

April 15, 2011

The Honorable Ron Kirk
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Kirk:

The undersigned organizations strongly support U.S. engagement in the Trans-Pacific Partnership (TPP) negotiations. We believe that an ambitious and balanced agreement will promote economic growth and new business opportunities for all of the participants. One area where we believe substantial progress can be made to achieve that objective is to clarify the scope and coverage of the national treatment obligation to address some of the concerns that U.S. business is facing relating to state-owned enterprises, as well as the overly broadly procurement exemption, and help ensure that state-influenced entities compete on a level playing field.

An important imbalance that U.S. businesses increasingly face is competition with state-influenced entities that have created, over the past decade, significant distortions in the terms of competition in the global marketplace. Rather than operating on normal commercial terms, these companies are accountable primarily to their governments. And far too often, governments and these state-influenced entities choose to discriminate against imported goods in derogation of their core trade obligation to provide treatment no less favorable than that accorded to domestic like products. Competing with these companies places an asymmetrical burden on U.S. companies and workers.

The TPP negotiations are an opportunity to stem this problem by clarifying the scope and coverage of national treatment to reflect more appropriately the 21st-century trading system. While there is no single fix for this complex issue, we believe that an essential step is to update the text of the national treatment obligation so that it explicitly captures state-influenced entities and explicitly binds them in a similar manner as it binds governments' laws, taxes, and regulations. The national treatment obligation is the principal discipline for fighting trade discrimination, and it should be clear to TPP Members that the actions of state-influenced entities will be held to the same standard as other state action. A control test for state influence exists in the definitions for "covered entity" and "effective influence" in the U.S.-Singapore FTA, Article 12.8. Capturing state-influenced entities in the obligating text of the national treatment obligation will help significantly to level the playing field for U.S. businesses which do not enjoy the same favored home-market status.

In addition, we also strongly urge that the existing procurement exemption of the national treatment obligation be modified to prevent the misuse of this provision that could allow wide swaths of state behavior to escape the basic non-discrimination obligation. In particular, we propose the replacement of the procurement exemption with a more limited *exception* to national treatment for purchases by and for the use of identified government agencies and covered entities. Such an approach

would promote congruence between the national treatment and the procurement disciplines of the TPP, thereby providing greater clarity of coverage and promoting better overseas access by U.S. companies. Adoption of this approach would also help bring the TPP fully into the 21st century and promote more transparent and accessible government-procurement markets, helping thereby not only U.S. companies and their workers, but also all the TPP governments provide their citizens with the highest-quality goods and services given current fiscal constraints. Such an approach also has the benefit of being clearer and more easily negotiated by the parties.

We recognize that explicitly subjecting state-influenced entities to a robust national treatment obligation will not resolve all of the issues surrounding the rise of state capitalism, particularly the preferential treatment of state-influenced entities by their governments which enables them to compete on non-commercial terms in global markets. The business community is continuing to examine these issues closely and will be providing additional recommendations on issues relating to state-influenced entities, including proposals to improve disciplines on the preferential treatment of such entities by their governments.

We have presented these ideas to members of your staff and we, along with our member companies, look forward to working closely with you and pursuing a TPP that reflects the President's goal of achieving a new, 21st-century agreement.

Sincerely,

Coalition of Service Industries (CSI)
Emergency Committee for American Trade (ECAT)
National Association of Manufacturers (NAM)
National Foreign Trade Council (NFTC)
United States Council for International Business (USCIB)
U.S. Chamber of Commerce