



AFTINET Submission to the JSCOT inquiry into the Indo-Pacific Economic Framework for Prosperity relating to supply chain resilience

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Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair-trading relationships with all countries, based on the principles of human rights, labour rights and environmental sustainability. We recognise the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability.

In general, AFTINET advocates that non-discriminatory multilateral rules are better than preferential bilateral and regional negotiations that discriminate against other trading partners. We are concerned about the continued proliferation of bilateral and regional preferential agreements and their impact on developing countries which are excluded from negotiations, then pressured to accept the terms of agreements negotiated by the most powerful players.

AFTINET welcomes the opportunity to make a submission to this inquiry into the Indo-Pacific Economic Framework for prosperity (IPEF) agreement relating to supply chain resilience between 14 IPEF members: the US, Australia, Brunei, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Fiji and Vietnam.

Summary and recommendations

The IPEF supply chain agreement has specific Articles which allowed it to come into force and set up implementation committees after ratification by five countries even if other countries had not yet ratified it because of longer democratic ratification processes. Since ratification by 5 countries occurred in February, the agreement is already in force.

Australia is now participating in the establishment of the committees specified in the agreement before the JSCOT inquiry report and the government decision about ratification.

AFTINET understands that this process has been driven by the US election in November 2024 and the wish to implement the arrangements quickly. However, this calls into question the relevance of the current JSCOT process and could undermine public confidence in the trade agreement process. As far as we are aware this is unprecedented in JSCOT's history and should not be repeated.

Recommendation 1

That the JSCOT note that the implementation of the agreement before JSCOT review is not acceptable and that it should not recur in future.

IPEF is not a traditional trade agreement because there is no additional market access provided through reductions in tariffs on goods or increased market access for services. This means that any commitments made by governments cannot be enforced by trade penalties. They may have the legal status of a diplomatic agreement between governments but there are no penalties if governments do not implement them.

The supply chain text deals with the main purpose of IPEF, which is to diversify supply chains and reduce dependence on China, create alternative networks of supply chains, prevent supply chain disruptions, and improve labour rights issues in supply chains.

The main binding commitments are to establish a series of committees which deal with these issues.

The following recommendations deal with these implementation and enforcement issues.

Recommendation 2

Australia should use the five-year review of the agreement to support the integration of all inclusivity issues, including First Nations Peoples, into the text of the agreement with stronger commitments to their implementation and enforcement.

Recommendation 3

The Australian government should play a leading role in pursuing the implementation of cooperation to remove asbestos in supply chains and provide technical assistance and funds for capacity building to ensure that the intention of this clause is implemented. Australia should support stronger commitments to implementation at the five-year review of the agreement.

Recommendation 4

The Australian government should use the five-year review to advocate for a more transparent and enforceable process for both reports of violations of labour rights in IPEF countries and complaints about violations of labour rights by specific enterprises.

IPEF ratification and public and parliamentary consultation: a back-to-front process since Australia is implementing outcomes before JSCOT review and government ratification

The IPEF supply chain agreement has specific Articles which allowed it to come into force and set up implementation committees after ratification by five countries¹ even if other countries had not yet ratified it because of longer democratic ratification processes. Since ratification by 5 countries occurred in February, the agreement is already in force.²

¹ DFAT (2023) Text of the Indo-Pacific Economic Framework for Prosperity Agreement relating to supply chain resilience, November 14, Articles 21 and 22, <https://www.dfat.gov.au/sites/default/files/indo-pacific-economic-framework-prosperity-agreement-relating-supply-chain-resilience.pdf>

² US Department of Commerce (2024) US Department of Commerce announces upcoming entry into force of the IPEF supply chain agreement, 31 January, <https://www.commerce.gov/news/press-releases/2024/01/us-department-commerce-announces-upcoming-entry-force-ipef-supply-chain>

Australia is now participating in the establishment of the committees specified in the agreement before the JSCOT inquiry report and the government decision about ratification.

