



STATE OF WASHINGTON
Office of the Governor

December 3, 2014

The Honorable Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, Northwest
Washington, DC 20508

Dear Ambassador Froman:

As Governor of the state of Washington, I would like to thank you for your efforts to advocate for American and Washington businesses in international commerce. International trade and investment are critically important to our state's economy. Over the last decade, Washington goods exports have grown 176 percent, from \$29.6 billion in 2004 to \$81.6 billion last year. Washington services exports account for an additional \$30 billion each year. Once imports are taken into consideration, it has been estimated that at least one-third of the jobs in our state are directly or indirectly related to international trade. According to the U.S. Department of Commerce, foreign direct investment is responsible for another 92,300 jobs in our state.

Given our reliance on international commerce, it is vital that the United States play a leading role in establishing and enforcing the rules governing international trade and investment to ensure that our companies and workers are not placed at a competitive disadvantage, and to boost economic growth and support good-paying jobs in our state and across the country. As you are aware, our trading partners are not standing still, but rather have been aggressively finalizing trade agreements that create new rules and market opportunities that could make it more difficult for our companies and workers to compete in other markets. We cannot afford to be bystanders.

To the contrary, it is necessary for the U.S. to take a lead role in establishing new rules that address emerging issues and challenges in international trade, including foreign restrictions on cross-border data flows, improved protection of intellectual property rights, unfair competition from state-owned enterprises, forced localization barriers to trade and investment, and improved international regulatory cooperation. The establishment and aggressive enforcement of these new rules will help level the playing field for U.S. industries and workers and will create opportunities to expand our state's leading economic sectors, including the aerospace, agriculture, clean energy, information & communications technology, life sciences, maritime and other industries. I am encouraged by the Obama Administration's efforts to tackle these issues as part of the negotiations of the Trans-Pacific Partnership Agreement (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP), as well as the WTO Trade in Services Agreement (TISA).

At the same time, it is just as important that our trade agreements do not create a "race to the bottom" for labor and environmental standards, or undermine health and safety measures. The inclusion of enforceable labor and environmental provisions in trade agreements will help prevent this race to the bottom and will also have the potential to improve the lives of citizens in other countries by providing a mechanism for improving their standards.



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The inclusion of an investor-state mechanism in the T-TIP or TPP is particularly concerning. This mechanism provides foreign investors with both greater procedural and substantive rights than domestic companies by providing foreign companies access to extrajudicial panels and by giving them the opportunity to be awarded compensation for government measures that apply equally to domestic companies and that would not be considered a violation of property rights protections under U.S. law. Although as of this time the U.S. has never lost a case, it certainly appears that we are susceptible to losing a case if the legal reasoning used in favor of U.S. investors under certain cases in the past were to be applied against our country's policies in the future. In its current form, the liabilities of investor-state provisions outweigh their potential value.

I also urge the Administration to maintain a strong position in support of protecting state laws and regulations in any ongoing negotiations over trade rules ("disciplines") impacting the domestic regulation of products and services. In particular, I urge the Administration to continue to resist pressure from some of our trading partners to include a "necessity test," which would preclude states from maintaining regulations that are "more burdensome than necessary to ensure the quality of the service." As you are aware, U.S. states regulate a broad range of service activities, including health care, communications, financial, utilities and professional services. States maintain many non-discriminatory regulations to advance important policy objectives that are not related to the quality of service at issue, including those related to environmental protection, land use, labor standards, fair competition and economic development. U.S. law generally permits states to pass non-discriminatory rules related to such considerations that may burden economic transactions, as long as a rational basis for these rules can be demonstrated. Adopting a necessity test could alter this basic principle and improperly replace it with a standard less deferential to state authority. I have similar concerns about the inclusion of new rules covering trade in goods or regulatory coherence in the trade agreements currently being negotiated, and I again urge you to continue to resist their inclusion in any trade agreements if they could undermine non-discriminatory public interest measures.

Finding the delicate balance between economic liberalization and the sovereign rights of countries to maintain non-discriminatory regulations in the public interest is a very difficult but extremely important requirement for ensuring the most widespread benefits from global commerce. Properly designed, international trade agreements can be a powerful tool for retaining and creating new good-paying jobs while preventing backsliding and indeed promoting important standards that protect workers, public health and the environment.

I appreciate your efforts to successfully negotiate strong trade agreements, as well as your hard work advocating for American and Washington businesses in international commerce.

Very truly yours,



Jay Inslee
Governor

cc: Members of the Washington State Congressional Delegation