

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

Dear Ambassador Zoellick:

I have the honour to refer to the Australia-United States Free Trade Agreement (the "Agreement") signed on this date. During the course of the discussions concerning Australia's non-conforming measure relating to the central government's guarantee of Commonwealth-owned entities which may conduct financial operations, the Government of Australia provided the following background information on its policies in this area.

The Government of Australia notes that competitive conditions in Australia's financial services markets are ensured, *inter alia*, through Australia's National Competition Policy (NCP), which embodies the principle of competitive neutrality, i.e., that government businesses not enjoy a net competitive advantage by virtue of their public sector ownership. The Competition Principles Agreement (CPA) between the central and regional governments underpins the NCP, and is enforced through central government financial sanctions.

The CPA requires governments at both levels to impose debt guarantee fees on significant government business enterprises directed towards offsetting any competitive advantages that may result from government guarantees, to the extent that the benefits of doing so outweigh the costs. It also requires governments to establish a complaints mechanism for competitive neutrality complaints. The Commonwealth Government Competitive Neutrality Complaints Office (www.ccnco.gov.au) fulfils this function in relation to Commonwealth businesses.

NCP required the Commonwealth Government to establish a timetable for reviewing and, where appropriate, reforming existing legislation that restricts competition, by 2002. It also requires the Commonwealth Government to publish an annual report on the progress of its reviews and reforms.

Furthermore, under Department of Finance Guidelines a Commonwealth guarantee should not be issued until it has been determined that all other options available (including commercial insurance) have been exhausted. If insurance is readily available, this is the preferable course of action and the proposal should not be approved. It is government policy to place a time limit on such guarantees and to terminate a guarantee when there is no longer a need for the instrument, for example when alternatives such as insurance are available.

Further, the CPA requires proposals for new legislation that restricts competition to be accompanied by evidence that the benefits to the community as a whole outweigh the costs, and that the legislation's objectives can only be achieved by restricting competition. Legislation or regulation that would be needed in establishing a Commonwealth-owned entity, including those which may conduct financial operations covered by a guarantee, would be subject to a regulation impact statement

(RIS), if there was a direct effect on business or it would result in restricting competition.

It is Commonwealth Government policy that a RIS be prepared by decision makers (subject to some exceptions) when considering policy options that involve new regulation or amendments to existing regulation that impact upon business. The Office of Regulation Review (ORR) (www.pc.gov.au/orr) assesses these statements and publicly reports on compliance.

Consistent with Government policy, the ORR Guidelines state that those affected by a proposed regulation be consulted at an early stage of the policy development process. Comments received in response to consultation are considered when determining the most appropriate regulatory option and in assessing its impact. A consultation statement must be incorporated into the RIS that details the consultation undertaken and a summary of the views elicited from the main affected parties, or specifying reasons why consultation was inappropriate.

A RIS must also include an implementation and review section, which includes an assessment of the feasibility of on-going arrangements for consulting with the interest groups affected and, where appropriate, detailed monitoring and enforcement mechanisms to ensure that the proposal achieves its objectives.

Sincerely,

Mark Vaile