

Earthjustice • Evergreen Collaborative
Natural Resources Defense Council • Sierra Club
Trade Justice Education Fund

President Joseph R. Biden
President of the United States of America
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

cc: The Honorable Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, DC 20508

October 4, 2023

Dear President Biden,

We are encouraged by the increased bipartisan support for and movement towards a U.S. carbon border adjustment mechanism (CBAM) which is urgently needed to prevent emissions leakage and job loss to countries with lower climate and environmental standards. At the same time, we are deeply concerned to see an increasing number of countries threatening to use trade rules to challenge the European Union's CBAM.¹ These trade threats not only stand to weaken an important EU climate policy, but also serve as a warning sign to other countries — including the U.S. — looking to establish similar policies.

Recognizing the progress both the U.S. and EU are making towards designing and implementing much-needed CBAM policies, we call on your administration to work with the European Union towards an agreement not to use trade rules to challenge each other's current or future CBAM policies.

With less than a decade to turn the corner on the climate crisis, we cannot afford for governments to act timidly for fear of costly trade challenges or for government policies or policy-making to be slowed or weakened due to threats or filing of trade cases. Given the complexity associated with designing a CBAM and the lack of trade jurisprudence associated with the policy, it is in the strong interest of the U.S. to work with like-minded countries on diplomatic approaches to avoid trade challenges to any future U.S. border carbon adjustment. The European Union, as a trusted

¹ Nandi, Shreya. *India Plans to Challenge European Union's carbon border tax at WTO*. (June 2023.) Available at: https://www.business-standard.com/economy/news/india-south-africa-other-developing-nations-to-challenge-cbam-at-wto-123061600716_1.html

ally that shares many U.S. climate goals, is an ideal partner with which to establish such an agreement. Moreover, such an approach is in line with the U.S. and India's recent commitment to terminate outstanding trade cases, including a U.S. case challenging India's national solar program and a case from the Indian government challenging the solar programs of eight U.S. states.²

A commitment between the U.S. and the EU would be an important way for the administration to show real progress at the intersection of trade and climate. In addition, such a commitment could help set the stage towards other countries also agreeing to not challenge each others' climate policies. Ultimately, we believe the U.S. should take leadership in pursuing a broad Climate Peace Clause — a self-enforcing commitment between nations to refrain from using dispute settlement mechanisms in international trade agreements to challenge any climate mitigation and clean energy transition measures. Agreement between the U.S. and EU not to issue trade challenges against each others' CBAM measures offers an immediate first step towards ensuring these critical policies are able to advance unimpeded by outdated trade rules.

Thank you for your attention to this issue. We look forward to working with you to build a model of trade that supports climate action.

Sincerely,

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² United States Trade Representative. *United States Announces Major Resolution on Key Trade Issues with India*. (June 2023.) Available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-announces-major-resolution-key-trade-issues-india>