

Chapter 4

International Investment Issues and Australia's International Investment Position

International Investment Issues and Australia's International Investment Position

Introduction

One of the Government's principal trade objectives is to generate and capture benefits for the Australian community through international trade and investment liberalisation. This is pursued through a multi-faceted trade policy involving complementary multilateral, regional and bilateral engagements.

The Foreign Investment Policy Division is responsible for ensuring effective representation of Australia's foreign investment policy and negotiating position on international investment policy issues. This includes multilateral forums, such as the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organisation (WTO); regional forums, such as Asia-Pacific Economic Cooperation (APEC); and bilateral forums, such as free trade agreements (FTAs), investment protection and promotion agreements (IPPAs) and other bilateral partnerships.

The Division also manages the Executive Member of the Board's responsibility as the Australian National Contact Point (ANCP) for the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) and related corporate social responsibility issues. The role of the ANCP is to ensure the effective administration and promotion of the Guidelines in Australia.

Over the past two decades growth in world foreign direct investment (FDI) levels has been unprecedented. This growth in FDI largely reflects the worldwide relaxation of trade and investment controls, together with advancements in information technologies, communications and transport.

Australia has traditionally looked to inward FDI to meet the shortfall between domestic savings and the domestic investment needed to meet consumption demand. Utilising foreign capital to supplement local savings provides for higher rates of economic growth and employment levels resulting in higher standards of living for Australians than otherwise could be achieved. Inward FDI also continues to play a significant role in making Australian industry internationally competitive, and thereby contributing to export growth, facilitating access to new technologies, financing new and often risky innovations, and providing opportunities for global integration and networking.

The emergence over recent decades of Australian firms increasingly investing abroad to expand market opportunities provides an additional dimension to the contribution that FDI makes to Australia's economic growth. Over the past fifteen years Australian outward FDI stocks have grown more strongly than inward FDI stocks. Outward FDI benefits the community by enabling Australian firms to expand their business beyond the potential constraints imposed by the limited size of the domestic market. This allows Australian firms to become more efficient and competitive in global markets. Offshore FDI not only provides growth opportunities for domestic firms, and attendant enhanced returns for domestic shareholders, by extending their market presence and access to resources, expertise and technology in other markets; it has a multiplier effect through stimulating the demand for goods and services provided by component and other input suppliers.

The strong growth in global cross-border FDI activity is also linked to the recent increase in government-to-government investment-related negotiations in multilateral, regional and bilateral forums. Given the importance of FDI flows to Australia and the positive role that investment-related agreements can play in enhancing international investment flows, Australia pursues a broad agenda on investment in international forums.

Multilateral investment issues

The Division's role in negotiating international investment agreements allows it to contribute to the further development of an international rules based system that takes appropriate account of both the interests of foreign investors and the wellbeing of Australians. The Division's work on the promotion of the OECD Guidelines supports its related contribution to the international policy framework by contributing to building a culture of good corporate behaviour and sustainable development.

While the Division has primary responsibility for the OECD Guidelines and the Government's engagement on international investment issues in the OECD, the Department of Foreign Affairs and Trade (DFAT) has direct responsibility for Australia's involvement in trade-related forums such as the World Trade Organisation (WTO) and Asia Pacific Economic Cooperation (APEC). The Division provides expert advice and briefings on foreign investment issues to the Government and DFAT.

Organisation for Economic Co-operation and Development (OECD)

The Division has previously represented Australia in two OECD committees, the Committee on International Investment and Multinational Enterprises (CIME) and the Committee on Capital Movements and Invisible Transactions (CMIT). On 22 April 2004, the OECD Council merged CIME and CMIT to create the OECD Investment Committee. This decision was part of the Council's broader efforts to streamline committee structures and maximise synergies.

The Investment Committee's mission is to provide a forum for international cooperation, policy analysis and advice to governments on how best to enhance the positive contribution of investment worldwide. The Division will continue to represent Australia on international investment issues in the OECD Investment Committee.

OECD Investment Committee

The Committee provides a well-placed forum for addressing the policy challenges facing OECD and non-OECD countries as they seek to attract investment and maximise its benefits to host societies. The Committee represents the community of policy makers, including treaty negotiators and National Contact Point representatives for the OECD Guidelines, from countries which are the source of more than 80 per cent of global investment flows. It is responsible for the OECD Codes of Liberalisation of Capital Movements and Current Invisible Operations. Additionally, the Committee is the guardian of the OECD Declaration on International Investment and Multinational Enterprises (the Declaration) and, as such, has extensive experience with intergovernmental cooperation on developing best policy practices and peer review-based approaches to capacity building. The Declaration is a broad political commitment that was adopted by the OECD Governments in 1976 to facilitate direct investment among OECD Members. The text of the Declaration is at **Appendix F**.

The Committee's work program falls into five main categories: promoting transparent and non-discriminatory investment policies; encouraging the positive contribution of multinational enterprises to sustainable development; cooperating with non-Members to mobilise investment for development; monitoring developments in international investment agreements; and monitoring foreign direct investment trends.

The main projects being undertaken by the Investment Committee include:

- *Business integrity in weak governance zones*. This project is in the early stage of development. It seeks to clarify how companies can manage the risks involved in operating in such environments. The key objectives of this work are to:
 - provide background analysis to assist National Contact Points in dealing with companies operating in these zones. The analytical work will mainly be organised around the OECD Guidelines and six other OECD integrity instruments together with a case study on the Democratic Republic of the Congo; and
 - help companies with business operations in these zones by providing them with terms of reference on conducting business with integrity and enhancing their contributions to host societies.
- *Analysis of key obligations and emerging issues in international investment treaties*. International investment agreements reinforce domestic liberalisation gains and provide legal security for investment. The Committee is undertaking analysis of

core provisions and arbitration procedures against the background of a proliferation of international investment agreements, the emergence of particular features in a 'new generation' of bilateral and regional agreements and a growing body of jurisprudence. The work has focused on compiling the factual elements of information based on legal literature, evolving arbitral jurisprudence and state practice in relation to the implications of 'Most-Favoured-Nation' provisions, interpretations of 'fair and equitable treatment' and 'indirect expropriation', and investor-state dispute settlement provisions.

- *Investment for development – synergies between investment and official development aid (ODA)*. This project looks at the role of ODA in facilitating investment, both domestic and foreign, for development.
- *Investment for development – Policy Framework for Investment*. The goal of this work is to promote a shared view among OECD and non-OECD governments and business of what constitutes 'good policies' in a range of areas bearing on investment. The Framework is a comprehensive, evolving and non-prescriptive operational guide on a broad range of policies and issues relevant to the investment climate. It is designed to be available and have practical value for any interested governments engaged in domestic reform, regional cooperation or international policy dialogue aimed at creating an investment environment that is not only attractive to investors but enhances the benefits of investment.
- *Investment for development – outreach*. The Investment Committee aims to provide best practice advice to non-Members (China, Russia, India, The New Partnership for Africa's Development (NEPAD), Middle East and Northern Africa (MENA) latin America, South East Europe and Eurasia) and engage in dialogue on the investment issues relevant to the two projects discussed above in a number of forums including working groups, regional roundtables, peer reviews and background reports.

