

In the European Union, legislation has also faced hurdles. Unanimity is required to approve the proposed directive implementing Pillar Two, but Poland and Hungary balked at agreeing to the measure.<sup>32</sup> Eager to push the agreement forward, the EU and the United States sought to convince both states to reverse their opposition. Secretary Yellen visited Poland in mid-May, and on June 1 the EU offered Poland €35.4 billion in loans and grants in COVID-19 recovery aid, apparently as an inducement.<sup>33</sup> By the middle of June, Poland indicated that it was dropping its opposition.<sup>34</sup> Hungary, though, continues to dissent. On July 8, the United States notified Hungary that it is terminating the bilateral tax treaty between the two countries, reportedly because the “United States, across administrations, has had long-held concerns with Hungary’s tax system and the Hungary treaty.”<sup>35</sup> Hungary is apparently working with congressional Republicans.<sup>36</sup> With Hungary’s opposition to the directive firm at the moment, France, Germany, Italy, the Netherlands, and Spain announced in September that they would push forward regardless, either through the EU’s “enhanced cooperation” procedure (which requires nine member states) or by enacting domestic legislation country-by-country.<sup>37</sup> Draft legislation is pending in many countries outside of the EU, including Australia, Canada, New Zealand, South Korea, Switzerland, and the United Kingdom.

*The United States Launches the Indo-Pacific Economic Framework for Prosperity and the Americas Partnership for Economic Prosperity*

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On May 23, 2022, in Tokyo, the United States, together with Australia, Brunei Darussalam, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the

reaches-deal-with-chuck-schumer-on-energy-healthcare-package-11658957299. U.S. law establishes a minimum tax rate on the foreign earnings of U.S. MNEs, but the rate is lower than required by Pillar Two (10.5%), and it does not apply on a jurisdiction-by-jurisdiction basis.

<sup>32</sup> Other EU member states, including Estonia and Ireland, had reservations about the agreement but negotiated changes before the text became final.

<sup>33</sup> Paul Hannon, *Global Minimum Tax Suffers Fresh Setback as EU Fails to Agree on Implementation*, WALL ST. J. (June 17, 2022), at <https://www.wsj.com/articles/global-minimum-tax-suffers-fresh-setback-as-eu-fails-to-agree-on-implementation-11655469945>.

<sup>34</sup> Eur. Comm’n Press Release, *NextGenerationEU: European Commission Endorses Poland’s €35.4 Billion Recovery and Resilience Plan* (June 1, 2022), at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3375](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3375); Sam Fleming, *Poland Ready to Drop Objection to Minimum Corporate Tax*, FIN. TIMES (June 15, 2022), at <https://www.ft.com/content/3e387d88-16c4-4c14-9acc-6c1f257e9125>.

<sup>35</sup> Richard Rubin & Drew Hinshaw, *U.S. Moves to End Tax Treaty with Hungary*, WALL ST. J. (July 8, 2022), at <https://www.wsj.com/articles/u-s-moves-to-end-tax-treaty-with-hungary-11657311739>; U.S. Dep’t of Treasury Press Release, *United States’ Notification of Termination of 1979 Tax Convention with Hungary* (July 15, 2022), at <https://home.treasury.gov/news/press-releases/jy0872>.

<sup>36</sup> Jeff Stein, *GOP Officials Back Hungary’s Resistance to Global Tax Deal, Bucking Biden*, WASH. POST (July 1, 2022), at <https://www.washingtonpost.com/us-policy/2022/07/01/hungary-gop-tax-deal>.

<sup>37</sup> Laurence Norman, *France, Germany and Other EU Countries Pledge to Advance Minimum Tax, Despite Hungary Veto*, WALL ST. J. (Sept. 9, 2022), at <https://www.wsj.com/articles/france-germany-and-others-pledge-to-advance-minimum-tax-despite-hungary-veto-11662736518>.

