



**Thomas M. Conway**  
International President

April 11, 2022

**Via Regulations.gov**

William Shpiece  
Chair of the Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

The Honorable Diane Farrell  
Deputy Under Secretary for International Trade  
Department of Commerce  
1401 Constitution Ave. NW  
Washington, DC 20230

**RE: Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework (USTR-2022-0002) and Request for Comments on the Indo-Pacific Economic Framework (ITA-2022-0001)**

Dear Chairman Shpiece and Deputy Under Secretary Farrell:

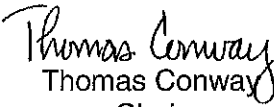
On behalf of the Labor Advisory Committee on Trade Policy and Negotiations (LAC), I am sharing a combined filing responding to the separate requests for comments posted by each of your agencies. The LAC believes that there is tremendous synergy and connectivity between each of the various pillars identified as part of the Indo-Pacific Economic Framework and, indeed, believes that provisions such as those related to workers' rights and corporate accountability must cross-cut all of the IPEF's components.

In October President Biden identified that the U.S. would pursue an Indo-Pacific Strategy with the Indo-Pacific Economic Framework (IPEF) as one of its key components. In subsequent months administration officials have shared additional details on the initiative and discussions have occurred to ascertain specific components for each of the identified "pillars". We appreciate that the administration has actively engaged stakeholders as it has evaluated what the architecture and specific provisions of the IPEF should be. The attached comments by the LAC are intended to help deepen that engagement and facilitate additional discussions in anticipation of more detail being provided on the administration's efforts.

When the administration began stakeholder and public discussions on the IPEF it made clear that market access provisions would not be part of any final agreement with signatory countries. The attached comments, therefore, do not address that critical issue. As the sole voice for workers within the statutory advisory system, we believe our comments and the ideas and approaches we offer, are critical to ensuring that the IPEF is truly a “worker-centered” trade approach.

We look forward to working with the administration as work on the IPEF continues.

Sincerely,

Handwritten signature of Thomas Conway in cursive script.

Thomas Conway

Chair

Labor Advisory Committee for Trade  
Negotiations and Trade Policy

**Indo-Pacific Economic Framework (IPEF)**  
**Comments of the Labor Advisory Committee for**  
**Trade Negotiations and Trade Policy (LAC)**  
**April 11, 2022**

On October 27, 2021, President Biden announced that the United States would explore the development of an Indo-Pacific Economic Framework as part of the broader Indo-Pacific Strategy to deepen economic relations in the region and coordinate approaches to addressing global economic and political challenges.

Given China's increasingly aggressive economic and security policies, we fully appreciate the need for the United States to be engaged in the Indo-Pacific region. The question is not whether the U.S. should continue to engage, but rather what types of new engagement best serve our interests.

For far too long, the jobs and economic prospects of American workers have been pawns in the pursuit of foreign policy goals. In the past, organized labor was told that trade agreements like the proposed Trans-Pacific Partnership (TPP) were necessary to ensure the U.S. "writes the rules" of the global economy, rather than as a tool for advancing the rights, interests and futures of working people. The rules in the TPP did not meet that test.

Some have argued that U.S. should demonstrate its commitment to the region by joining an existing trade agreement like the Comprehensive and Progressive Trans Pacific Partnership (CPTPP). We firmly reject this approach. The CPTPP, as currently structured, largely tracks the TPP's inadequate provisions which would simply promote further outsourcing and offshoring of jobs, further undermining our domestic manufacturing and production capacity in strategic sectors.

The initial design of the IPEF as articulated by the Administration was a set of modules or pillars that would not include market access provisions. We agreed with that approach as tariff cuts and market access do not need to be included for the IPEF to be meaningful. We already have FTAs with a number of countries in the region and tariffs are already zero or very low under existing WTO commitments. Each year hundreds of billions of dollars in trade occur among IPEF nations with the U.S. accruing higher and higher trade deficits. Creating the right structure and rules for engagement and ensuring that they are properly implemented, monitored, and enforced is the right foundation upon which to advance our interests in the region.

To advance the Biden Administration's objective of a "worker-centered" trade policy, the IPEF must build on the strong labor standards and enforcement mechanisms contained in the United States-Mexico-Canada Agreement (USMCA). Given the dismal labor rights records of several potential IPEF participants, it is critical that strong and enforceable labor and environmental standards, supported by corporate accountability measures, apply across the agreement's proposed pillars to ensure that countries cannot obtain the benefits of the agreement without respecting fundamental workers' rights.

More broadly, as the architecture of the IPEF is designed, serious attention must be given to which countries are included as negotiating partners. We firmly believe the IPEF should be a high-standard agreement that matches this Administration's commitment to building more secure and resilient supply chains that will strengthen our domestic manufacturing capacity and advance

respect for fundamental workers' rights. Accordingly, careful examination of a country's commitment to respect fundamental workers' rights must be a key determinant of their participation. More broadly, respect for broader human rights is an important issue that should guide the evaluation not only of a country's readiness to participate, but also the likelihood that it will, in fact, meet the commitments and that their citizens will benefit from participation in the initiative.

In short, not every country identified in the Administration's broad Indo-Pacific Strategy of the United States may be an appropriate participant in the IPEF. While the selection of countries for the IPEF was not a subject identified in the Federal Register Notices issued by the Department of Commerce and the Office of the United States Trade Representative, the LAC looks forward to engaging with the Administration as evaluation of the potential participating countries takes place.

## I. Workers' Rights and Corporate Accountability

Organized labor's first concern is how the IPEF can advance respect for workers' fundamental labor rights in each participating country and across the region. Respect for workers' rights is critical to ensuring that trade and investment flows generate broad-based economic growth, rather than driving a race to the bottom, and that each of the pillars advances the interests of workers here in the U.S. Workers' rights, properly advanced, will benefit workers in the U.S. and in all participating countries.

At the outset, we note the severe labor and human rights challenges present in several potential IPEF participants that have been identified:

- Human trafficking and forced labor are significant problems across the region, especially among migrant workers in Malaysia, Thailand, and other countries.<sup>1</sup>
- In its latest report on human trafficking and forced labor, the U.S. State Department downgraded Malaysia to "Tier 3," the lowest ranking reserved for countries that are failing to comply with the minimum standards for eliminating trafficking and forced labor and are **not making significant efforts to comply**.<sup>2</sup>
- In October 2019, the Trump Administration revoked one-third of Thailand's GSP benefits due to its failure to take steps to provide internationally recognized worker rights, particularly with regard to forced labor and human trafficking in the seafood sector.<sup>3</sup> Thailand has failed to make significant progress and its benefits remain suspended.
- The Thai government continues a campaign of judicial persecution against Sawit Kaewvarn, president of the State Railway Union of Thailand (SRUT). One of Thailand's most prominent union leaders, Mr. Kaewvarn is facing three years in prison for his role in organizing a railway safety campaign after a spate of railway accidents.<sup>4</sup> His case has been covered extensively in the Thai and international press and has had a chilling effect on unions and the right to organize in that country.

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<sup>1</sup> See "[Global Estimates of Modern Slavery: Forced labour and forced marriage](#)," International Labour Office (ILO), Geneva, 2017. d

<sup>2</sup> [2021 Trafficking in Persons Report: Malaysia](#), U.S. Department of State, Office to Monitor and Combat Trafficking in Persons.