As part of its responsibility to oversee Member and non-Member countries' adherence to the Declaration, the Committee also has broad responsibility for the OECD Guidelines and is the reporting post for National Contact Points on their activities relating to the promotion of the Guidelines. In addition to the recommendations contained in the OECD Guidelines, the Declaration deals with three related instruments aimed at:

- providing national treatment to foreign-owned enterprises on a best endeavours basis;
- promoting cooperation among governments in relation to international investment incentives and disincentives; and
- minimising the imposition of conflicting requirements on MNEs by governments of different countries.

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During 2003-04, CMIT finalised an updated list of country exceptions under the National Treatment instrument of the Declaration. This list is expected to be published by the Investment Committee later in 2004.

The Investment Committee's mandate also highlights cooperation with non-Member economies and dialogue with business, labour and other civil society stakeholders as key features of its approach to its work.

The Division's participation in the work of the Investment Committee is important in fulfilling the responsibilities of the National Contact Point for the OECD Guidelines and assists it to provide effective representation of Australia's foreign investment policy and position on international investment policy issues. It also ensures that the Division contributes to, and remains abreast of, current research and emerging issues in the field of international investment.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines provide voluntary principles and standards for responsible business conduct in a variety of areas, consistent with applicable domestic laws. As such, the Guidelines do not override Australian law or create conflicting requirements.

The OECD Guidelines are recommendations by governments to multinational enterprises (MNEs) operating in or from the 30 OECD Member countries and eight non-Member adhering countries (Argentina, Brazil, Chile, Estonia, Israel, Lithuania, Slovenia and Latvia). They are the only comprehensive and multilaterally-endorsed code of conduct for MNEs that Governments are committed to promoting.

The Guidelines apply to MNE's activities in OECD and non-OECD countries alike. They establish principles covering a broad range of issues including information disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, human rights and taxation. The Guidelines were last reviewed in June 2000.

Adhering countries to the Declaration are required to have a National Contact Point (NCP) for the OECD Guidelines to ensure their effective promotion. The Australian National Contact Point (ANCP) is the Executive Member of the Foreign Investment Review Board. The ANCP operates in accordance with the core criteria of visibility, accessibility, transparency and accountability in accordance with the principle of 'functional equivalence' between National Contact Points.

An important aspect of these Guidelines is its formal review mechanism which allows parties to raise 'specific instances' in which the behaviour of enterprises may have been inconsistent with the Guidelines. In accordance with the OECD's procedural guidelines for National Contact Points, the ANCP commits to contribute to the resolution of issues relating to the implementation of the Guidelines in any such specific instances.

In addition to attending the CIME meetings in September 2003 and April 2004, the Board's Executive Member, in his role as ANCP, chaired the Annual Meeting of National Contact Points, held in Paris on 14 June 2004. He also attended the 2004 Annual Corporate Responsibility Roundtable, which was held back-to-back with the Annual Meeting in June. This roundtable focused on how the OECD Guidelines can help promote companies' positive contribution to the environment.

The roundtable focused on how the Guidelines' specific recommendations relate to a growing array of corporate tools, standards and operational guidance that already exist to help corporate managers enhance their environmental performance. During the roundtable, representatives of the business, labour and NGO communities gave their views on four topics: recent developments in business practices toward the environment; dealing with environmental risk; corporate contributions to environmental policy; and specific instances with environmental content.

The main activities of the ANCP have built on last year's progress in refining procedures for handling specific instances, promoting the Guidelines to business groups and strengthening the consultation process with government agencies, non-government organisations (NGOs), business, and other social partners. This has involved:

- Bi-annual consultation sessions with social partners in November 2003 and May 2004 in Melbourne, Sydney and Canberra. These sessions provide a forum for interested parties to raise issues relevant to the Guidelines with the ANCP, facilitate discussion on OECD working papers and provide ideas and assistance with the promotion of the Guidelines.
- Review and upgrade of the ANCP website (www.ausncp.gov.au). This website provides: the text of the Guidelines; a secure section for registered social partners to access and comment on 'for official use' Investment Committee and Guidelines related OECD material; the ANCP's service charter; procedures for lodging specific instances and the ANCP's procedures for handling them; frequently asked questions about the Guidelines and specific instances; a notice board publicising coming events; links to related sites; and a compilation of related documents. The current upgrade of the website aims to improve the secure section of the website, thereby enhancing the ability of the NCP to consult with social partners electronically.
- Outreach to the business community promoting the Guidelines and efforts to establish a network of business contacts to consult with on Guidelines and related issues. This included:
 - a presentation on the Guidelines to a large audience of business representatives at a public affairs roundtable held in Melbourne; and

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- a working lunch, hosted by two of Australia's large MNE's, and a presentation on the Guidelines to a group of 20 business representatives.
- Continued efforts to promote the Guidelines through embassy and consular networks. This has included briefing officials in person prior to them taking up postings and incorporating information on the OECD Guidelines into information packs provided to all Australian Government officials taking overseas postings.
- Bi-annual interdepartmental meetings on the Guidelines and related issues, chaired by the ANCP. Representatives from 12 government agencies attended.
- Attendance at corporate social responsibility conferences hosted by other organisations (for example the 2004 Annual Meeting of the Australian Christian Centre for Socially Responsible Investment and the bi-annual Department of Foreign Affairs and Trade and NGO Human Rights Consultations).
- The presentation of the fourth Annual Report of the ANCP's activities to the OECD in June 2004.

No 'specific instances' regarding the operation of the OECD Guidelines have been raised with the ANCP since the last review of the OECD Guidelines in 2000.

More information on the OECD Guidelines and the activities of the ANCP can be found at www.ausncp.gov.au.

World Trade Organization (WTO)

Australia also pursues its interests on international investment on the multilateral front through involvement in the WTO Working Group on the Relationship between Trade and Investment (WGTI). The WGTI was formed following the Uruguay Round at the WTO Ministerial Conference in Singapore in 1996. In 1998, the WGTI's mandate was extended indefinitely. In November 2001, a new round of WTO trade negotiations was launched in Doha, Qatar.

The Division provides investment policy advice and briefings to the Department of Foreign Affairs and Trade, which represents Australia at the WGTI meetings. The two WGTI meetings held in 2003 built on the four meetings held in 2002 giving further consideration to seven key areas, as identified in the Doha Declaration, viz, scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments; development provisions; balance of payments safeguards; and settlement of disputes between members. Possible negotiating modalities were also discussed in the lead up to the Fifth Ministerial Conference, held in Cancun, Mexico in September 2003.

