

**Congress of the United States**  
**Washington, DC 20515**

July 20, 2024

The Honorable Katherine Tai  
Ambassador  
Office of the U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Tai:

We write regarding the Office of the U.S. Trade Representative’s (USTR) recent Federal Register notice<sup>1</sup> soliciting public comment on the Trade Track of the Americas Partnership for Economic Prosperity (APEP). APEP represents a unique opportunity for the United States to work with our trade partners to address the investor-state dispute settlement (ISDS) mechanism that plagues U.S. free trade agreements (FTAs) and bilateral investment treaties (BITs) with Latin American countries.

ISDS, a legacy of excess corporate influence in American trade policy, allows foreign investors to challenge good-faith domestic policymaking in the public interest by alleging that such policies violate a trade deal’s expansive investor protections. Corporations’ ISDS complaints are not adjudicated through judicial systems of the United States or our trade partners, but instead by industry-friendly arbitration tribunals. These panels—made up of trade lawyers who often adjudicate cases one day, then argue cases on behalf of corporations the next—can require governments to pay enormous sums to foreign investors with no recourse to appeal. Over the years, corporations have used ISDS claims, or the threat of them, to hold governments ransom for egregious amounts of money unless they roll back domestic policies aimed at protecting consumers, the environment, Indigenous communities, and more. Based only on the data that is publicly available, investors have attempted to claim a total of \$865.74 billion from governments—and taxpayers—through ISDS, with an astonishing \$113.87 billion having been awarded to investors by ISDS tribunals.<sup>2</sup>

The Biden Administration has recognized that ISDS must not be part of U.S. trade policy going forward. You have stated that you and President Biden “[do] not believe corporations should receive special tribunals in trade agreements that are not available to other organizations” and “oppose[] the ability of private corporations to attack labor, health, and environmental policies through ISDS.”<sup>3</sup>

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<sup>1</sup> <https://www.federalregister.gov/documents/2024/06/20/2024-13470/request-for-comments-on-americas-partnership-for-economic-prosperity-trade-track>

<sup>2</sup> <https://www.globalisdstracker.org/>

<sup>3</sup> <https://ielp.worldtradelaw.net/2024/06/the-biden-administrations-position-on-isds-removal.html> -- reply to Warren/Doggett letter from March 2023

While we are pleased that the Administration has committed not to pursue future trade or investment deals that include ISDS, most of the United States' 40 BITs and 14 FTAs that are currently in effect still contain ISDS provisions.<sup>4</sup> These provisions continue to be abused by American and foreign investors alike to attack legitimate public policies and threaten our and our trade partners' sovereignty.

The Americas Partnership for Economic Prosperity, which has a stated emphasis on promoting inclusive trade that protects the rights of Indigenous peoples and other vulnerable groups, labor standards and workers' rights, and climate-friendly policies, represents an important opportunity to engage with U.S. trade partners to terminate the ISDS liability from some of our existing trade and investment agreements. Of the 11 countries participating in the APEP trade track, the United States maintains FTAs or BITs containing ISDS provisions with nine of them.<sup>5</sup> As the convener of these discussions, and the country which initially advocated for the inclusion of ISDS in our trade and investment deals with countries in Latin America and worldwide<sup>6</sup> it is particularly important that the U.S. Trade Representative, in consultation with Congress, establish priorities for the APEP Trade Track. However, we recognize that APEP is a collaborative forum – and indeed, there has been a growing call for removing the ISDS liability in the countries of several APEP members:

- The people of Ecuador recently took part in a nationwide referendum with a sizeable majority voting to exclude from the country's constitution an article which would have allowed Ecuador to once again participate in international arbitration mechanisms such as ISDS.<sup>7</sup>
- “[T]he most harmful and negative aspects of trade agreements in recent decades have been the investment chapters and the Investor-State Dispute Settlement System (ISDS),” noted Esteban Silva, General Coordinator of the **Latin America and the Caribbean Better Without FTAs Platform**, in his organization's submission to this comment period. “Thanks to the ISDS, many multinational companies have sued states to challenge sovereign decisions linked to the defense of the national interest, the public interest, the environment or the defense of the rights of their citizens.”
- In 2023, more than 280 organizations from around the world (including 85 from **Colombia**) as well as 54 members of the Colombian Congress issued a [declaration](#) calling on the Colombian government to initiate a comprehensive review of ISDS pacts “with the aim of eliminating the ISDS mechanism.”
- Gregorio Mesa Cuadros, **director of the Research Group on Collective and Environmental Rights at the National University of Colombia** included the following concerns about ISDS in his comment submission: “The ISDS system has resulted in the

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<sup>4</sup> <https://prospect.org/world/2023-02-02-investor-state-dispute-settlement/>

<sup>5</sup> The 11 countries that have joined APEP with the United States are Barbados, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Panama, Peru, and Uruguay. The U.S. has ISDS pacts in effect with all of them except for Barbados and Canada. ISDS between the U.S. and Canada ended with the July 2020 entry into force of the U.S.-Mexico Canada Agreement, but the two countries still face legacy claims against each other's corporations with billions of taxpayer dollars potentially on the line. Overall, the 12 APEP countries are mired in a web of ISDS pacts among various groupings, with 43 ISDS pacts currently in force.

<sup>6</sup> <https://www.youtube.com/watch?v=nn85v7UCk2A&t=164s>

<sup>7</sup> <https://www.iisd.org/articles/statement/ecuador-referendum-rules-out-isds-return-underlining-public-support-sustainable>

two immediate effects: (1) It compels Global South governments to fail to comply with and make more flexible international and national standards of environmental protection and human rights, in favor of transnational interests of exploitation and dispossession.

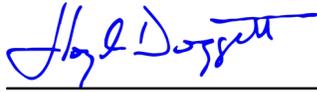
(2) It deepens violence against indigenous peoples and other ethnic and peasant communities who suffer the most from foreign investment, with effects that are replicated for other marginalized rural and urban communities and environmental and ecological actors and movements that defend ecosystems and cultures that inhabit such territories.”

- Earlier this year, the United States and **Colombia**, which have ISDS in their bilateral FTA, [announced](#) “discussions on environmental issues, workers’ rights, and the standards of investment protection in the context of the investor-state dispute settlement.
- “The climate emergency and sovereign needs in both, North and South, are motivating a new consensus against ISDS,” said Andrés Arauz, former Minister of Knowledge and Human Talent for **Ecuador** during the Rafael Correa administration. “APEP should follow the example of the EU and move swiftly to establish a working group to curtail sunset clauses and mutually agree to remove ISDS from all intra-APEP investment and trade treaties.”
- Ivette González, the Strategy Engagement and Advocacy Director of PODER, a human rights organization working out of **Mexico** on corporate accountability in the Latin American region that has been accompanying communities and workers affected by corporate abuse for almost 15 years, shared, “We have witnessed the challenges faced by rights holders to hold corporations and public authorities accountable when harm occurs on the ground. In several occasions, when concessions are canceled or permits revoked on the grounds of human rights and environmental protections, companies take these cases to investor-State dispute settlement mechanisms, invoking trade or investment agreements and suing States for millions or billions of dollars. This not only harms States in Latin America economically, but it also undermines their capacity to protect the rights of its citizens and residents, and to take action in the public interest. It is our view that ISDS has been used by companies to protect their profit when States make sovereign decisions with regards to their land, their natural resources, their environment and the human rights of their people. The misuse of these mechanisms is widespread in our region and, instead of being a space to solve commercial disputes, it has become a perverse system to put profit over people and the planet, and for corporations to exert undue influence over State decision making processes. This is why we think it is urgent to eliminate ISDS from trade and investment agreements and create a system that has rights holders – and not shareholders – at the center.)

