

June 22, 2012

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Kirk:

We welcome the progress that has been made in the Trans-Pacific Partnership negotiations toward more open markets in the Asia Pacific region. We are concerned, however, by reports that the Administration is proposing that the TPP agreement contain a new general exception, or safe harbor, that would have seriously negative implications for broader U.S. trade interests and the long-term efficacy of the trading system itself.

As U.S. Trade Representatives, we consistently took the position that trade and investment agreements entered into by the United States permit participating governments substantial latitude to adopt sound, science-based regulation in the public interest. As you know, our agreements have always contained general policy exceptions for measures to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for public health. Indeed, this was the explanation that you and President Obama provided to Congress only months ago when submitting our free trade agreements with Colombia, Korea and Panama for consideration. In light of that lengthy history, we do not understand why the Administration believes that is no longer the case with respect to tobacco regulation. We are also concerned that, unlike any prior agreement, the new proposal would create a new type of general exception for intellectual property and investment obligations. Since measures “necessary to protect human, animal or plant life or health” are already excluded from our FTAs by operation of the general exception grounded in GATT Article XX, we are concerned about the signal this sends to our trading partners that the United States is willing to support a plethora of new special interest exceptions to FTA obligations.

We are concerned that this safe harbor will establish a new precedent for other sectors, interest groups, and products. The systemic implications are troubling, given that our collective efforts over the years have been to ensure in our trade agreements that governments treat U.S. trade and investment fairly and that regulations are necessary and based on risk assessments and sound science. While we are confident that the United States would not adopt or impose measures that restrict trade or investment without a sound basis to do so, we have witnessed over the years other governments attempting to justify their protectionist measures in the name of health or safety, especially in agriculture.

In fact, the United States has successfully challenged protectionist measures taken by our trade partners that were alleged to be necessary to protect the public health but had no basis in science. Examples include the European bans on U.S. beef raised with hormones and products containing genetically modified organisms. Most recently, the United States has challenged India’s ban on U.S. exports of chicken meat and eggs based on unfounded concerns regarding

avian influenza. This proposal could needlessly hamper future USTR efforts to ensure fair treatment for U.S. farmers, traders, and investors.

We urge the Administration not to proceed with this proposal without further consideration of the implications for the trading system that all of us and you have worked hard to build. We would welcome the opportunity to discuss these issues with you.

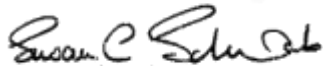
Sincerely,



Bill Brock



Mickey Kantor



Susan C. Schwab



Clayton Yeutter