At the WTO Ministerial meeting in Doha in November 2001, Ministers agreed to begin, subject to an explicit consensus, negotiation of multilateral rules for trade and

investment after the Fifth Ministerial Conference in Cancun. However, consensus to commence these negotiations was not reached at the Cancun meeting.

At the Cancun meeting, developing countries expressed particular resistance to negotiating on the Singapore issues (investment, competition policy, transparency in government procurement and trade facilitation) and it was subsequently decided at the July 2004 General Council Meeting that negotiations would only proceed on one of the four issues, trade facilitation. The remaining issues, including investment, were referred back to WTO working groups. The future work program of the WGTI remains uncertain.

Asia-Pacific Economic Cooperation (APEC)

Australia continues to participate actively in the work of APEC. Australia's main investment interest in APEC is to encourage Members to improve the foreign investment environment in their economies through the progressive liberalisation of foreign investment regulations and the introduction of measures aimed at improving public sector transparency. This is done through Individual Action Plans (IAPs), peer reviews and collective action through the work of the Investment Experts Group (IEG).

During 2003-04, the Division revised and updated the Investment Chapter of Australia's annual IAP. The Chapter describes the investment environment and policies of APEC Member Economies. It is intended to give a clear view of Members' progress in achieving the Bogor goal of free and open trade and investment between APEC Member Economies. Australia's IAP for 2003-04 included information on the liberalisation of Australia's foreign investment policy and investment related measures that have been implemented during the past twelve months. Australia's IAP for 2003-04 also provides information on the investment related measures that have been implemented since 1996 (the base year). Copies of APEC IAPs are available on the APEC website at www.apecsec.org.sg.

As part of the IAP Peer Review Process, the Division was also involved in the review of the investment regimes of the United States of America, the Peoples' Republic of China, Chile and Peru.

In May 2004, a seminar was held as a cooperative initiative on international investment between the APEC IEG and the Investment Committee of the OECD Directorate for Financial and Enterprises Affairs seminar. At this seminar an Australian Treasury official gave a presentation titled 'Current Foreign Direct Investment (FDI) Trends and Investment Agreements: Challenges and Opportunities'. The presentation addressed the growing trend for international organisations and individual countries to incorporate transparency standards into international investment agreements.

Bilateral investment issues

Australia has significantly increased its participation in bilateral trade and investment agreements. In addition to the long-standing and highly successful Agreement with New Zealand (the ANZCER announced in 1983), Free Trade Agreements (FTAs) with Singapore, the United States and Thailand have now been completed. A feasibility study into a possible FTA with China is underway and possibilities for the liberalisation of trade and investment barriers are being explored with Japan.

Bilateral agreements can play an important role in improving investment climates, reducing regulatory barriers to international trade and investment and enhancing the benefits that can be derived from FDI. Recent evidence indicates a link between the quality of the investment climate and the quality of productive investment that is attracted. They can provide greater security, certainty and opportunities for outward FDI from Australia, and at the same time, ensure that Australia is a desirable destination for overseas investors. In contrast to multilateral forums, bilateral agreements are less cumbersome to initiate and maintain, and they may be tailored to meet the needs of unique relationships between nations. They can secure practical results for Australian businesses and establish a high benchmark for the multilateral system.

Bilateral agreements can be complementary to regional and multilateral efforts by providing momentum to our wider multilateral trade objectives. They can provide precedents, examples of best practice and ensure that progress in improving the global environment for FDI continues when multilateral efforts are slowed.

Investment Promotion and Protection Agreements (IPPAs)

Australia's bilateral IPPAs provide a clear set of obligations relating to the promotion and protection of investments of the signatory parties. By promoting confidence in the regulatory environment relating to foreign investment, IPPAs have the potential to enhance investment flows between Australia and other countries. Australia's IPPAs apply post-establishment, that is, Australia's sovereign right to admit investments (either through acquisitions or new businesses) is unaffected by the provisions of such agreements.

Australia uses its model IPPA text as the basis on which these agreements are negotiated. Australia's IPPAs provide fair and equitable treatment, 'most favoured nation' commitments relating to the treatment of foreign investment, give undertakings about expropriation/nationalisation (including the nature of compensation for such acts) and establish mechanisms for resolving disputes over investment matters.

To date, Australia has signed IPPAs with Argentina, Chile, the Czech Republic, Egypt, Hong Kong, Hungary, India, Indonesia, Laos, Lithuania, Pakistan, Papua New Guinea,

the Peoples' Republic of China, Peru, the Philippines, Poland, Romania, Uruguay and Vietnam. An agreement with Sri Lanka has been signed, but is not yet in force. Australia is currently negotiating IPPAs with a number of countries including Iran, Lebanon, Mexico, Turkey and the United Arab Emirates.

Other agreements involving investment

Australia-New Zealand Closer Economic Relations

The Closer Economic Relations Agreement between Australia and New Zealand (ANZCER) has been in force for over twenty years (since 1983) and is highly regarded as a comprehensive bilateral free trade agreement. The objectives of ANZCER aim to expand free trade by eliminating barriers to trade and promoting fair competition. The Agreement has assisted in building momentum for trade liberalisation between Australia and New Zealand. By 1990, five years ahead of schedule, all tariffs and quantitative restrictions had been removed from trans-Tasman trade in goods. While the ANZCER does not include a specific chapter on investment, it has facilitated cooperation between Australia and New Zealand on this issue.

Australia and New Zealand continue to enjoy a close relationship with high levels of investment flowing between the two countries. In 1999, the Joint Prime Ministerial Taskforce on Australia New Zealand Bilateral Economic Relations (ANZBER) was established to address a number of issues including impediments to trans-Tasman investment. The review resulted in significant liberalisation of the investment regimes of Australia and New Zealand. Both countries have now met liberalisation commitments made in relation to investment under ANZCER.

Australia aims to continue to build on the considerable achievements already made to simplify laws and regulations that affect trans-Tasman business. There are no practical impediments to trans-Tasman investment and ongoing flows of new investment remain high.

Australia-Singapore Free Trade Agreement

In recognition of our growing trade and investment relationship, a free trade agreement between Australia and Singapore entered into force on 28 July 2003, creating greater economic integration and stronger bilateral relations between our two countries. The Singapore-Australia FTA (SAFTA) is the first bilateral FTA concluded by Australia since ANZCER.

