

September 19, 2017

Ambassador Robert Lighthizer
U.S. Trade Representative
Office of the United States Trade Representative
600 17th St. NW
Washington, D.C., 20508

Dear Ambassador Lighthizer:

I write to address recent reports that as U.S. Trade Representative during the re-negotiation of the North American Free Trade Agreement (“NAFTA”), you have not pushed for the removal of the corporate courts that give multi-national corporations special rights beyond those of working Americans. NAFTA’s investor-state dispute settlement (“ISDS”) provisions tilt the playing field even further in favor of large corporations, all while undermining United States sovereignty and leading to corporate offshoring. I have long advocated for the elimination of special corporate courts in our trade deals, but despite your own record of concerns over such provisions, recent reports suggest you have floated an idea to keep ISDS in NAFTA and merely tweak it. That’s not good enough. I write today to remind you that there is no justifiable reason for ISDS – especially not between countries that have well-developed and familiar legal systems.

As you know, ISDS provisions allow foreign corporations to challenge U.S. laws without ever stepping foot in a U.S. court. Instead, foreign companies who do business in the U.S. are given a free pass to ignore our rules and bypass our courts – a privilege not extended to the millions of Americans living in this country. This puts American taxpayers on the hook for potentially massive payouts to these companies based on the decision of a panel of arbitrators – often corporate lawyers serving in the role part-time. ISDS provides a huge handout to global corporations while undermining American sovereignty.

ISDS also hurts American workers. While American companies can use ISDS to challenge laws that cost them money around the globe, they’re the only ones who are given access to these special courts. American labor unions or environmental groups would have to go through foreign courts if they wanted to challenge the exact same laws.

That’s why I have consistently opposed the inclusion of ISDS provisions in American trade deals. I opposed the Trans-Pacific Partnership in part because it included these corporate-friendly provisions, and I will oppose the inclusion of any form of ISDS in NAFTA.

Up until recently, I had been hopeful that the Trump Administration would support workers by eliminating ISDS from NAFTA. President Trump promised that “the American

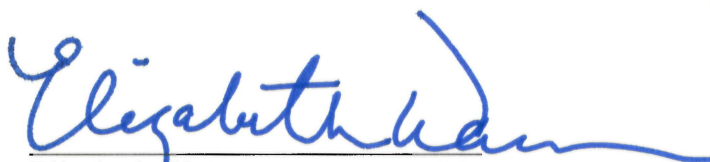
worker will finally have a president who will protect them and fight for them.”¹ He boldly claimed that he would renegotiate NAFTA “and get a much better deal for our workers[.]”²

And you have also expressed concerns over ISDS. Testifying before the Senate Finance Committee in June, you noted that ISDS was “an issue that’s troubling...on a variety of levels,” and that “in my judgment, at least on sovereignty issues, I’m always troubled by the fact that non-elected, non-Americans can make a decision that US law is invalid.”³ In fact, you claimed you found such provisions “offensive.”⁴ You have also stated that you “look forward to consulting with the Congress on these issues.”⁵

Despite these promises, recent reports suggest that you have floated tweaks to ISDS in the form of an opt-in system that would leave ISDS in NAFTA. Those changes don’t go nearly far enough. The arguments for ISDS are weak, but they are nonexistent in the context of a trade agreement between the United States, Canada, and Mexico. American companies are quite familiar with Mexican and Canadian courts, and both countries offer well-developed and fair legal systems. The idea that American companies will hesitate to do business in Canada or Mexico out of fear of their legal systems is simply baseless.

If the Trump Administration wants to prove that it “will protect...and fight” for working families, you should start by scrapping the corporate courts that give multi-national companies special treatment while stiffing American workers. I urge you to keep this Administration’s commitment to working families by pushing for the removal of ISDS from NAFTA in the upcoming rounds of renegotiation.

Sincerely,



Elizabeth Warren
United States Senator

¹ Jared Bernstein and Ben Spielberg, “The Trump administration’s ongoing attack on workers,” *Washington Post* (Aug. 30, 2017) (online at https://www.washingtonpost.com/news/posteverything/wp/2017/08/30/the-trump-administrations-ongoing-attack-on-workers/?utm_term=.b0862abbabaa).

² Vicki Needham, “Trump says he will renegotiate or withdraw from NAFTA,” *The Hill* (Jul. 28, 2016) (online at <http://thehill.com/policy/finance/285189-trump-says-he-will-renegotiate-or-withdraw-from-nafta-without-changes>).

³ “The President’s Trade Policy Agenda and Fiscal Year 2018 Budget,” *United States Senate Committee on Finance* (Jun. 21, 2017) (online at <https://www.finance.senate.gov/hearings/the-presidents-trade-policy-agenda-and-fiscal-year-2018-budget>).

⁴ *Id.*

⁵ *Id.*