

May 19, 2015

The United States Congress
United States Capitol
Washington, DC 20510

Dear Members of Congress:

As associations representing millions of small, medium and large companies across every major sector of the U.S. economy, we strongly support the inclusion of robust market access commitments and investment protections, enforceable through investor-state dispute settlement (ISDS), in ongoing U.S. trade negotiations. These provisions promote greater opportunities for our businesses and U.S. workers in the global economy. To secure such outcomes, it is vital that Congress continue to include a strong negotiating objective on investment in Trade Promotion Authority legislation, as it has for decades.

Those opposed to strong U.S. trade agreements have been critical of ISDS, mischaracterizing it and ignoring the importance that this fundamental protection and enforcement mechanism provides for businesses and workers here in the United States doing business around the world. We urge you to consider the following points.

First, businesses throughout the United States invest here at home and an increasing number also invest overseas to access consumers in fast-growing markets around the world. Of the approximately \$7 trillion in annual sales by foreign subsidiaries of U.S. companies, nearly 90 percent are sold to foreign consumers and not back to the United States. By reaching millions of new consumers overseas, U.S. foreign investment strengthens U.S.-based parent businesses, which account for nearly 50 percent of total U.S. exports and massive shares of U.S. research and development and capital expenditures. U.S. workers employed by companies with foreign operations earn 15 to 20 percent more on average than those employed by companies without foreign operations. In short, the U.S. economy benefits enormously from U.S. investment abroad.

Second, in the last 30 years, the United States has negotiated more than 40 treaties and several free trade agreements that have set in place basic commitments regarding such cross-border investment. These international commitments are based on the same rule-of-law guarantees found in the U.S. Constitution and laws - from due process, fair treatment and non-discrimination to basic property protections, such as respect for contracts and compensation for government seizures or destruction of private property - and have undergone intensive reviews in both 2004 and 2012. Enforcement of these commitments is important for the United States, its businesses and workers because when foreign governments act contrary to these basic fairness, non-discrimination and property protections, they not only harm the foreign investment, but also the parent U.S. business and its American workers. The result would be fewer sales overseas for our U.S. operations to support.

Third, the investment provisions of U.S. trade agreements are not generally enforceable through the domestic law of individual countries and require enforcement through the international agreement. Unlike other provisions of a trade agreement that can typically be enforced through more generalized dispute settlement systems, individual investments are impacted uniquely by foreign government actions and require a specialized, dependable, targeted and neutral form of

enforcement, known as ISDS. Having such a mechanism provides the additional benefit of depoliticizing individual cases.

Fourth, ISDS panels are limited to enforcing only the international commitments to which each country has voluntarily agreed and can only award monetary penalties. These ISDS panels never have overturned and never can overturn any country's laws or regulations.

Fifth, investor-state provisions in U.S. trade agreements do not allow any circumvention of non-discriminatory, fairly applied domestic regulatory processes or laws. As all of the cases under the North American Free Trade Agreement (NAFTA) have shown so far, investors have been successful only where they have challenged foreign government actions that lacked a legitimate, non-discriminatory purpose and tilted the playing field against a foreign investor or in favor of a domestic competitor. And, of course, the U.S. Government has never lost an ISDS case, reflecting our strong tradition of non-discrimination and rule-of-law.

Lastly, most investors who bring cases are individuals or small and medium sized businesses. In the 105 disputes filed at the International Centre for the Settlement of Disputes (ICSID) by American investors, two-thirds of the participants in the arbitrations were individuals or SMEs, according to findings *in Investor-State Dispute Settlement: A Reality Check* by the Center for Strategic and International Studies (CSIS).

ISDS is a strong enforcement tool that helps ensure that American businesses and their workers will be treated fairly overseas. This mechanism is an essential part of high-standard U.S. trade and investment agreements and should remain a high priority trade negotiating objective in the renewal of Trade Promotion Authority.

Sincerely,

America's Natural Gas Alliance
American Apparel & Footwear Association
American Chemistry Council
American Coatings Association
American Council of Life Insurers
American Forest & Paper Association
American Insurance Association
American Lighting Association
American Petroleum Institute
Arizona Chamber of Commerce and Industry
Arizona Manufacturers Council
Associated Oregon Industries
Association of Equipment Manufacturers (AEM)
Association of Washington Business
Biotechnology Industry Organization
Business Coalition for Transatlantic Trade
Business Roundtable
California Chamber of Commerce
Chemistry Council of New Jersey
Coalition of Service Industries

Consumer Specialty Products Association (CSPA)
Corn Refiners Association
CropLife America
Emergency Committee for American Trade (ECAT)
Express Association of America
Florida Chamber of Commerce
Footwear Distributors & Retailers of America (FDRA)
Illinois Manufacturers' Association
Industrial Truck Association
Information Technology Industry Council (ITI)
Institute of Scrap Recycling Industries, Inc.
International Housewares Association
Louisiana Association of Business and Industry
Manufacturers Alliance/MAPI
Maryland Chamber of Commerce
Minnesota Chamber of Commerce
National Association of Manufacturers

National Electrical Manufacturers
Association (NEMA)
National Foreign Trade Council
National Oilseed Processors Association
National Pork Producers Council
National Retail Federation
Ohio Chamber of Commerce
Pharmaceutical Research and
Manufacturers of America (PhRMA)
Power Transmission Distributors
Association
Rhode Island Manufacturers Association
Securities Industry and Financial Markets
Association (SIFMA)
Semiconductor Equipment and Materials
International (SEMI)
Semiconductor Industry Association

Society of Chemical Manufacturers and
Affiliates
Steel Manufacturers Association
Texas Association of Business
The Aluminum Association
The Distilled Spirits Council of the U.S., Inc.
The Ohio Manufacturers' Association
Trans-Atlantic Business Council
U.S. Business Coalition for TPP
U.S. Chamber of Commerce
United States Council for International
Business
US-ASEAN Business Council
Virginia Chamber of Commerce
Washington Council on International Trade