February 28, 2014

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

Re: Support for Public Consultation Process on Investment and Investor-to-State Dispute Settlement Policies

Dear Ambassador Froman:

As U.S.-based labor, environmental, health, consumer, business, family farm, faith-based and other interest groups, we write to urge you to join your counterparts from the European Union and embark upon a thorough, open, public consultation process to review the costs and benefits of the investor protection policies in trade and investment agreements, particularly the Trans-Atlantic Trade and Investment Partnership (known as the "TTIP").

As you know, on January 21, 2014, the European Commission announced that it would "consult the public on the investment provisions of a future EU-US trade deal, known as the Transatlantic Trade and Investment Partnership (TTIP)."[1] In the release, EU Trade Commissioner Karel De Gucht explained, "some existing arrangements have caused problems in practice, allowing companies to exploit loopholes where the legal text has been vague. I know some people in Europe have genuine concerns about this part of the EU-US deal. Now I want them to have their say." We applaud the creation of a public consultation process for Europeans. As American businesses, non-governmental organizations, and citizens, we would like to have the same opportunity as our counterparts across the Atlantic.

As you know, concerns about overbroad investor protections, and about the investor-to-state dispute settlement (ISDS) process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal, a right home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public—nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on **no** corresponding responsibilities),

[1] "Commission to consult European public on provisions in EU-US trade deal on investment and investor-state dispute settlement," European Commission Press Release, Jan. 21, 2014, available at: http://europa.eu/rapid/press-release_IP-14-56_en.htm.

and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of $8 million a case[2]) are expended to defend these often meritless claims.

Stakeholders raised these and other concerns with the ISDS mechanism in numerous filings during the 2013 public comment period on TTIP. These widely-held concerns underscore the need for a more extensive and thorough exploration of ISDS. A public consultation process in which American workers, families, communities, small businesses, faith institutions and civil society organizations have a real voice will be an important step toward creating more balanced investment policies that reflect the diverse needs and interests of real people and their communities, not simply large, global corporations.

The disproportionate voice of large, global corporations in the formation of U.S. trade and investment arrangements has led to trade deals becoming an instrument for the back-door enactment of a domestic economic agenda that resulted in declining consumer demand and wage stagnation—the American middle class, the engine of the American economy, has been left behind even as the stock market indexes hit record highs. As a nation, we cannot continue to implement the same trade policies over and over and hope for different outcomes—we must review and correct the mistakes of the past, including a thorough review and revision of investment policies.

We urge you to take this step to ensure that U.S. trade policymaking is *at least as inclusive* as that of our trading partners.

We look forward to hearing from you.

Sincerely,

AFL-CIO
Americans for Financial Reform
Backbone Campaign
Campaign for America's Future
Center for Effective Government
Center for Policy Analysis on Trade and Health
Citizens Trade Campaign
Coalition for a Prosperous America
Consumer Federation of America
Consumers Union
EarthRights International
Economic Policy Institute
Environmental Investigation Agency
Fight for the Future
Food & Water Watch
Friends Committee on National Legislation

[2] See, e.g., Gavin Thompson, "Investor-state dispute settlement (ISDS) and the Transatlantic Trade and Investment Partnership (TTIP)," House of Commons Library, Standard Note SN/EP/6777, Dec. 10. 2013, available at: http://www.parliament.uk/briefing-papers/SN06777.pdf.

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Global Exchange
Institute for Agriculture and Trade Policy
Institute for Policy Studies, Global Economy Project
International Brotherhood of Teamsters
International Fund for Animal Welfare
International Labor Rights Forum
Jubilee USA Network
Knowledge Ecology International
Maryknoll Office for Global Concerns
Missionary Oblates USP
MoveOn.org National TPP Team
National Consumers League
National Family Farm Coalition
National Farmers Union
National Legislative Association on Prescription Drug Prices
National Wildlife Federation
Natural Resources Defense Council
Oxfam America
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