



Australian Government
Attorney-General's Department

MC16-143958

11 January 2017

Mr Harold E Patricoff
Shutts & Bowen LLP
200 South Biscayne Boulevard
MIAMI
By email: hpatricoff@shutts.com

Dear Mr Patricoff

APR Energy

I refer to your letter dated 30 November 2016, which you advise operates as a notice of dispute under the *Australia – United States Free Trade Agreement* (AUSFTA) in relation to allegations made by APR Energy.

There is no jurisdiction for APR Energy to bring a dispute under AUSFTA, or any other international agreement, in relation to this matter. In negotiating AUSFTA, Australia and the United States made the clear public policy decision to not include investor-state dispute settlement. Accordingly, Australia has not consented to investor-state claims under AUSFTA, and your clients cannot rely on other agreements in order to create jurisdiction where no such consent exists.

Accordingly, if your clients persist in submitting a notice of arbitration, the Australian Government will vigorously contest jurisdiction and will seek a full award of its costs. In any event, the Government is confident that, in all respects, it has complied with its obligations under AUSFTA and any losses alleged by APR Energy resulted from its failure to exercise due diligence.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J Reid', is written over a light blue horizontal line.

John Reid
First Assistant Secretary
Office of International Law

Telephone: (02) 6141 3554
Email: john.reid@ag.gov.au