wide range of other institutions and financial service providers.

During the time this policy has been in effect there have been over 250 foreign investment proposals in the financial sector decided with no rejections. Of these, 14 proposals were valued between \$500 million and \$2 billion, and over half of the 14 involved acquisitions by major U.S. companies. In total, over the three years from 2000-

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01 to 2002-03, almost \$35 billion worth of foreign investment proposals in the financial sector that met the criteria for assessment against the national interest were approved. Over a quarter of the total equity in Australia's banking and general insurance sectors is now owned by non-residents.

The Government of Australia allows 100 percent ownership of financial institutions, with some 40 foreign-owned banks along with 14 majority-owned Australian banks. There are also several foreign-owned insurance companies, money market corporations and managed funds. These firms operate in Australia's growing financial market, which is now rated as the fourth largest funds management market in the world. The Government of Australia maintains no quantitative limitations preventing establishment of new financial institutions or branches.

Historically, very few proposals for acquisitions or arrangements by foreign investors in any sector have been rejected on grounds inconsistent with national treatment, reflecting the government's commitment to competitive neutrality and open, contestable markets. Where such rejections have occurred, other than those concerning routine cases involving urban land, the Treasurer has made the final decision in each case. If potential concerns arise with respect to a proposed foreign investment, the government's practice is to enter into discussions with the investors 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 has not imposed additional conditions on investors or their investments. In accordance with the principles of natural justice, investors are informed if their proposal is inconsistent with the foreign investment policy and the reasons why it is inconsistent, so that they have an opportunity to modify or withdraw their proposal prior to the Treasurer making a final decision. Australia's government regulators may contact relevant government agencies in the investor's home country to help address concerns about a proposal and investor, where this may assist in resolving inconsistencies between the proposal and foreign investment policy.

During the discussions, the Government of Australia confirmed that its approach to foreign investment in the future will be consistent with the approach described above. This approach has served Australia well in gaining the benefits of foreign investment consistent with community interests.

The Government of Australia acknowledged that, during the course of discussions concerning Australia's non-conforming measure relating to foreign investment policy, the Government of the United States stressed its reliance upon the Government of Australia's confirmation that its approach in the future to foreign investment in the financial services sector will be consistent with the approach described above. The Government of Australia noted that the Government of the United States also underscored the importance it attaches to the above factors in relation to its willingness to accept this non-conforming measure.

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I would be grateful if you would confirm that your government shares these understandings and have the honour to propose that these understandings be an integral part of the Agreement.

In addition, the Government of Australia acknowledges the U.S. proposal that the Financial Services Committee discuss developments concerning Australia's non-conforming measure relating to its foreign investment policy as it relates to the financial sector

Sincerely,

Mark Vaile
Minister for Trade

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

Dear Minister Vaile:

We have the honor to confirm receipt of your letter of this date, which reads, in relevant part, as follows:

“I have the honour to refer to the Australia-United States Free Trade Agreement (the “Agreement”) signed this day. During the course of discussions concerning Australia’s non-conforming measure relating to foreign investment the Government of Australia provided extensive background on its current and past practice and policy relating to foreign investment in the financial services sector.

The Government of Australia values the contribution that foreign investment has made and continues to make in the development of Australia. Australian Government policy over recent decades has been to welcome foreign investment. In particular, that policy supports an open, contestable financial sector, and recognizes that foreign ownership of financial sector companies 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.

The Australian Government’s approach to foreign participation in the financial system is to encourage investment consistent with community interests. In accordance with the Treasurer’s policy statement of April 9, 1997, each proposed foreign takeover in the financial system is considered on a case-by-case basis. In assessing such foreign participation, the Australian Government applies the principle that any large-scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest, but there is no blanket prohibition on foreign ownership of any particular financial institution. The Government of Australia takes into account the fact that the financial system in Australia has grown and diversified to include not only banks and insurance companies, but also a wide range of other institutions and financial service providers.

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The Government of Australia allows 100 percent ownership of financial institutions, with some 40 foreign-owned banks along with 14 majority-owned Australian banks. There are also several foreign-owned insurance companies, money market corporations and managed funds. These firms operate in Australia's growing financial market, which is now rated as the fourth largest funds management market in the world. The Government of Australia maintains no quantitative limitations preventing establishment of new financial institutions or branches.

Historically, very few proposals for acquisitions or arrangements by foreign investors in any sector have been rejected on grounds inconsistent with national treatment, reflecting the government's commitment to competitive neutrality and open, contestable markets. Where such rejections have occurred, other than those concerning routine cases involving urban land, the Treasurer has made the final decision in each case. If potential concerns arise with respect to a proposed foreign investment, the government's practice is to enter into discussions with the investors 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 has not imposed additional conditions on investors or their investments. In accordance with the principles of natural justice, investors are informed if their proposal is inconsistent with the foreign investment policy and the reasons why it is inconsistent, so that they have an opportunity to modify or withdraw their proposal prior to the Treasurer making a final decision. Australia's government regulators may contact relevant government agencies in the investor's home country to help address concerns about a proposal and investor, where this may assist in resolving inconsistencies between the proposal and foreign investment policy.

During the discussions, the Government of Australia confirmed that its approach to foreign investment in the future will be consistent with the approach described above. This approach has served Australia well in gaining the benefits of foreign investment consistent with community interests.

The Government of Australia acknowledged that, during the course of discussions concerning Australia's non-conforming measure relating to foreign investment policy, the Government of the United States stressed its reliance upon the Government of Australia's confirmation that its approach in the future to foreign investment in the financial services sector will be consistent with the approach

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described above. The Government of Australia noted that the Government of the United States also underscored the importance it attaches to the above factors in relation to its willingness to accept this non-conforming measure.

I would be grateful if you would confirm that your government shares these understandings and have the honour to propose that these understandings be an integral part of the Agreement.”

We have the further honor to confirm that our government shares the understandings set out in your letter and that these understandings are an integral part of the Agreement.

The Government of the United States also notes that, with respect to the non-conforming measure relating to Australia’s foreign investment policy as described above, it proposes that the Financial Services Committee discuss developments relating to such policy as it relates to the financial services sector, including the need for continuation of the non-conforming measure.

Sincerely,

Robert B. Zoellick
United States Trade Representative

Randal K. Quarles
Assistant Secretary for
International Affairs
U.S. Department of the Treasury