



April 30, 2024

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
Washington, DC 20510

The Honorable Jason Smith
Chairman
U.S. House Committee on Ways and Means
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
U.S. House Committee on Ways and Means
Washington, DC 20515

RE: Statement for the Record: The President's 2024 Trade Policy Agenda, April 16 & 17, 2024

Dear Chairman Wyden, Ranking Member Crapo, Chairman Smith, and Ranking Member Neal:

Public Citizen, a nonprofit consumer advocacy organization with more than 500,000 members, welcomes the opportunity to submit a statement for the record in regard to the 2024 United States Trade Agenda. A mission of Public Citizen is to ensure that in this era of globalization, a majority can enjoy economic security; a clean environment; safe food, medicines and products; access to quality affordable services; and the exercise of democratic decision-making about the matters that affect their lives.

At the core of the discussions of both hearings was a rehashing of a long-settled debate over the direction of U.S. trade policy. Since the early 1990s, corporate-rigged free trade agreements (FTAs) have undermined domestic safeguards and perpetuated a global race to the bottom for the cheapest labor and lowest environmental standards, contributing to the hollowing out of U.S. manufacturing and increasing income inequality. Americans who have lived with the consequences of the North American Free Trade Agreement (NAFTA) and its clones have thus demanded that their representatives in government pursue a new path. As a result, a new FTA hasn't successfully passed through Congress for over a decade, since 2012.

Biden administration officials have repeatedly stated that the President's vision for trade will not repeat the past mistakes of prioritizing efficiency above all else, but will serve workers, consumers, and the environment. It is the right but difficult task to create a new model of trade policy that excludes problematic investment, intellectual property, market access, and procurement provisions in order to put people and the planet first.

The neoliberal model had decades to run its course. It is unreasonable to expect a wholly new model to be completed within only three years — and still, important improvements have already materialized.

Worker-Centered Trade

U.S. trade agreements since the George W. Bush administration have included labor and environmental standards in their core texts as part of the “May 10” standard. The ostensible goal of these terms was to raise standards in trade partner countries. But these terms have proven ineffective. The absence of effective labor and environmental standards created race-to-the-bottom incentives for U.S. firms to offshore production and slammed U.S. firms and workers with a flood of imports subsidized by environmental and social dumping.

The U.S.-Mexico-Canada Agreement (USMCA) however, thanks to the determination of congressional Democrats and labor unions late in the negotiations, included innovative labor provisions. The office of the U.S. Trade Representative under Katherine Tai has used the USMCA’s Rapid Response Mechanism (RRM) to ensure that companies cannot secure unfair advantages by shipping jobs out of the U.S. to exploit workers in Mexico. Public Citizen recognizes the efforts of Ambassador Tai to enforce these terms, as well as her role in the crafting of those provisions in Congress. As of April 2024, these labor provisions have directly benefited nearly 30,000 workers in Mexico by providing millions of dollars in backpay and benefits to workers, ensured wrongly terminated workers were reinstated, and helped secure free and fair elections in which workers selected independent unions to represent them. **The labor provisions and RRM enforcement process in the USMCA are the new minimum standard that must be met for trade agreements going forward.**

One of the top priorities in President Biden’s trade policy agenda is working toward an Indo-Pacific Economic Framework (IPEF). It appears this administration recognizes that it would be disastrous in terms of policy and politics to return to the failed “free trade agreement” model that made the Trans-Pacific Partnership (TPP) so widely unpopular. From the start of negotiations, USTR has been clear that IPEF is not an FTA, and that it excludes all of the most controversial aspects of the TPP.

The Biden administration did the right thing by not concluding the IPEF Trade Pillar last fall, as the standards in the labor chapter were lacking, and there is no ‘worker-centered trade’ without enforceable standards. It’s better to miss an arbitrary deadline than to ink a deal that fails to live up to the administration’s promise of ‘worker-centered’ trade, especially when rules governing 40% of the global economy are on the line. This move by the Biden administration and USTR broadcasts the message to the world that if a trade deal doesn’t meet standards to protect workers and the environment, it’s not worth concluding. We applaud the righteous decision to slow negotiations, prioritizing workers over scoring political points.

