

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

February 19, 2013

Dear Mr. President:

We, the undersigned organizations, representing a broad range of development, labor, consumer, human rights, and faith-based groups, are eager to work with you in your second term to ensure that your Administration's trade policy fulfills the goals outlined in your U.S. Global Development Policy.

We strongly agree with your statement in the Global Development Policy that "development is vital to U.S. national security and is a strategic, economic, and moral imperative for the United States." This new vision for American leadership provides the platform for lasting, transformational progress for the hundreds of millions worldwide facing poverty and environmental degradation – and for securing a hopeful future for America's middle class. Yet, to achieve the full potential of your Global Development Policy goals, past practices in key trade and investment policies in agreement negotiations must change. We urge you to undertake a formal review of the administration's trade and investment policies to ensure that they increase international financial and economic stability and are consistent and coherent across the administration's policies on trade, development, and financial system reform. This is vital to ensuring that the U.S. governmental policies in each of these areas reinforce the approach taken in the other areas and create a legacy of transparency and accountability in U.S. trade, investment and economic policy. It will also strengthen U.S. partnerships with emerging markets and developing economies, the world's most rapidly increasing importers of U.S. goods. Such partnerships will advance U.S. interests through low- or no-cost policies.

**Therefore, we request that your comprehensive review include the following three critical areas of U.S. trade and investment policy: financial services regulation; investor rights and investor-state enforcement; and transparency of trade and investment agreement negotiating process.** Given the numerous trade agreements already or soon to be under negotiation, including the Trans-Pacific Partnership (TPP), the International Services Agreement (ISA), and various Bilateral Investment Treaties, we believe it is critical to conduct such a review as soon as possible to ensure that any clarifying textual changes resulting from the review can be incorporated into current and planned negotiations.

1) **Financial Services Regulation: Fostering Economic Development and Stability at Home and Abroad**

The financial crisis of 2008 highlighted the need for improved financial regulation and cross-border cooperation. Your Administration has worked domestically to re-regulate the financial sector to promote stability, as well as being a leader in international processes aimed at enhancing global financial regulatory cooperation.

Given the historic shift in global thinking with respect to capital controls – including the IMF's recent landmark "institutional view" endorsing the use of capital controls in some circumstances -- this is a critical moment to ensure that U.S. trade and investment policies **support developing countries' ability to implement these policy tools to prevent and mitigate financial crises.** A review of U.S. policy

goals in global financial regulatory cooperation with respect to compatibility with U.S. trade and investment agreements could provide governments worldwide with confidence **that these agreements provide the policy space needed for them to exercise effective financial regulation.**

## **2) *Investor Rights and Investor-State Enforcement: Rebalancing Toward the Public Interest***

We wholeheartedly support the concerns that you expressed with respect to the current international investor regime and investor-state enforcement during your 2008 campaign. It is now time to act on that issue. While foreign investment can be a vehicle for development, it is critical to strike the right balance between the rights of investors and the rights of the public and of sovereign policymaking. Foreign investor protections included in Free Trade Agreements (FTA) and Bilateral Investment Treaties (BIT), as well as their enforcement through investor-state arbitration, have become increasingly controversial as the number and breadth of investor-state cases have increased over the past decade. There are mounting concerns that this system threatens to undermine domestic justice systems and fundamentally shift the balance of power between investors, states and other affected parties in a manner that undermines fair resolution of legal disputes and chills democratic policymaking aimed at protecting financial stability, public health, environmental sustainability and more. International tribunals that currently rule over investor-state claims lack public accountability, standard judicial conflict of interest and ethics rules, and appeals processes. Furthermore, academic studies have shown that there is no correlation between BITs and FTAs with expansive investor protections and the amount of foreign investment a country obtains.