AFTINET understands that this process has been driven by the US election in November 2024 and the wish to implement the arrangements quickly. However, this calls into question the relevance of the current JSCOT process and could undermine public confidence in the trade agreement process. As far as we are aware this is unprecedented in JSCOT's history and should not be repeated.

Implementation before ratification moves in the opposite direction to Labor government policy³ which has responded to public demands for more transparency and public accountability in the trade agreement process. These demands have recently been reinforced by a public inquiry and report by the Joint Standing Committee on Trade and Investment Growth which recommended that the government legislate for a more transparent process with independent evaluations of trade agreements before they are signed, and regular reports to JSCOT about the progress of negotiations⁴ before JSCOT reviews.

IPEF differs from other agreements: many commitments are non-binding and no commitments are enforceable through trade sanctions

IPEF is not a traditional trade agreement because there is no additional market access provided through reductions in tariffs on goods or increased market access for services. This means that any commitments made by governments cannot be enforced by trade penalties. They may have the legal status of a diplomatic agreement between governments but there are no penalties if governments do not implement them.

The commitments themselves also vary between “acknowledge” or “intend” to the more definite “shall.” Only the latter are binding commitments with the status of an agreement between governments. The DFAT National Interest Analysis (NIA) acknowledges that the agreement “principally sets out non-binding commitments of member governments to cooperate with each other in the initiatives established.”⁵ The NIA also provides a list of non-binding commitments, including the inclusivity clauses other than those on labour rights.⁶

The supply chain text deals with the main purpose of IPEF, which is to diversify supply chains and reduce dependence on China, create alternative networks of supply chains, prevent supply chain disruptions, and improve labour rights issues in supply chains.

The main binding commitments are to establish a series of committees which deal with these issues.

Acknowledgement of inclusivity issues welcome, but non-binding

It is welcome that the preamble⁷ acknowledges the importance of consultations about the impacts of supply chains with workers, communities, women, Indigenous Peoples, persons with disabilities,

³ Australian Labor Party (2021) National Platform

⁴ Joint Standing Committee on Investment and Growth (2024a) Interim Report recommendations. See also the Final Report (2024b).

⁵ DFAT (2024) NIA p.3 para 7.

⁶ DFAT (2024) NIA p.10 para 55.

⁷ DFAT IPEF Text p. 1-2.

rural and remote community populations and minorities. We welcome the fact that consultation with workers is followed up in the text and through the committee system. However consultation with other groups is not followed up in the text, except for a reference to the intention to provide inclusive training opportunities for skilled workers,⁸ but this is non-binding. We note that Article 17 on the Treaty of Waitangi⁹ enables the New Zealand Government “to accord more favourable treatment to Māori in respect of matters covered by the agreement, including in fulfilment of its obligations under the Treaty of Waitangi”). There is no equivalent clause applying to Australian First Nations people.

References to the ILO Declaration on the Fundamental Rights of Workers¹⁰ and the reference to sustainable forms of production and the circular economy¹¹ are also welcome since most Indo-Pacific bilateral and regional trade agreements do not include any such references. There is a committee process for dealing with labour rights which as discussed below. There are no processes at all for dealing with environmental issues. Pillar III of the IPEF is intended to deal with environmental and climate change issues.

The agreement allows for a general review of the agreement 5 years after entry into force to be completed in 6 months,¹² which should address the issues of inclusivity and weak commitments.

Recommendation 2:

Australia should use the five-year review of the agreement to support the integration of all inclusivity issues, including First Nations Peoples, into the text of the agreement with stronger commitments to their implementation and enforcement .

Cooperating to promote transition from use of asbestos in supply chains

Asbestos was banned for public health reasons in Australia and many other countries after decades of campaigning by unions and community organisations. The banning of deadly asbestos products is endorsed by the World Health Organisation (WHO) and the ILO, and permitted by the World Trade Organisation (WTO). Asbestos is still extensively used as a building material in several IPEF countries, and this is the first time that asbestos has been specifically mentioned in a trade-related agreement in the region.

