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AUSTRALIA - UNITED STATES: AGREEMENT RELATING TO COOPERATION  
ON ANTI TRUST MATTERS\*

[Done at Washington, June 29, 1982]

AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA  
RELATING TO COOPERATION ON ANTI TRUST MATTERS

The Government of the United States of America and the Government of Australia,

Recognizing that conflicts have arisen between the interests reflected in  
United States

anti trust laws and policies and those reflected in Australian laws and policies, and  
that such

conflicts may arise in the future;

Recognizing the need for such conflicts to be resolved with mutual respect for  
each

other's sovereignty and with due regard for considerations of comity;

Considering that intergovernmental consultations may facilitate the resolution  
of such

conflicts;

Desiring to establish an appropriate bilateral framework for conducting  
consultations; and

Considering that, in the absence of conflicts, cooperation between the  
Governments of the

United States and Australia is desirable in the enforcement of anti trust laws,

Have agreed as follows:

ARTICLE 1

Noti fi cation

1. When the Government of Australia has adopted a policy that it considers may have anti trust implications for the United States, the Government of Australia may notify the Government of the United States of that policy. If practicable, such a noti fi cation shall be given before implementation of the policy by persons or enterprises.

2. When the Department of Justice or Federal Trade Commission of the United States decides to undertake an anti trust investigation that may have implications for Australian laws, policies or national interests, the Government of the United States shall notify the Government of Australia of the investigation.

3. A noti fi cation under paragraph 2 of this Article shall be effected promptly and, to the fullest extent possible under the circumstances of the particular case, prior to the convening of a grand jury or issuance of any civil investigative demand, subpoena or other compulsory process.

4. The content of a noti fi cation made pursuant to paragraph 1 or 2 of this

Article

shall be sufficiently detailed to permit the notified Government to determine whether the matter

may have implications for its laws, policies or national interests.

5. Notifications undertaken in accordance with paragraphs 1 and 2 of this Article

shall be transmitted through diplomatic channels.

## ARTICLE 2

### Consultations

1. When it appears to the Government of Australia through notification pursuant to

paragraph 2 of Article 1 that the Department of Justice or Federal Trade Commission of the

United States has commenced, or is likely to commence, an anti-trust investigation or legal

proceeding that may have implications for Australian laws, policies or national interests, the

Government of Australia shall communicate its concerns and may request consultations with the

Government of the United States. The Government of the United States shall participate in such

consultations.

2. When it appears to the Government of the United States through notification

pursuant to paragraph 1 of Article 1 that a policy of the Government of Australia may have

significant anti-trust implications under United States law, the Government of the United States

shall communicate its concerns and may request consultations with the Government of Australia.

The Government of Australia shall participate in such consultations.

3. Either Party may seek consultations with respect to potential conflicts which come to its attention other than by notification.

4. Both Parties during consultations shall seek to identify any respect in which:

(a) implementation of the Australian policy has or might have implications for the United States in relation to the enforcement of its anti trust laws; and

(b) the anti trust enforcement action by the Department of Justice or the Federal Trade Commission of the United States has or might have implications for Australian laws, policies or national interests.

5. Both Parties during consultations shall seek earnestly to avoid a possible conflict between their respective laws, policies and national interests and for that purpose to give due regard to each other's sovereignty and to considerations of comity.

6. In particular, in seeking to avoid conflict:

(a) the Government of Australia shall give the fullest consideration to modifying any aspect of the policy which has or might have implications for the United States in relation to the enforcement of its anti trust laws.

In this regard, consideration shall be given to any harm that may be caused by the implementation or continuation of the Australian policy to the interests protected by the United States anti trust laws; and

(b) the Department of Justice or the Federal Trade Commission of the

United

modifying

or to

interests

conduct:

States, as the case may be, shall give the fullest consideration to or discontinuing its existing anti-trust investigation or proceedings, modifying or refraining from contemplated anti-trust investigations or proceedings. In this regard, consideration shall be given to the of Australia with respect to the conduct to which the proceedings or contemplated proceedings, relate, or would relate, including, without limitation, Australia's interests in circumstances where that

from

or

(1) was undertaken for the purpose of obtaining a permission or approval required under Australian law for the exportation from Australia of Australian natural resources or goods manufactured produced in Australia;

its

Australian

Australia;

