



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 (the "Agreement"), I have the honour to refer to discussions between our delegations concerning Australia's non-conforming measure relating to the guarantee by government of government-owned entities which may conduct financial operations. During these discussions, 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.ccnc0.gov.au) fulfils this function in relation to Commonwealth businesses.

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

Furthermore, under Department of Finance and Administration 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. Australia's regional governments also have policies relating to guarantees and Australia shall provide the United States with additional information on the circumstances under which guarantees can be provided at the regional government level and the associated authorisation processes before 30 June 2004.

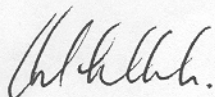
Further, the CPA requires proposals, at central and regional government level, for new legislation that restricts competition to be accompanied by evidence that the benefits to the community as a whole outweigh the costs, and that the legislation's objectives can only be achieved by restricting competition. For example, at the Commonwealth level, 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
Minister for Trade