



WRITTEN SUBMISSION OF THE NATIONAL FOREIGN TRADE COUNCIL

Request for Comments on the Americas Partnership for Economic Prosperity—Trade Track

Docket Number USTR-2024-0009

July 22, 2024

INTRODUCTION

This submission by the National Foreign Trade Council (“NFTC”) is in response to the request for comments on the Trade Track of the Americas Partnership for Economic Prosperity (“APEP or “Americas Partnership”) published by the Office of the United States Trade Representative (“USTR”) (89 FR 51935, June 20, 2024) (“the Notice”).

About NFTC

NFTC is the premier association for leadership and expertise on international tax and trade policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues together and to foster trust with governments to improve policy outcomes in the U.S. and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers, and shared global prosperity.

ANALYSIS

I. GENERAL COMMENTS

At the Summit of the Americas in June 2022, President Biden announced the Americas Partnership as a “high-standards” initiative to increase cooperation throughout the Hemisphere. NFTC shares that vision and voiced our support for a partnership that could build on existing free trade agreements (FTAs) to deepen economic integration and deliver concrete commitments throughout the Americas in areas like customs and trade facilitation and digital trade.¹

NFTC has long supported trade agreements and arrangements that provide new market opportunities for U.S. businesses, improve American competitiveness, create U.S. jobs and raise labor, environmental, and commercial standards. We continue to believe that trade agreements with binding and enforceable disciplines are a proven and effective tool for achieving durable results and shared prosperity, and should remain the primary objective for secure and predictable trade throughout the region.

On July 11, 2024, NFTC, joined by 48 other associations representing nearly every sector of the American economy, requested engagement with the White House in order to partner with the Administration in advancing our nation’s economy and national security through a positive and proactive U.S. trade policy that benefits all U.S. enterprises and citizens.²

Following the inaugural APEP Leaders’ Summit and the East Room Declaration, NFTC supports the shared commitment of Leaders to deliver concrete results. To achieve this objective, it remains essential that the United States establish the right governance framework to coordinate across the three APEP tracks – Foreign Affairs, Finance, and Trade – and ensure a cohesive agenda to support the President as well as a unified access point for the private sector, as has been recommended by the President’s Export Council for all trade facilitation efforts of the United States.³

¹ NFTC statement in support of the launch of APEP: <https://www.nftc.org/nftc-welcomes-launch-of-americas-partnership-for-economic-prosperity/> (June 8, 2022)

² Multi-association letter to NSC and NED on positive and proactive U.S. trade policy agenda: <https://www.nftc.org/wp-content/uploads/2024/07/Letter-to-NEC-and-NSC-on-US-Trade-Policy-20240711.pdf> (July 11, 2024)

³ President’s Export Council, Trade Facilitation Letter to the President of the United States: <https://www.trade.gov/sites/default/files/2023-06/PEC-Letter-Trade-Facilitation-6.29.2023.pdf> (June 29, 2023)

NFTC commends USTR for this consultation and advancing engagement under the APEP Trade Track. We remain committed to supporting this work to deepen our cooperation and remain hopeful that cooperation can be durable and lay the groundwork for a more ambitious future trade agenda and binding commitments throughout the Hemisphere.

II. COMMENTS

A. Customs and trade facilitation:

The United States has an opportunity to strengthen and build more resilient, efficient, and sustainable supply chains, improve security and risk management, and facilitate the movement of goods across the region by developing an ambitious customs and trade facilitation work plan through APEP. NFTC supports the agreed direction from the East Room Declaration for members to advance the implementation of the WTO Agreement on Trade Facilitation.

While technology has enabled a cross-border e-commerce ecosystem by connecting buyers, sellers, platforms, logistics providers, and others, the rules and customs procedures in many countries still treat an individual parcel under the same rules and procedures as an ocean container, often imposing complex processing requirements that add cost and red tape to transactions without serving well-defined government regulatory responsibilities. These archaic rules inhibit trade between APEP countries today and, for the same reason, will necessarily limit future trade growth envisioned by the Partnership. Using a real-world example affecting trade between two APEP countries, one customs administration limits all truck trailers to cargo handled by a single customs broker. This restriction causes great inefficiency – i.e., partially loaded trailers – while increasing traffic, congestion, and emissions from the increased conveyances which also applies supply chain stress through the inefficient use of infrastructure and equipment that threaten shortages and other disruptions.