Philippines, Singapore, Thailand, and Vietnam, launched the Indo-Pacific Economic Framework for Prosperity (IPEF).<sup>1</sup> A little more than two weeks later, on June 8, at the ninth Summit of the Americas, in Los Angeles, President Biden announced the Americas Partnership for Economic Prosperity (APEP), with participants to be named later.<sup>2</sup> Neither the IPEF nor the APEP is a trade agreement offering tariff reductions or other forms of market access. Neither requires congressional approval.<sup>3</sup> And neither establishes binding obligations on its participants. Both are political declarations that set out blueprints for future discussions on economic policy and cooperation, and indeed both are meant to serve as substitutes for traditional trade deals, like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which the administration has decided not to join.<sup>4</sup> As Secretary of Commerce Gina Raimondo remarked, the IPEF “is intentionally designed not to be a ‘same old, same old’ traditional trade agreement.”<sup>5</sup> Instead, “it’s designed as a more innovative and flexible approach, designed to reflect the fact that our economies have changed.”<sup>6</sup> National Security Advisor Jake Sullivan emphasized the point: the IPEF is “a 21st century economic arrangement designed to tackle 21st century economic challenges.”<sup>7</sup> Seeking to counter China’s growing economic influence in the Pacific and the

<sup>1</sup> Statement on Indo-Pacific Economic Framework for Prosperity (May 23, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/statement-on-indo-pacific-economic-framework-for-prosperity> [hereinafter IPEF Statement]. Within days, Fiji became the Framework’s fourteenth founding partner. White House Press Release, Statement by National Security Advisor Jake Sullivan on Fiji Joining the Indo-Pacific Economic Framework for Prosperity (May 26, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/26/statement-by-national-security-advisor-jake-sullivan-on-fiji-joining-the-indo-pacific-economic-framework-for-prosperity>. National Security Advisor Jake Sullivan noted that the IPEF “reflects the full regional diversity of the Indo-Pacific, with members from Northeast and Southeast Asia, South Asia, Oceania, and the Pacific Islands.” *Id.* The IPEF does not include Taiwan, which had sought to join, apparently because other states were concerned about China’s reaction. See Andrew Restuccia, Ken Thomas & Yuka Hayashi, *Biden Kicks Off Economic Group Linking U.S., Asia*, WALL ST. J. (May 23, 2022), at <https://www.wsj.com/articles/biden-kicks-off-economic-group-linking-u-s-asia-11653290101>. President Biden announced the exploration of the idea of an IPEF in October 2021. See White House Press Release, Readout of President Biden’s Participation in the East Asia Summit (Oct. 27, 2021), at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/27/readout-of-president-bidens-participation-in-the-east-asia-summit>.

<sup>2</sup> White House Press Release, Remarks by President Biden at the Inaugural Ceremony of the Ninth Summit of the Americas (June 8, 2022), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/06/08/remarks-by-president-biden-at-the-inaugural-ceremony-of-the-ninth-summit-of-the-americas>. The text of the APEP was issued as a press release. See White House Press Release, Fact Sheet: President Biden Announces the Americas Partnership for Economic Prosperity (June 8, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity> [hereinafter APEP Fact Sheet].

<sup>3</sup> The IPEF has been described as an “initiative” and an “administrative arrangement.” IPEF, *supra* note 1; Closing Plenary with Ambassador Sarah Bianchi, Deputy U.S. Trade Representative, at 24:48 (Feb. 1, 2022), at <https://www.youtube.com/watch?v=xBCJ7bwTnvI>. While not conceding the need to receive congressional approval of any agreements resulting from either the IPEF or APEP, the administration has recognized that “Congress needs to be a part of shaping what we do with our partners.” White House Press Release, On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework (May 23, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework> [hereinafter On-the-Record Press Call].

<sup>4</sup> James Mayger & John Micklethwait, *U.S. Aims to Begin New Asia Framework in 2022, Raimondo Says*, BLOOMBERG (Nov. 16, 2021), at <https://www.bloomberg.com/news/articles/2021-11-17/u-s-likely-to-launch-new-asia-framework-in-2022-raimondo-says>.

