



18 May 2004

The Honourable Robert B. Zoellick  
United States Trade Representative  
600 17<sup>th</sup> 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 confirm that Australia will review the treatment under the *Foreign Acquisitions and Takeovers Act 1975* (FATA) of portfolio investment, i.e., passive investment, internal corporate reorganisations, and foreign-to-foreign takeovers under its foreign investment screening arrangements, within 18 months of entry into force of this Agreement.

Australia notes that portfolio investment, i.e., passive investment, is currently inadvertently captured by the operation of the FATA. Australia also notes that internal corporate reorganisations and foreign-to-foreign takeovers have historically been classes of transactions that in almost all cases give rise to no concerns under foreign investment policy.

Accordingly, Australia further notes that it would be desirable to exclude such portfolio investment from the operation of the FATA and to minimise any screening of foreign-to-foreign takeovers and internal corporate reorganisations.

Australia confirms that the review will develop appropriate measures designed to exempt portfolio investment and to significantly reduce the incidence of investment screening of foreign-to-foreign takeovers and internal corporate reorganisations.

As part of its consultation process with all interested parties, Australia would welcome submissions from the United States in the course of this review and will consult with interested parties, including the United States, regarding the options under consideration.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Vaile'.

Mark Vaile  
Minister for Trade

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

May 18, 2004

The Honourable Mark Vaile  
Minister for Trade  
Department of Foreign Affairs and Trade  
Canberra ACT 2660

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 (the “Agreement”), I have the honour to confirm that Australia will review the treatment under the *Foreign Acquisitions and Takeovers Act 1975* (FATA) of portfolio investment, i.e., passive investment, internal corporate reorganisations, and foreign-to-foreign takeovers under its foreign investment screening arrangements, within 18 months of entry into force of this Agreement.

Australia notes that portfolio investment, i.e., passive investment, is currently inadvertently captured by the operation of the FATA. Australia also notes that internal corporate reorganisations and foreign-to-foreign takeovers have historically been classes of transactions that in almost all cases give rise to no concerns under foreign investment policy.

Accordingly, Australia further notes that it would be desirable to exclude such portfolio investment from the operation of the FATA and to minimise any screening of foreign-to-foreign takeovers and internal corporate reorganisations.

Australia confirms that the review will develop appropriate measures designed to exempt portfolio investment and to significantly reduce the incidence of investment screening of foreign-to-foreign takeovers and internal corporate reorganisations.

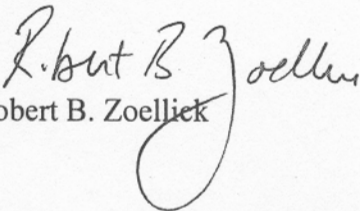
As part of its consultation process with all interested parties, Australia would welcome submissions from the United States in the course of this review and will consult with interested parties, including the United States, regarding the options under consideration.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.”

The Honorable Mark Vaile  
Page Two

I have the further honour to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the United States-Australia Free Trade Agreement.

Sincerely,

  
Robert B. Zoellick