Moreover, NFTC recognizes the benefits of digitalization of customs procedures throughout the Hemisphere and further supports this prioritization. Modernization of information technology (IT) infrastructure for customs administration by APEP members will make it quicker and less expensive to clear goods across the border and, critically, enable expanded trade in the region. This should be scalable for efficiency as trade volumes grow. For example, some countries' customs administrations still require every product entering by express delivery to have a physical paper document with a wet signature to convey the necessary customs information, even when that information has

already been shared electronically. This delays the shipping process by hours and creates a large amount of waste, discouraging small business exports and the deepening of supply chains. In this regard, support for capacity building and harmonization of best practices is required. Consideration should be given to development or adoption of common standards that can lower barriers to participation in digital systems (i.e., open access) while protecting proprietary data.

A 2022 report by Third Way found that the adoption of various trade facilitation measures would create 987,000 American jobs and save \$88 billion in U.S. export costs.⁴ The obstacle holding our economy back from realizing these economic benefits is red tape.

The overarching objectives should be to support and enable the digitalization of the entire customs clearance process in each APEP country into a single, centralized policy and regulatory process coordinated through a single customs agency that can be used by all relevant government departments without requiring duplicate information via paper-based processes. To achieve this, APEP should aspire to the facilitative disciplines of the USMCA's trade facilitation chapter as a baseline among members and seek improvements over that baseline by making progress towards new commitments in order to:

- Avoid unnecessary trade import licenses for imports of IT hardware and software.
- Provide better data sharing between governments and the private sector on seizures.
- Strengthen facilitation procedures for low-value shipments, including voluntary public-private partnerships that increase operational efficiencies in exchange for facilitation benefits.
- Expand the unified entry process based on the *Single Window* concept for all government partner agencies.
- Support commercially-meaningful de minimis thresholds among APEP members as an important customs tool that can enable trade while securely expediting customs clearance and manage the finite resources of customs officials.⁵

⁴ Gabe Horwitz, "Reducing the Red Tape around Supply Chains," Third Way: <https://www.thirdway.org/report/reducing-the-red-tape-around-supply-chains> (July 25, 2022)

⁵ As declared by Congress in the Trade Facilitation and Trade Enforcement Act that USTR "should encourage other countries through bilateral, regional, and multilateral fora to establish commercially meaningful de minimis values." "Statute 130: Public Law 114-125 114th Congress," U.S. Congress, Sec 901: <https://www.congress.gov/114/statute/STATUTE-130/STATUTE-130-Pg122.pdf>. (Feb 24, 2016)

- Expand the scope of Authorized Economic Operators (“AEOs”) to permit mutual recognition across all APEP countries and to increase the tangible benefits of AEO certification, including by creating trusted trader programs for individual sellers that do business via trusted e-commerce marketplaces.
- Allow entities to secure advanced rulings, such as, for supply chains free of forced labor.
- Enhance secure and interoperable e-payment systems to guarantee safe and secure online cross-border purchases.

B. Value and supply chain resilience and sustainability, with particular focus on clean energy, medical supplies and semiconductors:

In the years since the COVID-19 pandemic, countries, including the United States, have begun to reexamine supply chains to ensure the availability of goods ranging from medical supplies (e.g., PPE, pharmaceuticals) to products of national security importance (e.g., semiconductor chips). Industry stakeholders have been necessary allies in derisking supply chains. NFTC companies have indicated that the best way to achieve supply chain resilience moving forward is through diversification, not just through onshoring or reshoring.

Individual supply chains arise from a company’s considered and weighed evaluation of numerous criteria. This evaluation often requires the balancing of a network of input and material suppliers, service providers, production and distribution centers, and transportation and logistics providers. Across these factors, companies must also evaluate the investment climate, quality and reliability criteria, and the regulatory environment. These networks are global, with goods and services crossing borders multiple times to bring a product from design to end user and frequently further to include recycling, reuse or remanufacture.