<sup>3</sup> "[USTR Announces GSP Enforcement Actions and Successes for Seven Countries](#)," United States Trade Representative, Oct. 25, 2019.

<sup>4</sup> "[Top Thai union leader 'targeted' with jail for rail safety campaign](#)," The Guardian, Sept. 21, 2021.



- In the Philippines, President Rodrigo Duterte has overseen a regime of systemic human rights violations against trade unionists, journalists, and other human rights defenders. According to the International Trade Union Confederation (ITUC), at least 43 extrajudicial killings of Filipino trade unionists have been committed under Duterte’s administration.<sup>5</sup> No one has been convicted of any of these crimes.
- In December 2021, the AFL-CIO and a coalition of trade unions and human rights organizations filed a petition with USTR to remove the Philippines’ trade benefits under the Generalized System of Preferences (GSP) due to government’s failure to address widespread violence against trade unionists and labor laws that fail to guarantee workers’ right to organize and bargain collectively.<sup>6</sup>
- In Indonesia, a recent omnibus law passed with little public consultation undermines workers’ rights, environmental protections, and transparency in government.<sup>7</sup>
- Child labor, including its worst forms, remains prevalent in India and Indonesia, including in traded sectors like palm oil, rubber, and apparel.<sup>8</sup>
- Vietnam is an authoritarian one-party state where there are no independent trade unions.<sup>9</sup>
- In Sept. 2020 Yang Kyeung-soo, the President of the Korean Confederation of Trade Unions (KCTU), was arrested and detained for 84 days, allegedly for violating public health protocols by holding an outdoor rally in support of a general strike. The International Commission of Jurists found that the charges were politically motivated and had no sound legal basis.<sup>10</sup> International bodies have repeatedly found that the Korean government has interfered with independent trade union activity and does not respect workers’ fundamental right of freedom of association.<sup>11</sup>

Given the scale and scope of worker rights abuses the IPEF must include strong and enforceable labor standards and corporate accountability measurers integrated throughout each of the framework’s modules or pillars. These should build on the progress made under the United States-Mexico-Canada Agreement (USMCA) and include:

- **Basic Labor Rights to Ensure a Level Playing Field:** Parties must ensure, in law and in practice, that all workers in their territory, regardless of the workers’ citizenship, immigration status or national origin, enjoy the rights and freedoms guaranteed in the eight ILO Core Conventions (C87, C98, C29, C105, C138, C182, C100 and C111);
- **Front-end compliance:** A requirement that countries address non-compliance with major labor commitments in the IPEF before they are allowed to obtain full benefits under the framework. Past trade agreements have been fundamentally flawed in their structure by conferring economic benefits *before* the other signatory countries had adopted and enforced the laws and regulations that ensure that workers’ rights regimes are in place.

<sup>5</sup> See “[Stand for Filipino workers’ rights on 10 December](#),” International Trade Union Confederation (ITUC), Jan. 12, 2021.

<sup>6</sup> See “[Labor Groups Petition US Gov’t to Withdraw Trade Preference from Philippines for Labor Rights Violations](#),” Press Release, GLJ-ILRF, Dec. 15, 2021.

<sup>7</sup> See “[Indonesia: New Law Hurts Workers, Indigenous Groups](#),” Human Rights Watch, Oct. 15, 2020.

<sup>8</sup> See “[2020 List of Goods Produced by Child Labor or Forced Labor](#),” Bureau of International Labor Affairs - U.S. Department of Labor.

<sup>9</sup> See “[2020 Country Reports on Human Rights Practices: Vietnam](#),” U.S. Department of State.

<sup>10</sup> See “[South Korea: trade union leader Yang Kyeung-soo must be released](#),” International Commission of Jurists (ICJ), Sept. 18, 2021.

<sup>11</sup> See “[Trade justice: Historic opportunity as European Union calls for review of Korea’s neglect](#),” International Trade Union Confederation (ITUC), Jan. 20, 2020.

Indeed, the Government of Mexico has not met the standard for properly implementing its commitments under the USCMA, which is hampering workers' rights improvements on the ground;

- **Facility-specific enforcement mechanism:** An enforcement mechanism (modeled on the USMCA's rapid response labor mechanism) that allows for timely and targeted enforcement actions to be taken against facilities/companies which fail to comply with the agreement's labor standards. The provision of market access is not a prerequisite for adopting such an approach;
- **Threats and Violence Against Workers:** The Parties must explicitly recognize an affirmative obligation to investigate and prosecute cases of threats or violence against workers and their organizations for exercising their fundamental labor rights;
- **Forced and Child Labor Goods:** A clear commitment for all parties to ban the importation of goods produced, in whole or in part, with forced labor or the worst forms of child labor;
- **Eliminate enforcement loopholes:** No requirement that violations of the agreement's labor standards must be "sustained and recurring" or shown to have occurred in a "manner affecting trade" in order to be actionable under the agreement's dispute settlement mechanism.
- **Protect workers' rights in special economic zones:** The IPEF should ensure that commitments on fundamental labor rights and conditions of work apply fully in any special economic or free trade zones in the region.

It is essential that workers' rights commitments, corporate accountability measures and enforcement provisions cut across all of the separate modules or pillars that comprise the IPEF. Countries should not be able to cherry-pick which parts of the IPEF they want to participate in to avoid having to adhere to high standards and advance the interests of working people. We are concerned by early indications that enforceable workers' rights may only be contained within the trade pillar (led by USTR) and not extend to other three pillars led by the Department of Commerce.

In order to be effective, the IPEF's labor commitments must be fully enforceable against member states on par with the agreement's commercial terms. Accordingly, there must be no requirement that parties show that labor violations were "sustained or recurring" or occurred in "in a manner affecting trade" to demonstrate non-compliance with the agreement. Those outdated requirements have greatly compromised our ability to enforce the labor rights contained in many of our existing free trade agreements. A worker-centered trade policy must ensure that violations of labor standards are actionable in practice.

We have a long way to go as many multinational corporations do not honor commitments made by their home country when operating in foreign lands. Nissan's United States operation is a case in point. Nissan's actions underscore the gaping deficiencies in enforcement. Nissan has utilized anti-union legal counsel to undermine the possibility of unionization in their facilities.

As its Canton, Mississippi assembly plant, Nissan has repeatedly been charged and sanctioned for violating the rights of workers. This has included charges by the National Labor Relations Board that Nissan "interfered with, restrained, and coerced" pro-union employees by exercising discriminatory discipline measure sand establishing an illegal prohibition on the distribution of pro-union literature. Nissan was required to post a notice recognizing that such acts are illegal and pledging to respect employees' rights going forward.<sup>12</sup>

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<sup>12</sup> United States Government, National Labor Relations Board, Settlement Agreement in the Matter of Nissan North America, Cases 15-CA-118206 and 15-CA-123247, April 2014. (Accessed 3/24/2022).



