

4 February 2016

The Honourable Michael Froman
United States Trade Representative
600 17th Street, NW
Washington, DC 20508
United States of America

Dear Ambassador Froman

I have the honour to confirm the following understanding reached between representatives of the Government of Australia (Australia) and the Government of the United States of America (United States) during the negotiation of Chapter 18 (Intellectual Property) of the Trans-Pacific Partnership Agreement (TPP Agreement):

“1. Upon entry into force of the TPP Agreement for Australia and the United States, Article 18.49 (Regulatory Review Exception) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to the regulatory review exception for pharmaceutical products, instead of Article 17.9.6 (Patents) of the Australia-United States Free Trade Agreement and instead of the side letter to that agreement exchanged between Ambassador Zoellick and Minister Vaile dated 18 May 2004 insofar as it addresses Article 17.9.6 (Patents) and Article 17.9.8(b) of that agreement.

2. Upon entry into force of the TPP Agreement for Australia and the United States, Article 18.68 (Technological Protection Measures) and Article 18.74.17 (Civil and Administrative Procedures and Remedies) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to technological protection measures, instead of Article 17.4.7 (Copyright) and Article 17.11.13 (Enforcement of Intellectual Property Rights) of the Australia-United States Free Trade Agreement.

3. Upon entry into force of the TPP Agreement for Australia and the United States, Article 18.46, paragraphs .3 and 4 (Patent Term Adjustment for Unreasonable Granting Authority Delays) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to patent term adjustment for patent office delays instead of Article 17.9.8(a) (Patents) of the Australia-United States Free Trade Agreement.”

I have the further honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the TPP Agreement as between Australia and the United States.

Yours sincerely

Andrew Robb

February 4, 2016

The Honorable Andrew Robb
Minister for Trade and Investment
Parliament House Canberra, Australia

Dear Minister Robb:

I am pleased to acknowledge your letter of February 4, 2016, which reads as follows:

“I have the honour to confirm the following understanding reached between representatives of the Government of Australia (Australia) and the Government of the United States of America (United States) during the negotiation of Chapter 18 (Intellectual Property) of the Trans-Pacific Partnership Agreement (TPP Agreement):

1. Upon entry into force of the TPP Agreement for Australia and the United States, Article 18.49 (Regulatory Review Exception) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to the regulatory review exception for pharmaceutical products, instead of Article 17.9.6 of the Australia-United States Free Trade Agreement and instead of the side letter to that agreement exchanged between Ambassador Zoellick and Minister Vaile dated 18 May 2004 insofar as it addresses Article 17.9.6 and 17.9.8(b) of that agreement.
2. Upon entry into force of the TPP Agreement for Australia and the United States, Article 18.68 (Technological Protection Measures) and Article 18.74.17 (Civil and Administrative Procedures and Remedies) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to technological protection measures, instead of Article 17.4.7 and Article 17.11.13 of the Australia-United States Free Trade Agreement.
3. Upon entry into force of the TPP Agreement for Australia and the United States, Australia, Article 18.46(3) – (4) (Patent Term Adjustment for Patent Office Delays) of the TPP Agreement shall govern the relationship between Australia and the United States with respect to patent term adjustment for patent office delays instead of Article 17.9.8(a) of the Australia-United States Free Trade Agreement.

I have the further honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the TPP Agreement as between Australia and the United States.”

I have the honor to confirm that my Government shares this understanding, and that your letter and this letter in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the TPP Agreement as between the United States and Australia.

Sincerely,

Ambassador Michael B. G. Froman