<sup>5</sup> On-the-Record Press Call, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* U.S. Trade Representative Ambassador Katherine Tai has explained that “the innovation of the Indo-Pacific Economic Partnership is that it goes beyond a traditional trade agreement—trade is one component of

Americas,<sup>8</sup> the IPEF and APEP also signal what the U.S. government considers are the likely opportunities and threats in trade and investment during the coming years. They show as well the effect of domestic U.S. politics, manifested most clearly in the election of Donald Trump and his decision that the United States would not become a party to the Trans-Pacific Partnership, on the content and form of contemporary U.S. trade deals.

The IPEF Statement declares that it marks the initiation of “collective discussions [among its participants] toward future negotiations” in order to “strengthen economic cooperation” in four areas.<sup>9</sup> These four “pillars” are: “Trade,” “Supply Chains,” “Clean Energy, Decarbonization, and Infrastructure,” and “Tax and Anti-Corruption.”<sup>10</sup> For each, the Statement articulates the partners’ commitments to principles and their goals going forward. Regarding trade, they announced: “We seek to build high-standard, inclusive, free, and fair trade commitments and develop new and creative approaches in trade and technology policy that advance a broad set of objectives that fuels economic activity and investment, promotes sustainable and inclusive economic growth, and benefits workers and consumers.”<sup>11</sup> On supply chains, the partners undertook to “improv[e] transparency, diversity, security, and sustainability in our supply chains to make them more resilient and well-integrated . . . [and will] seek to coordinate crisis response measures; expand cooperation to better prepare for and mitigate the effects of disruptions to better ensure business continuity; improve logistical efficiency and support; and ensure access to key raw and processed materials, semiconductors, critical minerals, and clean energy technology.”<sup>12</sup> Concerning clean energy, decarbonization, and infrastructure, they “plan to accelerate the development and deployment of clean energy technologies to decarbonize our economies and build resilience to climate impacts . . . [which will] involve[] deepening cooperation on technologies, on mobilizing finance . . . and on seeking ways to improve competitiveness and enhance connectivity by supporting the development of sustainable and durable infrastructure and by providing technical assistance.”<sup>13</sup> And pertaining to tax and corruption, they “committed to promoting fair competition by enacting and enforcing effective and robust tax, anti-money laundering, and anti-bribery regimes in line with existing multilateral obligations, standards, and agreements to curb tax evasion and corruption in the Indo-Pacific region.”<sup>14</sup>

a larger program.” Carnegie Connects: The Biden Administration and Trade with Katherine Tai, at 40:55 (Sept. 7, 2022), at <https://www.youtube.com/watch?v=r5yC5A746R0>.

<sup>8</sup> See, e.g., Adam Jourdan, Marco Aquino & Matt Spetalnick, *Exclusive: Under Biden, China Has Widened Trade Lead in Much of Latin America*, REUTERS (June 8, 2022), at <https://www.reuters.com/world/americas/exclusive-under-biden-china-has-widened-trade-lead-much-latin-america-2022-06-08> (“When excluding Mexico, total trade flows—imports and exports—between Latin America and China hit nearly \$247 billion last year, according to the latest available data, well above the \$174 billion with the United States.”).

<sup>9</sup> IPEF Statement, *supra* note 1.

<sup>10</sup> *Id.* The White House fact sheet identifies the four pillars as: “Connected Economy,” “Resilient Economy,” “Clean Economy,” and “Fair Economy.” White House Press Release, Fact Sheet: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity (May 23, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity> [hereinafter IPEF Fact Sheet]. The fact sheet provides, in essence, the U.S. interpretation of the IPEF statement, indicating, it would seem, the more specific direction the Biden administration envisions for IPEF discussions.