SAFTA improves the environment for Australian investment in Singapore. Under the Agreement, Australian investors shall receive treatment in Singapore that places them on a par with domestic investors, except in areas specifically exempted. In the event that investors from another country are offered more favourable terms by Singapore under another agreement, Singapore has agreed to consider offering Australian investors this more favourable treatment. The Agreement also provides for greater

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transparency in relation to de facto investment restrictions in Singapore's government-linked companies. In addition, SAFTA contains provisions that protect Australian investments against expropriation and ensure Australian investors are adequately compensated should expropriation or other losses resulting from government action occur.

Australia also committed to establish a help desk to assist Singaporean business investors with applications for direct investment in Australia. See www.firb.gov.au/content/singapore/welcome.asp for further details.

Australia-Thailand Closer Economic Relations (Free Trade)

Negotiations on a Thailand Australia Free Trade Agreement (TAFTA) were concluded in October 2003 and the Agreement was signed by the Minister for Trade, the Hon Mark Vaile, and his Thai counterpart, Commerce Minister Mr Watana Muangsook, in Canberra on 5 July 2004. TAFTA is expected to enter into force on or about 1 January 2005, following the completion of the necessary domestic implementation processes by both countries.

TAFTA links Australia to the second largest and fastest growing economy in South East Asia. It is Thailand's first FTA with a developed economy and the first between a developed and developing country in South East Asia, thereby setting a benchmark for future trade liberalisation in the region. It is the third free trade agreement to be negotiated by Australia.

The Agreement is comprehensive in scope, covering trade in goods, services and investment, as well as promoting cooperation and best practice in a wide range of areas, including competition policy, e-commerce, industrial standards, quarantine procedures, intellectual property, government procurement and dispute settlement.

The completion of a comprehensive and liberalising Agreement with Thailand, positions Australian exporters and investors to take advantage of a rapidly growing Thai economy and an improved investment environment.

Under this Agreement, Thailand has agreed to liberalise its foreign investment policy to permit majority Australian equity participation in some sectors and sub-sectors, including mining, management consultancy, education, and distribution and installation of manufactured products. Australia has committed to bind current foreign investment policy settings. This obligation goes beyond our existing General Agreement on Trade and Services (GATS) commitments. The Agreement also provides for further negotiations on market access in services and investment to be undertaken three years after the Agreement has entered into force.

The protection provisions of the Investment Chapter will guarantee that both countries' investors and their investments will receive fair and equitable treatment, and full protection and security. These provisions will also ensure that investors will

receive prompt and adequate compensation for any losses incurred through expropriation and strife. Investors are also guaranteed the free repatriation of their capital and returns, except in circumstances of balance of payments crises, and have recourse to international arbitration to resolve post-establishment investment disputes.

The Division provided advice and briefing to DFAT on investment issues and maintained a strong involvement in the investment negotiations. The Division attended five of the full rounds of negotiations and a separate round specifically on investment protection and promotion issues.

Australia-United States Free Trade Agreement

Negotiations on the Australia-United States Free Trade Agreement (AUSFTA) were finalised in February 2004.

The United States is the largest source of foreign direct investment in Australia. US-sourced investment represents nearly 30 per cent of the stock of foreign investment in Australia. As at 31 December 2003, the total stock of US-sourced FDI in Australia was AUD\$70.9 billion. Australia is the 12th ranked destination for US direct investment abroad. As at 31 December 2003, the stock of Australian-sourced FDI in the US was AUD\$78.0 billion, more than twice as much FDI as Australia has invested in any other country.

Under the AUSFTA, Australia has committed to significant liberalisation of its foreign investment regime, as it applies to US investors, while preserving the main feature of that regime, namely, the ability to ensure that significant US investment proposals are in the national interest.

The following changes to Australia's foreign investment policy were agreed under the AUSFTA:

- exemption from the *Foreign Acquisitions and Takeovers Act 1975* (the Act) of acquisitions of interests in financial sector companies as defined by the *Financial Sector (Shareholdings) Act 1998* and therefore subject to the national interest test applying under the latter legislation;
- introduction of a screening threshold of \$800 million, indexed annually to the GDP implicit price deflator, of acquisitions of interests in Australian businesses in non-sensitive sectors (see below);
- introduction of a screening threshold of \$50 million, indexed annually to the GDP implicit price deflator, of acquisitions of interests in Australian businesses in defined sensitive sectors. The sensitive sectors are:
 - media;
 - telecommunications;

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- transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia);
 - the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defence Force or other defence forces;
 - the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
 - the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and
 - the extraction of (or holding of rights to extract) uranium or plutonium or the operation of nuclear facilities;
- introduction of a minimum screening threshold of \$50 million, indexed to the GDP implicit price deflator, for acquisitions by entities in which a United States government has a prescribed interest;
 - introduction of a screening threshold of \$800 million, indexed annually to the GDP implicit price deflator, for acquisitions of interests in non-residential developed commercial property (other than accommodation facilities); and
 - removal of existing policy-based screening requirements for the establishment of new Australian businesses other than where the investment involves the United States Government.

References to acquisitions and new investments involving the 'United States Government' refer to investments by the Government or its agencies, or companies with greater than a 15 per cent direct or indirect holding by the Government or its agencies or otherwise regarded as controlled by the Government.

Other than the commitments on developed commercial property, no concessions have been granted to US investors in relation to the acquisition of interests in Australian urban land. Furthermore, the existing policy-based screening requirements for acquisitions of interests in existing Australian businesses in the media sector or by the United States Government have been retained.

While DFAT had primary responsibility for the negotiations, the Division provided considerable input on Australia's offensive and defensive interests on investment and participated in all rounds of negotiations.

Post Reporting Period: the *US FTA Implementation Act 2004* (including a schedule amending the FATA) was passed by the Senate on 13 August, 2004. The Agreement is to come into effect on 1 January, 2005.

Australia-Japan Trade and Economic Framework

In July 2003, Prime Minister Howard and Prime Minister Koizumi of Japan signed the Australia-Japan Trade and Economic Framework (AJTEF). The AJTEF builds on two other formal agreements between Australia and Japan – the Agreement on Commerce between the Commonwealth of Australia and Japan, 1957 and the Basic Treaty of Friendship and Co-operation between Australia and Japan, 1976 – to further strengthen the bilateral economic relationship between the two countries.

The AJTEF commits both countries to work to achieve comprehensive trade and investment liberalisation. The Framework provides for a detailed study to be undertaken by the two governments to examine the costs and benefits of the liberalisation of trade in goods and services and investment between Australia and Japan. Both countries have commenced work on the study, which is being drafted jointly. The study includes a chapter on foreign investment regulations and potential liberalisations. The Division has been involved in the drafting of the Investment Chapter and has participated in all of the Joint Working Group meetings held in Australia.

