

Congress of the United States

Washington, DC 20515

August 1, 2022

Ambassador Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, DC 20508

The Honorable Gina Raimondo
Secretary of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

The Honorable Antony Blinken
Secretary of State
2201 C Street NW
Washington, DC, 20520

Mr. Jake Sullivan
National Security Advisor
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Ambassador Tai, Secretary Raimondo, Secretary Blinken, and Mr. Sullivan:

We write in response to the administration's May 23, 2022 announcement of plans to formally commence negotiations with countries on an Indo-Pacific Economic Framework (IPEF) and the administration's June 8, 2022 announcement of the Americas Partnership for Economic Prosperity (APEP) with Latin American and Caribbean nations on a similar agenda.¹ These announcements raise significant concerns. We support the Biden Administration's historic commitment to worker-centered trade policy, breaking from a history of bad trade deals that offshored American jobs and harmed American workers, businesses, consumers, and the environment.² However, the administration threatens to undermine its goal by seeking to negotiate trade agreements without undertaking robust consultations with Congress and outside stakeholders and without respecting Congress' constitutional authority to set the terms of foreign commerce.

The administration's many public declarations about the proposed IPEF process seem to indicate that it plans to negotiate a binding agreement while circumventing congressional input, authority, and approval. Article 1, Section 8 of the U.S. Constitution gives Congress the constitutional authority to regulate commerce with foreign nations. Previous administrations have attempted to

¹ The White House, "On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework," press briefing, May 23, 2022, <https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework/>; The White House, "FACT SHEET: President Biden Announces the Americas Partnership for Economic Prosperity," press release, June 8, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity/>.

² Office of the United States Trade Representative, "2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program," March 2021, <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

skirt Congress' authority and avoid the public scrutiny with respect to various bilateral, issue-specific "executive agreements." The IPEF and APEP mark a significant and concerning expansion of this approach to trade negotiations.

Robust Stakeholder and Congressional Consultation Is Necessary

Robust congressional and stakeholder consultation is necessary for crafting durable trade policy. And yet IPEF and APEP were both announced abruptly without robust consultation with Congress or stakeholders or a mandate from Congress. The administration subsequently engaged in some consultation with Congress and solicited public comments, but then announced the intention to include nations with autocratic governments and terrible human and labor rights practices, despite strong objections to their inclusion. Countries such as Vietnam, Malaysia, India, Indonesia, Brunei, Singapore, the Philippines, and Thailand are not suited at this time to meet the objectives or standards that must be at the heart of any pact that will qualify as promoting the worker-centered trade agenda that we join President Biden in supporting.

We urge you to consider the lessons of past trade negotiations that too often were conducted in secret, with members of Congress, workers and their unions, environmentalists, and consumer advocates largely unable to review text and ensure their interests were addressed. The failed Trans-Pacific Partnership (TPP) highlights the consequences of negotiating trade agreements in secret without sufficient input from stakeholders. Many Americans were not even aware of the TPP's existence, and the majority of those who were aware opposed it.³ The TPP put the profits of multinational corporations before workers, including through the Investor-State Dispute Settlement process that empowered corporations to challenge U.S. public health, environmental, and worker safety standards and extended monopoly powers for pharmaceutical corporations to raise medicine prices. Meanwhile, TPP members like Vietnam were not required to ban forced or child labor or to adequately protect workers' rights to unionize.⁴

This cannot be the case with IPEF, APEP, or any other negotiations: the proposed participants must be reviewed and reconsidered in partnership with Congress and the American people.⁵ And, if negotiations proceed, it must be through a process that provides outside stakeholders, Members of Congress, and their staff the opportunity to weigh in at the outset on proposals for specific negotiation objectives and, as negotiations continue, on draft text. Finally, if negotiations result in binding commitments concerning foreign commerce, Congress must exercise its Article 1, Section 8 authority to approve – or disapprove – the agreement.

³ Politico, "POLITICO-Harvard poll: Americans say 'TPP who?'" Doug Palmer, September 23, 2016, <https://www.politico.com/story/2016/09/americans-say-tpp-who-228598>.

⁴ BuzzFeed News, "Senators Call For Global Super Court To Be Renegotiated," Chris Hamby, September 29, 2016, <https://www.buzzfeednews.com/article/chrishamby/senators-call-for-global-super-court-to-be-removed-from-tpp>.

⁵ Public Citizen, "100+ U.S. Civil Society Organizations Call for Transparent and Participatory Negotiating Process for the Indo-Pacific Economic Framework and Future Trade Negotiations," July 22, 2022, <https://www.citizen.org/article/100-u-s-civil-society-organizations-call-for-a-transparent-and-participatory-negotiating-process-for-the-indo-pacific-economic-framework-ipef-and-future-trade-negotiations/>.

We note that USTR adheres to 2015 guidelines on congressional and public consultation and engagement.⁶ These guidelines were the foundation of the inadequate TPP consultation process and should be updated to reflect USTR’s consultative, worker-centered approach and to clarify that they apply to all negotiations with binding commitments. Worse, we are not aware of equivalent consultation guidelines for Commerce or any other agencies that may lead negotiations on IPEF, APEP, or other agreements relating to foreign commerce. The Administration must not circumvent robust consultations via the involvement of agencies other than USTR.