Subsequently, Nissan hired counsel to “develop strategies for dealing with union avoidance.”<sup>13</sup> Later, the U.S. National Contact Point (NCP) and the InterAmerican Commission for Human Rights (IACHR) made determinations and expressed concern with Nissan’s employment practices.<sup>14</sup><sup>15</sup> This is far from the end of the story, with repeated anti-union activities and another formal complaint being filed by the NLRB.<sup>16</sup><sup>17</sup>

Nissan is hardly an isolated case as auto manufacturers from the Indo-Pacific region have a long history of opposing unionization in the U.S. The efforts of auto manufacturers are matched by other employers in a variety of sectors and from South Korea and other countries across the region.

Furthermore, the IPEF must also build on recent steps the U.S. has taken to advance corporate accountability for labor rights in global supply chains. Section 307 of the Tariff Act of 1930 prohibits importing any product made, in whole or in part, with forced labor into the U.S. market. In January 2021 President Biden signed the Uyghur Forced Labor Protection Act (UFLPA), which strengthened this ban with regard to goods made in the Xinjiang region of China where the government has subjected the Uyghurs and other ethnic minorities to a program of cultural genocide, including forced labor camps. The U.S. import ban has served as a major catalyst for corporate action to clean-up global supply chains, and the IPEF must encourage our trade partners to adopt similar measures.

The USMCA’s rapid response labor mechanism (RRM) also advances corporate accountability by allowing the U.S. government to block imports or levy fines on goods from Mexican factories that deny workers their right to freedom of association and collective bargaining. To date, the RRM has been used twice to defend workers’ rights in Mexico, leading to union representation elections where entrenched protection unions were voted out and replaced by independent unions. While there is still much work to be done, the RRM has already proven to be an effective tool and the IPEF should contain a similar mechanism to ensure corporations abide by its labor provisions.

The inclusion of corporate accountability measures in the IPEF is essential to advance workers’ rights, and other objectives. There are a number of models for action in this area that should be studied, including the French and German supply chain due diligence laws.

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<sup>13</sup> Quoted in John Logan, “[The new union avoidance internationalism.](#)” *Work Organisation, Labour & Globalisation*, vol. 13, no. 2 (2019): 57-77

<sup>14</sup> [U.S. National Contact Point \(NCP\) for the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development \(OECD\) \(2015\). Final Statement: Specific Instance involving International Union, United Automobile Aerospace and Agricultural Implement Workers of America \(UAW\) and IndustriALL Global Union and Nissan North America, Inc. for conduct in the United States.](#) Washington DC: Office of the National Contact Point.

<sup>15</sup> Vannuchi P (2017 August 1). Statement of Paulo Vannuchi, Commissioner Inter-American Commission on Human Rights (IACHR) Upon the Completion of his Visit to Canton, Mississippi to Promote Respect for and Defense of Human Rights Pursuant to Article 41 of the American Convention on Human Rights.

<sup>16</sup> “[The new union avoidance internationalism.](#)” *Work Organisation, Labour & Globalisation*, vol. 13, no. 2 (2019): 57-77

<sup>17</sup> United States of American, Before the National Labor Relations Board, Region 15. Order Further Consolidating Cases, Fifth Consolidated Complaint and Notice of Hearing, Nissan North American, Inc. and Kelly Services, Inc. and International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW), NLRB, August 30, 2017. This complaint includes charges stemming from illegal management actions occurring between January 2015 and June 2017.

Regardless of where they operate, multinational corporations from the IPEF region should be held to a high standard in order to enjoy the benefits of the framework. And ESG reporting and accountability measures must be strengthened in the U.S.

As part of this effort, the IPEF should also include enhanced requirements for Environmental, Social and Corporate Governance (ESG) reporting. One critical component that should be contained within ESG reporting requirements is information on payments by U.S. employers or subcontractors to a labor organization, an employee or committee of employees, or a labor relations consultant, as defined in Section 203 of the Labor-Management Reporting and Disclosure Act of 1959. These payments are often evidence of anti-union activities, the existence of so-called “protection unions” and utilization of so-called “protection contracts.”

As the IPEF process unfolds, it is critical that the agreement builds on progress made under the USMCA to hold both governments and corporations accountable for labor rights to ensure that trade is based on fair competition, not worker exploitation. LAC members look forward to working with the U.S. government to ensure the IPEF advances workers’ rights and interests in the U.S. and the Indo-Pacific region.

## **II. Digital Commerce and Digital Trade**

The Labor Advisory Committee supports the USTR objective to develop “high-standard, worker-centered” commitments in the IPEF Fair and Resilient Trade pillar for the digital economy.<sup>18</sup> The rapidly evolving digital economy warrants new approaches to address the negative impacts of digitalization of the U.S. and global economy on workers, consumers, and communities. Advancing our interests in the Indo-Pacific requires that digital provisions in an IPEF must be coupled with acceptance of, and adherence to, the other pillars of the agreement. On its own, a digital approach would not sufficiently advance our interests and could very well accelerate offshoring of jobs and outsourcing of production and strengthen the power of Big Technology companies without advancing worker and consumer interests.

Increasingly, the world of work is being remade by digital platforms and transmission mechanisms. While this has enabled many workers to engage in remote work, providing new opportunities and flexibilities, it is also resulting in offshoring around the globe. Health care workers have seen telemedicine result in jobs moving to the Indo-Pacific. Call center workers have similarly seen many of their jobs shift to the region to workers who make a fraction of their wages and experience severe labor rights repression. These and other occupations are increasingly at risk. An IPEF must ensure that digital platforms and transmission mechanisms are subject to rules to ensure that workers’ rights are protected and that appropriate corporate accountability measures apply.

Digitalization and digital trade have provided benefits in communication, commerce, information, and research, but also present new challenges to workers and consumers. The globalized digital economy has facilitated the offshoring and outsourcing of service and public-sector jobs; employers are increasingly directing, surveilling, and disciplining workers with automated systems that can shortchange workers’ earnings, expose workers to unsafe workplace conditions, infringe on the right to form unions, and exacerbate employment discrimination; platform companies have exploited precarious and underpaid “gig” workers; large technology companies collect, share, and commodify vast amounts of personal data that is transmitted

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<sup>18</sup> 87 Fed. Reg. 47, March 10, 2022 at 13789.



worldwide; and the Big Tech companies wield tremendous market power that harms workers, consumers, and small and medium-sized enterprises.

This rapid digital transformation of the economy has emerged largely without coherent government regulation or the input of the workers and consumers it most affects. The digitalization of the economy has heightened concerns over working conditions, wages, and economic and racial inequality.<sup>19</sup> The IPEF negotiations must grapple with these challenges while preserving the policy space for governments to address new, emerging, and novel issues presented by the digital transformation.