Australia-China Trade and Economic Framework

On 24 October 2003, Trade Minister Vaile and China's Vice Minister of Commerce, Mr Yu Guangzhou, signed the Australia-China Trade and Economic Framework Agreement (ACTEF) in the presence of Prime Minister John Howard and China's President Hu Jintao. The ACTEF reflects the Government's strong commitment to deepening trade and investment linkages with China. China is currently Australia's third largest trading partner.

The ACTEF includes a commitment to undertake a joint study into the feasibility and benefits of a FTA between the two countries. The first Joint Working Group meeting for the study was held on 22-23 February 2004 in Beijing. The Division has contributed to the drafting of that chapter, which outlines the foreign investment policies of both countries and explores areas for future liberalisation. It is expected that the study will be completed by March 2005, well before the deadline of October 2005.

Recent developments

Further up-to-date information on Australia's bilateral and multilateral relationships, can be found in the international section of the FIRB website located at www.firb.gov.au/content/international.asp.

International investment position

This section summarises trends in foreign investment in Australia and Australian investment abroad using Australian Bureau of Statistics (ABS) data. In its most recent publication of foreign investment statistics, the ABS has changed the reporting of its estimates of Australia's international investment position from financial years to calendar years.

Foreign investment in Australia refers to the stock of financial assets in Australia owned by non-residents and financial transactions that increase or decrease this stock. Conversely, Australian investment abroad refers to the stock of foreign financial assets owned by Australian residents and financial transactions that increase or decrease that stock.

ABS data on Australia's international investment position, which are compiled in accordance with the relevant international statistical standards promulgated by the OECD and the International Monetary Fund, are based on different criteria from those used by the Board.

There are substantial differences between the Board's statistics and ABS statistics. These include differences in coverage, concepts and timing. ABS data are a measure of the actual cross-border transactions that have occurred and the level of foreign investment held at a particular time. The Board's figures are an aggregation of those proposals submitted for approval, regardless of the source of finance used, along with the proposed associated expenditures. The limitations of the Board's data are explained in Chapter 2.

Foreign investment levels

Foreign investment has made a significant contribution to the development of Australia. It provides scope for higher rates of economic activity and employment than could be achieved from domestic levels of savings. FDI provides access to the latest technology, production techniques and management skills. It also brings added value through commercial links that offer access to new markets.

The ABS estimated stock of foreign investment in Australia, as at 31 December 2003, was \$978 billion. This represents an increase of \$82 billion (8.3 per cent) over the level at 31 December 2002. FDI accounted for \$244 billion of the total stock of investment, an \$11 billion (4.5 per cent) increase from \$233 billion in 2002.

The stock of Australian investment abroad, as at 31 December 2003, was \$508 billion. This represents an increase of \$37 billion (7 per cent) over the stock at 31 December 2002. FDI accounted for \$169 billion of the total stock of investment, an increase of \$7 billion (4 per cent) from 2002.

As is demonstrated by Table 4.1, the OECD estimates that FDI flows into the OECD continued to fall in 2003. Despite the contraction of FDI since its peak in 2000, FDI

activity is not low by historic standards and OECD area inflows compare favourably with that in the early and mid-1990s. Estimates of FDI inflows for 2003 are US\$384.4 billion, compared with US\$1,288.0 billion in 2000 and an average of US\$291.9 billion per year over the 1990's. FDI outflows from the OECD for 2003 are estimated at US\$576.3 billion, compared with US\$1,235.8 billion in 2000 and an average of US\$383.7 billion per year over the 1990s.

Australian FDI trends have not followed those of the OECD as a whole. The Australian economy has performed strongly in recent years, despite the global slowdown. Furthermore, Australia continues to be a net importer of FDI, while the OECD as a whole is a net exporter.

While the enhanced US\$7.8 billion inflow of FDI to Australia in 2003 was significantly below the record level of US\$16.5 billion in 2002, it remains above the average of the 1990s. The estimated outflow of US\$14.3 billion for 2003 will top the previous high of US\$12.2 billion set in 2000 and will be more than triple the US\$3.2 billion average of the 1990s.

Table 4.2 shows a significant increase in the estimated value of the stock of FDI in Australia, estimated at US\$179.5 billion in 2003 compared to US\$131.6 billion in 2002. While the ABS data confirms that an increase in the stock of FDI in Australia has occurred in real terms, the size of the increase in FDI stock reported in USD is due, in part, to the appreciation of the AUD against the USD. The stock of FDI in Australia has more than doubled in the last decade. The strength of the Australian economy is also reflected in the OECD's estimate of a 37.6 per cent increase in the stock of Australian FDI invested overseas, from US\$91.3 billion in 2002 to US\$125.8 billion in 2003.

Table 4.1: International direct investment flows in OECD countries (US\$ billion)

Country	Inflows					Outflows						
	1998	1999	2000	2001	2002p	2003e	1998	1999	2000	2001	2002p	2003e
Australia	6.0	3.3	13.2	4.7	16.5	7.8	3.3	-0.4	0.7	12.2	7.6	14.3
Austria	4.5	3.0	8.8	5.9	1.0	6.9	2.7	3.3	5.7	3.1	5.3	7.1
Belgium/Luxembourg	30.1	142.5	221.0	84.7	-	-	29.1	132.3	218.4	100.6	-	-
Belgium	-	-	-	-	13.1	31.3	-	-	-	-	11.0	39.0
Canada	22.8	24.7	66.8	27.5	21.0	6.6	34.3	17.3	44.7	36.1	26.4	21.6
Czech Republic	3.7	6.3	5.0	5.6	8.5	2.6	0.1	0.0	0.0	0.2	0.2	0.2
Denmark	7.7	16.7	33.8	11.5	6.6	2.6	4.5	17.0	26.5	13.4	5.7	1.2
Finland	12.1	4.6	8.8	3.7	7.9	2.8	18.6	6.6	24.0	8.4	7.6	-7.4
France	31.0	46.5	43.3	50.5	48.9	47.0	48.6	126.9	177.5	86.8	49.5	57.3
Germany	24.6	56.1	198.3	21.1	36.0	12.9	88.8	108.7	56.6	36.9	8.6	2.6
Greece	0.1	0.6	1.1	1.6	0.1	0.7	-0.3	0.6	2.1	0.6	0.7	0.0
Hungary	3.3	3.3	2.8	3.9	2.8	2.5	0.3	0.3	0.6	0.4	0.3	1.6
Iceland	0.1	0.1	0.2	0.2	0.1	0.1	0.1	0.1	0.4	0.3	0.2	0.2
Ireland	8.9	18.2	25.8	9.7	24.4	25.5	3.9	6.1	4.6	4.1	3.1	1.9
Italy	4.3	6.9	13.4	14.9	14.6	17.0	16.1	6.7	12.3	21.5	17.1	9.1
Japan	3.2	12.7	8.3	6.2	9.2	6.3	24.2	22.8	31.5	38.4	32.3	28.8
Korea	5.4	9.3	9.3	3.5	2.4	3.2	4.7	4.2	5.0	2.4	2.6	3.4
Luxembourg	-	-	-	-	117.1	73.2	-	-	-	-	126.2	81.8
Mexico	12.2	13.2	16.4	26.6	14.4	10.7	-	-	-	4.4	1.0	-
Netherlands	36.9	41.2	63.9	51.9	25.6	19.7	36.5	57.6	75.6	48.0	34.6	36.1
New Zealand	1.8	0.9	1.3	4.2	-0.6	0.8	0.4	1.1	0.6	0.9	-1.0	-0.1
Norway	4.4	7.1	6.9	2.0	0.7	2.2	3.2	5.5	7.6	-1.3	4.2	2.6
Poland	6.4	7.3	9.3	5.7	4.1	4.2	0.3	0.0	0.0	-0.1	0.2	0.4
Portugal	3.1	1.2	6.8	5.9	1.8	1.0	3.8	3.2	7.5	7.6	3.3	0.1
Slovak Republic	0.7	0.4	2.4	1.6	4.1	0.6	0.1	-0.4	0.0	0.1	0.0	0.0
Spain	11.8	15.8	37.5	28.0	35.9	25.6	18.9	42.1	54.7	33.1	31.5	23.4
Sweden	19.8	60.9	23.2	11.9	11.6	3.4	24.4	21.9	40.7	6.4	10.7	10.6
Switzerland	8.9	11.7	19.3	8.9	5.7	12.2	18.8	33.3	44.7	18.2	7.6	10.9
Turkey	0.9	0.8	1.0	3.3	1.0	0.6	0.4	0.6	0.9	0.5	0.2	0.5
United Kingdom	74.3	88.0	118.8	52.7	27.8	14.6	122.9	201.4	233.5	58.9	35.2	55.3
United States	179.0	289.4	321.3	167.0	72.4	39.9	142.6	224.9	159.2	142.3	134.8	173.8
Total OECD	528.4	892.8	1,288.0	624.9	535.0	384.4	651.5	1,043.7	1,235.8	684.3	566.7	576.3

