

April 20, 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