August 8, 2017

The Honorable Robert Lighthizer
United States Trade Representative
Office of the U.S. Trade Representative
600 17th St, NW
Washington, DC 20508

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Ave., NW
Washington, DC 20230

The Honorable Rex Tillerson
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

The Honorable Steve Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Mr. Gary Cohn
Director, National Economic Council
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Ambassador Lighthizer, Secretaries Ross, Tillerson and Mnuchin and Director Cohn:

As associations representing millions of small, medium and large companies across every major sector of the U.S. economy employing tens of millions of U.S. workers, we urge that robust market access commitments and investment protections, enforceable through investor-state dispute settlement (ISDS), be maintained and upgraded in the negotiations to modernize the North American Free Trade Agreement (NAFTA). The original NAFTA included basic access, protection and enforcement provisions that have helped grow manufacturing, services and agricultural industries by enabling our businesses to reach new consumers and to participate in foreign infrastructure, energy and resource development projects. The negotiations to modernize NAFTA provide an important opportunity to upgrade the agreement to improve protection and enforcement tools against the theft, discrimination and unfair treatment of U.S. property overseas.

While individuals, non-profits and businesses primarily invest in the United States, they also invest overseas bringing significant benefits to the United States, its economy and U.S. workers. U.S. businesses that invest overseas to acquire foreign property, reach foreign customers, serve U.S. clients investing abroad or participate in otherwise inaccessible foreign projects are outsized participants in the U.S. economy and are more successful because of their access to foreign markets. Indeed, U.S. companies that invest overseas are America's largest exporters, biggest producers, largest innovators and investors in U.S. capital expansion and highest-paying employers.

The success of businesses that invest in foreign markets should be no surprise. Foreign investment is often the best way for American manufacturers, service providers and agricultural producers to reach foreign consumers. Such investment allows them to set up their own distribution networks to deliver products and services directly, tailor products to the local consumer and win sales more efficiently and successfully. Highly regulated service providers *have* to invest and establish themselves in foreign countries to be able to sell their

products. Likewise, in some areas, such as energy, natural resources, and foreign infrastructure development, foreign investment is the *primary* way American businesses can participate and grow, because activities to access and develop those resources can only take place in those foreign countries. With those investments, businesses in the United States also see additional advantages, as exports of U.S. goods are more often included in foreign infrastructure and natural resource development when those projects include American investment. The focus of U.S. investment abroad on foreign customers is borne out by the data: year-after-year, more than 90 percent of foreign affiliate sales are almost entirely made to customers *outside* the United States, rather than being sold back to the United States.

The existing NAFTA framework protects American individual, non-profit and business investors by extending several of the private property protections already found in the U.S. Constitution and U.S. law, including due process, non-discrimination, fair treatment by the government and compensation for the seizure of property. Each of these disciplines is directly enforceable by the investor through a neutral arbitration system, known as investor-state dispute settlement (ISDS). These provisions are highly valuable and have already helped many U.S. businesses that have faced the seizure, theft and mistreatment of investments in both Canada and Mexico. ISDS in the NAFTA has been highly beneficial to the United States. The United States has only faced 18 cases and won every one that has been concluded. U.S. investors, however, have used ISDS in 40 cases with Canada and Mexico, winning several to ensure compensation when those governments have taken unfair actions against American investment. In other cases, the existence of strong, neutral and fair enforcement provisions has helped U.S. investors successfully avoid and resolve problems with foreign governments.

While baseline investment protection and enforcement provisions were included in the original NAFTA, there are significant gaps as those provisions did not provide full coverage to all sectors or full enforcement. The NAFTA modernization provides an important opportunity to improve the NAFTA by:

- Ensuring intellectual property is fully protected as in the United States as a protected investment;
- Guaranteeing all sectors are afforded the same protections and access to ISDS to enforce those protections;
- Improving U.S. investment access in Canada and Mexico on a non-discriminatory basis, including by locking in reforms that have opened markets since NAFTA was negotiated;
- Adding stronger disciplines against forced technology transfers and localization;
- Expanding access to ISDS enforcement for breaches of major investment contracts; and
- Extending the enforcement period to at least ten years after any potential termination of the agreement, to ensure that American investment is appropriately and fully protected.

