

Comments on the Proposed Trade Pillar of an Indo-Pacific Economic Framework

Docket Number: USTR-2022-0002

Thank you for the opportunity to comment on the proposed “Fair and Resilient Trade Pillar” of the proposed Indo-Pacific Economic Framework (IPEF). Citizens Trade Campaign (CTC) is a cross-sector coalition of labor, environmental, family farm, faith and consumer organizations. Many of the more than 12 million Americans represented by our diverse member organizations would welcome a new model of trade policy that creates good jobs, raises wages, reduces inequality, prevents climate catastrophe and otherwise ensures strong, healthy and resilient communities across the United States and beyond. Decisions pertaining to the negotiating objectives, negotiating process and potential partner nations for any IPEF agreement are critical to developing such a people-centered trade model.

Labor-Related Matters

Working Americans are rightly wary of past trade agreements that have served to offshore jobs, drive down wages and exacerbate inequality. While some improvements to the labor rights provisions of trade agreements were made in the U.S.-Mexico-Canada Agreement renegotiation, the labor standards in IPEF must go beyond the USMCA in both the enumeration of rights guaranteed to working people and the mechanisms used to ensure those rights are implemented and enforced in an ongoing manner.

To begin, any IPEF agreement must include strong and binding standards that are explicitly based on the International Labor Organization (ILO) Conventions and their accompany jurisprudence. Labor provisions must likewise remove barriers that could prevent labor enforcement action from being taken, such as those requiring that labor violations must be proven to be “in a manner affecting trade or investment” or that they must be “sustained” or “reoccurring” before enforcement actions can be taken.

Measures must also be added to safeguard against any backsliding of existing labor standards, wages and working conditions in any party nation by barring movement of jobs to evade labor laws and by establishing formal protections for joint labor activities across borders, including collective bargaining. Resources for ongoing monitoring and robust mechanisms for swift and

certain enforcement must also be included, so as to assure the protection of working people at home and abroad is ongoing.

Crucially, the United States must assure that all such labor rules are being implemented and respected on the ground in partner nations before allowing any commercial aspects of an IPEF agreement to take effect. A number of countries that have been suggested as potential IPEF partners are known to prohibit the formation of independent labor unions, to permit many of the worst forms of child labor and/or to fail to address human trafficking and forced labor. Such nations are inappropriate partners for a new trade agreement or “trade framework.” Insofar as IPEF is intended as a “docking agreement,” policies to ensure that only countries that respect labor rights are considered for inclusion.

To ensure a fair playing field for job creation, strong, enforceable disciplines against currency manipulation and currency misalignment are also needed, and must include mechanisms for the automatic triggering of corrective action against currency manipulators, rather than just reports or dialogue.

Environment and Climate-Related Matters

Rising to the challenge presented by looming climate catastrophe necessitates an alignment of trade and investment rules with the imperative for governments to adopt and maintain robust policies to dramatically reduce greenhouse gas emissions and scale up renewable energy. To that end, IPEF must include a “climate peace clause” — a legally binding commitment from IPEF countries that they will not use or permit the use of trade and investment rules, whether in IPEF or any other international agreement, to challenge policies that a government deems necessary to implement their commitments under the Paris Agreement.

To both meet international climate goals and benefit the environment more broadly, any IPEF agreement must also require countries to enforce Multilateral Environmental Agreements ratified by the U.S. or most countries in the world, including the Paris Agreement.

It should further establish limits on toxic pollution that are on par with U.S. standards; prohibit countries from weakening environmental standards to gain a trade advantage or for other reasons; permanently end Investor-State Dispute Settlement (ISDS), “Good Regulatory Practices” (GRP) chapters and similar polluter-friendly, deregulatory measures; and include legally binding measures to protect forests, wildlife, and marine habitats.

Beyond these commonsense steps, a climate-friendly IPEF agreement must also require countries to end the cross-border dumping of climate pollution.

Like with labor standards, meeting environmental standards must be a prerequisite to countries enjoying the commercial benefits from an IPEF pact, and environmental provisions must also include strong, built-in mechanisms to guarantee their swift and certain enforcement moving forward. Enforcement mechanisms must enable members of the public to initiate claims of environmental violations, and these claims must trigger an independent

investigation and, where appropriate, adjudication with binding remedies, regardless of whoever occupies the White House at any given moment.

Digital Economy-Related Matters

At a moment in history when policymakers are finally beginning to grapple with “Big Tech’s” outsized power over the global economy, access to information, personal privacy, business competition and other aspects of society, IPEF must in no way place constraints on the ability of the U.S. Congress, regulatory agencies and state and local governments domestically, and other governments internationally, to enact new digital governance measures.

Specifically, IPEF must not include any provisions that: prioritize corporate interests ahead of labor rights, anti-offshoring measures and the protection of gig economy workers; help corporations hide the discriminatory effects of source code and algorithms through secrecy provisions; undermine consumer privacy and data security by prohibiting limits on data flows or rules on the location of computing facilities; shield firms from corporate accountability via overly broad content liability waivers; or promote corporate consolidation by banning limits on the size and services offered by tech conglomerates or by limiting other anti-trust measures in any form.