Providing meaningful public policy space that is not curtailed by trade provisions is especially critical for the new and novel concerns that are rapidly arising from the digital economy's impact on workers and daily life that is largely unaddressed by U.S. law or regulations or within and between the potential IPEF participating countries.<sup>20</sup> There are effectively no regulations addressing the impact of algorithmic management and workers have little protection or recourse from digital surveillance that occurs on and even off the job.<sup>21</sup> The purportedly facially neutral application of algorithmic human resources decisions can have disproportionate or disparate impact on people of color, women, older people, immigrants, or other protected classes, but the application of civil rights statutes to new and emerging digital technologies remains murky.<sup>22</sup>

**The IPEF digital trade provisions must provide policy space for governments to access source code and algorithms to protect workers:** The IPEF must provide broad government authority to investigate, evaluate, and regulate source codes and algorithms to both ensure that firms comply with current laws and to inform the development of effective regulatory oversight of emerging digital technology issues. As Ambassador Tai recently stated, digital trade provisions need to provide policy space to address “artificial intelligence in a way that safeguards economic security for workers.”<sup>23</sup>

Algorithmic-driven analysis and predictive software is increasingly utilized in the workplace, impacting workers in ways that can profoundly change the employment or work

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<sup>19</sup> Estevadeordal, Anton, Marisol Rodriguez Chatruc, and Christian Volpe Martincus. Inter-American Development Bank. “[New Technologies and Trade: New Determinants, Modalities, and Varieties.](#)” Discussion Paper No. IDB-DP-00746. February 2020 at 1.

<sup>20</sup> For example, federal laws protecting personal data are a patchwork of statutes that cover some specific areas (like medical information, credit, or financial data), but do not require companies to notify or compensate people if their personal information is shared or sold or exposed to unauthorized parties through cybercrime or data breaches. The internet regulations that absolve platforms and social media companies from responsibility from users promoting hate speech and disinformation were implemented during the age of dial-up modems. Klosowski, Thorin. “[The state of consumer data and privacy laws in the US \(and why it matters\).](#)” *New York Times*. September 6, 2021; The Communications Decency Act of 1996. 47 USC §230.

<sup>21</sup> Bernhardt, Annette, Lisa Kresge, and Reese Suliman. University of California Berkeley (UCB) Labor Center. “[Data and Algorithms at Work: The Case for Worker Technology Rights.](#)” November 2021 at 2; Ajunwa, Ifeoma, Kate Crawford, and Jason Schultz. “[Limitless worker surveillance.](#)” *California Law Review*. Vol. 105. 2017 at 747 to 749.

<sup>22</sup> Yang, Jenny R. Urban Institute. Statement before the Subcommittee on Civil Rights and Human Services. Committee on Education and Labor. U.S. House of Representatives. “[The Future of Work: Protecting Workers’ Civil Rights in the Digital Age.](#)” February 5, 2020 at 8 to 11.

<sup>23</sup> Tai, Katherine. Ambassador, Office of U.S. Trade Representative. “[Remarks by Ambassador Katherine Tai on digital trade at the Georgetown University Law Center Virtual Conference.](#)” November 3, 2021.



experience and potentially violate labor and employment laws (like wage and hour, workplace safety, and the right to form unions) and civil rights laws (discrimination in employment). While much attention has focused on the ways in which technology platform companies misclassify workers as independent contractors, an equal concern is the ways in which algorithmic software is increasingly used in hiring, task assignment, determining pay rates, performance monitoring, and even worker discipline and termination decisions.<sup>24</sup> A 2021 literature review found that more than 90 percent of algorithmic management studies reported negative impacts on workers, including de-skilling, reduced worker autonomy, increased workplace control, increased work intensity and job insecurity.<sup>25</sup>

Given the remarkable scope of impacts that digital applications have on workers and consumers, governments have a significant and legitimate interest in access to source codes to conduct investigations, enforce laws and regulations, and develop policy and regulatory frameworks. However, the near absolute prohibitions on source code and algorithm disclosure contained in U.S. digital trade agreements are likely to frustrate legitimate regulatory oversight.<sup>26</sup> For example, the relevant labor authorities should be able to determine if app-based platform companies are violating wage and hour law protections, the right to form unions, or exacerbating workplace injuries. Civil rights authorities should be able to assess algorithmic bias that discriminates against people of color and women in employment, lending, housing, and more.<sup>27</sup> Some specific areas requiring policy space to address algorithmic management practices that may negatively impact workers include:

- *Prevent workplace discrimination in hiring and employment:* Employers are increasingly using artificial intelligence-driven tools to recruit and assess candidates' applications that affect prospective workers chances of getting hired and can perpetuate racial and social biases that contribute to occupational segregation and racial, gender, and economic inequality.<sup>28</sup> The discriminatory impacts of these artificial intelligence screening and hiring processes are being challenged as potential violations of civil rights and antidiscrimination laws.<sup>29</sup>
- *Prevent algorithmic scheduling from violating wage and hour laws and short-changing workers:* Some companies use algorithms to automate just-in-time shift schedules to minimize costs that often leave workers without stable work schedules that reduce economic stability and disrupt family life.<sup>30</sup> Algorithmic scheduling software can also deduct unpaid breaks that were never taken, misattribute paid sick leave, or incentivize

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<sup>24</sup> AI Now Institute. "[2019 Report](#)." December 2019 at 10.

<sup>25</sup> Parent-Rocheleau, Xavier and Sharon K. Parker. "[Algorithms as work designers: How algorithmic management influences the design of jobs.](#)" *Human Resource Management Review*. May 2021.

<sup>26</sup> Słok-Wódkowska, Magdalena and Joanna Mazur. "[Secrecy by default: How regional trade agreements reshape protection of source code.](#)" *Journal of International Economic Law*. Vol. 25. 2022 at 107.

<sup>27</sup> Martinez, Emmanuel and Lauren Kirchner. "[The secret bias hidden in mortgage-approval algorithms.](#)" *The Markup/Associated Press*. August 25, 2021; Akinwumi, Michael et al. Brookings Institute. "[An AI Fair Lending Policy Agenda for the Federal Financial Regulators.](#)" December 2, 2021; Consumer Financial Protection Bureau. [Press release]. "[CFPB targets unfair discrimination in consumer finance.](#)" March 22, 2022;

<sup>28</sup> Yang. Urban Institute. 2020 at 3 to 5.

<sup>29</sup> Opfer, Chris. "[AI hiring could mean robot discrimination will head to courts.](#)" *Bloomberg Law*. November 12, 2019.

<sup>30</sup> Finnegan, Matthew. "[EU 'gig worker' rules look to rein in algorithmic management.](#)" *Computerworld*. December 15, 2021; Wykstra, Stephani. "[The movement to make workers' schedules more humane.](#)" *Vox*. November 5, 2019.



managers to press workers to work off the clock to hit productivity targets that amount to wage theft.<sup>31</sup> Platform drivers are often paid under algorithmic rates that use secret calculations to set fares or delivery payments that have tended to lower earnings.<sup>32</sup> The combination of platform algorithmic evaluation and discipline can push gig workers to work intensively for long hours without breaks.<sup>33</sup>

- *Prevent algorithmic productivity management from jeopardizing worker safety:* Algorithmic worker surveillance and productivity management targets that can lead to workplace injuries. Employers are increasingly deploying advanced surveillance to monitor workers on the job and even outside the workplace.<sup>34</sup> Employers are tracking tasks, worker locations, productivity, and more by utilizing digital tools to enhance worker productivity at the expense of safety. For example, Amazon’s warehouse worker productivity programs have ratcheted up workloads and work speeds, contributing to an injury rate that is three times the national average, with serious injury rates at five times the national average.<sup>35</sup>
- *Protect workers privacy and the right to form unions:* Artificial intelligence-driven worker surveillance has been used to identify potential union supporters and organizing activity and intimidate workers although spying on organizing efforts and anti-union coercive pressure are violations of U.S. labor law.<sup>36</sup> This surveillance often takes place without workers’ knowledge or consent and data collected may be shared or sold to third parties.

