

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:

Article 9.5 (Global Safeguard Measures) of the proposed United States-Australia Free Trade Agreement would provide, in part, that a Party taking a global safeguard measure may exclude imports of an originating good from the other Party, if such imports are not a substantial cause of serious injury or threat thereof.

Implementing legislation will be required in order for the President to exclude imports of originating goods from Australia, as provided for under Article 9.5, from safeguard measures the President imposes in accordance with Article XIX of GATT 1994 and the World Trade Organization Agreement on Safeguards. We have notified the Congress, in the trade remedies report submitted pursuant to section 2104(d)(3) of the Trade Act of 2002, that legislation would be required to implement Article 9.5.

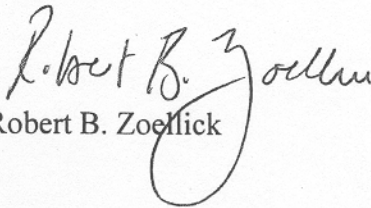
We expect that the procedure for carrying out Article 9.5 in the United States will be similar to that for the equivalent provisions included in our free trade agreements with Singapore, Jordan, and Israel. Under U.S. law, the U.S. International Trade Commission ("Commission") is responsible for developing a factual record and making certain determinations in global safeguards investigations, including whether increased imports are a substantial cause of serious injury or threat thereof to a domestic industry. If the Commission makes an affirmative injury determination, it also issues recommendations to the President on an appropriate remedy.

With respect to the President's decision on a possible exclusion from a global safeguard measure, we anticipate relying on the Commission to develop the factual basis for a determination on whether imports of originating goods from Australia are a substantial cause of serious injury or threat thereof, and to make a determination on this issue. If the Commission makes an overall affirmative injury determination and also determines that imports of originating goods from Australia are not a substantial cause of serious injury or threat thereof, the President would then decide whether to exclude them from any global safeguard measure that he determines is appropriate under U.S. law. During the process of determining whether imports from Australia should be excluded from a global safeguard measure, the Administration would consult with interested parties, including the Australian government.

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I hope that this explanation addresses any questions you may have regarding the manner in which the United States would expect to implement the relevant provisions of Article 9.5 of the Free Trade Agreement.

Sincerely,


Robert B. Zoellick