Resilient supply chains are designed to prevent supply chain disruptions from occurring and recover more quickly from those that do happen. In both cases, industry must remain nimble to mitigate future vulnerabilities, balancing “just in time” and “just in case.” Factors like adaptability, agility, and access to real-time data determine the level of resilience in individual supply chains.

The supplier diversification that resilience requires means the U.S. needs a network of like-minded trade partners that have committed to open and fair markets to ensure that

essential goods can be made available in the market faster and more efficiently. A too-heavy focus on only supplying from the U.S. domestic market will undermine supply chain resilience, alienate the very allies that are needed to achieve real supply chain security and create inefficient production patterns. Instead, supply chain resiliency must come from flexibility and redundancy, both of which are made easier by trade agreements and arrangements, such as APEP, that promote cooperation among allies.

NFTC recommends APEP's work on supply chain resilience focus on:

- Ensuring that any steps to improve supply chain resilience remain consistent with U.S. international, regional, and bilateral trade commitments. Actions that precipitate retaliation (e.g., punitive tariffs) on U.S. businesses and consumers will only further exacerbate the problem.
- Improving APEP member commitments that have already been made in other contexts (e.g., accelerating the implementation of commitments under the WTO's Trade Facilitation Agreement).
- Minimizing supply chain disruptions by developing a mutual understanding of "essential" products and services and by agreeing on conditions that would allow a permit for essential products and services issued by one APEP economy to be recognized in all economies without additional review.
- Collaboration in the semiconductor ecosystem, which accounts for APEP members' niche strengths and comparative advantage. Cooperation can be leveraged for key inputs such as critical minerals, key aspects of the supply chain such as packaging, and on workforce development.
- Building on existing initiatives in the pharmaceutical sector, such as those under the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use to align regulatory standards. The objective is to ensure that regulatory approval processes do not impede effective and efficient global drug development, review, and evaluation. The Administration should also support the Congressional passage of the Medical Supply Chain Resiliency Act, enabling the United States to enter into trusted trade partner agreements with APEP members and facilitate the manufacture of medical supplies (PPE, medical devices and machinery) in APEP economies.
- Effective regulatory procedures with respect to the efficacy of new medicines, including developing new pathways for approval of medicines, increasing capacity

within regulatory agencies, and eliminating unnecessary regulatory barriers. Addressing these important issues can help to optimize the deployment of limited regulatory agency resources and expedite patient access to innovative and lifesaving or life-enhancing medicines.

- Ensuring access to procurement opportunities, which is an important aspect of many supply chains and should be provided based on equal access to public procurement for all companies (foreign or local), free from corruption, and with no local content, technological restrictions, or other NTBs.
- Avoiding policies that could weaken supply chain resilience or negate the facilitative benefits of agreements, including through overburdensome requirements.

C. Environment, climate, and conservation:

The NFTC has long recognized the important link between international trade policies and advancing domestic and international environmental priorities. As the United Nations notes, “international trade constitutes a growing portion of global economic activity, making it an increasingly important driver of environmental change.”⁶ The green transition is also a key driver of employment in the United States. The Bureau of Labor Statistics “projects job growth in occupations related to helping the environment or conserving natural resources” especially for renewable energy technologies. U.S. trade and environment policy leadership is critical to bolstering U.S. green innovation and increasing exports and jobs, and ensuring that climate is not used as an excuse for protectionism.⁷

Companies recommend that APEP objectives on environment, climate, and conservation include meaningful cooperation that supports regulatory framework alignment, enabling companies to reach renewable energy goals. APEP members should collaborate on building not only more resilient supply chains, but more sustainable ones, including prioritizing clean/renewable energy in production, reducing waste, improving recyclability, and enabling more ecological products.

