

4 February 2016

The Honourable Andrew Robb
Minister for Trade and Investment
Australia

Dear Minister Robb

In connection with the signing on 4 February 2016 in Auckland of the Trans-Pacific Partnership Agreement (the “TPP Agreement”) and in the context of the Australia New Zealand Closer Economic Relations Trade Agreement (“CER”) done at Canberra on 28 March 1983 and its related agreements and understandings, and in the context of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done at Cha-am on 27 February 2009 (AANZFTA), I have the honour to confirm the following agreement reached between the Government of Australia and the Government of New Zealand during the course of negotiations on the TPP Agreement:

1. Nothing in the TPP Agreement shall be construed to derogate from any rights or obligations of New Zealand or Australia under CER or AANZFTA.
2. Chapter 6 (Trade Remedies) of the TPP Agreement shall not create any rights or obligations between New Zealand and Australia.
3. No investor of New Zealand shall have recourse to dispute settlement against Australia under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP Agreement.
4. No investor of Australia shall have recourse to dispute settlement against New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP Agreement.
5. New Zealand shall only rely on Entry 2 in New Zealand’s schedule to Annex IV of the TPP Agreement with respect to air transport services between New Zealand and Australia where:
 - (a) non-commercial assistance provided to a state-owned enterprise supplying the service is solely intended to enable the state-owned enterprise to continue operating as a going concern; and
 - (b) the non-commercial assistance does not cause:
 - (i) a significant increase in the state-owned enterprise’s market share of the service; or
 - (ii) a significant price undercutting by the service supplied by the state-owned enterprise as compared with the price of a like service supplied by an Australian service supplier in the same market, or a significant price suppression, price depression or lost sales in the same market.

I have the further honour to propose that this letter and your letter of confirmation in reply, shall constitute an agreement between Australia and New Zealand which shall enter into force on the

date on which the TPP Agreement enters into force for both Australia and New Zealand.

Yours sincerely

Hon Todd McClay
Minister of Trade

4 February 2016

Hon Todd McClay
Minister of Trade
New Zealand

Dear Minister McClay

I have the honour of acknowledging receipt of your letter of today's date, which states as follows:

“In connection with the signing on 4 February 2016 in Auckland of the Trans-Pacific Partnership Agreement (the “TPP Agreement”) and in the context of the Australia New Zealand Closer Economic Relations Trade Agreement (“CER”) done at Canberra on 28 March 1983 and its related agreements and understandings, and in the context of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done at Cha-am on 27 February 2009 (AANZFTA), I have the honour to confirm the following agreement reached between the Government of Australia and the Government of New Zealand during the course of negotiations on the TPP Agreement:

6. Nothing in the TPP Agreement shall be construed to derogate from any rights or obligations of New Zealand or Australia under CER or AANZFTA.
7. Chapter 6 (Trade Remedies) of the TPP Agreement shall not create any rights or obligations between New Zealand and Australia.
8. No investor of New Zealand shall have recourse to dispute settlement against Australia under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP Agreement.
9. No investor of Australia shall have recourse to dispute settlement against New Zealand under Chapter 9, Section B (Investor-State Dispute Settlement) of the TPP Agreement.
10. New Zealand shall only rely on Entry 2 in New Zealand's schedule to Annex IV of the TPP Agreement with respect to air transport services between New Zealand and Australia where:
 - (c) non-commercial assistance provided to a state-owned enterprise supplying the service is solely intended to enable the state-owned enterprise to continue operating as a going concern; and
 - (d) the non-commercial assistance does not cause:
 - (iii) a significant increase in the state-owned enterprise's market share of the service; or
 - (iv) a significant price undercutting by the service supplied by the state-owned enterprise as compared with the price of a like service supplied by an Australian service supplier in the same market, or a significant price suppression, price depression or lost sales in the same market.

I have the further honour to propose that this letter and your letter of confirmation in reply, shall constitute an agreement between Australia and New Zealand which shall enter into force on the date on which the TPP Agreement enters into force for both Australia and New Zealand.”

I have the further honour to confirm that your letter reflects the understandings made by the Governments of Australia and New Zealand during the course of the negotiations on TPP and that your letter and this letter in reply shall constitute an agreement between Australia and New Zealand.

Yours sincerely

Andrew Robb