

April 10, 2013

Ambassador Demetrios Marantis  
Acting United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington DC 20508

Dear Ambassador Marantis:

We are writing to you regarding the ongoing Trans-Pacific Partnership (TPP) negotiations. Specifically, we wanted to share with you some key issues that must be addressed regarding the treatment of state-owned enterprises within any final agreement to obtain our support.

Clearly, the entire scope of issues included in the TPP is of vital concern. While a number of countries in the TPP already have existing bilateral free trade agreements with the United States, the harmonization of those agreements and ratification of a TPP both creates new opportunities for America's business and workers and has enormous consequences for U.S. trade policy. The "dock-on" nature of the agreement, which will allow new members to join, will only amplify these opportunities and consequences. Each component of the TPP must be carefully crafted to maximize the benefits for U.S. producers and workers.

The TPP negotiations offer an important opportunity to craft disciplines to address actions taken by state-owned enterprises that are not based on commercial interests and may be the result of foreign government priorities. U.S. businesses and workers compete on a global playing field and are harmed at home and abroad by state-owned enterprises whose activities are discriminatory and market distorting. Provisions on such behavior in the TPP would set a standard from which language in future trade agreements could be based and would allow the United States to address concerns related to competition with countries and companies whose economies do not reflect values of free and fair trade of the United States.

In order to ensure the effectiveness of these disciplines, we recommend consideration of the following:

- **Definition:** The definition of state-owned enterprises should capture the range of government involvement that may result in a business taking actions counter to its commercial interest or market considerations, and must ensure that companies operating under the authority, or on behalf, of the state are disciplined when these activities are market distorting. State-owned enterprises, those exercising regulatory authority, sovereign wealth funds, sub-federal and other entities must fall under the coverage of provisions in this chapter; though we understand that these rules must be carefully crafted

to ensure that truly public services, such as education and social services, are not inadvertently affected.

- **Activities:** The activities of state-owned enterprises must be addressed in an expansive way so as to address any potential anticompetitive impact. This includes such activities as mergers and acquisitions, greenfield investments, and general commercial activities such as purchase or sale of goods or services, pricing, and sourcing, and these rules should apply to these enterprises in their home market as well as third-country markets.
- **Injury Test:** An injury test must provide effective tools to address any anticompetitive impact and ensure that the actions taken by state-owned enterprises do not result in commercial harm to U.S. business and workers. Clearly, there should be the ability to utilize prudential measures but those must generally be short-term and circumscribed. The TPP agreement should include an injury test that is enforceable and provides for negative effects to be quickly evaluated and addressed so that injury is mitigated before an industry and its workers suffer irreparable harm.

In order for the TPP agreement to provide the anticipated market access and competitive opportunities at home and abroad for U.S. businesses and workers, these are critical points that must be addressed in relation to state-owned enterprises. We look forward to your reply and working with you in the coming days on this important issue.

Sincerely,

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Sherrod Brown  
United States Senator

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John D. Rockefeller IV  
United States Senator

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Debbie Stabenow  
United States Senator

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Robert P. Casey  
United States Senator

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Jeff Merkley  
United States Senator

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Al Franken  
United States Senator

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Tammy Baldwin  
United States Senator