Furthermore, to support the stated goals of APEP leaders including “strengthening regional competitiveness and integration” and “protecting the climate and environment”,

⁶ Trade and Green Economy: A Handbook, Third Edition, International Institute for Sustainable Development, <https://www.iisd.org/system/files/publications/trade-green-economy-handbook-third-edition-en.pdf> (2014)

⁷ Green Growth: Employment projections in environmentally focused occupations, <https://www.bls.gov/careeroutlook/2022/data-on-display/green-growth.htm> (April 2022)

NFTC members want to highlight the importance to USTR of remanufacturing and trade of remanufactured goods and their inputs (end-of life-cycle goods that feed the remanufacturing mainstream) as a priority for the Partnership. Building off the success of various U.S. FTAs and the Asia-Pacific Economic Cooperation (APEC) “Pathfinder on Facilitating Trade in Remanufactured Goods”, USTR should develop and include a program to support education and adoption of remanufacturing and remanufactured goods across the entire APEP membership.

We note various APEP members are already parties to the APEC “Pathfinder on Facilitating Trade in Remanufactured Goods” or another trade agreement that covers remanufactured goods, but this is not the case for all APEP parties. Remanufacturing is increasingly becoming a key enabler of the technical cycle of circular economy, highly contributing to the Sustainable Development Goals (SDG), and is distinct from other circular concepts such as reuse or recycling.

By promoting and enabling a policy and regulatory environment that allows for facilitating trade of remanufactured goods and their inputs such as the policies contained in the USMCA, APEP partners could foster stronger regional competitiveness and integration by making sure there exists cohesive treatment for remanufactured goods and their inputs in production and trade. The APEC Pathfinder is a useful guide that has allowed the industry to educate policymakers on the sustainable development and commercial benefits of remanufacturing while also assisting governments with enacting policies that support the industry.

Additional considerations in defining USTR’s engagement on climate and energy policies with APEP members should take into account:

- Commitments to avoid localization mandates and allow the U.S. and other APEP businesses to compete on a nondiscriminatory basis for commercial-scale energy projects, including those funded by governments, that involve emerging or innovative energy technologies.
- Promotion of a flexible energy mix to promote decarbonization including renewal energy, hydrogen, ammonia, and carbon capture technologies.
- Open access to energy markets for renewable electricity suppliers, consumers, and corporate buyers and link those markets across borders.
- The removal of regulatory barriers to privately built and operated renewable energy projects and foreign investments in renewable energy.

- Increasing consumer options for sourcing renewable energy beyond the existing grid mix.
- Promoting common accounting tools to track renewable energy certificates (REC) or other similar instruments.
- Providing capacity building in the region to strengthen the knowledge, abilities, and skills of individual companies, and improve institutional structures and processes around GHG reduction targets.
- Enrolling the support of the U.S. Agency for International Development and the U.S. Development Finance Corporation in support of sustainable agriculture practices and related research and development among APEP economies to develop more resilient plant varieties, scale “climate-smart” agriculture practices, improve crop yields, and reduce post-harvest loss.
- Supporting investment by APEP economies in projects that advance responsible labor and human rights practices in agriculture supply chains and strengthen legal frameworks, implementation, and oversight of labor laws and practices that ensure transparency, compliance, and accountability.

D. Transparency and good regulatory practices:

APEP’s work streams should incorporate and build from the Good Regulatory Practices (GRP) chapter of the USMCA as well as the WTO Agreement on Domestic Regulation. While almost all APEP countries are signatories to this recently concluded WTO Agreement, not all have scheduled their specific commitments. Through APEP, USTR should: (1) encourage accession by the holdouts among the APEP countries; (2) accelerate implementation of the current signatories; and (3) craft ways to go beyond the WTO standards, for example, by focusing on rulemaking procedures. In addition to formal GRP, APEP should also promote best practices for advisory committees such as the National Trade Facilitation Committees required by the WTO’s Trade Facilitation Agreement, as outlined by a recent paper tabled at the WTO by the United States.

Additionally, given the increased adoption of digital tools and technologies across all sectors, governments are pursuing active regulatory agendas around the use and misuse of technologies. However, heightened regulatory concern should not be an excuse

for undermining core trade principles such as non-discrimination, transparency, due process, the rule of law, and protections for privacy, security, and intellectual property.