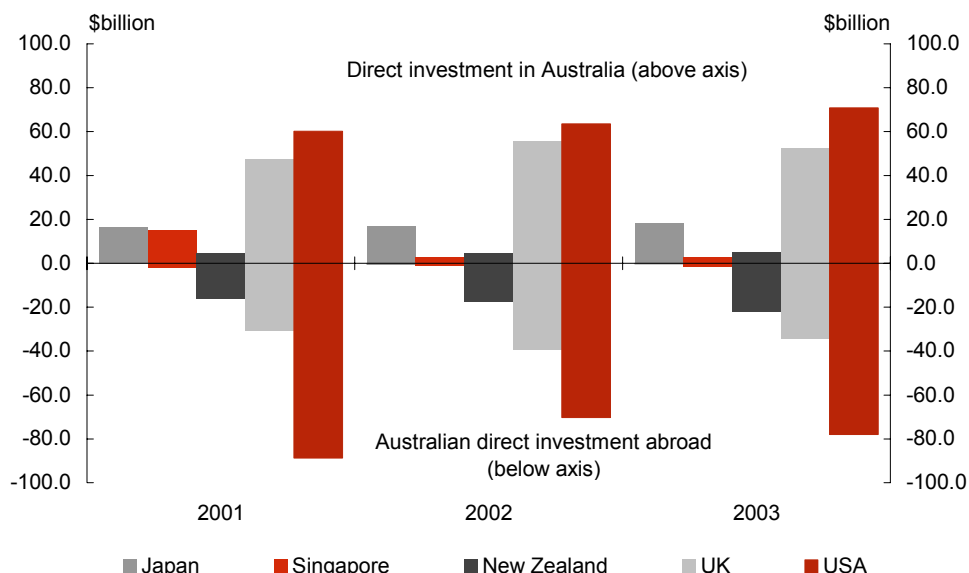
Notes: Data is converted to US dollars using average exchange rates; p: preliminary; e: estimate
Source: OECD International direct investment database.

Table 4.2: International direct investment position in OECD countries (US\$ billion)

Country	Inward Position					Outward Position						
	1998	1999	2000	2001	2002p	2003e	1998	1999	2000	2001	2002p	2003e
Australia	106.0	120.6	109.3	107.2	131.6	179.5	78.6	89.6	83.4	90.7	91.4	125.8
Austria	23.6	23.5	30.4	34.3	41.9	58.1	17.5	19.1	24.8	28.5	39.7	55.8
Belgium/Luxembourg	-	-	-	-	-	-	-	-	-	-	-	-
Belgium	-	-	-	-	-	-	-	-	-	-	-	-
Canada	143.3	175.0	212.7	214.1	220.9	276.7	171.8	201.4	237.6	250.4	272.0	308.8
Czech Republic	14.4	17.5	21.6	27.1	38.7	47.5	0.8	0.7	0.7	1.1	1.5	1.9
Denmark	31.2	42.1	66.7	67.4	73.6	-	34.9	45.6	66.2	70.1	75.9	-
Finland	16.5	18.3	24.3	24.1	34.0	46.4	29.4	33.9	52.1	52.2	63.9	68.7
France	246.2	244.7	259.8	295.3	386.5	-	288.0	334.1	445.1	508.8	586.1	-
Germany	250.3	288.6	460.6	404.5	510.2	-	365.2	412.0	484.9	545.2	654.9	-
Greece	13.1	15.5	12.5	13.6	15.6	-	2.8	3.2	5.9	7.0	9.0	-
Hungary	20.8	23.3	22.9	27.4	35.9	42.9	0.8	0.9	1.3	1.6	2.2	3.9
Iceland	0.5	0.5	0.5	0.7	0.8	0.8	0.4	0.5	0.7	0.8	1.1	1.4
Ireland	62.5	72.8	118.5	143.9	184.7	-	20.3	25.2	27.9	34.3	34.8	-
Italy	108.8	108.6	113.0	108.0	126.5	-	177.0	181.9	180.3	182.4	194.5	-
Japan	26.1	46.1	50.3	50.3	78.1	89.7	270.0	248.8	278.4	300.1	304.2	335.5
Korea	-	-	-	53.2	62.7	-	-	-	-	20.0	22.6	-
Luxembourg	20.8	20.4	23.5	25.6	-	-	8.0	8.5	7.9	8.6	-	-
Mexico	63.6	78.1	97.2	140.4	154.3	-	-	-	-	-	13.2	14.2
Netherlands	160.5	187.8	238.9	276.4	344.1	-	220.7	253.8	296.7	322.2	374.2	-
New Zealand	33.2	32.9	28.1	22.1	27.5	34.2	5.5	7.0	6.1	7.6	7.8	8.4
Norway	26.1	29.4	30.3	32.6	42.6	-	31.6	31.9	33.7	-	-	-
Poland	22.5	26.1	34.2	41.2	47.9	-	1.2	1.0	1.0	1.2	1.5	-
Portugal	24.5	24.1	29.0	34.6	43.2	53.5	9.6	10.3	17.2	23.5	31.9	38.5
Slovak Republic	2.9	3.2	4.7	5.7	8.5	11.3	0.4	0.3	0.4	0.5	0.5	0.6
Spain	118.2	116.0	144.9	165.3	236.3	312.6	70.1	112.8	159.9	184.7	225.2	281.7
Sweden	51.0	73.3	94.0	92.2	118.0	143.3	93.5	106.3	123.2	122.9	144.4	189.4
Switzerland	72.0	76.0	86.8	88.8	125.1	153.7	184.2	194.6	233.4	253.6	295.4	344.1
Turkey	-	-	19.2	19.7	17.6	-	-	-	3.7	4.6	5.0	-
United Kingdom	337.4	385.1	438.6	506.7	568.3	672.0	488.4	686.4	897.8	869.7	921.4	1,128.6
United States	920.0	1,101.7	1,418.5	1,514.4	1,504.4	-	1,196.0	1,414.4	1,529.7	1,598.1	1,751.9	-
Total OECD	2,915.7	3,351.2	4,191.2	4,536.9	5,179.5	-	3,766.6	4,424.1	5,200.0	5,490.5	6,126.0	-

