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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

December 1, 2022

President Joseph R. Biden, Jr.
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear President Biden:

We write regarding the Indo-Pacific Economic Framework for Prosperity (IPEF) launched by your Administration in May 2022. We support efforts to strengthen our bonds with our allies in the Indo-Pacific and look forward to better understanding your plans to tackle 21st century issues like digital trade and the strengthening of supply chains; your objectives in the clean and fair economy pillars; and the ways in which these efforts might support U.S. workers and U.S. jobs.

As you are aware, the Constitution establishes a careful balance of authority between the Executive and Legislative branches. In no place is this balance more apparent than international trade. The Constitution provides Congress with sole authority “to lay and collect . . . duties” and “to regulate commerce with foreign nations,” while the President is vested with the “power, by and with the advice and consent of the Senate, to make treaties.”

There is no question that comprehensive free trade agreements that include reciprocal tariff reductions and dispute resolution mechanisms must be approved and implemented by Congress. However, there appears to be a misunderstanding as to whether an agreement like IPEF, which aims to regulate foreign commerce and reshape international trade flows, requires similar approval. It does.

We recognize that over time and across administrations of both parties, there has been an uptick in the use of “sole executive agreements” to bind the United States without congressional authorization or approval. But, as we have discussed with prior administrations, the use of sole executive agreements to reshape trade relations confuses *the implementation of an agreement*—which may not require congressional action because no domestic laws need to be altered—and *the ability to enter into a binding agreement* with other sovereign nations without congressional approval.

There are only three constitutional mechanisms for binding the United States to an international agreement: invocation of the Treaty Clause of the Constitution; a “congressional–executive agreement,” which requires approval of the majority of both houses of Congress; and a sole

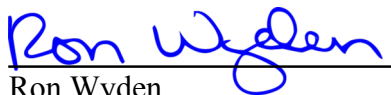
executive agreement covering matters reserved by Article II of the Constitution to the President. Entering into a significant binding trade agreement necessarily utilizes powers reserved to Congress under Article I, Section 8 of the Constitution. Therefore, attempts to use sole executive agreements to bind the United States on broad matters of international trade not only interfere with congressional authority under the Constitution, but also limit Congress's domestic law-making ability without consent.

Recognizing that neither the Administration nor Congress has taken a definitive position on the process for approving and implementing the proposed IPEF, we respectfully urge you to adhere to the following initial requests to facilitate our discussions on that matter:

- First, ensure that the Administration provides robust consultation with Congress. Given that IPEF will address novel issues not included in previous trade agreements and be led in part by agencies not involved in trade negotiations, consultation must exceed even that required by the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) to build bipartisan support for any final agreement.
- Second, ensure that the Administration provides heightened transparency with stakeholders and the broader public on these initiatives. As noted above, the novel content of this framework calls for providing clear and detailed information to stakeholders about the potential outcomes of any such agreement. Tools such as briefings, town halls, outreach to non-traditional stakeholders, continually updated public summaries, and clear descriptions of U.S. goals and objectives must be deployed to improve transparency beyond that of a traditional trade agreement.
- Third, ensure that your Administration works with Congress to arrive at a common understanding of the appropriate submission, approval, and implementation mechanisms for such a broad-based and important agreement regulating international commerce.

Thank you for your attention to this important matter, and we look forward to continuing this critical work with you and your Administration.

Sincerely,



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Michael D. Crapo
United States Senator
Ranking Member, Committee
on Finance



Debbie Stabenow
United States Senator



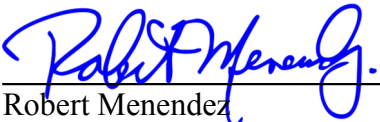
Charles E. Grassley
United States Senator



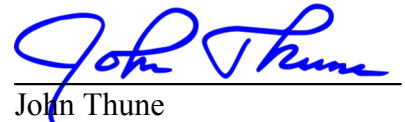
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United States Senator



John Cornyn
United States Senator



Robert Menendez
United States Senator



John Thune
United States Senator



Thomas R. Carper
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Benjamin L. Cardin
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Rob Portman
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Sherrod Brown
United States Senator



Pat Toomey
United States Senator



Catherine Cortez Masto
United States Senator



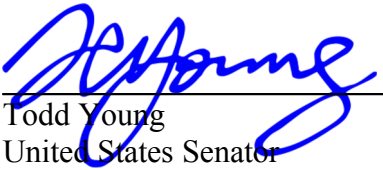
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United States Senator



Bill Cassidy, M.D.
United States Senator



Steve Daines
United States Senator



Todd Young
United States Senator



Ben Sasse
United States Senator



John Barrasso, M.D.
United States Senator

CC: Ambassador Katherine Tai
Secretary Gina Raimondo