APEP should include commitments on good governance to promote transparency and accountability in the development and implementation of regulations on digitally enabled services and technologies, including electronic payment services, as well as in all other services sectors, including financial services.

For the information and communications technology (ICT) ecosystem, the absence of harmonized compliance standards for hardware, software, and communications equipment among the APEP countries undermines the potential of a secure and resilient sector throughout the region. APEP should support the harmonization of safety and environmental inspection standards for imports of hardware, software, and communications equipment, and in cases where harmonization is not possible, allow for mutual recognition of testing and certifications. Mitigating country-specific standards and requirements facilitates interoperability, production efficiency, and swift deployment, enabling both supply chain resiliency and inclusive growth.

Governments around the region are rushing to introduce AI legislation that risks a disjointed patchwork approach that will hinder interoperability, AI deployment, and innovation. APEP members should establish an agreement on the safe, responsible and interoperable development and deployment of artificial intelligence centered on the U.S.-led risk-based and use-case specific approach to AI governance. The AI agreement could include endorsement of the G7's Hiroshima Process, which was built on the core commitments in the White House Voluntary Commitments for AI. The Hiroshima Process has now expanded with support from more than 50 countries, including several APEP members.

APEP could also consider securing commitments from member governments to ensure AI regulatory guardrails are balanced, by committing to risk-based approaches and global technical standards as the building block for interoperability. Notably, APEP could draw upon the OECD Recommendation of the Council of Artificial Intelligence and incorporate new amendments to address concerning trends in AI legislation across the region.⁸ Finally, it could facilitate governments and private sector partners to build on the

⁸ OECD Recommendation of the Council on Artificial Intelligence, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449#:~:text=OECD.AI%20is%20an%20inclusive,for%20the%20benefit%20of%20society> (Adopted May 2019, amended May 2024)

work that Costa Rica is doing at the Center for Excellence on expanding workforce training in technologies of the future.

APEP governments are increasingly entering the digital retail space, for instance, through the development of domestic real-time payment systems or Central Bank Digital Currencies (CBDC), resulting in policymakers assuming the dual role of regulator and competitor. This may create a conflict of interest that favors a domestic system and brand over private sector competitors, thus creating an unlevel playing field. To help avoid such scenarios and promote good governance best practices, we support APEP members endorsing domestic services regulation which mirror *Article 4.4: Development and Administration of Measures for Supply of a Financial Service* of the U.S.-Taiwan Initiative on the 21st Century Trade. Interoperability and internationally accepted standards are critical to achieving economies of scale and enabling to support small businesses in the APEP region, making the development of the APEP that focuses on trade digital services—including the use of digital assets and blockchain technology—crucial.

NFTC additionally recommends that cooperation in the APEP region on transparency and good regulatory practices identify how to advance cooperation towards binding commitments on:

- Good governance procedures to promote transparency and accountability in the development and implementation of regulations, particularly as they relate to trade and emerging technologies.
- Regulatory non-discrimination provisions prohibiting APEP members from drafting regulations or standards-setting processes that discriminate against companies based on their geographic location.
- Uniform safety and environmental standards for imported ICT equipment or mechanisms that allow for mutual recognition of compliance assessments.
- State-owned enterprises, state enterprises, or designated monopolies by ensuring that when regulatory, administrative, or other governmental authorities are exercised those entities act in a non-discriminatory manner and are subject to oversight by an independent regulator.
- Practices that advance fair, balanced, industry-led, and consensus-based processes in global standards bodies to prevent distortions such as undue control by any single firm or country. Additionally, the recognition of industry-led standards

focused on interoperability between various digital systems would enhance U.S. national security by creating a more diverse and transparent ecosystem.

- Due process protections and opportunities for regulatory dialogue where impacted stakeholders can provide input or seek clarifications.
- Recognition of the importance of industry-led, consensus-based, multi-stakeholder approaches to international standards development that foster interoperability, compatibility and inclusiveness, and avoid country-unique standards.
- Timely publication of draft regulations, provision of a reasonable comment period, and appropriate consideration of comments.
- Internationally recognized standards to support digital services, electronic payment services, and emerging technologies.

