



Office of Hon Tim Groser

Minister of Trade

Minister Responsible for International Climate Change Negotiations

Associate Minister of Foreign Affairs

21 APR 2011

Peter Lowe
President
New Zealand Captive Insurance Association
PO Box 369
AUCKLAND

Dear Mr Lowe

Thank you for your letter of 2 March outlining your concern that the recently introduced Insurance (Prudential Supervision) Act 2010 potentially breaches the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and New Zealand-Singapore Closer Economic Partnership (NZSCEP).

Following consultations between the Ministry of Foreign Affairs and Trade and the Reserve Bank of New Zealand, I can confirm that the Act is not inconsistent with the non-discrimination ('National Treatment') obligations contained in ANZCERTA and NZSCEP.

In respect to insurance services, both agreements require the New Zealand Government to extend no less favourable 'treatment' to nationals of Australia and Singapore than that which it accords to New Zealanders or New Zealand institutions:

Each Member State shall accord to persons of the other Member State and services provided by them treatment no less favourable than that accorded in like circumstances to its persons and services provided by them.

*Article 5 of the Protocol on Trade in Services to the
Australia New Zealand Closer Economic Relations Trade
Agreement*

In the sectors in its schedule of commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

*Article 18 of the New Zealand Singapore Closer Economic
Partnership*

The Insurance (Prudential Supervision) Act 2010 establishes a system of oversight, including licensing, that applies to all insurers "carrying on business in New Zealand". As you will be aware, the test of whether an insurer is "carrying on business in New Zealand" rests on an entity holding a liability under a contract of insurance to a New Zealand policy holder. This standard is applied to all insurers in New Zealand, regardless of whether they are a New Zealand or overseas insurer. Moreover, any insurer, including a New Zealand insurer, which does not meet this standard will not be eligible to be licensed under the Act.

The non-discriminatory application of these requirements ensures that the Act is consistent with the National Treatment obligations of ANZCERTA and NZSCEP. Furthermore, the Act does not prohibit overseas insurers from operating in New Zealand. Any insurance company, whether from New Zealand or overseas, is eligible to be registered under the Act provided it meets the definition of "carrying on business in New Zealand".

On this basis the Act establishes a clear, transparent and non-discriminatory framework that regulates all insurance activities in New Zealand in a manner which is consistent with New Zealand's international trade obligations. Whether it is appropriate for the New Zealand Government to regulate activities which relate exclusively to the insurance of risk in another jurisdiction is a separate issue and one which rests more appropriately with New Zealand policy agencies including the Reserve Bank. I understand this issue was discussed extensively during the Act's development, including as part of the Select Committee process.

You correctly note that the ANZCERTA and NZSCEP agreements, consistent with New Zealand's trade policy more generally, include scope for the Government to adopt or maintain measures for prudential reasons (even if such actions are inconsistent with other provisions in the agreements). In the event the Government had decided to afford a different level of treatment to foreign insurers, any differences would be permitted under New Zealand's trade agreements provided they reflected prudential considerations, such as the protection of New Zealand policy holders and/or the integrity and stability of the financial system more broadly.

Yours sincerely



Tim Groser
Minister of Trade