ISDS enforcement is a core element to protect the United States against the theft, discrimination and unfair treatment of U.S. property overseas. Unlike other provisions of a trade agreement that can typically be enforced through more generalized dispute settlement systems, individual investments are impacted uniquely by foreign government actions and require a specialized, dependable, targeted and neutral form of enforcement. Notably, ISDS panels are limited to enforcing only the international commitments to which each country has voluntarily agreed and can only award monetary penalties. These ISDS panels have never overturned – and do not have any authority to change – any country's laws or regulations.

ISDS is a strong enforcement tool that helps ensure that American investors, businesses and their workers will be treated fairly overseas. This mechanism has been an essential part of the

NAFTA and other high-standard U.S. trade and investment agreements. We urge that investment and ISDS remain high priorities in the NAFTA modernization to strengthen enforcement and ensure the fair treatment for U.S. individual, non-profit and business investors.

Sincerely,

Air-Conditioning, Heating & Refrigeration Institute
American Fuel & Petrochemical Manufacturers
American Apparel & Footwear Association
American Beverage Association
American Business Conference
American Chemistry Council
American Coatings Association
American Council of Life Insurers
American Fiber Manufacturers Association
American Forest & Paper Association
American Frozen Food Institute
American Insurance Association
American Petroleum Institute
American Wire Producers Association
Arizona Chamber of Commerce and Industry
Arkansas State Chamber of Commerce/ AIA
Associated Equipment Distributors
Associated Industries of Massachusetts
Associated Industries of Missouri
Association of Equipment Manufacturers (AEM)
Association of Metro Counties
Biotechnology Innovation Organization (BIO)
Bloomington/Normal Economic Development Council
Border Trade Alliance
Brick Industry Association
Business Roundtable
Coalition of Services Industries
Columbus Area Chamber of Commerce
Consumer Specialty Products Association (CSPA)
Corn Refiners Association
Council of Industry of Southeastern New York
Council of the Americas
Council of the Great Lakes Region
Distilled Spirits Council of the United States, Inc.
Express Association of America (EAA)
Fabricators and Manufacturers Association, International
Florida Chamber of Commerce
Florida State Hispanic Chamber of Commerce
Forestry Association of South Carolina
Glass Packaging Institute (GPI)
Greater North Dakota Chamber of Commerce
Greater Seymour Chamber of Commerce
Grocery Manufacturers Association
Illinois Manufacturers' Association
INDA, Association of the Nonwoven Fabrics Industry

Independent Petroleum Association of America
Indiana Chamber of Commerce
Indiana Hardwood Lumbermen's Association, Inc.
Indiana Manufactured Housing Association-Recreation Vehicle Indiana Council
Indiana Manufacturers Association
Indiana Retail Council
Industrial Truck Association
Information Technology Industry Council (ITI)
International Housewares Association
International Wood Products Association
Investment Casting Institute
Iowa Association of Business and Industry
IPC - Association Connecting Electronics Industries
Jackson Area Manufacturers Association
Louisiana Association of Business & Industry
Michigan Premium Cigar and Pipe Retailers Association
Missouri Chamber of Commerce and Industry
Montana Chamber of Commerce
Montana Manufacturing Association
Motor & Equipment Manufacturers Association
National Association of Manufacturers
National Association of Real Estate Investment Trusts
National Council of Textile Organizations
National Electrical Manufacturers Association (NEMA)
National Foreign Trade Council
National Oilseed Processors Association
National Retail Federation
ND Association of Plumbing, Heating & Mechanical Contractors
Nevada Mining Association
New Mexico Association of Commerce and Industry
Next Generation Manufacturing
NH Business & Industry Association
North Carolina Chamber
Northeast PA Manufacturers & Employers Association
Ohio Licensed Beverage Association
Ohio Manufacturers' Association
Outdoor Advertising Association of Indiana
Outdoor Power Equipment Institute, Inc.
Personal Care Products Council
Petroleum Equipment and Services Association
Petroleum Equipment Institute
Pharmaceutical Research and Manufacturers of America (PhRMA)
Plastics Industry Association
Recreation Vehicle Industry Association
Resilient Floor Covering Institute
Rhode Island Manufacturing Association
San Antonio Manufacturers Association (SAMA)
Securities Industry and Financial Markets Association (SIFMA)
SEMI
Semiconductor Industry Association
SOCMA

South Carolina Chamber of Commerce
St. Joseph Chamber of Commerce
Texas Association of Business
Texas Association of Manufacturers
Texas Oil and Gas Association
United States Chamber of Commerce
United States Council for International Business
Valley Industrial Association
Vinyl Institute
Virginia Chamber of Commerce
Virginia Forestry Association
Washington Farm Bureau