Similarly, Public Citizen calls on members of Congress and the administration to work together to ensure that strong and enforceable labor and environmental standards are at the center of ongoing and future trade talks, including Critical Minerals Agreement (CMA) negotiations. The U.S.-Japan CMA must not be the model, as the lip service around labor rights and environmental protections are unenforceable. The only binding language in the text concerns a vague commitment to share information on labor protections. All labor standards must be subject to swift and certain enforcement that include facility-specific enforcement mechanisms and meaningful penalties for violations. Public Citizen is encouraged that the U.S. Trade

Representative appears to be responsive to the critiques from labor and Congress regarding the lack of transparency in negotiations and enforceable standards in the U.S.-Japan CMA, as negotiations with other partners have reportedly slowed. These new and foundational texts will play a major determining role in the green transition, and we look forward to improved processes with meaningful stakeholder engagement in future negotiations.

Reflecting on the lessons learned from the IPEF process, we call on the administration to center labor rights and environmental protections in negotiations for a U.S.-Kenya Strategic Trade and Investment Partnership (STIP). And we note that all of the negotiations over the past three years would have benefited from greater transparency and civil society participation.

Redefining Digital Trade Rules

Several representatives at the hearings disingenuously criticized USTR's rethink of digital trade rules as if it shuts down all online sales and the internet itself. In reality, all that USTR did was remove U.S. support for four extreme "digital trade" provisions that the previous administration proposed at e-commerce talks on the sidelines of the World Trade Organization (WTO). These rules — on data flows, data localization, source code/algorithm non-disclosure, and anti-competitive nondiscrimination — came straight from the tech industry, which has picked up the pharma industry playbook to insert rules in trade agreements that would restrict governments' ability to regulate them.

We commend Ambassador Tai for leading the update of digital trade rules to provide the policy space necessary for our nation to enact urgently needed policies that Congress and regulators are currently crafting: on Big Tech competition, gig worker rights, online consumer privacy and data security protections, and AI accountability measures. We are eager to work with the Biden-Harris administration to create new digital trade rules that promote worker rights, consumer privacy, civil rights, and data security goals.

The 2024 National Trade Estimate (NTE) Report on Foreign Trade Barriers shows continued progress on this front. This year's NTE is not simply a hit list of other countries' laws and regulations that large U.S. corporations dislike. Now, for the first time in memory, USTR is recognizing that it is not in the U.S. national interest to attack and threaten other nations' consumer and worker protection measures. This is particularly apparent in the context of 'digital trade' barriers, many of which are actually privacy, anti-discrimination, and anti-monopoly safeguards. As governments around the world, including our own, work to regulate the rapidly changing tech space, it does not make sense to list these new regulations as 'barriers to trade.' Still, there are 22 jurisdictions with sections on 'digital barriers to trade' (compared to 28 in Trump's 2020 NTE) — revealing the lie behind Big Tech's claim that USTR has dropped their interests entirely.

There is still more work to be done to ensure that the NTE does not inappropriately target other countries' public health and development laws. This would be consistent with the Biden-Harris administration's stated "worker-centered" approach to trade, that does not simply privilege large corporate interests over all else, but recognizes that trade policy should complement, rather than undermine, public interest goals.

Checking Corporations' Power to Challenge Laws

Senator Sheldon Whitehouse and Ambassador Tai acknowledged at the Senate Finance hearing that for decades the United States was the driving force expanding the Investor-State Dispute Settlement (ISDS) mechanism. Yet at the end of 2019, the U.S. Congress, in a welcome act of bipartisanship, agreed to eliminate ISDS provisions with Canada and significantly reduce them with Mexico as part of the USMCA. This shift in U.S. policy sent a signal worldwide to the many countries also eager to exit the ISDS regime, especially after nations that terminated ISDS agreements [saw no fall-off in foreign investment](#).

