



## **Comments on the Digital and Emerging Technologies-Related Issues in an Indo-Pacific Economic Framework**

*Docket Number: ITA-2022-0001-0001*

As a nonprofit organization that sponsors public education programs designed to expand awareness about the worker rights, environmental and climate, and public health implications of U.S. trade policy, the Trade Justice Education Fund appreciates the opportunity to comment on the digital and emerging technology-related issues of the proposed Indo-Pacific Economic Framework (IPEF).

Our strong interest and desire is that such provisions uplift workers, ensure racial justice, protect consumers and enable fair competition. Our comments today echo previous communications we have sent to the President, Secretary of Commerce, U.S. Trade Representative and others on behalf of more than fifty labor, civil rights, consumer and faith organizations.

Fundamentally, IPEF must not advance a digital framework that helps massive global retail, advertising, transportation, hospitality and other businesses evade regulation and oversight. Legitimate “digital trade” proposals should focus on remedying actual problems related to the online sale of imported goods, such as tariff evasion and product safety. IPEF’s digital provisions should not promote binding international rules that limit governments from regulating online platforms in the interests of workers, consumers or smaller business competitors.

Misbranding constraints on government regulatory authority as “e-commerce” or “digital trade” policy would only help corporations evade scrutiny and serve to 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 the Biden administration, many in Congress from both parties and other governments worldwide.

Large digital firms must not be allowed to hijack common trade-pact concepts, such as “non-discrimination,” to secure their monopolistic dominance by labelling as illegal trade barriers countries’ labor, competition and other domestic policies of general application simply because such policies may have great 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, IPEF must not establish rules that restrict or dissuade countries from regulating digital entities or that impose or lock-in retrograde domestic digital governance policies.

Harmful digital proposals include those that serve to:

- ***Hurt working people by prioritizing corporate interests ahead of labor rights and the protection of gig workers.*** IPEF must not contain Trojan Horse tools for attacking, weakening, preventing or dismantling labor or other public interest policies. For example, any agreement must not 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. Instead, IPEF 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. IPEF cannot repurpose “trade secrets” protection rules or establish other 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. IPEF 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 IPEF to prevent signatory countries from determining the best ways to protect the public interest online would be 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. IPEF must not include terms that forbid countries from establishing or maintaining politics 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 corporations.

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 any of IPEF's pillars.

Furthermore, IPEF's negotiating processes must be transparent and participatory. Civil society organizations, Congress and the public must be invited to help formulate U.S. positions and comment on draft U.S. proposals not just via this public comment period, but throughout the entire course of the negotiations. This includes publishing draft versions of U.S. IPEF proposals and soliciting public comment upon them prior to tabling the; announcing the dates and locations of IPEF negotiating rounds as far in advance as possible and including public stakeholder engagement opportunities, including interactions with negotiators from each nation; and quickly publishing all U.S. proposals, other countries' proposals, related materials and any consolidated texts after each negotiating round so that civil society and the public can review and comment on the latest proposals while there is still opportunity to make real changes.

Civil society, Congress and the public must also be invited to comment on proposals on which countries the United States will enter into IPEF negotiations with. Decisions as to which countries are and are not appropriate IPEF negotiating partners should be based on things like each country's status in the State Department's Country Reports on Human Rights Practices, Trafficking in Persons Report, Advancing Freedom and Democracy Report, and Elie Wiesel Genocide and Atrocities Prevent Report, as well as countries' participation in the Paris Agreement, International Labor Organization Conventions and other international agreements. IPEF should only be open to democracies that are committed to upholding certain universal human rights, labor rights and environmental rights. Establishing clear

readiness criteria for IPEF membership will be particularly important insofar as IPEF is pursued as a docking agreement that additional countries can join over time.

We appreciate the Biden 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.