



COMMONWEALTH of VIRGINIA

Office of the Governor

Terence R. McAuliffe
Governor

February 20, 2015

The Honorable Thomas J. Vilsack
United States Secretary of Agriculture
United States Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

The Honorable Penny S. Pritzker
United States Secretary of Commerce
United States Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

The Honorable Michael B. Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Secretary Vilsack, Secretary Pritzker, and Ambassador Froman:

I write to you to express my strong concern regarding provisions being discussed within the Trans-Pacific Partnership (TPP) treaty negotiations. Specifically, I am concerned about the proposal to exclude leaf tobacco and tobacco products through either the Investor-State Dispute Settlement (ISDS) provisions or adding them to the 'general exceptions' chapter of the TPP agreement. Such exclusions represent an unprecedented action to exclude an entire segment of Virginia's thriving agricultural industry from a major trade agreement set to level the playing field for businesses throughout the twelve TPP member countries.

As a Democratic governor and a strong supporter of free and fair trade, I commend your work in developing the TPP treaty amongst key nations in the Asia-Pacific region. I realize that the TPP is one of the top remaining global trade agenda goals of the Obama administration. Like you, I believe that the TPP will promote job creation, more economic growth, and increased trade opportunities between the United States and the eleven other TPP member countries. In

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particular, I believe that Virginia's diverse array of businesses stand to gain tremendous new economic opportunities from the agreement.

Agribusiness, including forestry and wood product operations, seems poised to reap benefits in the short and intermediate terms if the treaty is formally approved. Agriculture and forestry are two of Virginia's three largest private sector industries and increased exports are helping these businesses grow further. In fact, one of my top economic development goals is to make Virginia the East Coast capital for agricultural and forestry exports. Virginia will exceed three billion dollars in agricultural and forestry exports for 2014 for the first time in history, but we hope that mark is eclipsed in the years to come. The new trade opportunities afforded by ratification of the TPP would help my administration and our private sector partners reach that goal.

Given the common interest we share and following up on recent conversations either between us or officials in my administration and staff in your respective agencies, I would like to offer my assistance to you as you work with other state governors and members of Congress to build support for the trade pact. However, it is imperative that the concerns I have regarding any proposal to exclude leaf tobacco and tobacco products through either the ISDS provisions or adding them to the 'general exceptions' chapter of the TPP agreement be addressed.

It is my understanding that such exclusions would represent an unprecedented action by the U.S. under ISDS or the 'general exceptions' provision in a global trade treaty. Further, I understand that the potential exclusions would eliminate important protections provided by the TPP for an entire class of agricultural products which are critical to Virginia's economy and those of other tobacco producing states. In addition to my concern for Virginia's tobacco interests regarding their exclusion from the ISDS provisions or being added to the 'general exception' chapter, I am troubled about the precedent this would set for potential exclusion of other Virginia agricultural products and commodities in future trade agreements. We all know exclusions are often sought by other countries for other products in global trade agreements.

Because of these critical matters, I respectfully and earnestly request that you abandon both proposals, let the ISDS process work as it has and should to solve any disputes, and focus on completing the TPP agreement for the betterment of the twelve member countries.

Specific to the ISDS, I understand that the provision is a well-established method for resolving international conflict between governments and private firms. The provision has served to protect U.S. companies operating overseas from arbitrary, discriminatory, and unfair treatment by foreign governments for decades. It provides American companies investing in other countries with the ability to challenge unfair treatment by foreign governments – including expropriation of private property, infringement on intellectual property rights, and adoption of anti-competitive, non-science based regulatory schemes – through an impartial, third-party judicial process. Taking measures to withhold from one class of U.S. companies and agricultural producers the protection provided by ISDS would deny them the rights to due process, fair treatment, and respect for private property upon which all businesses fundamentally rely.

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I also fear that this would set a precedent that would undermine the basis of the worldwide free trade and investment system, which for decades has been moving toward leveling the playing field for companies of all types and in all industries as they do business around the world. Instead, this proposal is going to immediately and consciously create an unlevel playing field for hundreds of workers in the tobacco industry.

The tobacco industry remains vital to the economy and social fabric of Virginia and other tobacco growing states by providing jobs and income for thousands of farm families, in addition to generating billions of dollars annually in federal, state, and local tax revenues. Virginia is the fourth largest leaf tobacco-exporting state, with more than \$200 million shipped out of the Commonwealth in 2014. Those shipments alone generated more than \$260 million in economic activity in Virginia from the port to our farms. Tobacco products and the manufacturing of those products remain legal in the U.S. and around the world. To maintain our U.S. tobacco manufacturers, and the tobacco farmers who sell to them, as thriving and active contributors to our economy, I firmly believe that we must treat them as we would any other company and provide them with all of the reasonable protections offered to U.S. businesses operating overseas.

In summary, I support the broader goals of the TPP agreement and believe it represents a key opportunity for Virginia businesses, agricultural producers, exporters, and many others. However, I am deeply concerned that the proposal to add a product-specific reference to tobacco in the 'general exceptions' chapter or eliminate ISDS provisions for tobacco will undermine the goals of the TPP agreement and squander this historic opportunity for the Commonwealth's economy, and that of the entire country. I am also concerned that the precedent set by excluding any one class of companies and products from a critical piece of a major trade agreement is seriously threatening from the outset. I fear it could lead to similar exclusions of other Virginia products in future trade agreements and impede the ability of Virginia businesses and agricultural producers to compete and flourish in important overseas markets.

Again, I respectfully and earnestly request that you to abandon both proposals, let the ISDS process work as it has and should in global trade treaties, and focus on negotiating a TPP agreement that upholds the international rule of law and expands, rather than restricts, access for Virginia and U.S. companies and products in Asian-Pacific markets.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terence R. McAuliffe', written over a large, faint, circular watermark or stamp.

Terence R. McAuliffe

cc: The Honorable Mark R. Warner, U.S. Senate
The Honorable Tim Kaine, U.S. Senate
The Honorable Robert J. Wittman, U.S. House of Representatives, First District

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The Honorable Scott Rigell, U.S. House of Representatives, Second District
The Honorable Robert C. Scott, U.S. House of Representatives, Third District
The Honorable J. Randy Forbes, U.S. House of Representatives, Fourth District
The Honorable Robert Hurt, U.S. House of Representatives, Fifth District
The Honorable Robert W. Goodlatte, U.S. House of Representatives, Sixth District
The Honorable Dave Brat, U.S. House of Representatives, Seventh District
The Honorable Don Beyer, Jr., U.S. House of Representatives, Eighth District
The Honorable H. Morgan Griffith, U.S. House of Representatives, Ninth District
The Honorable Barbara Comstock, U.S. House of Representatives, Tenth District
The Honorable Gerry Connolly, U.S. House of Representatives, Eleventh District
The Honorable Todd P. Haymore, Secretary of Agriculture and Forestry
The Honorable Maurice Jones, Secretary of Commerce and Trade