E. Anti-corruption:

The APEP objectives on anti-corruption should include a commitment for parties to adopt and fully implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The recommendations above support this objective. In particular, the digitization of cross-border data requirements and payments promotes the consistent application of customs procedures and integrity in revenue collection.

Commitments by APEP members to enhance transparency and fairness in their government procurement practices would do much to reduce corruption, enhance value for member government agencies, and open up greater competitive opportunities for U.S. exporters.

There is increasing recognition that multilateral initiatives like APEP can and should advance policy and regulatory reforms that create a more transparent operating environment for businesses, including by:

- Pursuing commitments to strengthen anti-corruption through more transparent government procurement practices.
- Building on high-standard commitments that promote integrity among public officials, establish confidential and protected systems for reporting corruption

offenses, and encourage the private sector to implement effective compliance programs.

F. Other matters related to trade and investment in the Americas that are consistent with the mission and scope of the Partnership:

Ecommerce Skills Partnerships and SMB Export Financing: Ecommerce and other technologies level the playing field on trade for SMBs, removing many traditional barriers to exporting and allowing companies to be “born global”. However, SMBs often lack the technical training and skills to leverage ecommerce, along with the resources needed to navigate complicated customs and regulatory requirements.

Once established and armed with the knowledge and tools, SMBs often lack the financing needed to grow and export. U.S. programs like the SBA’s State Trade Expansion Program (STEP) grants are critical for helping SMBs grow. APEP provides an opportunity to share best practices and develop innovative financing mechanisms for SMBs and their exports. APEP could leverage its Americas Partnership Accelerator to specifically support small business ecommerce exports.

- Each APEP government should establish an ecommerce office and initiate public-private skills partnerships to help small businesses take advantage of ecommerce and other digital tools and execute key business activities, including securing intellectual property, managing inventory, marketing and sales, and scaling export opportunities.
- APEP governments should commit to expanding export financing for SMBs and identify opportunities to leverage existing or new regional financing channels. Organizations like the IDB, CAF, USAID, and others should support these small business loans.

A Common Framework for Taxation: In October 2021, 137 countries within the OECD-coordinated Inclusive Framework (IF) reached a ground-breaking agreement on international aspects of corporate income tax. Today, the number has grown to more than 145 countries; which includes 31 Latin American and Caribbean (LAC) countries. Regrettably, governments within the region have moved forward with unilateral steps to impose retroactive and discriminatory digital services taxes (DST) or relevant similar measures (i.e., a DST, but not in name), in contravention of prevailing international tax

principles. Doing so not only discriminates against U.S. companies, but also directly contravenes the OECD and the World Trade Organization (WTO).

- APEP governments should recommit to the OECD's IF and not adopt any unilateral tax measures that discriminate against US companies or put the ongoing global coordination efforts at risk.

Business Advisory Council: As APEP's work program is formalized, it will be important that the business community have mechanisms to constructively engage throughout the process.

- The U.S. government should facilitate more formal industry engagements, including support for an APEP business advisory council, as exists in other bilateral and regional initiatives.

Expansion and Accession: While creating a framework that supports meaningful outcomes is critical, it is also critical for APEP to reach its potential that it expand to additional countries in the Hemisphere. There is a correlation between the benefits greater harmonization and cooperation can achieve with reaching the majority of trade and supply chains throughout the region.

- Support the expansion of APEP to additional countries in the Hemisphere that can meet the high-standard objectives of the Partnership and the ambition highlighted throughout our submission.

Thank you for the opportunity to present our comments. If you have any questions regarding our comments, please contact Tiffany Smith, Vice President of Global Trade Policy (tsmith@nftc.org) and Brad Wood, Senior Director for Trade and Innovation Policy (bwood@nftc.org).

Sincerely,

A handwritten signature in black ink that reads "Jake Colvin". The signature is written in a cursive, flowing style.

Jake Colvin
President