Notes: Data is converted to US dollars using average exchange rates; p: preliminary; e: estimate
Source: OECD international direct investment database.

Chart 4.1: Level of foreign direct investment by country at 31 December 2003 (\$billion)



Source: ABS Catalogue No. 5352.0 International Investment Position, Australia: Supplementary Country Statistics 2003

Foreign investment levels by country

Chart 4.1 gives a breakdown of Australia's inward and outward FDI positions with our major FDI partners (the US, the UK, Japan, New Zealand and Singapore) as at 31 December 2001, 2002 and 2003.

The US is the single largest source of FDI in Australia and the largest destination for Australian FDI abroad. The stock of Australian direct investment in the US at 31 December 2003 was estimated at \$78.0 billion and the stock of US FDI in Australia was an estimated \$70.9 billion. The UK is the other major source of direct investment in Australia and the stock of UK investment has increased from \$47.2 billion to an estimated \$52.7 billion over the last three years.

Japanese direct investment in Australia has steadily increased over the three years from a stock of \$16.5 billion to an estimated \$18.2 billion. The level of direct investment from Singapore fell markedly from a stock of \$15.0 billion in 2001 to an estimated \$2.6 billion in 2003. The stock of FDI from New Zealand faltered in 2002, but recovered in 2003 to an estimated \$5.1 billion.

Foreign investment flows

Foreign investment transactions involve changes in the levels of Australian foreign assets and liabilities (including the creation or extinction of foreign assets and liabilities). A current account deficit in Australia's balance of payments is balanced by

a surplus on the capital and financial account, after allowing for errors and omissions. The balance on the financial account represents net financial transactions with the rest of the world, that is, the inflow of foreign investment into Australia, minus the outflow of Australian investment abroad.

International investment flows and stocks are divided into 'direct', 'portfolio', 'financial derivatives', 'other investment' and 'reserve assets'. Under the international standards used to compile ABS foreign investment statistics, direct investment represents capital invested in an enterprise by an investor in another country which gives the investor a 'significant influence' (either potentially or actually exercised) over the key policies of the enterprise. Ownership of 10 per cent or more of the ordinary shares or voting stock of an enterprise is considered, under the ABS framework, to indicate 'significant influence' by an investor. Portfolio investment is cross-border investment in equity and debt securities other than direct investment. Other investment is a residual group that comprises many different kinds of investment. Reserve assets are those external financial assets available to and controlled by the Reserve Bank of Australia or the Commonwealth Treasury for use in financing payment imbalances or intervention in foreign exchange markets.

Table 4.3: Foreign investment flows (\$billion)^(a)

	1999-00	2000-01	2001-02	2002-03	2003-04
Australian investment abroad					
Direct investment					
Equity & reinvested earnings	-5.2	-2.8	-26.0	-12.2	-22.9
Other capital	1.8	-6.9	4.8	4.1	-1.5
Portfolio investment					
Equity	-14.8	-17.2	-17.9	-13.0	-10.2
Debt	-2.8	-7.9	-10.1	-3.2	-14.3
Derivatives(b)	-0.9	0.9	-0.7	7.0	23.3
Other investment(c)	0.0	-6.1	-6.2	-1.7	-15.8
Reserve assets	-2.6	-8.9	0.8	-5.6	-5.1
<i>Total Australian investment abroad</i>	<i>-24.5</i>	<i>-48.9</i>	<i>-55.3</i>	<i>-24.6</i>	<i>-46.5</i>
Foreign investment in Australia					
Direct investment					
Equity & reinvested earnings	8.7	7.1	16.3	13.4	13.3
Other capital	4.5	5.1	5.0	4.5	-3.7
Portfolio investment					
Equity	4.5	18.7	10.7	3.3	16.8
Debt	26.1	24.2	28.6	32.8	85.1
Derivatives(b)	1.3	-1.4	1.5	-7.1	-22.4
Other investment(c)	10.1	10.4	14.1	17.8	4.5
<i>Total foreign investment in Australia</i>	<i>55.2</i>	<i>64.1</i>	<i>76.2</i>	<i>64.8</i>	<i>93.6</i>
Net Foreign Investment(b)	30.7	15.2	20.9	40.1	47.1

Note: Figures may not add due to rounding.

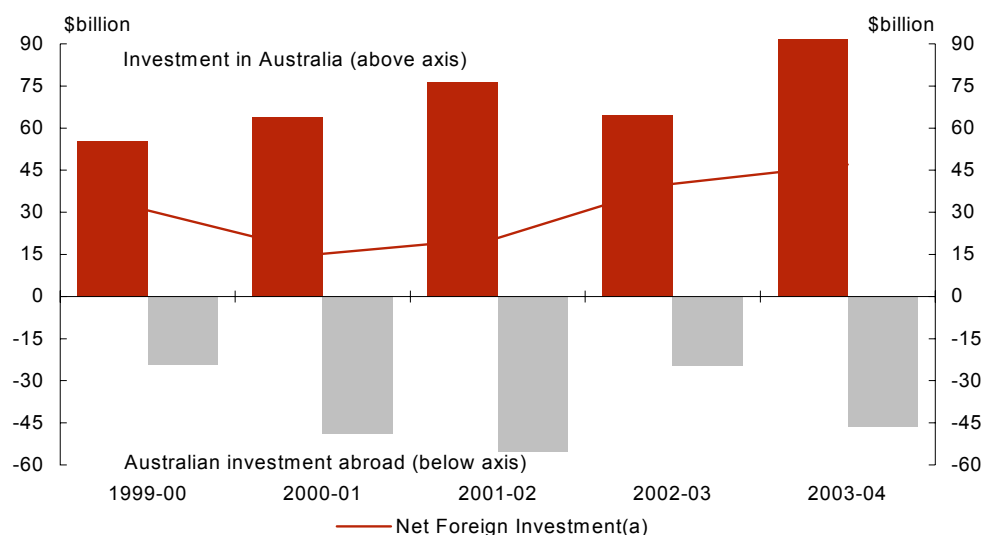
(a) In keeping with balance of payment conventions, credit entries are shown without sign and debit items are shown as negative entries. Thus, investment flows going from Australia to offshore destinations are shown as a negative.

