

Indo-Pacific Economic Framework for Prosperity Agreement relating to Supply Chain Resilience

Submission by the Australian Council of Trade Unions to the
Joint Standing Committee on Treaties

ACTU Submission, 12 June 2024
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Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.8 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

A worker-centric approach to trade

The ACTU supports fair trade as a vehicle for economic growth, job creation, tackling inequality and raising living standards. The most important objective of trade policy should be to deliver benefits to workers, the community and the economy by increasing opportunities for local businesses, creating quality local jobs, and protecting public services. The benefits of trade must be shared among our community, and promote equitable development abroad: economic development must go hand-in-hand with decent work.

We are calling for a reformed trade policy that puts the Australian community at the centre – workers and our communities must be genuinely consulted on trade agreements, and our Parliament must have democratic oversight. The United States is perhaps the best international example of a consultative approach to trade agreements, that prioritises workers’ rights in its negotiating agenda. The Biden Administration has explicitly adopted a ‘worker centric trade policy’¹ as a key priority.

Under this ‘worker centric’ policy, workers have a seat at the table to advise on the development of new trade policies that promote equitable economic growth by including strong, enforceable labour standards in trade agreements that protect workers’ rights. The Biden Administration is also committed to using trade to engage its partners to secure commitments to combat forced labour and increase transparency and accountability in global supply chains. The US has a legislated approach to guide its consultation and negotiating parameters for trade agreements. The US Congress passed the Bipartisan Congressional Trade Priorities and Accountability Act² (‘the Trade

¹ Office of the United States Trade Representative, ‘Fact Sheet: 2021 President’s Trade Agenda and 2020 Annual Report’

<https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/2021%20Trade%20Report%20Fact%20Sheet.pdf>

² ‘Overview of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015: Prepared by the staffs of the Ways and Means Committee and Senate Finance Committee’

Priorities Act') in 2015 which established new and expanded consultation requirements and negotiating objectives, including the requirement for labour clauses, and robust consultation before, during and after negotiations. The Biden Administration's approach provides an example of how Australia could adopt legislation that embeds a consultative approach to trade that centres the voices and the interests of working people, and ensures that workers' rights are non-negotiables in trade deals.

The IPEF Supply Chains Agreement

The Indo-Pacific Economic Framework for Prosperity (IPEF) negotiations launched in September 2022, consisting of four 'pillars' of work, each with its own standalone agreement:

1. Trade
2. Supply chains
3. Clean Economy
4. Fair Economy

Pillar Two, Supply Chains, was the first of the IPEF agreements to be completed, with Pillars 3 and 4 signed at the IPEF Ministerial meeting in Singapore in June 2024. Pillar 1 negotiations are ongoing. IPEF is not a traditional trade agreement as there is no additional market access provided and the commitments are non-binding.

The purpose of the Pillar 2 IPEF Supply Chain Agreement is to establish regional coordination to build the 'resilience, efficiency, productivity, sustainability, transparency, diversification, security, fairness, and inclusivity of IPEF supply chains'.³ The Agreement establishes a framework for collaboration to prevent, mitigate, and prepare for supply chain disruptions, which includes the establishment of three supply chain bodies: the IPEF Supply Chain Council, IPEF Supply Chain Crisis Response Network, and the IPEF Labour Rights Advisory Board.

ACTU's position on IPEF

In general, we welcome the focus on lifting labour standards for workers in IPEF supply chains, and we welcome the cooperation regarding the establishment of a facility-specific mechanism and the

<https://www.finance.senate.gov/imo/media/doc/Bipartisan%20Congressional%20Trade%20Priorities%20and%20Accountability%20Act%20of%202015%20Summary.pdf>

³ Article 2(1), 'Indo-Pacific Economic Framework For Prosperity Agreement Relating To Supply Chain Resilience', https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2024/IPEF/IPEF_Supply_Chain_Agreement_treaty_text.pdf?la=en&hash=30456EFD26C1CA29B1429619656F79675753376E

prevention of asbestos-related diseases and transition away from asbestos usage. While we welcome the inclusion of a corporate accountability mechanism, based on the good-practice facility-specific mechanism in the US-Mexico-Canada (USMCA) trade agreement, the IPEF version of this mechanism is significantly watered-down and the labour provisions in the agreement are largely unenforceable. We recognise, however, that these provisions in IPEF represent a positive first step which we expect the Australian Government will build upon in future negotiations.