Workers and the Environment Must Not Be Sidelined

Congressional and stakeholder consultation on trade policy is critical because it drives outcomes, including whether negotiations center on strong, enforceable labor, environmental, and climate standards. But in addition to proposing participation of countries with records of worker abuses, the administration has yet to make concrete commitments to condition participation in any pillar of IPEF or APEP on countries’ agreement to adopt in their domestic laws and enforce the obligations of the International Labor Organization’s (ILO) core labor standards. As the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) noted in comments to the Commerce Department on IPEF,⁷ labor-related requirements must “build on the strong labor standards and enforcement mechanisms contained in the United States-Mexico-Canada Agreement (USMCA),” and, at the very least, should include: compliance with the ILO’s eight Core Conventions to protect basic labor rights; a ban on the importation of goods made with forced or child labor; an affirmative obligation to investigate and prosecute cases of threats or violence against workers and unions for exercising their labor rights; and a dispute resolution and enforcement mechanism modeled on the USMCA’s rapid response mechanism.⁸ The LAC also recommends that partner countries be required to demonstrate full compliance with all major labor commitments in the agreement before they are able to reap the benefits of the framework.

We note that USTR intends to include “high standard commitments to implement and enforce internationally-recognized worker rights” in the “fair and resilient trade” pillar of the framework, which USTR will negotiate, and will even propose “country-specific provisions to help countries fulfill their labor commitments” when needed.⁹ But for the other pillars in IPEF and APEP that the Commerce Department and other agencies will lead, we don’t have a similar commitment on labor standards.

⁶ Office of the United States Trade Representative, “Guidelines for Consultation and Engagement,” 2015, <https://ustr.gov/sites/default/files/USTR%20Guidelines%20for%20Consultation%20and%20Engagement.pdf>. USTR reiterated its adherence to these guidelines in 2021. Office of the United States Trade Representative, “USTR Releases Agency Transparency Principles,” May 7, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/ustr-releases-agency-transparency-principles>.

⁷ Regulations.gov, “Comment from Labor Advisory Committee,” April 11, 2022, <https://www.regulations.gov/comment/USTR-2022-0002-1187>.

⁸ *Id.*

⁹ Letter from Amb. Tai to Senator Warren, June 22, 2022, [on file with the office of Senator Elizabeth Warren]; Office of the U.S. Trade Representative, Federal Register Notice, “Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework,” March 10, 2022, <https://www.federalregister.gov/documents/2022/03/10/2022-05044/request-for-comments-on-the-proposed-fair-and-resilient-trade-pillar-of-an-indo-pacific-economic>.

Workers are at the center of the issues outside of the trade pillar that Commerce and other agencies will lead, including supply chains and infrastructure. Ongoing bottlenecks in offshore supply chains have made clear that American workers, businesses, and consumers need more resilient supply chains. However, some corporations would like nothing better than to weaponize these negotiations—as they have with past trade agreements¹⁰—to solidify offshore supply chains reliant on countries known to use forced, trafficked, and child labor, rather than investing in truly sustainable U.S. manufacturing. Similarly, workers cannot be left out of the “clean energy, decarbonization, and infrastructure” pillar of the proposed framework. Building this infrastructure will involve a huge amount of manufactured goods, which could be made in America. But the Administration’s May 23 announcement furnishes no additional information as to the labor standards that will be in place for the provenance of supplies or construction labor for these foreign infrastructure projects. Without strong labor commitments, this pillar could easily result in U.S. government resources being spent to enrich companies operating in countries with atrocious records of abusing workers and polluting the environment. This is why the ILO has developed guidelines for a just transition towards environmentally sustainable economies and societies for all.¹¹ We agree with the LAC: “The IPEF must not simply be a framework to replace existing supply chains in China with sourcing relationships in the IPEF countries.”¹² At a minimum, that means including strong labor and environmental standards as conditions of infrastructure investments, supply chain agreements, climate-related projects, and other aspects of IPEF’s Commerce-led pillars. It also means that, where U.S. funds are made available to support the IPEF’s goals, that the materials purchased with those funds be produced within the IPEF region.

Our concerns with IPEF apply to APEP as well. Even less consultation was conducted prior to the abrupt June announcement of APEP than with respect to IPEF, and we know even less about the potential partners or scope of the agreement.

If after the necessary consultations with Congress and stakeholders, proceeding with negotiations on IPEF, APEP, or other prospective agreements is merited, then we urge you only to pursue pacts that invest in American workers and domestic manufacturers. That means not rewarding corporations that offshore jobs to nations that arrest labor leaders, use forced and child labor, or deny workers the right to organize. And it means not giving a free pass to countries that allow violence against workers and assassinations of union leaders to occur with impunity.

IPEF and APEP must not undercut the Administration’s new and important commitment to worker-centered trade policy, nor should they undermine the enormous progress that workers, environmentalists, and Congressional Democrats made in securing key labor and environmental provisions in the USMCA. If negotiations on IPEF and APEP proceed, we urge you to ensure that any agreement benefits American workers, not corporate offshoring, and to provide Congress and the public with clearer insight into your approach to the negotiation process,

¹⁰ Public Citizen, “The TPP: More Job Offshoring and Lower Wages,” <https://www.citizen.org/wp-content/uploads/tpp-wages-jobs.pdf>.

¹¹ International Labor Organization, “Guidelines for a just transition towards environmentally sustainable economies and societies for all,” 2015, https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf.

¹² Regulations.gov, “Comment from Labor Advisory Committee,” April 11, 2022, <https://www.regulations.gov/comment/USTR-2022-0002-1187>.

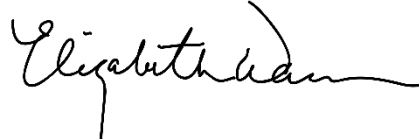
including through robust consultation throughout the process and congressional approval of any binding commitments.

Thank you for your attention to this matter. We look forward to receiving your response.

Sincerely,



ROSA L. DeLAURO
Member of Congress



ELIZABETH WARREN
U.S. Senator



BERNARD SANDERS
U.S. Senator



PETER DEFAZIO
Member of Congress



ROBERT C. SCOTT
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