It is clear that the United States is not alone in its opposition to ISDS and its desire to explore removing ISDS from some of our trade and investment agreements. You and President Biden have taken important steps to shift U.S. trade policy to one that prioritizes workers, consumers, small businesses, and the environment, and eschewed the corporate-driven trade policies of the past. We urge you to build on this progress and establish a working group or similar forum within the APEP Trade Track to explore pathways towards eliminating ISDS from any trade or investment agreements to which the U.S. and APEP partner countries are party.

Thank you for your consideration of this request.

Sincerely,



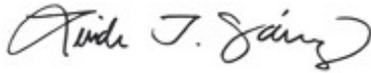
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Lloyd Doggett  
Member of Congress



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Rosa L. DeLauro  
Member of Congress



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Linda T. Sánchez  
Member of Congress



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Eleanor Holmes Norton  
Member of Congress



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Jesús G. "Chuy" García  
Member of Congress



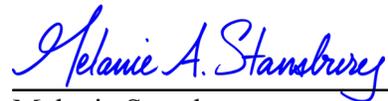
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Rashida Tlaib  
Member of Congress



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Paul D. Tonko  
Member of Congress



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Melanie Stansbury  
Member of Congress



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Jan Schakowsky  
Member of Congress



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Barbara Lee  
Member of Congress



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Jerrold Nadler  
Member of Congress



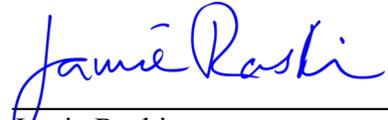
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Ro Khanna  
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John Garamendi  
Member of Congress



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Jamie Raskin  
Member of Congress



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Raúl M. Grijalva  
Member of Congress



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Greg Casar  
Member of Congress



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Pramila Jayapal  
Member of Congress



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Cori Bush  
Member of Congress



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Delia C. Ramirez  
Member of Congress



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Ayanna Pressley  
Member of Congress



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Susan Wild  
Member of Congress



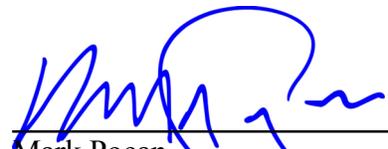
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Katie Porter  
Member of Congress



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Chris Deluzio  
Member of Congress



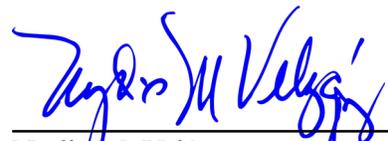
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Mark Pocan  
Member of Congress



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Betty McCollum  
Member of Congress



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Nydia M. Velázquez  
Member of Congress



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Steve Cohen  
Member of Congress



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Jimmy Gomez  
Member of Congress



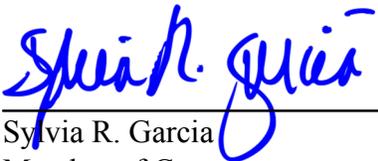
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Henry C. "Hank" Johnson, Jr.  
Member of Congress



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Jonathan L. Jackson  
Member of Congress



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Sylvia R. Garcia  
Member of Congress



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Veronica Escobar  
Member of Congress



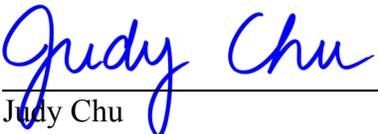
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Sheila Jackson Lee  
Member of Congress



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Jim Tokuda  
Member of Congress



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Judy Chu  
Member of Congress



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Dina Titus  
Member of Congress



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Summer L. Lee  
Member of Congress



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Brad Sherman  
Member of Congress



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Dan Goldman  
Member of Congress



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Danny K. Davis  
Member of Congress



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Donald Norcross  
Member of Congress



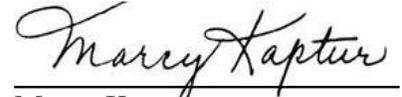
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Nanette Diaz Barragán  
Member of Congress



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Debbie Dingell  
Member of Congress



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Marcy Kaptur  
Member of Congress



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Daniel T. Kildee  
Member of Congress



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Dwight Evans  
Member of Congress

CC: The Honorable Anthony Blinken, Secretary of State