18 May 2004

The Honourable Robert B. Zoellick
United States Trade Representative
600 17 Street, NW
Washington, D.C. 20508

Dear Ambassador Zoellick

In connection with the signing on this date of the Australia – United States Free Trade Agreement ("the Agreement"), I have the honour to confirm the following understanding reached by the Governments of Australia and the United States in relation to Chapter Seventeen (Intellectual Property) of the Agreement:

1. Notwithstanding Article 17.9.6, if a patent for a pharmaceutical product has been granted an adjustment of its term pursuant to Article 17.9.8(b), Australia may permit the export by a third party of a pharmaceutical product covered by that patent, only for the purposes of meeting the marketing approval requirements of Australia or another territory.

2. With respect to the obligation set out in Article 17.4.10(b), if, at any time more than two years after the entry into force of this Agreement, it is the considered opinion of either Party that there has been a significant change in the reliability, robustness, implementability and practical availability of technology to effectively limit the reception of Internet retransmissions to users located in a specified geographic market area, that Party may request, and the other Party agrees to enter into, consultations to review the continued applicability of the obligation set out in Article17.4.10(b) and whether, in light of technological and other relevant developments, it should be modified, which agreement shall not be unreasonably withheld.

3. Notwithstanding Article 17.11.6(a)(i) where, on the entry into force of this Agreement, a Party provides any one or more of the following: that only one or other of the remedies set out in sub-paragraph 17.11.6(a)(i) and (a)(ii) is available at the election of the right holder; and that only the remedy set out in sub-paragraph 17.11.6(a)(ii) is available in the case of innocent copyright infringement and in the case of a finding of non-use of a trademark that the right

holder may not be entitled to either of the remedies set out in sub-paragraph 17.11.6(a), the Party may continue to so provide.

4. Notwithstanding Article 17.9.5, Australia may provide that a patent may be revoked on the basis that the patent is used in a manner determined to be anti-competitive in a judicial proceeding.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Yours sincerely

Mark Vaile
Minister for Trade

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 18, 2004

The Honorable Mark Vaile MP
Minister for Trade
Parliament House
Canberra ACT 2600

Dear Minister Vaile:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the Australia – United States Free Trade Agreement ("the Agreement"), I have the honour to confirm the following understanding reached by the Governments of Australia and the United States in relation to Chapter Seventeen (Intellectual Property) of the Agreement:
>
> 1. Notwithstanding Article 17.9.6, if a patent for a pharmaceutical product has been granted an adjustment of its term pursuant to Article 17.9.8(b), Australia may permit the export by a third party of a pharmaceutical product covered by that patent, only for the purposes of meeting the marketing approval requirements of Australia or another territory.
>
> 2. With respect to the obligation set out in Article 17.4.10(b), if, at any time more than two years after the entry into force of this Agreement, it is the considered opinion of either Party that there has been a significant change in the reliability, robustness, implementability and practical availability of technology to effectively limit the reception of Internet retransmissions to users located in a specified geographic market area, that Party may request, and the other Party agrees to enter into, consultations to review the continued applicability of the obligation set out in Article17.4.10(b) and whether, in light of technological and other relevant developments, it should be modified, which agreement shall not be unreasonably withheld.
>
> 3. Notwithstanding Article 17.11.6(a)(i) where, on the entry into force of this Agreement, a Party provides any one or more of the following: that only one or other of the remedies set out in sub-paragraph 17.11.6(a)(i) and (a)(ii) is available at the election of the right holder; and that only the remedy set out in sub-paragraph 17.11.6(a)(ii) is available in the case of innocent copyright infringement and in the case of a finding of non-use of a trademark that the right holder may not be entitled to either of the remedies set out in sub-paragraph 17.11.6(a), the Party may continue to so provide.

4. Notwithstanding Article 17.9.5, Australia may provide that a patent may be revoked on the basis that the patent is used in a manner determined to be anti-competitive in a judicial proceeding.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement."

I have the honor to confirm that my Government shares this understanding and that your letter and this reply shall constitute an integral part of the United States–Australia Free Trade Agreement.

Sincerely,

Robert B. Zoellick