This submission focuses on the aspects of the agreement directly related to workers and labour rights.

Recommendation 1: JSCOT should note that the implementation of the agreement before the completion of the JSCOT review and domestic ratification processes is not acceptable and should not reoccur in the future.

Recommendation 2: 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 and in Pillar 1 negotiations still on going.

Recommendation 3: The Australian Government must use the five-year review of IPEF to ensure a review of the functioning of the Labour Rights Advisory Board to ensure it is effective, including advocating for the removal of the requirement for reports to be approved by a two-thirds majority before they are made public.

Recommendation 4: The Australian Government must use the five-year review of IPEF to ensure an independent evaluation of the mechanism takes place, including how widely it has been used and whether there have been concrete outcomes to improve labour rights, and advocate for a more transparent and enforceable process for violations of labour rights in IPEF countries and complaints about violations of labour rights by specific enterprises.

Implementation process

We are concerned that the Australian Government has begun implementing elements of the agreement before the completion of the Joint Standing Committee on Treaties (JSCOT) inquiry process is complete and the agreement has been ratified. The IPEF Supply Chain Agreement comes into force after ratification by five countries, which occurred in February 2024 after Fiji, India,

Japan, Singapore and the United States completed their domestic ratification processes. This triggered the commencement of establishing the three supply chain bodies in the agreement: the Supply Chain Council, Crisis Response Network, and the Labour Rights Advisory Board.

Australian Unions have been calling for a reform of Australia's trade agreement-making process to ensure transparency and accountability, and a recent inquiry of the Joint Standing Committee on Trade and Investment Growth has recommended that the Government legislate a framework for the negotiation of trade and investment agreements⁴, which includes transparency measures such as independent analysis, stakeholder consultation, and regular briefs of relevant parliamentary committees on the status and progress of current and potential trade and investment agreements.

The commencement of IPEF implementation before the parliamentary processes are concluded and the agreement is ratified, however, undermines transparency and accountability. We recommend JSCOT provide a comment on this process and recommend that the implementation of an agreement before a JSCOT review should not reoccur in the future.

Recommendation 1: JSCOT should note that the implementation of the agreement before the completion of the JSCOT review and domestic ratification processes is not acceptable and should not reoccur in the future.

Article 2.12: Asbestos

We welcome the cooperation in IPEF regarding asbestos outlined in Article 2.12:

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.

Although we would prefer more enforceable language, this is still a significant achievement, and if implemented, will be a strong contributor to saving thousands of lives in the region and securing considerable savings for participating countries in future health, environment, clean up, and compensation costs. The agreement will also support safer supply chains in construction and transport sectors, among others, and contribute to improved human health and the environment.

⁴ Recommendation 8, 'Strengthening Australia's approach to trade negotiations', Joint Standing Committee on Trade and Investment Growth, April 2024
https://parlinfo.aph.gov.au/parlinfo/download/committees/reportjnt/RB000220/toc_pdf/StrengtheningAustralia'sapproachtotradenegotiations.pdf

The importance of this initiative is clear, given latest estimates of asbestos disease deaths in IPEF countries by the Global Burden of Disease Study. The study indicates that for 2021 there were over 73,200 deaths in that year among the 14 countries. The current burden of deaths is mainly occurring in IPEF countries that used asbestos last century due to the lead time between exposure and disease onset (20-40 years). In 2021, USA, Japan, Australia and Korea made up 63,969 of these deaths or 87% of burden for the region. As all 4 of these countries have banned asbestos between 2003 and 2024, this burden will shift to other IPEF countries in coming decades, to those who are currently consuming high amounts of asbestos. These IPEF countries includes India (400,000 tonnes imported in 2022), Indonesia (100,000 tonnes), Thailand (35,000 tonnes), Vietnam (23,000 tonnes) Malaysia (3,800 tonnes) and Philippines (2,445 tonnes). In total these countries imported over 564,000 tonnes of asbestos fibre in 2022, not counting imports of asbestos containing materials.