**The IPEF digital provisions must provide exemptions to free flow of data to protect workers and consumers:** Global data flows generate scientific, healthcare, and public policy benefits, but the globalization of data has also led to the outsourcing of U.S. call center, data processing, and other jobs, the increasing privatization of government datasets, and the collection and commercialization of personal data. Big Tech companies collect mountains of data from workers (described above) and people (every mouse-click, social media action, internet search, and e-commerce transaction) for marketing and corporate decision-making. The industry has successfully pressed for digital trade provisions to create a nearly absolute right to unfettered cross-border flows.<sup>37</sup> The IPEF must rebalance these commitments to provide meaningful policy space to protect worker and consumer privacy, reduce digital offshoring or the privatization of government data services, and provide specific exemptions and exclusions for sensitive categories of data (e.g., financial, health, biometric) where there may be sound reasons to restrict cross border data flows.

**The IPEF should allow data localization for certain types of critical and sensitive data:** Countries should be able to implement data localization requirements for certain categories of sensitive information, including financial, health, and biometric data. While some localization policies may be disguised trade barriers, others “may be used to achieve legitimate public policy

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<sup>31</sup> Kaplap, Esther. “[The spy who fired me.](#)” *Harper’s Magazine*. March 2015.

<sup>32</sup> Feliz Leon, Luis. “[How gig workers in Canada are fighting for employee rights.](#)” *The Real News*. March 8, 2022.

<sup>33</sup> Wood, Alex J. European Commission. Joint Research Center. “[Algorithmic Management: Consequences for Work Organisation and Working Conditions.](#)” JCR Working Paper No. 124874. 2021 at 10.

<sup>34</sup> Ajunwa, Crawford, and Schultz. *California Law Review*. 2017 at 738 to 739.

<sup>35</sup> Athena Coalition. “[Packaging Pain: Workplace Injuries in Amazon’s Empire.](#)” January 10, 2020.

<sup>36</sup> *Ibid.* at 16; Constantz, Jo. “[‘They were spying on us’: Amazon, Walmart, use surveillance technology to bust unions.](#)” *Newsweek*. December 13, 2021.

<sup>37</sup> USMCA Art. 19.11.1; U.S-Japan Digital Agreement Art. 11.1.



objectives, including national security and personal data protection.”<sup>38</sup> Localization requirements can prevent companies from moving data to countries with weaker privacy, financial, or other safeguards in a digital race-to-the-bottom.<sup>39</sup> Accordingly, any general ban on data localization measures should include exceptions where sound public policy reasons exist to limit cross-border data flows.

A worker-centered approach to digital trade also must protect and promote the economic security of the more than four million people who work in the U.S. motion picture, television, and music industries. Many of these workers collectively bargain for payments and contributions to their health insurance and pension plans that are directly tied to the sales and licensing of the copyrighted works that they help create.<sup>40</sup> This content contributes more than \$500 billion to the U.S. economy and produces a positive trade balance.<sup>41</sup> Stolen or unlicensed use of copyrighted content on digital platforms directly harms these workers. The payment and benefit contributions they bargain for, and the ability of their employers to fund future content, are severely diminished.

To ensure that workers who rely on copyright sustain their middle-class careers, and to promote these union-dense industries, the IPEF’s Fair and Resilient Trade pillar should include:

- An obligation that countries join and implement the WIPO Digital Treaties;
- An explicit obligation to apply enforcement procedures to the digital environment (E.g. USMCA article 20.78.2.);
- A commitment to not discriminate against U.S. creative content; and
- Safeguards to ensure that content review and standards do not constitute unnecessary barriers to trade

In addition, the IPEF should not incorporate outdated, overbroad copyright safe harbor language modeled after Section 512 of the Digital Millennium Copyright Act. Section 512, in specified circumstances, frees online platforms from liability for infringing content posted by others. Due to a series of harmful court decisions, Section 512, which was originally intended to create a narrow protection to an infant industry, now provides broad protection against copyright infringement liability to some of the largest, most dominant companies in the world. In essence, Section 512 acts as a nearly free pass for platforms to profit from stolen or otherwise illegitimate content posted by third parties. As a result, the LAC has witnessed the emergence of a widespread business model which benefits and profits from the downloading or streaming of unlicensed content created by union workers. As these illegitimate business models continue to proliferate, American workers pay the price.

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<sup>38</sup> Fefer, Rachel F., Shayerah I. Akhtar, and Michael D. Sutherland. Congressional Research Service. “[Digital Trade and U.S. Trade Policy](#).” CRS Report R44565. December 9, 2021 at 16.

<sup>39</sup> Kelsey, Jane. Public Services International. “[Digital Trade Rules and Big Tech: Surrendering the Public Good to Private Power](#).” February 2020 at 14 to 15.

<sup>40</sup> “Creative Professionals Depend on Strong Copyright Protections.” (2021). Department for Professional Employees, AFL-CIO. <https://www.dpeaflcio.org/other-publications/creative-professionals-depend-on-strong-copyright-protections>

<sup>41</sup> “Intellectual Property Theft: A Threat to Working People and the Economy.” (2021). Department for Professional Employees, AFL-CIO. <https://www.dpeaflcio.org/factsheets/intellectual-property-theft-a-threat-to-working-people-and-the-economy>

The IPEF's digital trade provisions should not include language modeled on Section 230 of the Communications Decency Act. Section 230 of the CDA allows online platforms to avoid responsibility for unlawful user content the platforms themselves facilitate or profit from. For example, AI-created image and voice manipulations that target individuals, including creative professionals like performers and broadcasters, has resulted in sexual abuse via deepfake pornography, unprecedented privacy violations, and unauthorized commercial misappropriation. The IPEF must take steps to eradicate the problems that directly result from Section 230 of the CDA.

Finally, the IPEF must aggressively address the rise of cybercrime by both state and private actors in the region. In 2014 the U.S. charged several Chinese military members with hacking multiple U.S. based companies and the United Steelworkers.<sup>42</sup> In 2019 the International Brotherhood of Teamsters (IBT) experienced a ransomware attack demanding \$2.9 million that forced the union to rebuild computer servers.<sup>43</sup> IPEF should take steps to improve cyber security and strive to create common enforcement agenda to hold the criminals and companies that facilitate these crimes accountable.

### **III. Resilient Supply Chains**

The LAC appreciates the Biden Administration's focus on building more resilient and secure supply chains to ensure our economic prosperity and national security.<sup>44</sup> More resilient supply chains hold the promise of rebuilding our domestic manufacturing capacity, maintaining our competitive edge in research and development, and creating well-paying jobs. At the same time, enormous care must be taken in terms of the development of any disciplines and provisions in this critical area as the potential for significant impacts on U.S. national, economic, and health security exist.

Our members have been focused on supply chains and the offshoring of production and jobs for decades. Recent and ongoing supply chain shortages related to the COVID pandemic have made the American public increasingly aware of our country's loss of industrial and manufacturing capacity after decades of neo-liberal trade policy. Workers across the country have seen their jobs adversely affected by supply chain bottlenecks. Front line health care and other workers have had to contend with limited and at times non-existent supplies of personal protective equipment as they have served patients and the public.

