

Congress of the United States
Washington, DC 20515

November 6, 2023

The Honorable Joseph R. Biden
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden,

We strongly support your whole-of-government competition policy agenda and your 2023 State of the Union commitment to protect all Americans' privacy, our children's wellbeing, and smaller businesses' opportunities by countering Big Tech abuses. Opinion research shows that these goals also are strongly supported by a broad majority of Americans united across partisan and regional lines.

We are writing today to express our appreciation for your efforts to try to ensure that any "digital trade" provisions of an Indo-Pacific Economic Framework (IPEF) are consistent with these goals.

Congress and administration agencies focused on digital governance are working to promote competition, safeguard Americans' privacy and civil rights and liberties and develop policies to prevent harms related to artificial intelligence (AI). But some Big Tech interests seek to use their lobbyists and money to hijack IPEF negotiations to impose binding rules branded as "digital trade" that may derail such government action. This form of international preemption could thwart domestic policies that address problems for workers, consumers, competing businesses, and democracy itself caused by an unregulated digital sphere shaped by dominant platforms.

We thank you for suspending negotiations on aspects of the IPEF digital text that can be used to frustrate privacy, AI, civil rights and liberties, anti-monopoly, gig worker and other digital safeguards that Congress and the administration seek. This includes terms covering personal data, which could derail policies to protect consumer privacy and our kids online and to secure data related to infrastructure and other sensitive sectors. Another rightly suspended provision could be construed as branding competition policies that apply equally to domestic and foreign firms as "illegal trade barriers" if they have a greater impact on some U.S. firms simply because these firms are large, not because they are American. This provision would undermine most tech anti-monopoly policies.

We also thank you for recognizing the importance of excluding dangerous digital terms from IPEF that industry pushed the Trump administration to include in the U.S.-Mexico-Canada Agreement (USMCA). This includes rules that can be read as providing new secrecy guarantees to tech firms that restrict governments from obtaining information on algorithms to systematically enforce against self-preferencing and other competition policy threats and wage and hour and other labor violations done via "bossware" programs. This term could also potentially forbid pre-screening of source code and even algorithms, including those used in

artificial intelligence applications, for racial bias and other violations of civil liberties and rights, as the administration’s AI Bill of Rights proposes, and gut the right-to-repair laws being enacted in states nationwide and that the administration and many in Congress seek to enact nationally.

We applaud the recent withdrawal of the United States’ support for similar harmful digital language with respect to the WTO-linked E-Commerce Joint Statement Initiative (JSI).¹ This is an important step to protect the space Congress and regulators need to develop our domestic tech policies – but we must go further. We urge you to now secure our shared competition and tech regulatory goals by replacing the problematic “digital trade” provisions with new language that ensures U.S. regulatory agencies and Congress can counter Big Tech abuses. Reconceiving IPEF’s digital provisions is critical because the pact, if completed, will set binding rules for 40% of the global economy. We also urge you to develop a new model for digital rules in trade pacts that protect workers, consumers and smaller business, and to use these terms to update the U.S. approach in the WTO JSI and any future trade talks, including with Taiwan and Kenya, in which digital terms are contemplated.

We are heartened to learn that administration agencies responsible for enforcement of privacy and competition policies have been engaged on digital trade policy based on the balanced approach USTR Katherine Tai enumerated previously² in a speech on digital trade and again in a recent speech³ that emphasized the importance of consistency between administration trade and competition policies. It is critical that fixes to the IPEF digital provisions safeguard the policy space we need to effectively regulate Big Tech. We are keen to see USTR continue to work collaboratively with the antitrust agencies on digital trade terms that might be contemplated for any future pacts. Indeed, it is critical that new terms are developed and used consistently across agreements and that our allies are informed that this is the new U.S. digital trade policy.

Additionally, we were particularly glad to see Ambassador Tai’s appointment to the White House Competition Council, which coordinates administration-wide policy on competition in accordance with President Biden’s “Executive Order on Promoting Competition in the American Economy.” Ambassador Tai’s appointment signals the administration’s recognition that President Biden’s domestic competition agenda must extend to trade policy as well. The U.S.’s trade agreements cannot impede, and should in fact promote, fair competition in the global economy.

On behalf of the American people, we thank the Biden administration for acting to protect the interest of American workers, consumers and small businesses. Over and over, we have seen the

¹ “U.S. to end support for WTO e-commerce proposals, wants ‘policy space’ for digital trade rethink”, Inside U.S. Trade, October 24, 2023, <https://insidetrade.com/daily-news/us-end-support-wto-e-commerce-proposals-wants-policy-space-digital-trade-rethink> (October 25, 2023)

² “Remarks of Ambassador Katherine Tai on Digital Trade at the Georgetown University Law Center Virtual Conference”, November 2021, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/november/remarks-ambassador-katherine-tai-digital-trade-georgetown-university-law-center-virtual-conference> (October 5, 2023)

³ “U.S. Trade Representative on Trade Policy and the Economy”, C-SPAN, June 15, 2023, <https://www.c-span.org/video/?528771-2/us-trade-representative-trade-policy-economy> (October 5, 2023)

damage wrought when Big Tech companies and their corporate allies are able to shape U.S. trade policy against the interests of most Americans.

We look forward to working with you to fix the IPEF digital rules and create a new model that can be deployed for all U.S. negotiations to ensure your administration's smart competition and tech policies are reinforced, not undermined, in trade agreements.

Sincerely,



Jan Schakowsky
Member of Congress



Elizabeth Warren
United States Senator



Rosa L. DeLauro
Member of Congress



Amy Klobuchar
United States Senator



Pramila Jayapal
Member of Congress



Bernard Sanders
United States Senator



Mark Takano
Member of Congress



Peter Welch
United States Senator



Lori Trahan
Member of Congress



Richard Blumenthal
United States Senator



Henry C. "Hank" Johnson, Jr.
Member of Congress



Jerrold Nadler
Member of Congress

CC: Ambassador Katherine Tai, United States Trade Representative