COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

June 28, 2011

The Honorable Barack H. Obama
President of the United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

As trade negotiators return from the seventh round of Trans-Pacific Partnership (TPP) negotiations in Ho Chi Minh City, and ahead of the next round of negotiations, we urge your Administration to develop a robust set of disciplines relating to state-owned enterprises (SOEs) and state-supported enterprises (SSEs). Your Administration has committed to ensuring that the TPP negotiations address the 21st century challenges faced by U.S. businesses and workers. Unfair competition from, and distortions caused by, SOEs and SSEs are one of the greatest of these challenges.

U.S. trade agreements have, historically, been negotiated with certain assumptions in mind – key among them, that our trading partners have free market economic systems that are fundamentally similar to our own, characterized by private actors that compete on principles of supply and demand, quality, and performance. Our trade agreements have also assumed that regulatory processes in trading partner countries operate on principles of openness, transparency, public participation, and rule of law that are similar to our own. These assumptions have informed the specific rules and disciplines reflected in the previous trade agreements.

However, trade in the 21st century is increasingly out of step with these assumptions. Trade today is characterized by the growth of "state capitalism," especially in developing and advanced developing countries. In its most recent report, *Global Trends 2025: A Transformed World*, The National Intelligence Council noted this phenomenon, saying: "In the early 1990s, many economists predicted that SOEs would be a relic of the 20th century. They were wrong. SOEs are far from extinction, are thriving, and in many cases seek to expand beyond their own borders..." Indeed, between 2004 and 2008, 117 SOEs from Brazil, Russia, India and China appeared for the first time on the Forbes Global 2000 list of the world's largest companies, while 239 U.S., Japanese, British and German companies fell off the list. And three of the world's four largest banks in 2009 were state-owned Chinese firms (Industrial and Commercial Bank of China, China Construction, and Bank of China). Ian Bremmer, <u>The End of the Free Market</u>, pp. 20-21.

State backing of SOEs and SSEs takes various forms, including substantial government subsidies, government financing on non-market terms, special exemptions from regulation in otherwise highly-regulated sectors, favored treatment in procurement, and other advantages not avaible to commercial actors with which SOEs and SSEs compete. Such practices can fundamentally affect the incentives for, and behavior of, SOEs and SSEs, and can dramatically tilt the competitive playing field in favor of such entities.

The competitive harm from SOEs and SSEs can be felt in every market in which they compete with U.S. businesses, whether it is in the U.S. market, the home market of the SOE/SSE, or in third-country markets. In all such cases, U.S. goods and services are put at a competitive disadvantage, and U.S. workers, producers, exporters and investors are denied vital opportunities.

The existing provisions of U.S. trade agreements – including provisions requiring "national treatment" for trading partners' goods, services, and investors – are insufficient to address the broad range of concerns raised by SOEs and SSEs. To provide a comprehensive solution, the TPP Agreement must include a robust and enforceable set of disciplines obligating SOEs and SSEs to operate as commercial actors, obligating their respective governments to treat them as such, and establishing clear standards as to what these obligations mean in practice. Moreover, the TPP Agreement must require partner countries to share information about their respective SOEs and SSEs, and the levels of government intervention in such entities, so that there can be proper monitoring of compliance with TPP rules. These new rules will be crucial not only to address concerns about SOEs and SSEs in existing negotiating partner countries but also to set in place the disciplines that will apply to future new entrants.

We understand that some have resisted the negotiation of new SOE/SSE disciplines, arguing that these could be used to limit U.S. prerogatives – for example, to provide temporary assistance to companies in exceptional moments of crisis. We believe these arguments are without merit. First, there are simply not parallels in the United States to the kind of SOEs and SSEs that are pervasive in much of the rest of the world. Second, the disciplines we contemplate would not preclude TPP countries from having SOEs and SSEs; they would simply level the playing field vis-à-vis the commercial actors with whom the SOEs and SSEs compete. Third, there are some exceptions already in U.S. FTAs that may be relevant to this issue, such as the exception for prudential measures taken to ensure the integrity and stability of the financial system. These exceptions would, presumably, continue to apply. Moreover, to the extent further flexibility is needed to permit the U.S. government, in exceptional situations, to provide limited and temporary support to commercial actors, the rules can be crafted to accommodate such specific circumstances. Similarly, there can be clarifications to ensure that the SOE/SSE disciplines are not used against legitimate governmental and quasi-governmental entities.

The TPP negotiations provide a critically important opportunity to address this new generation of trade issues. What is negotiated in the TPP may well establish the ground rules for the future of trade policy. Your strong leadership is important not only for U.S. trade agreements but also for the multilateral trading system. We urge you to seize this opportunity through a broad, innovative initiative to address the anti-competitive harm caused by SOEs and SSEs.

Sincerely,

The Honorable Sander M. Levin

The Honorable Jim McDermott

The Honorable Charles B. Rangel

The Honorable Fortney Pete Stark

The Honorable John Lewis

The Honorable Richard E. Neal

The Honorable Xavier Becerra

The Honorable Lloyd Doggett

The Honorable Mike Thompson

The Honorable John B. Larson

The Honorable Earl Blumenauer

The Honorable Ron Kind

The Honorable Bill Pascrell, Jr.

The Honorable Shelley Berkley

The Honorable Joseph Crowley

cc: The Honorable Hillary Rodham Clinton
Secretary of State

The Honorable Timothy F. Geithner
Secretary of Treasury

The Honorable Eric H. Holder, Jr.
Attorney General

The Honorable Ronald Kirk
United States Trade Representative

The Honorable Gary Locke
Secretary of Commerce