

The Honorable Ronald Kirk
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

March , 2013

Dear Ambassador Kirk:

As elected members of our state legislatures from across the United States, we are writing regarding the environmental implications of the Trans-Pacific Partnership (TPP) agreement. While we understand and appreciate that the United States is advocating for an ambitious and legally binding environment chapter of the TPP, we are deeply concerned that other parts of the agreement, including provisions on or related to investment and energy exports, threaten the environment and our responsibility, as legislators, to serve and protect our constituents. While there are environmental implications of numerous chapters in the TPP, we are writing to express our particular concerns regarding the environment chapter, the investment chapter, and natural gas exports.

Environment chapter

An ambitious and binding environment chapter of the TPP that protects the environment, natural resources, and U.S. jobs is critical. The environment chapter of the TPP must be legally binding and enforceable by dispute settlement; ensure that countries uphold and strengthen their domestic environmental laws and policies and uphold all obligations under the multilateral environmental agreements to which they are a party; and deal with the core conservation challenges of the region. The May 10, 2007 bipartisan Congressional agreement should be the absolute *minimum* standard for the environment chapter of the TPP.

The illegal timber trade is a major challenge in the Pacific Rim which threatens biodiversity, contributes to deforestation and climate change, threatens communities who live in and rely upon forests, and is estimated to cost \$1 billion per year to US producers of legal wood and \$15 billion to the economies of developing countries. Because of these and other impacts, we support a legally binding ban on the trade of illegally harvested timber in the TPP.

We are also very concerned that many TPP countries are a source, transit hub, or destination for illegally taken wildlife or wildlife parts, such as rhino horns from Vietnam or tiger parts from Malaysia. It is estimated that illegal wildlife crime could be worth as much as \$20 billion per year, and is a serious threat to the ecosystem and the environment. We support a legally binding ban on trade in illegally taken wildlife.

With more than 85 percent of the world's commercial fish populations considered over-or fully-exploited, responsible fisheries management is also a key conservation challenge in the Pacific Rim. Fisheries subsidies that lead to overfishing in the Pacific region put the U.S. fish industry at an economic disadvantage, while threatening the oceans ecosystem. The TPP must include binding provisions on sustainable fisheries management.

Investment Chapter

The rules that govern foreign investment in the TPP pose significant threats to the environment and interfere with our responsibility as state legislators to enact and enforce fair, nondiscriminatory rules that protect the public.

Vaguely defined requirements to treat foreign investors with a “minimum standard of treatment,” for example, have been interpreted by international tribunals as a standstill on regulation, making it very difficult for new laws and regulations to be introduced or existing laws to be amended. Moreover, under the “investor-state dispute settlement” system that is being replicated in the TPP, foreign investors have used such broad powers to challenge public interest regulations for cash compensation in private tribunals, bypassing domestic courts and undermining democratic processes.

Evidence from previous investor-state cases demonstrates investment rules may make it difficult to, for example, ban a chemical that is found to be harmful to the environment and human health, place new regulations on an industry in order to protect the environment, or put a moratorium on a practice that may be harmful to the environment and human health, such as fracking.

In fact, we were deeply troubled to learn that just months ago, a U.S. energy firm filed its notice to sue Canada under the investment chapter of the North American Free Trade Agreement over Quebec’s moratorium on fracking. Legislators, at either the local, state, or national level—inside the United States or from another TPP country—must be able to put in place policies which protect communities and the environment.

We oppose an investor-state dispute settlement in the TPP and we insist that rules in the investment chapter are drafted in such a way that does not undermine our responsibility to enact and enforce fair, nondiscriminatory rules that protect communities, workers, and the environment.

Energy Exports

We are deeply concerned that the TPP would increase exports of liquid natural gas by *requiring* that the Department of Energy (DOE) approve all US gas exports to TPP countries, even if exports are not in the best interest of the public. While the environmental risks associated with natural gas exports are not fully understood—the United States has yet to complete a full assessment of the environmental impacts—what we know is of great concern.

Increased exports will require an expansion of natural gas production, which means more fracking in many of our states. The impacts of fracking are numerous, and include increased air and water pollution; the conversion of land into busy construction sites; and health risks to communities and animals. In addition to the production of gas, other environmental impacts of natural gas exports are associated with the building of new pipelines and terminals across the country and the highly energy intensive process of cooling, liquefying, and transporting gas across the world.

We also are concerned about the economic impacts of natural gas exports. The Energy Information Association has stated that a rapid increase in exports corresponds to a multi-billion dollar increase in energy costs. And a recent DOE-commissioned study found that exports will

disproportionately hurt the middle-class while transferring significant wealth to the natural gas industry.

In sum, we do not believe that the United States should forever cede its ability to manage natural gas resources—particularly when the potential impacts to communities and the environment are so high. The TPP must be drafted in a way that retains the ability of the Department of Energy to manage natural gas exports so as to protect the interests of communities and the environment.

We kindly request more information as to whether the TPP will build on all areas of the May 2007 Congressional agreement; whether the investment rules in the TPP will be redrafted to ensure that environment and other public interest policies are protected; and whether the United States Trade Representative will draft language so as to ensure that the DOE retains its authority to oversee natural gas exports to TPP countries.

Sincerely,