Tribunals have interpreted existing standards ever more widely in favor of investors at the expense of governments and the public interest. A vital aspect of the review must consider what aspects of U.S. trade and investment agreement policy should be reformed to rebalance the rights of investors with the broader public interest in the United States and developing countries. Such a rebalancing, in our view, would include **replacing the investor-state dispute resolution mechanism with a state-to-state mechanism to guarantee the crucial role of governments in protecting the public interest**, or at a minimum, end many of the current excesses of the system. Secondly, U.S. trade and investment agreements should **reaffirm the rights of governments to regulate foreign investors in the public interest by establishing specific and narrower standards.**

## **3. *Transparency of Trade and Investment Agreement Negotiating Processes***

On the first day of your Administration, you committed to creating an “unprecedented level of openness in Government.” As well as calling for enhanced openness in U.S. government processes, your Open Government Partnership is a laudable multilateral initiative that aims to secure concrete commitments from other governments to promote transparency and empower citizens. Your Administration has specifically said that its transparency initiative extends to the Office of the U.S. Trade Representative (USTR).

However, your Administration’s priority trade initiative, the Trans-Pacific Partnership (TPP), USTR has engaged in negotiations for nearly three years without any public access to even the most fundamental draft agreement texts or summaries beyond the official advisors. This stands in contrast to the negotiation of the multi-country Free Trade Area of the Americas, for which a complete draft composite text was publicly released in 2003, and to negotiations related to the WTO Doha Round, for which various proposed agreement texts were also made public. As well, with respect to the TPP, the United States has

signed an unprecedented Memorandum of Understanding that bars release of negotiating documents for four years until after talks are completed or abandoned.

This lack of transparency has severely limited meaningful input by many members of Congress, civil society and other stakeholders who have a direct and long-term interest in the outcome of these negotiations. Yet, under the trade advisory system, more than 600 official advisors mainly representing business interests have direct access to at least the U.S. proposals and thus, unlike the public and most of Congress, have a greater ability to directly influence the TPP's terms. **Greater transparency and inclusiveness is essential to such negotiations, particularly as the scope with respect to both the subject matter and the countries potentially involved are expanded.** The enforceability and permanence of such binding rules, with later changes to an adopted pact requiring agreement by all signatory countries, necessitates maximal transparency and extreme care on the front end.

### **Conclusion**

The NGO community has a wide range of opinions with respect to FTAs and BITs. However, where we are united is in our belief that such agreements cannot be allowed to undermine the well-being and economic development of communities, both within the U.S. and abroad. A systematic review as you begin your second term will enhance the compatibility between your Administration's policies with respect to trade and investment agreements and your stated goals regarding global development, sound regulation of financial services, and government transparency.

Ideally, the review would enable you to put forward a definitive and public statement that your development, financial system reform, and trade and investment policies are consistent and mutually reinforcing. This step will help provide an added measure of certainty that developing countries need in their efforts to create robust and effective financial regulatory systems and to withstand covert and overt threats of legal action by the world's largest financial institutions.

Strengthening U.S. leadership in this area would be a tremendous legacy that would build lasting partnerships between the United States and emerging markets and developing countries to achieve our mutual economic development goals. We look forward to discussing these important issues with you and members of your team.

Sincerely,

AFL-CIO  
Public Citizen  
Presbyterian Church (U.S.A.)  
Public Interest Research Group (PIRG)  
United Church of Christ, Justice and Witness Ministries  
Center of Concern  
Columban Center for Advocacy and Outreach  
Institute for Agriculture and Trade Policy  
Institute for Policy Studies, Global Economy Project  
Just Foreign Policy  
National Association of Consumer Advocates  
New Rules for Global Finance Coalition

CC:

The Honorable Ron Kirk, United States Trade Representative

The Honorable Neal Wolin, Acting Secretary and Deputy Secretary, United States Treasury

The Honorable Ben Bernanke, Chairman, Federal Reserve

The Honorable Elisse B. Walter, Chairman, Securities and Exchange Commission

The Honorable Denis McDonough, Chief of Staff, White House

The Honorable Michael Froman, Deputy National Security Advisor for International Economics

The Honorable Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation (FDIC)

The Honorable Gary Gensler, Chairman, Commodities Futures Trading Commission (CFTC)

The Honorable Harry Reid, Majority Leader, United States Senate

The Honorable Nancy Pelosi, Minority Leader, US House of Representatives