

Biden's Midnight Trade Sabotage

The President wants to rewrite trade deals to remove protections for U.S. investors in Mexico and Colombia.

By [The Editorial Board](#)

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The Biden Administration has only a month to go, but its economic damage isn't finished. Our sources say an interagency trade policy committee is seeking to erode investor-state dispute settlement (ISDS) protections under U.S. trade agreements with Colombia, Mexico and Canada as it leaves town.

Most U.S. trade agreements include independent tribunals to arbitrate disputes between foreign governments and investors. The goal is to provide an impartial forum for foreign investors to challenge hostile government actions. Investors are entitled to monetary damages if they prevail. The U.S. has never lost a case, but a political right-left axis wants to weaken the protections.

Robert Lighthizer, [Donald Trump](#)'s first-term trade representative, negotiated limitations on the international tribunals in the revised U.S. trade pact with Mexico and Canada. He and his allies on the left say businesses would build more factories in the U.S. if there were fewer legal protections for overseas investments. But this opens the door to leftwing governments that want to nationalize U.S. investments and harm U.S. shareholders.

The USMCA scrapped protections for investments in Canada and restricted the power of tribunals in disputes with Mexico. But now progressives complain that any such protections hinder their climate goals because foreign governments might be forced to compensate businesses if they take actions that harm fossil-fuel investments.

The United Nations' Special Rapporteur on human rights and the environment last year called investor protections a "major obstacle to the urgent actions needed to address the planetary environmental and human rights crises" and urged countries to "unilaterally or jointly terminate existing" trade agreements with them.

President Biden promised when he ran in 2020 to exclude investor protections from new trade agreements. His Administration hasn't negotiated any owing to hostility from unions and leftwing groups like Public Citizen and Rethink Trade. Unsatisfied, progressives are urging him to remove investor protections from existing agreements.

"These provisions tilt the playing field even further in favor of large corporations, incentivizing offshoring and undermining the sovereignty of the United States and other governments," Sen. Elizabeth Warren and 32 other Democrats wrote to Trade Rep Katherine Tai last spring. ISDS "continues to harm human rights and hinder efforts to address climate change."

Their exhortations come as leftwing governments in Latin America seek to seize and maroon foreign investments, especially in energy and mining. Mexico's new president Claudia Sheinbaum wants to ban hydraulic fracturing and new open-pit mining. American investors are also tangling with the Mexican state-owned oil company Pemex.

In March 2023, Mexican soldiers took over a cargo terminal owned by Alabama-based construction company [Vulcan Materials](#) near Playa del Carmen. Former Mexican President Andrés Manuel López Obrador later banned extraction of construction material in the area. [Vulcan](#) says, with cause, that Mexico is expropriating its property.

Enter Biden trade officials, who are negotiating with the Mexican and Colombian governments to add “interpretative” text to U.S. trade agreements that would make it harder for Vulcan and other U.S. businesses to prevail in international tribunals. They plan to present their revisions to Congress as a *fait accompli*.

If Biden officials amend trade agreements without a vote of Congress, Mr. Trump could claim the changes aren’t binding. Republicans might also be able to use a Congressional Review Act resolution to overturn the Biden trade coup. Even in his final days, Mr. Biden is letting the left run his economic policy.