Congress of the United States
Washington, DC 20515

March 20, 2018

Ambassador Robert E. Lighthizer
United States Trade Representative
The Office of the United States Trade Representative
600 17th St. N.W.
Washington, DC 20508

Dear Ambassador Lighthizer:

We write to reiterate our strong support for the continuation of robust investor protections, including investor-state dispute settlement (ISDS), in NAFTA and to insist that ISDS provisions at least as strong as those contained in the existing NAFTA must be included in a modernized agreement to win Congressional support.

These protections are crucial for U.S. companies that invest abroad to serve foreign markets, whether through exports from the United States or through the provision of local goods or services. These protections provide certainty for U.S. companies in all sectors, including U.S. energy companies that drill or operate pipelines or service stations in Mexico; U.S. railroads that operate on both sides of the U.S.-Mexican border; agriculture entities that maintain feedlots or processing or storage facilities; and U.S. services companies that maintain capital in Mexico to meet regulatory requirements or establish facilities.

The overwhelming majority of Republicans in both the House and the Senate supported Trade Promotion Authority (TPA), which directed the Administration to include robust investor protections in trade agreements. In particular, TPA directs the Administration "to secure for investors important rights comparable to those that would be available under United States legal principles and practices," including by "providing meaningful procedures for resolving investment disputes." Congress expects that both the substantive protections and the enforcement mechanisms for investment commitments will be more or equally robust in an updated NAFTA relative to the existing agreement. Our position on the importance of these protections has not changed and is as strong as ever: ISDS is an essential enforcement mechanism for investor protections and must be maintained rather than weakened or abandoned.

As you may know, the prior Administration disregarded advice from Congressional Republicans and excluded a single sector from ISDS in the Trans-Pacific Partnership (TPP). This policy choice significantly diminished Republican support for that agreement. Excluding ISDS altogether or making it optional in a modernized NAFTA similarly will jeopardize Republican support, even among Members who consistently have voted for trade agreements.

We are open to continuing to discuss ways to enhance the fairness, transparency, and efficiency of NAFTA's ISDS mechanism. But abandoning or weakening this important enforcement tool would harm the ability of U.S. companies to export and locally provide goods and services to

PRINTED ON RECYCLED PAPER

Canada and Mexico. In addition, such action would advantage our global competitors – including China – which continue to benefit from ISDS and/or direct government ownership and support.

As NAFTA negotiations progress, we look forward to continuing to work with you to achieve the negotiating objectives, including those concerning ISDS, that Congress established through statute, which is necessary to successful consideration of a modernized NAFTA by Congress.

Sincerely,

Orrin G. Hatch
United States Senator

David Schweikert
Member of Congress

John Cornyn
United States Senator

Kevin Brady
Member of Congress

John Thune
United States Senator

David Reichert
Member of Congress

Bill Cassidy, M.D.
United States Senator

Sam Johnson
Member of Congress

Michael B. Enzi
United States Senator

Devin Nunes
Member of Congress

Johnny Isakson
United States Senator

Adrian Smith
Member of Congress

Pat Roberts
United States Senator

Lynn Jenkins
Member of Congress

Pat Toomey
United States Senator

Erik Paulsen
Member of Congress

Thom Tillis
United States Senator

Kenny Marchant
Member of Congress

M. Michael Rounds
United States Senator

Patrick Meehan
Member of Congress

John Hoeven
United States Senator

George Holding
Member of Congress

John Barrasso, M.D.
United States Senator

Jackie Walorski
Member of Congress

Lamar Alexander
United States Senator

Carlos Curbelo
Member of Congress

Roy Blunt
United States Senator

Mike Bishop
Member of Congress

Dan Sullivan
United States Senator

Darin LaHood
Member of Congress

Jerry Moran
United States Senator

Michael T. McCaul
Member of Congress

Tim Scott
United States Senator

Bill Flores
Member of Congress

Todd Young
United States Senator

Jim Banks
Member of Congress

John Boozman
United States Senator

Daniel Webster
Member of Congress

John McCain
United States Senator

Mike Johnson
Member of Congress

Paul A. Gosar, D.D.S.
Member of Congress

Steve Womack
Member of Congress

Roger Marshall, M.D.
Member of Congress

Ron Estes
Member of Congress

Will Hurd
Member of Congress

Pete Sessions
Member of Congress

Randy Weber
Member of Congress

Elise M. Stefanik
Member of Congress

Barbara Comstock
Member of Congress

Steve Chabot
Member of Congress

Karen Handel
Member of Congress

Charles W. Dent
Member of Congres

Roger Williams
Member of Congress

David Rouzer
Member of Congress

Drew Ferguson
Member of Congress

Paul Mitchell
Member of Congress

Robert B. Aderholt
Member of Congress

Peter J. Roskam
Member of Congress

Billy Long
Member of Congress

Glenn Grothman
Member of Congress

John H. Rutherford
Member of Congress

Andy Biggs
Member of Congress

Kevin Cramer
Member of Congress

Tom Graves
Member of Congress

Jody B. Hice
Member of Congress

Mac Thornberry
Member of Congress

Mike Kelly
Member of Congress

Andy Barr
Member of Congress

Jason Smith
Member of Congress

Jodey Arrington
Member of Congress

Kristi Noem
Member of Congress

Jim Renacci
Member of Congress

K. Michael Conaway
Member of Congress

Mark Sanford
Member of Congress

Steve Knight
Member of Congress

Lloyd Smucker
Member of Congress

Ralph Norman
Member of Congress

David G. Valadao
Member of Congress

Mark Walker
Member of Congress

Larry Bucshon, M.D.
Member of Congress

Mike Crapo
United States Senator

Steve Stivers
Member of Congress

Greg Gianforte
Member of Congress

Mike Coffman
Member of Congress

Vern Buchanan
Member of Congress

John Moolenaar
Member of Congress

Michael R. Turner
Member of Congress

Cathy McMorris Rodgers
Member of Congress

James Comer
Member of Congress

Brian Babin
Member of Congress

Don Bacon
Member of Congress

Joe Barton
Member of Congress

Brad R. Wenstrup
Member of Congress

Adam Kinzinger
Member of Congress

David Young
Member of Congress

Mimi Walters
Member of Congress

Member of Congress
Scott R. Tipton

Warren Davidson
Member of Congress

Joni K. Ernst
United States Senator

Tom Emmer
Member of Congress

Dave Trott
Member of Congress

Jack Bergman
Member of Congress

Martha McSally
Member of Congress