

March 18, 2014

The Honorable Michael Froman
United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Obama Administration's Record on Investment Stakeholder Consultation

The undersigned associations, representing hundreds of thousands of businesses large and small, write to correct the record regarding the extensive efforts the Obama Administration has undertaken to engage in consultation with all stakeholders (business, academia, NGOs, and individuals) regarding the U.S. approach to the protection of cross-border investment in international agreements.

Bilateral investment treaties (BITs) and the investment chapters of our trade agreements seek to ensure that U.S. companies can invest overseas to access foreign customers. They guarantee that such investment is treated fairly, without discrimination, and is protected against uncompensated expropriation by foreign governments. Such provisions also guarantee investors the right to seek a neutral, apolitical venue to resolve disputes. The U.S. approach to investment is completely consistent with U.S. domestic law as well as the core principles found in the U.S. Constitution.

Suggestions that the United States should undertake yet another examination of its investment position generally or in the context of the Transatlantic Trade and Investment Partnership (T-TIP) talks ignore the Administration's exhaustive three-year review of the U.S. model bilateral investment treaty concluded in 2012. Yet another review would only serve to delay progress on negotiations that are critical to ensuring a level playing field for America's businesses and their workers.

In fact, the U.S. negotiating position on investment is undertaken on the basis of a model text that has been subject to several reviews since the 1990s. The Administration uses this publicly-available model text in every trade and investment negotiation. The claim that investment is being negotiated in a "black box" in any current U.S. negotiation is simply unfounded.

The most recent review of the U.S. investment negotiating position was far-reaching. President Obama specifically ordered a comprehensive review, but took special note of the importance of examining the investor-state dispute settlement mechanism. That process included the creation of a formal investment subcommittee by the State Department's Advisory

Committee on International Economic Policy (ACIEP), which was co-chaired by a representative of the AFL-CIO and Covington & Burling. A wide range of NGOs, unions, academics, and business representatives sat on that committee, which issued a report in 2009. The State Department and the Office of the U.S. Trade Representative (USTR) also officially sought input from all stakeholders and held a public hearing on recommendations. As a central part of the review, all of the investment skeptics' criticisms were thoroughly evaluated in a comprehensive interagency process that included consultations with the Congress. Approximately three years after the process began the Administration issued its updated Model BIT in April 2012. The Administration rightly concluded that the sweeping changes sought by investment skeptics were neither necessary nor prudent.

Further, the Obama Administration also has conducted extensive public consultation at the outset of the T-TIP talks. All interested parties have had ample opportunity to make their priorities known, as well as to voice areas of concern. This process has afforded all stakeholders numerous opportunities for engagement on their priorities regarding cross-border investment in U.S. negotiations.

Europe is in quite a different position. Only recently have European Union institutions been given the authority to negotiate investment-related agreements on behalf of the 28 member states. Previously, that power was left to the individual member states. In fact, the EU member states enjoy the benefits of some 1,400 investment agreements, which as a matter of standard practice rely on an investor-state dispute settlement mechanism. Several member states already have investment treaties with the United States that include investor-state dispute settlement. While it may be appropriate for Europe to engage in a consultation to develop a European approach to investment that draws on the experience of Europe's vast network of investment agreements, the recently concluded U.S. review and T-TIP consultations have already addressed any similar need in the United States.

We urge the Administration to continue to embrace strong investment provisions that are vital to open markets, protect U.S. property, and level the playing field so that U.S. industry can compete successfully in the global economy.

Sincerely,

Advanced Medical Technology Association (AdvaMed)
American Apparel & Footwear Association (AAFA)
American Council of Life Insurers
American Insurance Association
American Petroleum Institute (API)
Business Coalition for Transatlantic Trade
Coalition of Service Industries
Corn Refiners Association
Emergency Committee for American Trade
Express Association of America (EAA)
Information Technology Industry Council (ITI)
National Association of Manufacturers

National Foreign Trade Council
National Oilseed Processors Association
Property Casualty Insurers
Retail Industry Leaders Association
Securities Industry and Financial Markets Association (SIFMA)
Society of Chemical Manufacturers and Affiliates (SOCMA)
Software & Information Industry Association
Trans-Atlantic Business Council
United States Council for International Business
U.S. Chamber of Commerce