

# Congress of the United States

Washington, DC 20515

March 21, 2024

The Honorable Anthony Blinken  
Secretary of State  
Department of State  
2201 C Street N.W.  
Washington, D.C. 20520

The Honorable Katherine Tai  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street N.W.  
Washington, D.C. 20508

Dear Secretary Blinken and Ambassador Tai,

We commend the administration's commitment to a "worker-centered" trade agenda that uplifts people in the United States and around the world and helps promote our humanitarian and foreign policy goals. We particularly appreciate President Biden's opposition to including investor-state dispute settlement (ISDS) mechanisms in trade and investment agreements, which enable foreign companies to sue the U.S. and our trading partners through international arbitration.

On a bipartisan basis, Congress drastically reduced ISDS liability from the U.S.-Mexico-Canada Agreement (USMCA) because ISDS incentivizes offshoring, fuels a global race to the bottom for worker and environmental protections, and undermines the sovereignty of democratic governments. However, the U.S. has more than 50 existing trade and investment agreements on the books, most containing ISDS, including the U.S.-Central America Dominican Republic Agreement (CAFTA-DR) which entered into force in 2006. We urge you to offer CAFTA-DR governments the opportunity to work with the U.S. government to remove CAFTA-DR's ISDS mechanism.

While there is no evidence that ISDS significantly promotes foreign direct investment, there is ample evidence that the abuse of the ISDS process harmed the Central America and Caribbean region. Multinational corporations have used ISDS to demand compensation for policies instituted by governments in CAFTA countries, undermining their democratic sovereignty and, often, harming the public good. For example, foreign companies have targeted labor rights, environmental protection, and public health policies.<sup>1</sup> This ultimately works to counteract U.S. government assistance intended to address the root causes of migration from the region.

For certain Central American and Caribbean countries, even a single ISDS award (with some claims in the hundreds of millions or billions of dollars) could destabilize their economy, as limited fiscal revenues are diverted from critical domestic priorities to cover legal defense expenses, tribunal costs and damages. According to public sources, taxpayers in CAFTA-DR countries paid at least \$58.9 million to foreign corporations in ISDS awards, with at least \$14.5 billion in pending ISDS claims.<sup>2</sup> Notably, the lack of transparency in ISDS arbitration makes it impossible to know the full extent of ISDS liability. There are also

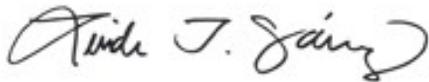
<sup>1</sup> <https://www.law.georgetown.edu/carola/wp-content/uploads/sites/29/2023/11/CAROLA-White-Paper-Turning-the-Tide.pdf>

<sup>2</sup> Compilation by Public Citizen from Center for the Advancement for the Rule of Law in the Americas (2022). "International Investments Agreements in the Latin American and the Caribbean Database". Accessed on July 26, 2023. Retrieved from <https://isdslac.georgetown.edu/> and UNCTAD, Investment Dispute Settlement Navigator, Accessed on July 26, 2023. Retrieved from <https://investmentpolicy.unctad.org/investment-dispute-settlement>

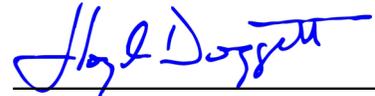
concerns regarding the fairness of ISDS proceedings as ISDS arbitrators can appear as counsel before tribunals composed of arbitrators with whom they previously served in different ISDS proceedings.

Accordingly, we are eager to work with you to remove ISDS liability from CAFTA-DR and all other trade or investment agreements with countries in Central America and the Caribbean. This would send a powerful signal that the U.S. government is committed to a new model of partnership in the region — a model that uplifts and protects democracy, rule of law, human rights, and the environment. We look forward to working alongside you to bring the CAFTA-DR more into alignment with the current trade agenda and prevent harmful corporate overreach in emerging economies.

Sincerely,



Linda T. Sánchez  
Member of Congress



Lloyd Doggett  
Member of Congress



Maxine Waters  
Member of Congress



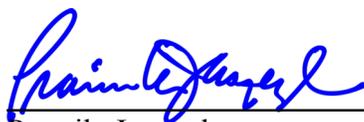
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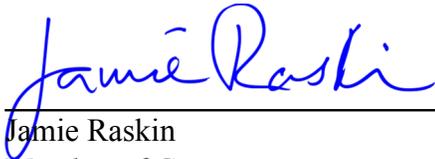
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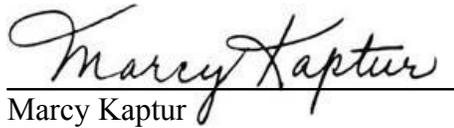
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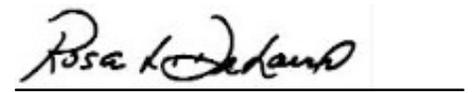
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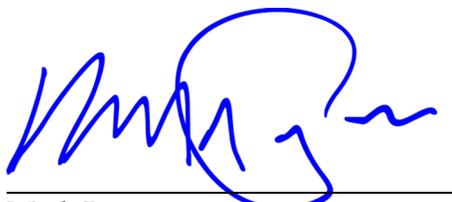
  
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