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Grassley Seeks Strong Investment Protections in Trade Deals

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, today sent the following letter.

March 28, 2002

The Honorable Robert B. Zoellick
United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Zoellick:

I am writing to express my serious concern over reports that the Administration may weaken important investment protections as it pursues future international trade negotiations. As you know, U.S. investment abroad is critical to support a more dynamic and flexible U.S. economy, greater export flows and higher paying jobs for American workers.

For the last 25 years, each successive Administration has recognized that it is critical to negotiate strong, objective and fair investment protections in our international agreements to continue to promote such investment. These traditional investment protections are largely based on U.S. law and policy and established international law rules of which the U.S. has been the chief architect and advocate.

The Senate Finance Committee gave very careful consideration to investment issues and some concerns expressed about NAFTA Chapter 11 when we discussed H.R. 3005, the *Bipartisan Trade Promotion Authority Act*. Both Republican and Democratic members of the Committee agreed to several improvements to the U.S. negotiating position on investment which address these concerns, such as providing a mechanism for the early dismissal of frivolous claims, injecting greater transparency into arbitration proceedings and establishing a review mechanism. The bill and accompanying report also provide the Committee's views on ensuring that U.S. investors abroad enjoy protections comparable to those available to foreign investors in the United States under existing U.S. law, while at the same time not making our own regulations unduly subject to treaty challenge on grounds that have no foundation in U.S. law and practice. The degree of support for

the final product is demonstrated by a strong bipartisan Committee vote of 18 to 3 in favor of the bill.

These provisions represent a very careful balance between the political concerns raised by particular cases under the NAFTA Chapter 11 process and the need to continue to provide U.S. citizens with strong investment protections overseas. I appreciate the seriousness with which you have approached the guidelines set forth in H.R. 3005 and accompanying report. Your consultations with Congress on this issue have been exemplary. However, in implementing these guidelines I urge you not to go beyond the careful balance established by the Congress.

Congress clearly intended for this Administration to continue to pursue strong investment protections and investor-state dispute settlement provisions in future trade agreements. At the same time we ask that you address legitimate concerns about protecting the ability of the U.S. government to regulate health, safety and the environment in the public interest. There is no magic formula that achieves this balance and many approaches are possible. However, I understand there may be several proposals under consideration which I believe undermine the fundamental core of the investor-state dispute settlement process, dilute protections for U.S. investment abroad, and therefore go beyond the intent of the Committee. Such provisions include establishing a government screening mechanism which would have to be utilized before a complaint is allowed to proceed, requiring investors to exhaust judicial remedies before seeking arbitration, or interpreting the expropriation standard more narrowly than international and U.S. law. In formulating our negotiating position on investment, I strongly urge that you not press for changes that, in the view of many members of the Senate Finance Committee, would weaken an investment policy and approach that has so benefitted U.S. companies and their workers and the U.S. economy as a whole.

I appreciate your personal efforts to consult with members of Congress and bridge differences, where possible. I look forward to continuing our work on this and many other important issues.

Sincerely,

Chuck Grassley