(2) was undertaken by an Australian authority, being an authority established by law in Australia, in the discharge of functions in relation to the exportation from Australia of natural resources or goods manufactured or produced in

the

natural

(3) related exclusively to the exportation from Australia to countries other than the United States, and otherwise than for purpose of re-exportation to the United States, of Australian resources or goods manufactured or produced in Australia; or

to

(4) consisted of representations to, or discussions with, the Government of Australia or an Australian authority in relation

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the formulation or implementation of a policy of the Government of Australia with respect to the exportation from Australia of Australian natural resources or goods manufactured or produced in Australia.

7. Each party during consultations shall provide as detailed an account as possible, under the particular circumstances, of the basis and nature of its anti trust investigation or proceeding, or its national policy and its implementation, as the case may be.

### ARTICLE 3

#### Confidentiality

Documents and information provided by either Party in the course of notification or consultations under this Agreement shall be treated confidentially by the receiving Party unless the providing Party consents to disclosure or disclosure is compelled by law. The Government of the United States shall not, without the consent of the Government of Australia, use information or documents provided by the Government of Australia in the course of notification or consultations under this Agreement as evidence in any judicial or administrative proceeding under United States anti trust laws. The Government of the United States shall not, however, be foreclosed from pursuing an investigation of any conduct which is the subject of notification or consultations, or from initiating a proceeding based on evidence obtained from sources other than the Government of Australia.

ARTICLE 4

Procedure After Consultations

1. When consultations have been held with respect to an Australian policy notified pursuant to paragraph 1 of Article 1, and the Department of Justice or the Federal Trade Commission of the United States, as the case may be, concludes that the implementation of that policy should not be a basis for action under United States anti-trust laws, the Government of Australia may request a written memorialization of such conclusion and the basis for it. The Government of the United States shall, in the absence of circumstances making it inappropriate, provide such a written memorialization. When a written memorialization has been provided, the Government of the United States shall expeditiously consider requests by persons or enterprises for a statement of enforcement intentions with respect to proposed private conduct in implementation of the Australian policy, in accordance with the Department of Justice's Business Review Procedure or the Federal Trade Commission's Advisory Opinion Procedure, as may be appropriate in the case.

2. If, through consultations pursuant to this Agreement, no means for avoiding a conflict between the laws, policies or national interests of the two Parties has been developed, each Party shall be free to protect its interests as it deems necessary.

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ARTICLE 5

Cooperation In Anti trust Enforcement

1. When a proposed investigation or enforcement action under the anti trust laws of one nation does not adversely affect the laws, policies or national interests of the other, each Party shall cooperate with the other in regard to that investigation or action, including through the provision of information and administrative and judicial assistance to the extent permitted by applicable national law.

2. The mere seeking by legal process of information or documents located in its territory shall not in itself be regarded by either Party as affecting adversely its significant national interests, or as constituting a basis for applying measures to prohibit the transmission of such information or documents to the authorities of the other Party, provided that in the case of United States legal process prior notice has been given of its issuance. Each Party shall, to the fullest extent possible under the circumstances of the particular case, provide notice to the other before taking action to prevent compliance with such legal process.

ARTICLE 6

Private Anti trust Suits In United States Courts

When it appears to the Government of Australia that private anti trust proceedings are pending in a United States court relating to conduct, or conduct pursuant to a policy of the

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Government of Australia, that has been the subject of notification and consultations under this

Agreement, the Government of Australia may request the Government of the United States to

participate in the litigation. The Government of the United States shall in the event of such

request report to the court on the substance and outcome of the consultations.

## ARTICLE 7

### Entry Into Force

This Agreement shall enter into force upon signature by both Parties, and shall remain in

force unless terminated upon six months notice given in writing by one of the Parties to the

other.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective

Government, have signed this Agreement.

DONE, in duplicate, at Washington this twenty-ninth day of June, 1982.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
AUSTRALIA:

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William French Smith  
Attorney General

Peter Durack  
Attorney General

By direction of the Federal  
Trade Commission:

James C. Miller, III  
Chairman