(b) Derivatives were included in other investments prior to 2000.

(c) Other investment includes all other investment.

Source: ABS 5302.0 Balance of Payments and International Investment Position, Australia, June Qtr 2004, Table 23 – Financial Account (a)(b).

Chart 4.2: Foreign investment flows



(a) The net foreign investment figure has been derived from determining the difference between foreign investment in Australia and Australian investment abroad.

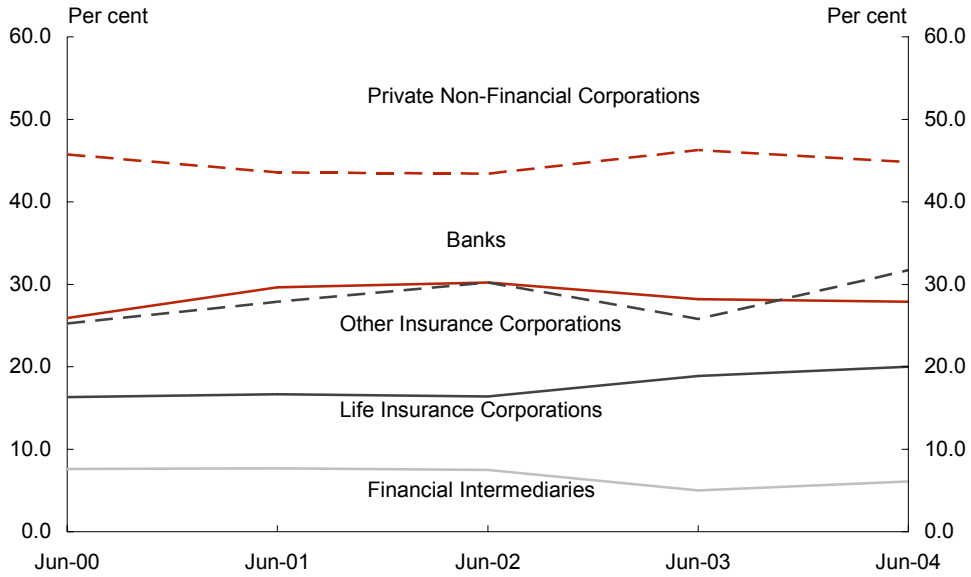
Source: ABS 5302.0 Balance of Payments and International Investment Position, Australia, June Qtr 2004, Table 23 – Financial Account (a)(b).

Table 4.3 provides a breakdown of the flow of foreign investment over the past five years measured by ABS statistics. Chart 4.2 provides a summary of the major trends in foreign investment flows from the same data. These demonstrate that Australia remains a net importer of capital.

Foreign investment by sector

Over the period 1 July 2003 to 30 June 2004, the percentage of foreign ownership of Australian equity increased for financial intermediaries and life insurance corporations but decreased for all other sectors (Chart 4.3). Over the past five years, the aggregate level of foreign ownership has remained steady.

Chart 4.3: Foreign ownership of Australian equity by sector



Source: ABS 5232.0 Financial Accounts, Australia, June Qtr 2004, Tables 40 and 41 – Listed and Unlisted Shares and Other Equity Market (a).

Useful references on international investment issues

Websites

Organisation	Address
Asia-Pacific Economic Cooperation (APEC)	< www.apec.org.sg >
Attorney-General's Department	< www.ag.gov.au >
Australian Bureau of Statistics	< www.abs.gov.au >
Australian Competition and Consumer Commission	< www.accc.gov.au >
ANCP for the OECD Guidelines for Multinational Enterprises	< www.ausncp.gov.au >
Australian Prudential Regulatory Authority	< www.apra.gov.au >
Australian Securities and Investment Commission	< www.asic.gov.au >
Business and Industry Advisory Committee to the OECD	< www.biac.org >
Commonwealth Treasurer	< www.treasurer.gov.au >
Department of Foreign Affairs and Trade	< www.dfat.gov.au >
Department of Immigration and Multicultural and Indigenous Affairs	< www.immi.gov.au >
Department of Treasury	< www.treasury.gov.au >
Foreign Investment Review Board	< www.firb.gov.au >
International Monetary Fund	< www.imf.org >
Invest Australia	< www.investaustralia.gov.au >
OECD Guidelines for Multinational Enterprises	< www.oecd.org >
Organisation for Economic Co-operation and Development (OECD)	< www.oecd.org >
Scale Plus (Australian law online)	< www.scaleplus.law.gov.au >
United Nations	< www.un.org >
World Trade Organization (WTO)	< www.wto.org >

Specific documents

Document title	Available at:
Code of Liberalisation of Capital Movements	< www.oecd.org >
Economic Round Up (Treasury series)	< www.treasury.gov.au >
General Agreement on Tariffs in Trade (GATT)	< www.wto.org >
General Agreement on Trade in Services (GATS)	< www.wto.org >
Guide to the Investment Regimes of the APEC Member Economies	< www.apec.org.sg >
International Direct Investment Statistics Yearbook	< www.oecd.org >
International Investment Agreements (UNCTAD series)	< www.un.org >
OECD Code of Liberalisation of Current Invisible Operations	< www.oecd.org >
OCED Declaration on International Investment and Multinational Enterprises	< www.ausncp.gov.au >
OECD Guidelines for Multinational Enterprises	< www.ausncp.gov.au >
Policies and International Integration: Influences on Trade and Foreign Direct Investment (OECD Study)	< www.oecd.org >
The Trade and Investment Effects of Preferential Trading Arrangements — Old and New Evidence (Australian Productivity Commission — Staff Working Paper)	< www.pc.gov.au >
Treasury Annual Report	< www.treasury.gov.au >
UNCTAD Series on Issues in International Investment Agreements	< www.un.org >
UNCTAD World Investment Directory	< www.un.org >
UNCTAD World Investment Report	< www.un.org >