<sup>11</sup> IPEF Statement, *supra* note 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

There is significant overlap between the IPEF and the APEP.<sup>15</sup> The APEP identifies three “areas of focus” that are similar to those in the IPEF: “Ensuring Sustainable and Inclusive Trade”; “Making More Resilient Supply Chains”; and “Creating Clean Energy Jobs and Advancing Decarbonization and Biodiversity.”<sup>16</sup> And the APEP’s aspirations in these areas are described in ways that are consistent with, and sometimes identical (or nearly identical) to, those in the IPEF. Thus, on clean energy, the APEP partners will “work together to accelerate clean energy technology . . . [and] will work to decarbonize our economies . . . [.] build resilience on carbon impacts . . . [.] deepen cooperation on technologies and best practices, mechanisms to increase public and private investment, and explore technical assistance to advance quality infrastructure.”<sup>17</sup> And on supply chains, the APEP asserts that: “Our economic security rests on supply chains that are diverse, secure, transparent, and sustainable. We recognize the importance of diversifying and rebalancing our supply chains to minimize disruption risks.”<sup>18</sup>

The IPEF and the APEP also share an “open architecture”—a flexible approach to participation and implementation. Partners can select the pillars in which they wish to take part. India, for example, is not currently joining the IPEF’s trade pillar because the pillar links environmental and labor issues to trade.<sup>19</sup> The legal effect of the agreements that will be negotiated will vary too, with some binding and some not. And the type of substantive commitments (policy promulgation and regulatory alignment, elaboration of shared standards, information sharing and transparency, financial and technical assistance and capacity building, and investment facilitation and promotion) will vary as well. Since the IPEF’s announcement, an informal ministerial discussion of the trade pillar took place on June 11 in Paris, a virtual ministerial took place July 26, and an in-person ministerial took place September 8–9 in Los Angeles.<sup>20</sup> At the September meeting, the IPEF partners issued ministerial statements outlining their negotiation objectives for each of the four pillars.<sup>21</sup> All participants have joined all pillars, aside from, as noted, India. U.S. Trade Representative Ambassador Katherine Tai stated that: “Our intention now is to move towards negotiations with our partners on each pillar, with the first round of discussions taking place after this

<sup>15</sup> The similarity is even closer when comparing the APEP with the White House’s description of the IPEF. See IPEF Fact Sheet, *supra* note 10.

<sup>16</sup> APEP Fact Sheet, *supra* note 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Saurabh Sinha, *India Stays Out of Indo-Pacific Trade Pillar*, TIMES OF INDIA (Sept. 10, 2022), at <https://timesofindia.indiatimes.com/business/india-business/why-india-opted-out-of-joining-trade-pillar-of-ipef-for-now/articleshow/94106662.cms>.

<sup>20</sup> Japanese Ministry of Foreign Affairs Press Release, *Informal Ministerial Discussion on the Trade Pillar of the Indo-Pacific Economic Framework (IPEF) for Prosperity* (June 13, 2022), at [https://www.mofa.go.jp/press/release/press4e\\_003134.html](https://www.mofa.go.jp/press/release/press4e_003134.html); Office of the U.S. Trade Rep. Press Release, *Ambassador Katherine Tai and Secretary of Commerce Gina Raimondo Virtual Indo-Pacific Economic Framework Ministerial Readout* (July 27, 2022), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/ambassador-katherine-tai-and-secretary-commerce-gina-raimondo-virtual-indo-pacific-economic>; U.S. Dep’t of Commerce Press Release, *United States and Indo-Pacific Economic Framework Partners Announce Negotiation Objectives* (Sept. 9, 2022), at <https://www.commerce.gov/news/press-releases/2022/09/united-states-and-indo-pacific-economic-framework-partners-announce>.

