

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

December 1, 2014

The Honorable Jacob J. Lew
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Michael Froman
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Secretary Lew and Ambassador Froman:

We are pleased that the Administration has withstood pressure from the European Union (EU) to subject U.S. financial regulations to some of the proposed provisions of a Transatlantic Trade and Investment Partnership (TTIP). We very much agree that work on financial regulatory and prudential cooperation should continue uninterrupted in existing international coordination channels. We appreciate your continued refusal to expose financial regulations to “regulatory cooperation” terms proposed for TTIP in a manner that could undermine recent financial reforms that Congress has passed and that our regulators are now implementing, or to subject new U.S. financial safeguards to pre-review by foreign officials.

We are concerned, however, about provisions included in past U.S. trade deals that, if replicated in TTIP, could infringe on Congress’ policy space to enact measures to guarantee U.S. financial stability, as well as consumer protection safeguards. The issue of binding financial services to the market access rules of past U.S. trade agreements is deeply complex and goes to the heart of ongoing efforts to preserve and protect the stability of the international financial system.

Some have argued that market access in financial services should be kept out of TTIP altogether, given the fact that our financial markets already are open and the lack of a deeper formal arrangement in this area has not been an obstacle to

transatlantic financial service commerce or investment. In fact, we currently have a high level of trade with the EU, and investment dominates the \$4.64 trillion U.S.-EU relationship. Last year, U.S. and EU companies reported at least \$2.43 trillion in trans-Atlantic revenue, much of which stems from cross-border transactions and investments in the financial services sector.

If financial service market access provisions of past pacts were included in TTIP, it could expose to challenge a variety of non-discriminatory financial regulations, including, potentially, those that many countries have adopted in the wake of the 2007-2008 financial crisis. TTIP should not bind financial services to similar rules that could limit the maintenance or establishment of certain forms of financial regulations with respect to committed sectors. Past pacts' market access rules could be interpreted, for example, as forbidding bans of, or restrictions on, certain financial products. (The World Trade Organization's Appellate Body, for example, interpreted these rules to hold that the U.S. ban on Internet gambling was a forbidden "zero quota.") Previous market access rules could also conflict with policies designed to mitigate systemic risk or to protect depositors' savings from high-risk proprietary trading.

We know that the Administration believes that the "prudential exception" provision in past U.S. trade agreements provides countries with sufficient policy space to regulate on a prudential basis. But this is a two-sentence "exception." The first sentence says a government should not be stopped from taking prudential measures. The second sentence says that a government may not take such measures, if to do so would avoid their obligations under the agreement. It appears to be self-cancelling; or, at best, as many legal scholars have concluded, the language is ambiguous and could create a burden of proof in favor of the claimant and against the defending government.

Moreover, it's not clear to us how the prudential defense would cover consumer protection measures in the Dodd-Frank Act or in any future measures aimed at safeguarding the interests and rights of consumers, as opposed to the safety and soundness of individual financial institutions.

TTIP should also not replicate rules from past trade agreements that restrict the use of capital controls, which the International Monetary Fund and leading economists have endorsed as legitimate policy tools for preventing and mitigating financial crises. Nor should TTIP include provisions that could limit Congress' prerogative to enact a financial transaction tax to curb speculation while generating revenue. If TTIP is to include provisions on capital transfers, could you please explain how the TTIP language will be altered relative to past pacts so as not to prohibit macro-prudential financial stability measures such as capital controls, which were recently endorsed by the IMF Board of Directors, with the support of the United States?

Finally, we were very disappointed to learn that the Administration is pushing to include an investor-state dispute settlement (ISDS) mechanism in TTIP that would bind our financial policies to even broader obligations than past agreements. Past U.S. trade pacts have explicitly included "futures, options, and other derivatives" in the definition of "investments" for which foreign investors are guaranteed special rights, including a guaranteed minimum standard of treatment and compensation for "regulatory takings." Private foreign investors should not be empowered to circumvent U.S. courts, go before extrajudicial tribunals and demand compensation from U.S. taxpayers because they do not like U.S. domestic financial regulatory policies with which all firms operating here must comply.

We note that the absence to date of recourse by U.S. and EU firms to an investor-state dispute settlement mechanism has not deterred U.S.-EU investment, and recent academic studies have not found that entering agreements with expansive investor protections increases the amount of foreign investment a country attracts. Even a conservative pro-trade think tank in Washington recently recognized that the investor-state dispute settlement mechanism is not essential to the task of freeing trade and advocated for TTIP to exclude the mechanism. We believe there will be a great deal of resistance to any agreement that exposes U.S. financial regulations to the interpretations of international tribunals. We strongly urge that the investor-state dispute settlement provision be excluded from TTIP, or at the very minimum, that it not apply to the financial sector.

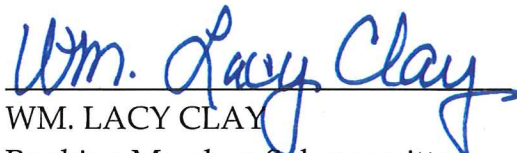
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We appreciate your efforts to ensure that TTIP does not undermine our efforts to protect consumers and guarantee financial stability. We look forward to hearing your responses to our specific concerns at your earliest convenience.

Sincerely,



MAXINE WATERS
Ranking Member



WM. LACY CLAY
Ranking Member, Subcommittee
on Monetary Policy and Trade



KEITH ELLISON
Co-Chair
Congressional Progressive Caucus



RAÚL M. GRIJALVA
Co-Chair
Congressional Progressive Caucus