Globally this consumption pattern is clear as asbestos consumption moves from high income countries last century, to low- and middle-income countries currently.

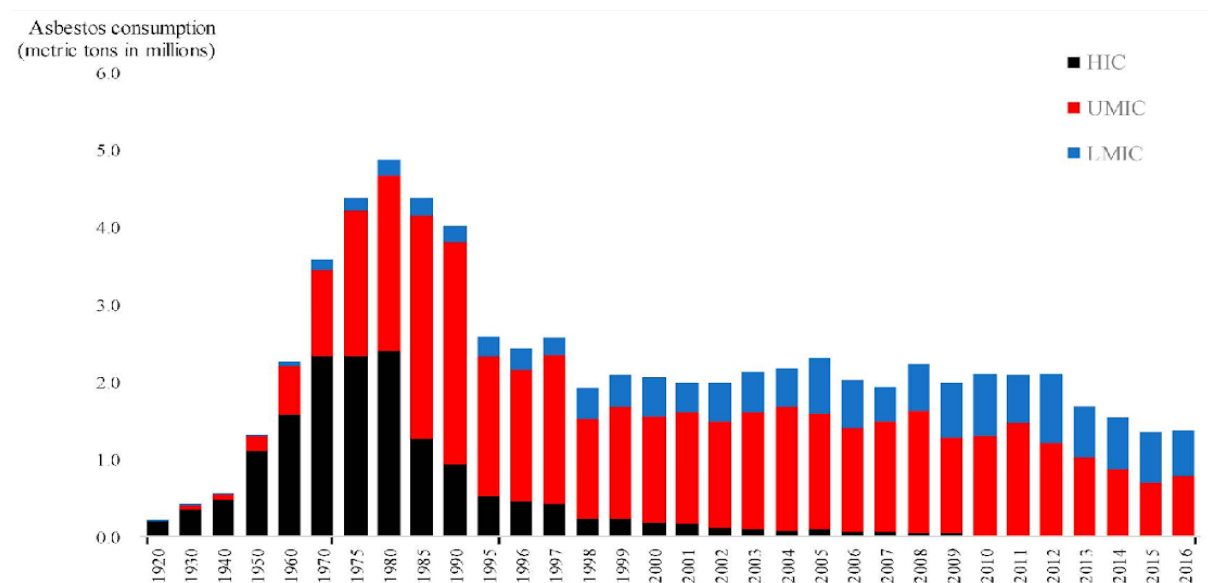
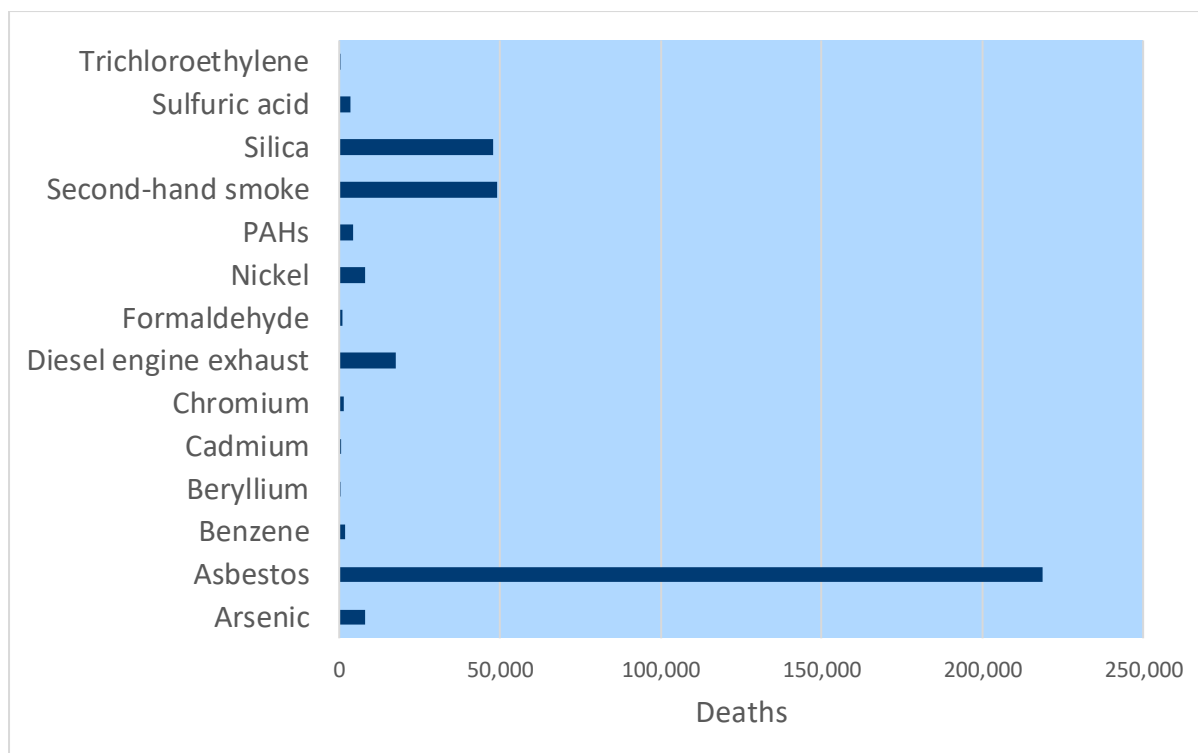