<sup>21</sup> Office of the U.S. Trade Rep. Press Release, *United States and Indo-Pacific Economic Framework Partners Announce Negotiation Objectives* (Sept. 9, 2022), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/september/united-states-and-indo-pacific-economic-framework-partners-announce-negotiation-objectives>.

ministerial.”<sup>22</sup> An APEP ministerial is envisioned for fall 2022 following “conversation[s] . . . [with] countries in the region . . . as well as U.S. stakeholders ranging from friends in Congress to labor and industry stakeholders.”<sup>23</sup>

For all the similarities, there are differences too between the two initiatives. Some of these are substantive. The APEP covers two topics not mentioned in the IPEF: “Reinvigorating Regional Economic Institutions and Mobilizing Investment” and “Updating the Basic Bargain.” The first focuses on “pivot[ing] our public institutions and financing mechanisms to leverage far greater levels of private investment . . . [and] reinvigorat[ing] the hemisphere’s regional economic institutions . . . including through reforms to drive climate ambition, social inclusion and private sector development.”<sup>24</sup> The second prioritizes “[p]ublic investments and innovations in public administration” and underscores the importance of “cooperation and infrastructure investments in areas such as migration, education, health, unemployment and retirement, childcare, and women’s economic empowerment.”<sup>25</sup> An administration official, referring to these themes, said that “two fifths of [the APEP pillars] are totally bespoke to the hemisphere.”<sup>26</sup> Other divergences between the APEP and IPEF are procedural. Thirteen states together issued the IPEF joint statement, whereas the United States alone announced the APEP.<sup>27</sup> The IPEF thus constituted a commitment by a collective. The APEP in contrast was a unilateral declaration by President Biden, which anticipated subsequent “initial consultations with partners in the hemisphere and . . . stakeholders on [the APEP’s] areas [of focus].”<sup>28</sup> No specific APEP country partners were mentioned by the president, though an administration official indicated that discussions would “begin[] with a set of . . . likeminded partners where . . . we already have existing FTAs. . . . This really is about kind of updating a foundation laid by the several FTAs that we have in the region.”<sup>29</sup>

There has been no shortage of criticisms of these initiatives. Not unexpectedly, China has sought to undermine them. Even before the IPEF was formally announced, Foreign Minister Wang Yi stated that “the Indo-Pacific Strategy concocted by the United States is keen on creating various sorts of small cliques by ganging up on others under the banner of ‘freedom and openness.’”<sup>30</sup> It is, he continued, “in essence a strategy that creates divisions, incites confrontation and

<sup>22</sup> Office of the U.S. Trade Rep. Press Release, Remarks by Ambassador Katherine Tai at the Indo-Pacific Economic Framework Ministerial Closing Press Conference (Sept. 9, 2022), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/september/remarks-ambassador-katherine-tai-indo-pacific-economic-framework-ministerial-closing-press>.

<sup>23</sup> White House Press Release, Background Press Call by Senior Administration Officials Previewing the 9th Summit of the Americas Economic Deliverables (June 8, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/08/background-press-call-by-senior-administration-officials-previewing-the-9th-summit-of-the-americas-economic-deliverables> [hereinafter Background Press Call].

<sup>24</sup> APEP Fact Sheet, *supra* note 2.

<sup>25</sup> *Id.*

<sup>26</sup> Background Press Call, *supra* note 23.

<sup>27</sup> In developing the APEP, the United States, according to a senior official, “consult[ed] with experts and [talked] to governments, even formally through our embassies, to get their feedback.” *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* As the administration official noted, limiting the APEP to countries, at least initially, with which the United States has a trade agreement would distinguish APEP from IPEF, as not all partners in the latter have entered into a trade agreement with the United States.