The impact of past trade agreements and actions, most notably being the adoption of Permanent Normal Trade Relations for the People's Republic of China and that country's consequent accession to the World Trade Organization have significantly undermined broad U.S. security interests. Multinational companies have outsourced production of myriad products in an effort to minimize cost, oversight and standards. Our trade agreements, coupled with inadequate enforcement of those agreements and U.S. law, have contributed significantly to our dependence on insecure sources of supply that also fail to abide by international workers' rights standards and that undermine environmental sustainability.

To date, the outline of the supply chain resiliency module has been ill-defined. The Federal Register notice does not provide any guidance as to the design, scope or goals of this

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<sup>42</sup> See "[Pittsburgh-Area Firms Allegedly Targeted by Hacking](#)," The Wall Street Journal, March 19, 2014.

<sup>43</sup> See "[Ransomware attack hit Teamsters in 2019 — but they refused to pay](#)," NBC News, July 11, 2021.

<sup>44</sup> See "[Executive Order on America's Supply Chains](#)," The White House, Feb. 24, 2021.



initiative. Accordingly, the LAC will provide input on how a worker-centered supply chain resiliency module should be developed as part of an IPEF:

- The IPEF, as originally constructed, and throughout its potential existence and expansion, must advance, not undermine, the broader efforts of the Biden Administration to increase sourcing of products covered by Buy America and other domestic procurement preference programs. U.S. taxpayers want to ensure that their tax dollars maximize domestic production and employment and want federal programs to expand utilization of domestic products and services to the maximum extent practicable.
- The IPEF must also advance the work of the Biden Administration to expand domestic capacity and capabilities in terms of critical supply chains. The disruption of supply chains that has occurred during the pandemic, as well as the willingness of countries, like the People's Republic of China, to "weaponize" supply chains has identified vulnerabilities that must be addressed.
- The IPEF in this, and all other modules, must include provisions to enhance workers' rights and the enforcement of such rights, as well as corporate responsibility measures to advance U.S. interests.
- The IPEF must not simply be a framework to replace existing supply chains in China with sourcing relationships in the IPEF countries. Clearly, not all products our country utilizes will be sourced domestically but the goal cannot simply be shifting sourcing which will only continue our dependence on other countries. A careful and strategic approach is needed.
- The U.S. government should build confidence in the utilization of supply chains from IPEF countries by strengthening our enforcement of our laws against unfair trade with regard to products from such countries. Roughly one-in-six of our existing antidumping and countervailing duty orders apply to the anticipated initial IPEF participants. Many of these countries are also venues for transshipment, circumvention, and evasion of our efforts to counter unfair trade practices. A more effective approach by our government can enhance support for supply chain coordination with such countries.
- Attention must be given to the continued outsourcing of aircraft repair, maintenance, and overhaul work as a part of a service sector supply chain assessment. The FAA has identified several IPEF countries as failing to meeting international safety standards (IASA Category 2 countries such as Malaysia and Thailand) but servicing of aircraft in these countries is still allowed. The IPEF must not facilitate the further outsourcing of jobs in this critical area and, indeed, should include proper measures to reclaim many of these jobs.
- The IPEF must include coordinated approaches among the participating countries to address non-market activities and unfair and predatory trade practices. In part, America's dependence on foreign sources of supply has been the result of predatory and protectionist trade actions that have reduced the ability of our firms to compete. Among the provisions that should be included in this regard are:
  - Disciplines on overcapacity;
  - Disciplines on state-owned entities;
  - Coordinated actions to address circumvention and evasion of the participating country's actions to address unfair trade;
  - Transparency and tracing provisions to assess trade flows among the participating countries and assess supply chain security, vulnerabilities, and strengths.
- The U.S., as part of its domestic policies to support our interests generally, and specifically with regard to the IPEF, should enhance implementation, monitoring, and enforcement of laws against unfair trade. In addition, while the Administration has indicated that it will not be seeking legislative authority for the IPEF nor is it planning to include market access



commitments, it should aggressively support provisions in the House-passed America COMPETES Act, including:

- Strengthening U.S. trade law starting with adoption of the Brown-Portman/Sewell-Johnson Level the Playing Field Act 2.0;
  - Adoption of early warning trade monitoring approaches by the Department of Commerce to ensure that any predatory trade practices can be identified quickly and that consultation with participating countries involved in such trade can be initiated immediately. Where consultations to address such unfair trade practices are unsuccessful, the Department should utilize existing self-initiation authorities to abate any injury that could result to U.S. farmers, ranchers, producers, and workers;
  - Reauthorization and expansion of Trade Adjustment Assistance to ensure that workers who lose their jobs to trade have the support they need;
  - Provisions included in the National Critical Capabilities Defense Act to monitor and govern the outsourcing of critical supply chain capabilities;
  - Resilient supply chain provisions authored by Representatives Blunt-Rochester, Kinzinger and Malinowski to reduce dependence on critical materials from China, encourage domestic manufacturing expansion with fair guardrails, and ensure that labor and management cooperate in the creation of good paying union jobs;
  - Adoption of the provisions in the Import Security and Fairness Act that would stop non-market economies from taking advantage of the de minimis threshold to skirt U.S. trade laws including those relating to products made with forced labor.
  - Development of other tools to promote confidence in the trade and sourcing relationships between the U.S. and participating IPEF countries including with regard to sustainability and de-carbonization which is expected to be dealt with in a separate pillar but must be linked with any resilient supply chain provisions.
- The U.S. government should develop a comprehensive data collection approach and the analytical infrastructure needed to assess and measure the impact and success of the IPEF. The Commerce Department, for example, has existing authorities that could be targeted at better understanding the individual actions of U.S. multinational firms in terms of sourcing and supply arrangements. More timely collection and dissemination of data is needed. The existing Multinational Enterprise Report could be expanded, tailored and expedited to ensure that U.S. resiliency and critical supply chain interests are advanced. The previously-issued International Labor Comparisons data sets should be reinstated to help assess the impact of the IPEF on workers in all the signatory countries. These and other supporting efforts should be an integral component of the U.S. governments' approach.
  - The IPEF must not be a venue in which to discuss Section 232 relief measures.

As the development of the IPEF continues, we intend to be a partner in ensuring that the president's goals of achieving a worker-centered trade approach is faithfully and fully reflected.

#### **IV. Environment and Climate**

Securing strong environmental standards across the IPEF region is important both for improved quality of life and for avoiding a race to the bottom in standards that could put downward pressure on U.S. working conditions and encourage the continued offshoring of jobs.

The LAC recommends that the IPEF require all parties to adopt and maintain in law, regulation, and practice, the following eight multilateral environmental agreements:

- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES);
- Montreal Protocol (Ozone Treaty);
- Convention on Marine Pollution;
- Inter-American Tropical Tuna Convention;
- Ramsar Convention on Wetlands of International Importance;
- International Convention on the Regulation of Whaling;
- Convention on the Conservation of Antarctic Marine Living Resources;
- Paris Agreement on Climate Change.

In order to be effective, these commitments should be subject to a dispute settlement mechanism with meaningful sanctions for non-compliance. In addition, there must be no requirement that parties show that violations of the environmental standards were “sustained or recurring” or occurred in “in a manner affecting trade” to demonstrate non-compliance with the agreement.