Legitimate international trade concerns associated with e-commerce and the broader digital economy that IPEF negotiators should consider include: ensuring that goods purchased online across borders meet labor, environmental and consumer safety standards, including by lowering de minimis levels so that online orders can no longer evade U.S. inspection regimes; preventing corporate misclassification so that so-called “digital platforms” involved in transportation, hospitality, healthcare, retail, education and other industries cannot evade labor, consumer and other regulations imposed on “brick-and-mortar” businesses; combating the growing high-tech discrimination in Artificial Intelligence by expanding access to source codes and algorithms by Congressional committees, regulatory agencies, academic scholars, labor unions and nongovernmental organizations; and introducing corporate liability for personal data collected via computers, cell phones and the “Internet of Things” without consumers’ explicit, informed permission, shared or sold without their permission and/or stolen.

While different governments, individual policymakers and organizations may reasonably disagree on what the best digital governance rules should entail, everyone should oppose locking in deregulatory rules in trade agreements.

Agriculture-Related Matters

Any IPEF agreement must protect U.S. producers and consumers alike with strong food safety and consumer right-to-know requirements. IPEF must require imported food to meet U.S. standards; should enhance border inspection requirements; and must also require country-of-origin labeling for meat and other food produces so that consumers can make informed choices. At the same time, the U.S. should stop using trade policy to undermine the use of the

precautionary principle or other efforts to raise standards in other countries. The food safety, inspection, labelling, agricultural biotechnology and other policies of any country that treat domestic and imported goods the same must not be subject to challenge within IPEF or otherwise undermined by the IPEF negotiating process.

To advance fair and sustainable agricultural production, IPEF trade rules must support the growing movement for fair prices and supply management of agricultural production that helps to reduce overproduction and enhance farmers' resiliency. This will require the ability to use trade barriers to protect sensitive local markets, as well as new rules on farm subsidies designed to promote a transition to climate-resilient production that strengthens rural communities and food security in the U.S. and around the world.

Transparency and Good Regulatory Practice Issues

Overlooked by their newness and overshadowed by rightful concern regarding other harmful trade agreement provisions, Good Regulatory Practice chapters in recent trade proposals have not yet gained the notoriety they deserve; but, as mentioned above in our comments on the environment and climate, such provisions cannot be allowed to continue moving forward in IPEF.

Per language in the most recent U.S. free trade agreement, Good Regulatory Practice chapters cover all government practices "relating to the planning, design, issuance, implementation, and review of the Parties' respective regulation." There are requirements on everything from the creation of "Expert Advisory Groups" and "Regulatory Impact Assessments" to the use of "sound statistical methodologies" and "Retrospective Review." While clothed in faux concern about transparency and stakeholder participation, these measures are a calculated means of awarding corporations specific roles in virtually every step of the regulatory policymaking process and of granting corporations new avenues for attacking regulations they do not like — not only after regulations take effect, but before they are even crafted. Such provisions serve to slow, weaken and/or prevent public interest regulations in the areas of climate, food safety, financial regulations, consumer privacy, labor rights and more, and they must not be included in IPEF or any other pact.

Competition-Related Matters

As noted in comments above pertaining to the digital economy, IPEF must not include measures that restrict nations' ability to adopt policies and take other actions designed to combat monopoly power and promote competition among online service providers and others in the digital economy. Likewise, IPEF must not restrict anti-trust and pro-competition efforts in any other private sector of the economy, such as those in finance.

While not typically considered in the realm of "competition" when it comes to trade policy, many of the extreme intellectual property protections of past trade agreements also promote monopoly power and limit competition, particularly, but not only, in the pharmaceutical industry. The COVID-19 pandemic is only the most recent illustration of the grave danger posed by allowing trade pacts to continue prioritizing the protection of monopolies over broader

public concerns. Insofar as IPEF includes any intellectual property provisions, it must include safeguards to trigger automatic waivers in the event of public health, climate and other emergencies.

The IPEF Negotiating Process

To achieve the necessary overhaul of existing U.S. trade policy, IPEF's negotiating processes must be transparent and participatory — the complete opposite of the opaque and corporate-dominated processes that produced trade agreements under previous administrations.

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 them; 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 Prevention Report, as well as countries' participation in the Paris Agreement, ILO 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.

These procedural measures are necessary not only to ensure IPEF outcomes that align with the Biden administration's goals on worker rights, climate change, racial justice, consumer protection and other areas, but to rebuild public faith in trade policymaking generally after decades of backroom deal making.

International trade is a crucial part of our economy and connects us with the rest of the world. It's worth devoting the time and care needed to ensure that any IPEF rules governing international trade work for everyone, and not just corporate special interests.

We appreciate your consideration of our coalition's viewpoints. Please address any questions to Citizen Trade Campaign's Executive Director, Arthur Stamoulis, at (202) 494-8826 or info@citizenstrade.org.