<sup>30</sup> Ministry of Foreign Affairs of the People’s Republic of China Press Release, Wang Yi: The U.S. Indo-Pacific Strategy Is Bound to Be a Failed Strategy (May 22, 2022), at [https://www.fmprc.gov.cn/eng/zxxx\\_662805/202205/t20220523\\_10691136.html](https://www.fmprc.gov.cn/eng/zxxx_662805/202205/t20220523_10691136.html).

undermines peace. No matter how the strategy is airbrushed or disguised, it is bound to be a failed strategy.”<sup>31</sup> The *China Daily* criticized the APEP as an attempt to “contain China by driving wedges between China and its partners.”<sup>32</sup> It was, the paper continued, “the latest version of the Monroe Doctrine.”<sup>33</sup> Members of Congress were no less critical, although for different reasons. A group of Republican senators argued that the IPEF, by failing to follow the trade agreement model of tariff reductions and binding commitments, would not succeed. “Advancing U.S. economic interests,” they wrote, “requires meaningful and enforceable market access commitments. . . . The lack of ambitious market-opening initiatives not only disadvantages U.S. workers, farmers, ranchers, and businesses today, it jeopardizes America’s competitiveness, resilience, and security in the long-term.”<sup>34</sup> The IPEF, these senators concluded, “is not a credible counterweight to the market-opening agreements that other countries, including China, are actively advancing.”<sup>35</sup> A group of Democratic members of Congress expressed concern that the administration was “seeking to negotiate trade agreements without undertaking robust consultations with Congress and outside stakeholders and without respecting Congress’ constitutional authority to set the terms of foreign commerce.”<sup>36</sup> “Previous administrations,” they noted, seemingly alluding to agreements like those with China and Japan negotiated by the Trump administration, “have attempted to skirt Congress’ authority and avoid the public scrutiny with respect to various bilateral, issue-specific ‘executive agreements.’ The IPEF and APEP mark a significant and concerning expansion of this approach to trade negotiations.”<sup>37</sup> These members also urged the administration to maintain in the IPEF and APEP its “commitment to worker-centered trade policy” and to not “undermine the enormous progress . . . made in securing key labor and environmental provisions” in the United States-Mexico-Canada Agreement (USMCA).<sup>38</sup>

The IPEF and APEP represent a new U.S. approach to trade deals. This stems in part from the administration’s view of trade’s future. As National Security Adviser Sullivan stated, “we and our [IPEF] partners . . . agree that much in the coming decades will depend on how well governments harness innovation, especially the transformations underway in clean energy and the digital and technology sectors, while at the same time fortifying our economies from a range of threats from fragile supply chains, to corruption, to tax havens.”<sup>39</sup> It stems too, as Ambassador Tai explained, from a rethinking of the assumption, fundamental to today’s multilateral trading system, that “trade [is] something that needs to be liberalized maximally . . . that all we needed to do was just to trade a lot, trade more, and trade freely,

<sup>31</sup> *Id.*

<sup>32</sup> *Americas Partnership More Pie in the Sky: China Daily Editorial*, CHINA DAILY (June 9, 2022), at <https://global.chinadaily.com.cn/a/202206/09/WS62a1df44a310fd2b29e61c47.html>.

<sup>33</sup> *Id.*

<sup>34</sup> Letter of Twenty-Four Republican Senators to Ambassador Katherine Tai and Secretary Thomas Vilsack (May 9, 2022), available at [https://www.thune.senate.gov/public/\\_cache/files/cbbf5f1a-8cac-4e18-be32-207485244c68/32EF03DDCBDF7184508B09D4EB77855.final.-05.09.2022-thune-ustr-trade-letter.pdf](https://www.thune.senate.gov/public/_cache/files/cbbf5f1a-8cac-4e18-be32-207485244c68/32EF03DDCBDF7184508B09D4EB77855.final.-05.09.2022-thune-ustr-trade-letter.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> Letter of Forty-Five Democratic Members of Congress to Ambassador Katherine Tai, et al. (Sept. 6, 2022), available at [https://delauero.house.gov/sites/delauero.house.gov/files/DeLauro\\_Warren%20IPEF%20letter\\_v2%2019.06.22.pdf](https://delauero.house.gov/sites/delauero.house.gov/files/DeLauro_Warren%20IPEF%20letter_v2%2019.06.22.pdf) [hereinafter Letter of Forty-Five Democratic Members].

<sup>37</sup> *Id.* On the agreements with China and Japan, see Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 124, 137 (2020).