While the USMCA made significant progress on labor standards, it failed to require parties to take meaningful steps to address our climate crisis. Accordingly, the LAC recommends that IPEF require all parties to join the Paris Agreement on Climate Change which established legally binding commitments to cut greenhouse gas emissions which are driving global warming. In addition, it is critical this commitment is accompanied by policies which ensure that necessary investments in clean and renewable energy and infrastructure result in the creation of good, union jobs that sustain the middle class, a matter to that must be addressed within the clean energy and decarbonization pillar.<sup>45</sup>

## **V. Infrastructure**

IPEF presents an opportunity for the U.S. and the other OECD nations in the region to improve economic and development linkages with nations that might otherwise look to China and initiatives like Belt and Road or face onerous conditions from other sources of capital.

In addition to development needs, many nations in the region will need to undertake expensive long-term infrastructure projects to adapt to the effects of climate change. The U.S. should use its existing climate finance commitments and consider additional funding from entities such as the Development Finance Corporation and the Export-Import Bank to help low and medium-income IPEF nations address these issues. However, this opportunity should not be realized at the cost of diluting or otherwise circumventing the domestic economic interests of U.S. producers and workers.

The IPEF must respect domestic content preferences in government procurement and federally assisted infrastructure spending and must not undermine or restrict these important domestic economic tools. It is vital that U.S. taxpayers are able to ensure that their hard-earned tax dollars promote domestic production and employment. We appreciate President Biden’s commitment to “Make Buy American Real” and to re-shore critical supply chains so we are not dependent on China or any other country for the production of critical goods in a crisis.<sup>46</sup>

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<sup>45</sup> [“Labor, Environmental Leaders Release Historic ‘Solidarity for Climate Action’ Platform,”](#) Blue-Green Alliance, June 24, 2019.

<sup>46</sup> See “FACT SHEET: Biden-Harris Administration Issues Proposed Buy American Rule, Advancing the President’s Commitment to Ensuring the Future of America is Made in America by All of America’s Workers,” The White House, July 28, 2021. Available at: <https://www.whitehouse.gov/briefing-room/statements->

Reciprocity (or a lack thereof) in government procurement market access should be addressed with our trading partners. Available data strongly indicates that the United States provides much more market access than what it gets in return under its procurement agreements. According to the GAO:

Under the World Trade Organization (WTO) Agreement on Government Procurement (GPA), the United States has reported opening more procurement covered by the agreement to foreign firms than have other parties to the agreement. For example, U.S. data for 2010—the most recent available—show that the United States reported \$837 billion in GPA-covered procurement. This amount is about twice as large as the approximately \$381 billion reported by the next five largest GPA parties—the European Union, Japan, South Korea, Norway, and Canada—combined, even though total U.S. procurement is less than that of the other five parties combined.<sup>47</sup>

Meanwhile, the United States and other nations have largely excluded assistance for infrastructure programs from government procurement market access obligations in international trade agreements. As a result, the Buy America laws applied to these programs – including the new *Build America, Buy America Act* in the recently-enacted Bipartisan Infrastructure Law –are not waived because of trade agreements. Maintaining these exclusions is critical to implementing strong Buy America policies that direct infrastructure procurement opportunities to American workers.

The IPEF must not undermine these policies and should instead ensure that taxpayer money supports American producers and workers whenever possible.

As has been noted elsewhere, workers' rights and corporate accountability measures should apply to infrastructure investments facilitated by an IPEF agreement. Infrastructure investments have the power not only to advance economic development and critical infrastructure in partner nations, but also to ensure good jobs. These measures should include measures analogous to U.S. Project Labor Agreement (PLA) requirements to support the interests of organized labor in the recipient countries.

Compared to the approach of many of China's Belt and Road investments that have created debt traps, been riddled with corruption, and are often developed with a workforce and materials sourced from China, the approach that could be advanced through an IPEF would truly expand opportunity and also enhance U.S. relations in the region.

If U.S. financing is to be made available, it should include domestic procurement provisions that will either promote indigenous production in the recipient country or provide for U.S.-sourced content to be utilized in the project. This would be enabled by the restoration of Buy America requirements associated with the provision of foreign aid that were lifted roughly 20 years ago.

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releases/2021/07/28/fact-sheet-biden-harris-administration-issues-proposed-buy-american-rule-advancing-the-presidents-commitment-to-ensuring-the-future-of-america-is-made-in-america-by-all-of-americas/

<sup>47</sup> See "Government Procurement: United States Reported Opening More Opportunities to Foreign Firms Than Other Countries, but Better Data Are Needed," General Accounting Office (GAO) Report (GAO-17-168), Feb. 9, 2017. Available at: <https://www.gao.gov/products/gao-17-168>



## **VI. Clean Energy and Decarbonization**

Two of the subjects the LAC is commenting on for the Indo-Pacific Economic Framework, Clean Energy and Decarbonization, address one of the overarching themes of the 21<sup>st</sup> century: the fight against climate change. Climate change is an indelibly global issue, since greenhouse gas emissions anywhere contribute equally to climate change everywhere.

The United States must provide international leadership in advancing technical, political and economic solutions to climate change in a manner that is consistent with worker-centered foreign and trade policies and honors the commitments to just transition in the Paris Agreement. A key tenet of just transition is that workers must be included in decision making especially within multilateral negotiations and institutions from which they historically have been excluded.

In order for IPEF to result in any durable, politically legitimate arrangements or agreements regarding decarbonization or clean energy, the voice of workers in every country must be heard in IPEF processes, and their advice incorporated into any outcomes. In many IPEF nations, workers' rights are routinely denied, and they have no effective institutional voice. U.S. leadership in accounting for the needs and aspirations of workers everywhere can help ameliorate these institutional constraints. The U.S. must properly assess and resource an effort to understand and include workers in these matters, as it is aspiring to do in the case of South Africa's engagement in processes related to the Paris Agreement.

Nowhere is this more important than in the United States, where energy workers are threatened with displacement from well-paid jobs connected to the production and use of fossil fuels, subjected to vicious union-busting, confronted with long-term trade patterns that severely inhibit the development of a clean energy economy that will necessarily center on the production of clean energy goods, and caught in a potential squeeze between decarbonizing at home and increased imports of energy-intensive goods.

The devastating events in Ukraine have laid bare the tensions between decarbonization and the necessity for energy security, with the latter now clearly revealed as a predicate for advancement of the former. The United States is in a position to offer energy security to IPEF nations and others in the region, and IPEF discussions present an opportunity to leverage our capacity to produce energy to engage these nations in long-term cooperative relationships. Whether bilaterally, in IPEF agreements, or through other multi-lateral institutions, the U.S. can put itself at the center of energy security and assured supply in the region, cementing alliances that will advance relationships across issues and building the institutional capacity to cooperate in efforts to mitigate emissions and adapt to the effects of climate change.

It is important to recognize that expanding international access to energy from democratic societies reduces the influence of governments that are not aligned with our core values of democracy and freedom.

