

February 27, 2012

The President  
The White House  
1600 Pennsylvania Ave., N.W.  
Washington, D.C. 20500

Dear Mr. President:

As associations representing small, medium and large U.S. companies throughout every sector of the U.S. economy, we are strongly supportive of the work you and your Administration are pursuing to achieve a comprehensive and high-standard Trans-Pacific Partnership (TPP) agreement in 2012. By opening markets, leveling the playing field with foreign competitors and setting in place strong and enforceable rules on issues from intellectual-property protection and transparency to regulatory coherence, such an agreement will yield important new economic opportunities that will help grow the American economy and jobs, while also helping to promote economic growth among the TPP partner countries.

As the 11<sup>th</sup> Round of negotiations is set to open in Melbourne, Australia, we want to highlight the importance of securing a strong and enforceable agreement with all the TPP partners. While agreeing to robust enforcement tools – a priority of your Administration and the business community – would seem to be an issue on which all TPP negotiators would have already reached a consensus, that is unfortunately not the case, given Australia's ongoing refusal to agree to one of the most widely-adopted core enforcement tools in international commerce – investor-state dispute settlement.

Australia, like the United States and the other TPP countries, has already agreed to investor-state dispute-settlement mechanisms in numerous other agreements. Indeed, Australia has binding investor-state commitments with every other TPP partner, except the United States and New Zealand (with which it has a special economic and legal relationship). Included in over 2,700 instruments worldwide and supported by Democratic and Republican Administrations alike, these provisions promote the rule of law and serve as an important backstop to ensure that investors who risk their capital, property and talent in foreign countries will be able to enforce due process, non-discrimination, basic property and related protections in a neutral, balanced and objective forum.

The reasons for Australia's refusal to accept this basic enforcement tool in the TPP are less than clear. It has been suggested that Australia may be concerned about retaining its ability to regulate in the public interest. Yet, the United States, Australia and other governments have worked carefully to address this issue both through substantive provisions and procedural mechanisms. In the United States, its recent trade and investment agreements reflect core legal principles based on our Constitution and laws that protect each government's basic right to regulate in the public interest, while also providing, as in the U.S. legal system, that such regulation is subject to impartial review to ensure that it meets basic principles (including due process, non-discrimination and disciplines on expropriation). Other provisions provide mechanisms to limit frivolous claims and ensure transparency. Australia's own recent investment agreements include similar provisions ensuring governments' right to regulate, while also providing for impartial review to ensure that government action meets basic core principles.

While Australia has been a leader bilaterally, regionally and multilaterally in promoting an international economic system with binding and enforceable commitments, it continues to reject the application of this dispute-settlement tool to its own TPP commitments. Australia's rejection of investor-state dispute settlement is not only thwarting the ability of the TPP negotiations to produce strong enforcement outcomes, it is also having a corrosive effect on the level of ambition and other key aspects of the TPP

negotiations. If Australia were able to extract such a major exemption, other countries would press forward to seek their own major exemptions from core commitments, which would ultimately unravel the ability to achieve a comprehensive, 21<sup>st</sup>-century TPP agreement.

As data from the U.S. Department of Commerce's Bureau of Economic Analysis have shown over the past several decades, the U.S. investment overseas that strong investment rules promote brings important benefits back to the United States. Firms that invest overseas are more globally competitive, export more, invest more in research and development and capital projects in the United States and pay their workers more than purely domestic companies. Promoting and assuring a level playing field for both inbound and outbound investment is therefore vital for the United States and the other TPP negotiating partners.

Given your strong support and recognition of the importance of strong tools to enforce international norms, we strongly urge you and your Administration to reiterate the importance of all TPP countries (including those that may join these negotiations later) to commit not only to a comprehensive and high-standard TPP agreement, but also to strong enforcement mechanisms, including investor-state and other dispute-settlement provisions.

Respectfully,



Kevin M. Burke  
President & CEO  
American Apparel & Footwear Association (AAFA)



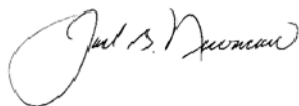
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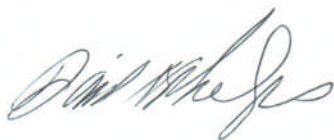
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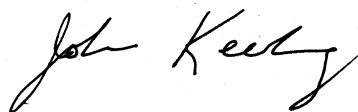
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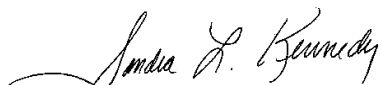
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