<sup>38</sup> Letter of Forty-Five Democratic Members, *supra* note 36.

<sup>39</sup> On-the-Record Press Call, *supra* note 3.

in as unfettered a way as possible. And the more of these connections were generated, the more we would rely on each other, and the better off we would all be. That this was the path to a better, more secure world.”<sup>40</sup> That imagined world, she said, was disrupted by Brexit, the election of Donald Trump, the COVID-19 pandemic, and Russia’s invasion of Ukraine. As a result, “this ‘free trade equals good, protectionism equals bad’ dichotomy is one that . . . we need to revisit.”<sup>41</sup> Instead, she concluded, “what we really need to think through is how can we adapt the rules of trade to incentivize firm behavior to take into account more than just efficiency, but to promote and reward decisions that are made to pursue sustainability for our people and for our planet.”<sup>42</sup> It thus connects with a broader set of administration actions and policies centering workers and the environment put forward in the President’s 2022 Trade Policy Agenda.<sup>43</sup> And it stems from a belief that traditional market-access trade agreements are, according to Deputy Secretary of Commerce Don Graves, “things that we can’t do right now given the state of politics, particularly on the Hill.”<sup>44</sup>

The IPEF and APEP reflect too the administration’s overall China policy and its related focus on the Indo-Pacific region.<sup>45</sup> A key part of that policy, Secretary of State Anthony J. Blinken announced in a major address in May, shortly after the IPEF was unveiled, is to “align our efforts with our network of allies and partners, acting with common purpose and in common cause.”<sup>46</sup> The IPEF was the first example he gave. For Secretary Blinken and others in the administration, the IPEF and the APEP provide attractive counter-models to China’s. The U.S. model, he declared, is “one of a free and open Indo-Pacific where rules are developed transparently and applied fairly; where countries are free to make their own sovereign decisions; where goods, ideas, and people flow freely across land, sky, cyberspace, the open seas, and governance is responsive to the people.”<sup>47</sup> Ambassador Tai has made a similar point, arguing that there was “a real opportunity for collaboration between the United States and our partners here on challenges that we face together from China’s non-market policies and industrial policies.”<sup>48</sup> For Secretary Raimondo too, the IPEF provides “an alternative to China’s approach to . . . critical [economic] issues.”<sup>49</sup> The same applies to the APEP, which a senior administration official described as an “affirmative vision for the region economically” and “the best antidote to China’s inroads” in the Americas.<sup>50</sup>

<sup>40</sup> The Trade Off: Economics Versus the Environment, a Conversation with U.S. Trade Representative Ambassador Katherine Tai, at 41:48 (Apr. 26, 2022), at <https://www.youtube.com/watch?v=TXbEh6Mr8M>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Office of the U.S. Trade Rep., 2022 Trade Policy Agenda & 2021 Annual Report of the President of the United States on the Trade Agreements Program (Mar. 2022), available at [https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20\(1\).pdf](https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20(1).pdf).

<sup>44</sup> Partnerships for Prosperity: U.S. Leadership in the Global Economy, at 24:48 (July 25, 2022), at <https://www.youtube.com/watch?v=1QtuNev4vgs>.

<sup>45</sup> See Kristen E. Eichensehr, Contemporary Practice of the United States, 116 AJIL 164, 165 (2022).

<sup>46</sup> U.S. Dep’t of State Press Release, Anthony J. Blinken, The Administration’s Approach to the People’s Republic of China (May 26, 2022), at <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china>.

<sup>47</sup> *Id.*

<sup>48</sup> Leo Lewis & Kana Inagaki, *US Trade Representative Admits Need for “Course Correction” in Asia*, FIN. TIMES (Nov. 18, 2021), at <https://www.ft.com/content/24c37975-f48f-435a-9c32-e69090412763>.

<sup>49</sup> On-the-Record Press Call, *supra* note 3.

<sup>50</sup> Background Press Call, *supra* note 23.