As difficult as this is proving to be in the United States, it will be even more difficult for IPEF nations, many of which lack the economic and institutional capacity to make the rapid adjustments that now seem to be underway in Europe. IPEF discussions offer a chance to address energy security and supply in the region before any acute crises result in hasty arrangements that are not in the interest of the U.S. and our allies, and lead to dependencies on energy suppliers that are not committed to a high-standards international order or the critical fight against climate change.

Simply put, these negotiations are an opportunity to deepen economic and political ties in the energy sector and develop the cooperative relationships needed to be successful in the decades-long arc of coordinated actions necessary to beat climate change.

Energy-intensive sectors in the U.S. have long been threatened by imports from nations with higher greenhouse gas intensity in their economies. This is in no small part due to the imprudent inclusion in trade agreements and multilateral institutions of parties that were not prepared to follow the spirit or the letter of these arrangements. Overcapacity, state-owned enterprises, and illegal subsidies are all addressed in other sections of these comments, but it is important to recognize that they have a large impact on employment in energy-intensive industries.

As the U.S. presses forward on decarbonization, and U.S. producers bear the additional cost of deploying emissions-reducing technologies, IPEF must not in any way constrain the ability of the United States to restrict or manage imports of energy-intensive goods. The LAC appreciates the engagement of the Department of Commerce and USTR's with labor in the ongoing discussions of section 232 tariffs and carbon border adjustments, and we look forward to continuing engagement as the subjects of decarbonization and climate change arise in IPEF discussions.

The production of clean energy goods is central to the development of a clean energy economy. As investment and spending shift away from the production and use of fossil fuels, high value-added and intellectual property-enabled energy sector economic activity will increasingly center on the production of clean energy goods. If the U.S. is not successful in developing a robust clean energy goods sector, U.S. workers will lose out on decades of potentially well-paid employment, and the nation will lose the opportunity to replace the lost GDP and employment associated with declining fossil fuel use.

It should be noted that the extraction and production of fossil fuel products is supported by an extensive supply chain of high value-added manufactured goods. The transition to a clean-energy economy poses both threats and opportunities for the manufacturing sector.

Unfortunately, the U.S. has not been very successful in the development of a clean energy goods sector and remains largely dependent on imports for these goods. This is not only an economic issue, but also an energy-security issue. Remaining dependent on imported clean energy goods will prove to be as risky as dependence on imported fossil fuels. If we are to be successful in reducing political and economic risk in the energy sector, and in capturing the opportunities of the clean energy economy, the capacity to produce clean energy goods must be viewed through a security lens.

However, because of our advantage in science, research and development, the U.S. is in a position to reverse this trend. In a broad swath of technologies that are currently entering the market, such as advanced batteries, solar and wind, the U.S. is making important advances that could, in the proper policy environment, significantly increase domestic investment and employment. The U.S. is in a similar position with many emerging technologies, such as those needed for carbon capture and storage, clean hydrogen, and advanced light-weight materials.

As previously noted, IPEF must deepen our relationships in the energy sector and towards cooperation in the fight against climate change. In the provision of clean energy goods, the only satisfactory outcomes are those that advance domestic production and the interests of American

workers. This will require supportive domestic policies and robust administration of trade and human rights laws and agreements. More specifically, we recommend that:

- IPEF should address near-term regional energy security issues in the context of building regional ties that can add impetus to long-term cooperation on climate change;
- The U.S. should enact tax and other incentives for the deployment and production of clean energy and associated goods, including those that build on existing industries and that convert fossil energy for emission-free use, such as carbon capture and storage, clean fuels, and hydrogen;
- The U.S. should leverage its science and research advantages to stand up domestic production of technologies using U.S.-funded intellectual property. The Department of Energy's 2021 policy change increasing scrutiny of Bayh-Dole waivers should be applied across the federal government;
- IPEF should engage participants in technical discussions on carbon accounting in traded goods. Approaching this jointly with nations where we have existing discussions and agreements may be most fruitful;
- The U.S. should push to establish multilateral forums in IPEF that provide genuine input from workers regarding the clean energy transition and its effects on their lives and communities. The U.S. should take responsibility for making sure that workers' concerns are addressed in any climate, decarbonization or clean energy related agreements contemplated or reached in the IPEF processes.

## **VII. Competition Policy**

The LAC shares the Biden Administration's concern that excessive market concentration in U.S. and global markets threatens the well-being of workers, small businesses, and consumers.<sup>48</sup> In too many sectors of our economy, consolidation has increased the power of corporate employers, making it harder for workers to bargain for higher wages and better work conditions. Large and powerful employers often require workers to sign non-compete agreements that restrict their ability to change jobs. Companies frequently place abusive and often hidden contract provisions in consumer, employment, and other agreements that force workers and consumers to settle their disputes against companies in a private system of arbitration that favors corporate interests.

In order to promote fair competition and protect worker rights, the LAC recommends that the U.S. government encourages IPEF parties to:

- Pursue a competition regulatory and enforcement agenda that includes workers and meaningfully addresses unfair, anticompetitive practices by employers that diminish workers' bargaining power and degrade wages and working conditions;
- Cooperate on comprehensive, cross-border competition investigations, regulation, and enforcement measures against large tech firms and gig platform companies that have used their dominant market positions to stifle innovation and exploit users' data, while also promoting the wholesale use of unfair employment practices such as misclassification disempower workers on a massive and systematic scale;
- Ensure that the IPEF does not create rules that unreasonably limit governments' ability to fully enforce competition and antitrust laws, including in the digital economy.
- Ensure that the IPEF addresses the anticompetitive impacts of state-owned entities. The agreement should ensure that non-market rate financing and other governmental support

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<sup>48</sup> See "[Executive Order on Promoting Competition in the American Economy](#)," The White House, July 9, 2021.



does not disadvantage the interests of other participants to the agreement. Included in this regard should be provisions that do not grandfather in the amount of previously-provided governmental supports or that limit injury test considerations to address dumping and subsidization.

- Adopt coordinated measures to address global overcapacity in key sectors, including the efforts of non-participating countries to take advantage of any preferential measures in the IPEF. Any benefits of the IPEF should accrue to the signatories and not extend to other countries.

## **VIII. Tax-related issues**

For too long, U.S. trade and tax policies have rewarded companies for offshoring jobs and profits. At the global level, corporations have aggressively pitted countries against one another resulting in a race to the bottom in corporate rates of taxation. This global challenge requires greater coordination among nation states to ensure that corporations pay their fair share of the taxes that fund our infrastructure and public services.

The LAC commends the Biden Administration for the successful negotiation of a global minimum corporate tax rate of 15 percent at the OECD, which was approved by over 130 countries.<sup>49</sup> Although organized labor supported a higher minimum tax rate, we recognize the vital importance of establishing a global floor to ensure corporations pay their fair share. The LAC recommends the following tax related measures be included in the IPEF:

- Include binding commitments to prevent global companies from using tax havens, transfer pricing, and other tax avoidance schemes to avoid paying their fair share of taxes;
- Include commitments by each party to enact legislation to implement the OECD minimum corporate tax rate;
- Include commitments for tax authorities to coordinate on the enforcement of tax laws across jurisdictions to crack down on corporate abuse of tax havens, shelters, and the like.

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<sup>49</sup> See "[Statement by President Joseph R. Biden, Jr. on the Unprecedented OECD Agreement for a Global Minimum Tax](#)," The White House, Oct. 8, 2021.