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The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

November 2, 2021

Dear President Biden:

Our organizations appreciate your administration's focus on developing new, people-centered trade policies and agreements that advance worker rights, racial equity and consumer safeguards here and across borders. We are excited to work with you and U.S. Trade Representative Katherine Tai to fulfill that vision. We write today to express our interest and desire to ensure trade policies of any stripe, including recent discussions about "digital trade" policy, uplift workers, ensure racial justice, protect consumers and enable fair competition.

Many supporters of the status quo trade regime are pushing policies through the "digital trade" framework aimed at helping massive global retail, advertising, transportation, hotel and other businesses evade regulation and oversight. These proposals are not focused on remedying actual problems related to the online sale of imported goods, such as tariff evasion and product safety. Instead, Big Tech interests have promoted binding international rules to limit governments worldwide from regulating online platforms in the interest of workers, consumers or smaller business competitors.

Misbranding constraints on government regulatory authority as "e-commerce" or "digital trade" agreements has helped them to evade scrutiny and quietly undermine certain worker protections, policies that constrain entities' size or market power and promote fair competition, and civil rights, privacy and liability policies being considered by your administration, many in Congress from both parties and other governments worldwide. By hijacking common trade-pact concepts, such as "non-discrimination," the largest digital firms seek to secure their monopolistic dominance by labeling as illegal trade barriers countries' labor, competition and other domestic policies of general application simply because such policies may have greater impact on the largest firms because of the firms' size.

At a time when the United States and the world are grappling with how to best regulate Big Tech in areas as disparate as gig economy worker protections, discrimination and algorithm transparency, competition policy and anti-trust, corporate liability, and consumer privacy, we must not establish "trade" rules that restrict or dissuade countries from regulating digital entities or that impose or lock in retrograde domestic digital governance policies.

for a just and sustainable global economy

Harmful “digital trade” proposals include those that serve to:

- ***Hurt working people by prioritizing corporate interests ahead of labor rights and the protection of gig workers.*** No trade or other international commercial agreement should limit countries’ policies that condition permission for an entity to operate on compliance with labor, health and safety, civil rights, competition, consumer and other policies that apply across an economy or to a sector. Requiring large ride-sharing companies, for instance, to meet driver hours-of-service-rules or to contribute to social security for drivers or requiring buildings of short stay guest units booked online to meet worker and consumer safety rules, must never be characterized as a “trade barrier” nor as “censorship” if failure to comply means an end to operating permissions. Trade and commercial agreements must not be allowed to become Trojan Horse tools for attacking, weakening, preventing or dismantling labor or other public interest policies. Instead, all trade agreements should be structured to raise the floor to help ensure that all workers’ rights are protected, regardless of country.
- ***Hide the discriminatory effects of source code and algorithms through “trade secrets” protections.*** Governments increasingly are turning to private corporations for aid with “predictive policing” and other surveillance, law enforcement and security functions. And, every-day decisions made by artificial intelligence components of online platforms increasingly affect which individuals and communities are offered access to public and private services ranging from home loans to job postings to medical treatments. International commercial agreements cannot repurpose “trade secrets” protection rules or establish other “digital trade” rules that limit the ability of regulators, academics, civil society and the public to access and review the underlying technology for discriminatory practices deserving of scrutiny, criticism and correction. Similarly, “digital trade” rules cannot establish rights and protections for online entities that allow them to evade liability for discriminatory conduct and civil rights violations.
- ***Undermine consumer privacy and data security by prohibiting limits on data flows or rules on the location of computing facilities.*** Peoples’ every move on the internet and via cell phones is increasingly tracked, stored, bought and sold — as are interactions with the growing “internet of things,” that many people may not even be aware are tracking them nor from which they have a feasible way to opt out. Trade pacts must not restrict governments from acting on the public’s behalf in establishing rules regarding under what conditions individuals’ personal data may be collected, where it can be processed or transmitted, and how or where it is stored.
- ***Shield Big Tech firms from corporate accountability via overly broad content liability waivers.*** How to address the ways in which certain online business practices, algorithms and moderation stoke racial and ethnic violence and contribute to other anti-social behavior is a hotly debated topic. While there is no consensus on policy solutions, what is absolutely true is that this rapidly evolving area of public policy must not be restrained via trade agreements. Using trade pacts to prevent signatory countries from determining the best ways to protect

the public interest online is unacceptable.

- ***Protect Big Tech monopolies and promote further consolidation by banning limits on size, services offered or break-ups.*** As corporations and conglomerates exert increasing control over important social functions, governments must be able to combat anti-competitive business practices, place limits upon corporate mergers and break up monopolies where warranted. Digital trade rules must not include terms that forbid countries from establishing or maintaining policies that limit the size or range of services offered by companies, limit the legal structures under which they may be required to operate, nor otherwise restrict the regulation or break-up of Big Tech monopolies.

Certain terms of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Digital Economic Partnership Agreement (DEPA) and leaked text from the World Trade Organization (WTO)-adjacent “e-commerce” talks are problematic in many of these areas. The administration must avoid any negotiations or agreements that would replicate troubling anti-worker, anti-consumer and anti-democratic policies.

As governments worldwide struggle to address fundamental issues relating to digital governance, these important policy debates and decisions that will shape every facet of our lives must not be constrained, undermined or preempted via “trade” pacts or policies. We appreciate the administration’s forward-thinking approach on the need to refocus international trade policy beyond just corporate interests, and we look forward to working with you to set appropriate trade agreement priorities.

Sincerely,

Trade Justice Education Fund
American Economic Liberties Project
American Family Voices
Americans for Democratic Action
Asian Pacific American Labor Alliance, AFL-CIO
Association of Western Pulp & Paper Workers Union
Center for Digital Democracy
Citizens Trade Campaign
Coalition of Labor Union Women
Codepink
Color of Change
Communications Workers of America (CWA)
Consumer Action
Consumer Federation of America
Council on American-Islamic Relations (CAIR)
Defending Rights & Dissent
Demand Progress Education Fund
Demos
Electronic Privacy Information Center (EPIC)
Encode Justice

Franciscan Action Network
Global Exchange
Government Information Watch
Hip Hop Caucus
Institute for Local Self-Reliance
Institute for Policy Studies - Global Economy Project
Jobs with Justice
Justice is Global
Media Alliance
National Association of Consumer Advocates
National Consumers League
National Organization for Women
National Workrights Institute
Network Lobby for Catholic Social Justice
Open MIC (Open Media and Information Companies Initiative)
Other98
Our Revolution
Partners for Dignity & Rights
People's Parity Project
Pride at Work
Progressive Change Institute
Public Citizen
Revolving Door Project
Service Employees International Union (SEIU)
Social Security Works
SumOfUs
The United Methodist Church - General Board of Church and Society
Transport Workers Union of America
U.S. PIRG
UNITE HERE
United Steelworkers
US Human Rights Network
Win Without War

CC: Secretary of State Anthony Blinken
Bureau of Consumer Financial Protection Director Rohit Chopra
Attorney General Merrick Garland
Federal Trade Commission Chair Lina Khan
Secretary of Commerce Gina Raimondo
Council of Economic Advisers Chair Dr. Cecilia Rouse
National Security Advisor Jake Sullivan
United States Trade Representative Katherine Tai
Secretary of Labor Marty Walsh