Figure 1: Global Trend Over Time in Asbestos Use of the 3 Country Groups based on National Income Category, HIC: High income countries (N=54), UMIC: Upper middle-income countries (N=51): LMIC: Lower middle income and low-income countries combined (N=57).

Asbestos exposure is responsible for over half of all occupational based diseases globally:



Global Deaths from Occupational Carcinogens 2016⁵

Chrysotile or white asbestos is banned in 7 IPEF countries currently (Australia, USA⁶, New Zealand, Korea, Japan, Brunei and Singapore⁷) however, IPEF countries also made up 4 of the top 8 importers of asbestos fibre globally in 2018⁸ (India, Indonesia, Thailand and Vietnam) with a total of 550,506 tonnes or fully 55% of total asbestos traded that year. The agreement then to cooperate between these countries to help the remaining user countries transition to safer products is very significant.

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. We urge Australia to seek stronger commitments from IPEF countries to phasing out this deadly material from all supply chains in IPEF Pillar 1 negotiations, and as an agenda in all future trade agreement negotiations.

⁵ <https://vizhub.healthdata.org/gbd-compare/>

⁶ Announced by Biden administration in 2024 with transition period

⁷ Some exemptions on trade through the port

⁸ UN Comtrade data, <https://comtrade.un.org/Data>

Recommendation 2: 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 and in Pillar 1 negotiations still on going.

Article 8: Labour Rights Advisory Board

The Labour Rights Advisory Board (LRAB) is a tripartite board comprising of representatives of worker organisations, employer organisations and governments from each IPEF country. The Parties shall also establish a Subcommittee of the LRAB, consisting of one government representative from each body to address ‘facility specific labour rights inconsistencies’. It will develop guidelines for a reporting mechanism about complaints of violations of labour rights in specific enterprises within 180 days of the agreement coming into force. Decisions are made by a two-thirds majority.

The LRAB has responsibility for developing up to two sector-specific technical reports annually on labour rights in IPEF supply chains on a sector chosen by the Subcommittee (comprised of Governments), and the Board shall, following approval by two-thirds of the representatives, publish such reports, except for any confidential information. The Board may also publish other materials, such as best practice guides and business advisories to support the realisation of high labour standards in IPEF supply chains. The Board shall also identify on an ongoing basis ‘any labour rights concerns that it considers pose a significant risk to the resilience, efficiency, productivity, sustainability, transparency, diversification, security, fairness, or inclusivity of IPEF supply chains and shall develop recommendations to address such risks’ and inform the IPEF Supply Chain Council (comprised of Government representatives) of any identified concerns.

