

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

The Honorable Angus King
United States Senate
Washington, DC 20510

JUL 04 2014

Dear Senator King,

Thank you for your letter regarding the Maine Citizen Trade Policy Commission. We have received letters from them stating their views on several trade issues. I am happy to share with you the additional information my office has provided to them.

Sincerely,



Ambassador Michael B.G. Froman

Attachments:

1. Government Procurement
2. Pharmaceutical and Medical Device Reimbursement and IP Provisions
3. Investor State Dispute Settlement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat:

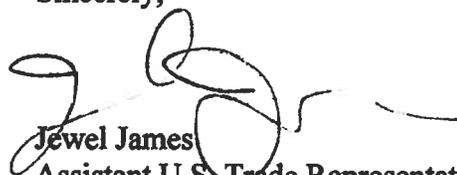
Thank you for your letter regarding the Transatlantic Trade and Investment Partnership (T-TIP) negotiations. Input from stakeholders is a critical component of our trade policy-making. We recognize and appreciate the important role that states and localities play in our federal system of government and we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators, both individually and collectively as we have pursued the President's robust trade agenda. In addition, through our advisory committee system, we regularly consult with and seek advice from the Intergovernmental Policy Advisory Committee (IGPAC).

As your letter indicates, the European Union has expressed interest in expanded access to U.S. state-level government procurements. As you know, states manage their own procurement processes. As such, any discussion of sub-central coverage would be shaped by the direct involvement of our state governments.

You also identified concern about the exclusion of "procurements of any agricultural good made in furtherance of an agriculture support program or a human feeding program." We have received no indication that this is an EU interest in T-TIP, but we appreciate your raising this concern and welcome any additional information on this issue.

Thank you again for your interest in the T-TIP negotiations and active participation in related stakeholder events. We look forward to continuing to coordinate closely with you on this important issue.

Sincerely,



Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat:

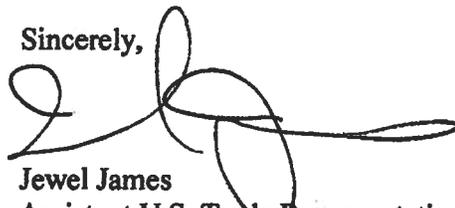
Thank you for your letter regarding the Trans-Pacific Partnership (TPP) negotiations. Input from stakeholders is a critical component of our trade policy-making. Over the past year, we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators both individually and collectively. In addition, through our advisory committee system, stakeholder events at negotiating rounds, notice and comment processes, public meetings, and direct submission of comment to USTR, our trade policy is developed with careful consideration of the broadest possible range of stakeholder perspectives.

As you know, ensuring access to affordable healthcare is a priority for this Administration. The TPP transparency provisions are geared towards promoting the kind of transparency and due process features that are already part of the U.S. system, such as publicly disclosing rules and guidelines and providing opportunities for public notice and comment (including from beneficiaries and the public at large), while leaving decisions regarding healthcare expenditures completely within the domain of each country's public health authority. These are straightforward provisions that will not prevent the U.S. Government from pursuing the best healthcare policy for its citizens, including future reforms or decisions on healthcare expenditures.

You also raised the issue of biologics. Among TPP countries, opinions vary on the best term of data protection and standards vary across the region. Some TPP countries currently have no data protection for biologic drugs. Some have five years, others have eight, and the standard under existing U.S. law is twelve years. Biologics offer great potential for new treatments and cures, however they also require enormous amounts of time and money to develop. Our aim on pharmaceutical IP issues is to strike a balance that incentivizes the costly research and development required to create new life-saving drugs, while also ensuring affordability and accessibility for the patients that need them.

Thank you for your interest in the TPP negotiations. We look forward to continuing our constructive dialogue on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jewel James", with a long horizontal flourish extending to the right.

Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 3, 2014

Citizen Trade Policy Commission
c/o Office of Policy and Legal Analysis
State House Station #13
Augusta, ME 04333-0013

Dear Senator Jackson and Representative Treat,

Thank for your letter regarding the Transatlantic Trade and Investment Partnership (T-TIP) negotiations. Input from stakeholders is a critical component of our trade policy-making. Over the past year, we have directly and pro-actively engaged Governors, Mayors, County Commissioners, and State Legislators, both individually and collectively. Through discussions such as these, as well as through our advisory committee system, stakeholder events at negotiating rounds, notice and comment processes, public meetings, and direct submission of comment to USTR, our trade policy is developed with careful consideration of the broadest possible range of stakeholder perspectives.

