

## Attachment 6



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

October 26, 2017

The Honorable Steven Ciobo  
Minister for Trade, Tourism and Investment  
Department of Foreign Affairs and Trade  
Canberra, Australia

Dear Minister Ciobo:

Pursuant to Article 11.16 of the United States-Australia Free Trade Agreement, the United States hereby requests consultations with the Government of Australia with a view towards allowing the U.S. investors in NuCoal Resources Ltd. to submit to arbitration claims related to the New South Wales Parliament's cancellation of exploration license number 7270 by means of its enactment of the Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014 on January 30, 2014. Article 11.16 of the Australia-United States Free Trade Agreement (FTA) states in relevant part:

If a Party considers that there has been a change in circumstances affecting the settlement of disputes on matters within the scope of this Chapter and that, in light of such change, the Parties should consider allowing an investor of a Party to submit to arbitration with the other Party a claim regarding a matter within the scope of this Chapter, the Party may request consultations with the other Party on the subject, including the development of procedures that may be appropriate. On such a request, the Parties shall promptly enter into consultations with a view towards allowing such a claim and establishing such procedures.

As we have discussed, the U.S. investors in NuCoal Resources Ltd. allege that the cancellation of the license was inconsistent with Australia's obligations in the Investment chapter of the FTA. While the United States does not take a view on the merits of these allegations, the United States believes that the enactment of legislation by an Australian state government cancelling a hydrocarbons exploration license and denying U.S. investors the opportunity to seek compensation in Australia's domestic courts constitutes a change in circumstances affecting the settlement of investment disputes meriting consultations under Article 11.16. Further, the United States is compelled to request consultations with a view towards allowing the U.S. investors to arbitrate their claims due to the longstanding lack of resolution of this matter, notwithstanding several years of engagement between the U.S. investors and state and federal officials in Australia, and also between our governments.

As you know, this is the first time that the United States has requested consultations under Article 11.16 since the FTA entered into force in 2005, which reflects the seriousness of our concerns regarding this matter.

I look forward to your reply and to fixing a mutually convenient date to hold consultations. The United States reserves all rights under the FTA to seek an expeditious resolution of this matter. Thank you for your attention to this request for consultations.

Sincerely yours,



Ambassador Robert E. Lighthizer  
United States Trade Representative