This new Board has a number of limitations, however, that lead us to question whether it will be effective, including that:

- reports may only be published if approved by a two-thirds majority, excluding any confidential limitation. This is a serious limitation that will reduce the effectiveness of the Board and may politicise labour rights issues.
- Sectors are chosen by the government Subcommittee, which may mean the most at-risk sectors are not selected for political reasons.
- While we welcome the publication of best-practice advisories, care must be taken to ensure these are in areas not already covered by work of the International Labour Organisation to avoid duplication and competing guidance.

Recommendation 3: The Australian Government must use the five-year review of IPEF to ensure a review of the functioning of the Labour Rights Advisory Board to ensure it is effective, including advocating for the removal of the requirement for reports to be approved by a two-thirds majority before they are made public.

Article 9: Addressing Facility-Specific Labour Rights

Inconsistencies

Each Party undertakes to establish a reporting mechanism to receive allegations of labour rights inconsistencies at facilities (that is, enterprises that are not microenterprises – firms with 20 or fewer workers) located at the territory of another Party in the agreement. This is based on the facility-specific Rapid Response Mechanism (RRM) in the US-Mexico-Canada Agreement (USMCA), which is a best-practice example of corporate accountability mechanism in a trade agreement. The USMCA entered into force on 1 July 2020, and the RRM enables stakeholders to file petitions alleging violations of the rights to freedom of association and collective bargaining under Mexican law. It is a dispute settlement mechanism that provides for expedited enforcement of workers' rights to freedom of association and collective bargaining at the workplace level. The RRM permits the US Government to take enforcement actions against individual factories to protect workers' rights, including the suspension of USMCA tariff benefits or denial of entry of goods from businesses that are repeat offenders.

The RRM is leading to concrete results: the ACTU's US counterpart, the AFL-CIO, filed allegations jointly with the National Independent Union of Industry and Service Workers in Mexico, that workers at the Tridonex auto parts factory were being denied the rights to freedom of association and collective bargaining. As a result the US Government and Tridonex announced an agreement where Tridonex commits to paying severance and backpay, expressing neutrality in any union representation election, and protecting workers from intimidation and harassment in the election. In addition, the Government of Mexico has agreed to facilitate workers' rights training for employees, monitor any union representation election at the facility, and investigate claims by employees of workers' rights violations.

Unfortunately, however, the IPEF version of the RRM lacks the enforceability and transparency of the USMCA mechanism. The shortcomings of the IPEF mechanism include:

- The details of the complaint are to be kept confidential and the process.
- The host Party reviews the allegation in manners 'consistent with its relevant domestic laws and regulations'.

- Only the name of the country and sector and the specific labour right involved will be made public for unresolved cases – not the name of the company. In situations where the sector would identify the facility, the sector shall not be named.
- There is no obligation or mechanism to ensure parties reach a solution.

We fear this complaints mechanism has many of the same draw backs of other under-utilised complaints mechanisms, such as the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, which lacks any ability to ensure enterprises participate in mediation with the complainant. Indeed, this process appears weaker than the OECD MNE complaints process as there appears to be no independent process for mediation, and the MNE must not be named publicly. We are deeply concerned that these weaknesses will mean the complaints facility is not used, or that if it is, it will have no positive impact on labour rights. Protections must also be put in place to ensure there are no reprisals against workers who utilise this complaints mechanism. We are similarly concerned at the establishment of processes that could appear to be parallel to ILO processes, that have not been developed in consultation with the social partners (worker and employer organisations).

Recommendation 4: The Australian Government must use the five-year review of IPEF to ensure an independent evaluation of the mechanism takes place, including how widely it has been used and whether there have been concrete outcomes to improve labour rights, and advocate for a more transparent and enforceable process for violations of labour rights in IPEF countries and complaints about violations of labour rights by specific enterprises.

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