The U.S. approach to investment in trade agreements is based on a public model that was developed through a recently completed multi-year process of extensive stakeholder consultation, public meetings, *Federal Register* notice and public comment, and recommendations from groups representing academic, labor, environmental and other public and business interests. The European Commission has recently followed our lead with its own process. We fully support them.

As a result of our extensive consultations, which have been supplemented by numerous ongoing consultations in the T-TIP context, the United States is pursuing an approach to investment that seeks to facilitate job and growth-creating international investment, while ensuring that the U.S. Government, our state and local governments, and the governments of our trading partners are fully able to regulate in the public interest.

Your letter specifically raises investor-State dispute settlement (ISDS). ISDS is a process for resolving investor disputes that is grounded in established U.S. legal principles enshrined in our Constitution. I have attached a fact sheet that outlines the United States' approach to the investment provisions in our agreements and addresses the specific concerns you have raised. If the CTPC would like an in depth briefing on our investment policy, I am more than happy to facilitate a conversation with our negotiators who work on this issue.

Thank you again for your letter. We appreciate your views, and look forward to continuing our constructive dialogue on these important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jewel James", with a long horizontal flourish extending to the right.

Jewel James
Assistant U.S. Trade Representative for
Intergovernmental Affairs and Public Engagement

The Facts on Investor-State Dispute Settlement: Safeguarding the Public Interest and Protecting Investors

The investment provisions that the U.S. has included in its trade agreements are different – and stronger – than the provisions in many other investment agreements in which the United States is not a participant. It's important to understand how U.S. agreements differ from other agreements that do not meet the same standards. Below are key facts about U.S. investment provisions:

They provide basic legal protections for American companies abroad that are based on the same assurances that the United States provides to both foreigners and Americans in the United States. Investment provisions are intended to prevent discrimination, repudiation of contracts, and expropriation of property without due process of law and appropriate compensation. These are the same kinds of basic protections that are already provided by U.S. law. Unfortunately, not all governments protect basic rights at the same level as the United States. Investment protections are intended to address that fact. They provide no new substantive rights for foreign or domestic investors.

They protect the right of governments to regulate in the public interest. The United States wouldn't negotiate away its right to regulate in the public interest, and we don't ask other countries to do so either. Our investment rules preserve the right to regulate to protect public health and safety, the financial sector, the environment, and any other area governments seek to regulate.

They ensure fair, unbiased, and transparent legal processes with independent, impartial, third party arbitration. The United States is committed to ensuring the highest levels of transparency in all investor-state proceedings. Investment hearings under recent U.S. trade and investment agreements, as well as all key documents, are public. Recent U.S. trade and investment agreements also give NGOs and other non-parties to a dispute the ability to participate by filing *amicus curiae* or "friend of the court" submissions.

They do not impinge on the ability of federal, state, and local governments to maintain (or adopt) any measure that they deem necessary. Nor do they expose state or local governments to new liability. Under our investment provisions, no government can be compelled to change its laws or regulations. In any disputes arising under our trade agreements, the federal government assumes the cost of defending the United States, even if they relate to state and local issues. As a country that plays by the rules and respects the rule of law, the United States has never lost a case and, in a number of instances, has been paid compensation by private parties.

They provide no basis to challenge laws just because they hurt a company's profits. Our investment rules do not in any way guarantee a firm's rights to any profits or to its projected financial outcomes. Rather, they only provide basic rights, such as non-discrimination and compensation in the event of an expropriation. Our investment rules seek to promote standards of fairness, not to protect profits.

They include strong safeguards to deter frivolous challenges to legitimate public interest measures. The United States is pursuing investment provisions with strong safeguards that include strict definitions of what is required for successful claims, as well as mechanisms for expedited review and dismissal of frivolous claims, consolidation of duplicative cases, and transparency. These

are some of the strongest safeguards in any of the nearly 3,200 investment agreements currently in force among 180 countries around the world.