

**Congress of the United States**  
**Washington, DC 20515**

July 24, 2015

Ambassador Michael Froman  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Froman:

Thank you for your efforts to promote America's interests in ongoing trade negotiations. As the 12 member countries gather later this month to work to conclude the Trans-Pacific Partnership (TPP), it is critically important that the United States continue its efforts to open markets and eliminate unfair barriers, while at the same time ensuring respect for basic sovereign rights of governments to govern in the public interest.

For decades now, countries around the world have sought to balance their desire to both attract foreign investment and protect their citizens and natural resources by establishing a neutral forum to resolve claims related to discrimination, expropriation, due process, and the movement of capital. These same basic protections are already provided for in the United States through the Constitution and domestic laws.

While these basic protections have long been a fundamental part of U.S. law, there remains concern about how similar provisions should be included as part of trade agreements and enforced through international arbitration. We share your belief that there is a clear need to provide a neutral and impartial process to resolve conflicts between countries and our businesses. Every effort should be made to ensure that our government's ability to regulate in a balanced and fair way on behalf of the public interest cannot be successfully challenged using the investment provisions included in our trade agreements.

We greatly appreciate efforts undertaken by USTR to increase transparency and refine our investor-state dispute settlement process, or ISDS, in an effort to address these concerns. The success of these efforts is made clear by the fact that the U.S. has never lost an ISDS case and that U.S. investment treaty arbitral proceedings provide comparable transparency to U.S. federal court proceedings.

While progress has been made, however, there is room for improvement. As members who support trade done right, we strongly believe the U.S. should not miss an opportunity to make greater progress. As you continue to negotiate the TPP, we urge

you to move the investment chapter beyond the 2012 Model Bilateral Investment Treaty and take steps to reinforce that TPP governments have the ability to implement legitimate regulations—grounded in respect for individuals, private property, and the rule of law—that seek to address objectives related to public health, consumer safety, workers’ rights, environmental protection, and other public interest needs.

Specifically, in the annex on expropriation, we urge you to consider whether changes could be made to achieve greater alignment with U.S. law, including whether changes to the “reasonable expectations” factor properly balances those expectations with both existing and potential future government regulations.

When considering claims of discriminatory treatment, ISDS panels currently must consider how other investors “in like circumstances” are treated. Recognizing that countries have the basic sovereign right to regulate in the public interest, the U.S. should work to clarify that this phrase is read in a comprehensive manner.

Another critically important clarification that the U.S. should seek to include as part of its investment chapter is language providing TPP member countries with greater flexibility in cases where they impose short-term capital restrictions as legitimate efforts to prevent and mitigate financial crises.

Finally, the U.S. should push for even greater transparency in the arbitration process. Decisions made by investor-state dispute settlement panels affect a wider range of civil society and they should have the ability to have their voices heard and considered throughout the process.

We welcome your continued efforts to ensure that our substantive investment protections are consistent with U.S. law and do not provide foreign investors greater substantive rights to challenge U.S. environmental, health, consumer or other public welfare rules. We look forward to working with you to advance an investment chapter that is consistent with U.S. law and while retaining government’s sovereign right to regulate.

Sincerely,



Derek Kilmer  
Member of Congress



Earl Blumenauer  
Member of Congress



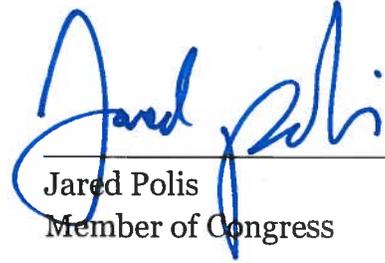
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Member of Congress



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Member of Congress



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Member of Congress



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