We welcome the fact that IPEF countries have agreed to cooperate to promote transition from the use of asbestos to safer alternative products. However, the language is non-binding rather than a commitment to definite action.

The relevant Article reads:

“The parties intend to cooperate to provide technical assistance and capacity building to prevent asbestos-related diseases and to promote transition from the use of asbestos to safer alternative products in IPEF supply chains.”¹³

⁸ DFAT IPEF Text Article 5.

⁹ DFAT IPEF Text Article 17.

¹⁰ DFAT IPEF Text Section A Article 1 Definitions.

¹¹ DFAT IPEF Text Article 2.9.

¹² DFAT IPEF Text Article 27.

¹³ DFAT IPEF Text Article 2.12.

Recommendation

The Australian government should play a leading role in pursuing the implementation of cooperation to remove asbestos in supply chains and provide technical assistance and funds for capacity building to ensure that the intention of this clause is implemented. Australia should support stronger commitments to implementation at the five-year review of the agreement.

IPEF Supply Chain Committees

The IPEF Supply Chain Council

As discussed above, the main binding commitments in the agreement are the establishment of a series of committees to implement and improve supply chain process.

The Supply Chain Council¹⁴ has one senior official representative from each country and will develop an action plan and establish teams to develop Action Plans in each country to share information and develop projects to improve supply chains. Possible access to investment and funding of infrastructure and development projects are mentioned, but there are no specific funding or development commitments.

The IPEF Supply Chain Response Network

The Supply Chain Response Network¹⁵ is also composed of senior government officials and is established to gather information, report and respond quickly to disruptions in supply chains. The network shall establish terms of reference setting up procedures related to network operations including specifying under what circumstances a party may request an emergency meeting at the Ministers or Leaders level.

The Labour Rights Advisory Board

The Labour Rights Advisory Board¹⁶ is intended to respect, promote and realise labour rights in IPEF supply chains. This will have three representatives from each of the 14 countries from business, government and worker representative bodies a total of 42 people, and will monitor and report on labour rights in IPEF countries, in consultation with the ILO. Reports may be published if approved by a two-thirds majority, excluding any information designated as confidential.

The Labour Rights Advisory Board subcommittee

This subcommittee consists of one government representative from each country. This body of government representatives elects the chair of the Labour Rights Advisory Board and will address what are called Facility Specific Labour Rights Inconsistencies.¹⁷ It will develop guidelines for a reporting mechanism about complaints of violations of labour rights in specific enterprises 180 days after the agreement comes into force. Decisions are made by a two-thirds majority

¹⁴ DFAT IPEF Text Article 6.

¹⁵ IPEF Text Article 7 and Article 12.

¹⁶ IPEF Text Article 8

¹⁷ IPEF Text Article 9

This facilities-based process is partly modelled on the dispute process in the US-Mexico-Canada Agreement (USMCA), but it lacks the transparency and final enforcement process of trade penalties which give that agreement some enforceability.¹⁸

All the details of the complaint are to be kept confidential and the process only results in consultation between the parties and then between the subcommittee and the parties, without any obligation to reach a solution.¹⁹

The subcommittee will maintain a public list of unresolved allegations but the list will only identify the countries and sector involved, and the specific labour right involved, but will not identify the enterprise.²⁰

The establishment of a tripartite body to produce regular reports on labour rights in IPEF countries is a welcome development, as is a process for this subcommittee to receive complaints about violations of labour rights by specific enterprises. However, country reports may not be published and the complaints process lacks both transparency and enforceability.

Recommendation:

The Australian government should use the five-year review to advocate for a more transparent and enforceable process for both reports of violations of labour rights in IPEF countries and complaints about violations of labour rights by specific enterprises.

¹⁸ US Trade Representative (2020) Text of US-Mexico-Canada Agreement Chapter 23, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>

¹⁹ IPEF Text Article 9.8-9.12.

²⁰ IPEF Text Article 9.13-14.