President Biden and USTR have thus far followed through on the promise to exclude ISDS provisions in new trade negotiations. **The next step is to dismantle ISDS in the dozens of active U.S. agreements in which it still exists.** Public Citizen is encouraged that, in response to Sen. Whitehouse's impassioned plea to remove the mechanism in existing agreements, Ambassador Tai noted that USTR is actively looking into options to address ISDS in existing agreements. We look forward to working with the administration to make concrete progress on this as soon as possible, and would like to note for the record the growing support for this endeavor:

- [300+ Professors of Law and Economics Urge Elimination of ISDS in U.S. Trade and Investment Agreements](#)
- [47 Representatives Call for Biden Administration to Reform CAFTA-DR, Remove ISDS](#)
- [Warren, Whitehouse, Cohen, Lawmakers Urge Biden Administration to Eliminate Investor-State Dispute Settlement from Existing U.S. Trade and Investment Agreements](#)
- [200+ Labor, Environmental, Consumer, Human Rights, Faith and Community Organizations Urge U.S. to Exit ISDS](#)
- [UN Report: Paying Polluters: the Catastrophic Consequences of Investor-State Dispute Settlement for Climate and Environment Action and Human Rights](#)
- [Georgetown Law, Columbia & Rethink Trade White Paper: Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas](#)
- [Center for International Environmental Law: Overcoming International Investment Agreements as a Barrier to Climate Action: A Toolkit to Safeguard Fossil Fuel Measures from Investment Treaty Claims](#)

Access to Medicines

Too often, the U.S. government has sided with Big Pharma at the expense of access to medicines and vaccines in developing countries, contributing to suffering and preventable death during the early global AIDS crisis and accepting access delays at the height of the Covid emergency. In years past, the U.S. government sought to deter even consideration of pro-health patent policies in many other countries, under potential penalty of trade sanctions, and provided cover for far more aggressive opposition tactics by powerful prescription drug corporations.

But as with investment rules, USTR has changed course and excluded intellectual property (IP) rules from ongoing trade negotiations. Ambassador Tai has frequently spoken about the need to balance IP protections with access to affordable medicines and technologies.

Public Citizen applauds USTR for realizing that this balance has leaned heavily in favor of pharmaceutical company profits for far too long. For example, in the recent Special 301 Report, USTR states its “policy of declining to call out countries for exercising [WTO Trade-Related Aspects of Intellectual Property Rights] TRIPS flexibilities, including with respect to compulsory licenses, in a manner consistent with TRIPS obligations.”

This statement gives reason for hope. Countries struggling under the burden of high-priced medicine monopolies should know that the United States will not interfere with their efforts to make medicine affordable for their people, consonant with WTO rules.

However this progress is constrained by the still-onerous and pharma-authored rules of the WTO. And U.S. negotiators of a WHO pandemic accord have yet to accept forward-looking proposals from developing countries on medical patents. And the Special 301 report still supports harmful rules favored by drug corporations, including challenges to practices safeguarding India’s provision of generics to the world. This must change.

In 2021, the initial announcement from the Biden administration of support for a temporary waiver of IP barriers to facilitate more production of COVID-19 vaccines was a welcome change from the previous administration. The final outcome of the negotiations was ultimately inadequate to meet the scope of the tragedy facing the world, but shining a light on the deadly prioritization of intellectual property over public health in our global trade systems was an important first step.

Helpfully, the Biden-Harris administration acknowledged countries’ health interest in compulsory licensing to support production and access, and stepped down trade pressures against their use. The October 2023 USITC report found compulsory licenses are “associated with increased generics and lower prices, and increased access to pharmaceuticals.” The report cites evidence that patent protection “has little to no positive effect for innovation in developing countries and negative effects for access and affordability.

The world will never forget the critical time the WTO wasted or the untold lives lost because rich countries refused to share the doses and knowledge that scientists around the world and public funds helped produce. We sincerely urge the U.S. Trade Representative to learn from these missteps and act quickly and effectively in the next crisis, and look forward to the U.S. continuing the work to shift the balance towards access.