

July 22, 2024

ELECTRONIC SUBMISSION TO <https://www.regulations.gov>

Ambassador Katherine Tai
U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: Request for Comments on Americas Partnership for Economic Prosperity – Trade Track (89 FR 51935; Docket No. USTR-2024-0009)

Dear Ambassador Tai:

The Consumer Technology Association (CTA) thanks you for the opportunity to submit comments in response to the Office of the U.S. Trade Representative's (USTR) request for views from stakeholders on the trade track of the Americas Partnership for Economic Prosperity (APEP).

CTA represents over 1,300 companies from every facet of the consumer technology industry, which supports 18 million U.S. jobs. A strong majority of our members are small and medium-sized enterprises (SMEs). They and our larger members are innovators, manufacturers, service providers and employers. They also have long-standing and diverse commercial relationships in economies across the Latin American region and therefore have unique perspectives to share on the trade track of the APEP. The recommendations we outline below are relevant to small and medium-sized enterprises in the consumer technology space.

USTR should address institutional issues to ensure the APEP trade track lasts beyond changes of administration.

Latin America is a region of increasing importance to consumer technology companies. LATAM markets are important sources of critical minerals. Companies are assessing whether to source production of inputs and finished products from LATAM markets as they diversify their supply chains. Sound and durable policy and policy-making processes are essential to U.S. interests in this region.

The United States has long been able to influence policymaking in Asia-Pacific economies through the Asia-Pacific Economic Cooperation (APEC) forum, which has stood the test of time since its founding in 1989. Three APEC economies – Chile, Mexico, and Peru are from Latin America. However, not all Pacific-facing Latin American economies are able to become full APEC members, due to long-standing political and institutional issues.

Assuming APEP does not result in comprehensive, market-opening, binding and enforceable trade agreements, APEP should therefore become the APEC of Latin America, but with the United States firmly at the driver's wheel. To emulate APEC as much as possible, USTR should that the APEP trade track institutes an ongoing partnership with industry. Through such a partnership, APEP could create the building blocks for trade agreements, facilitate and liberalize trade, and bolster the ability of micro, small, and medium-sized enterprises to engage in trade. APEP participants must make the trade track a foundational pillar of APEP. APEP economies should establish clear, measurable, and forward-looking trade goals, and then create the necessary institutional infrastructure to achieve those goals. Such an approach will enable the trade track to thrive amid geopolitical challenges and build the capacity of APEP economies to engage in APEP meetings and future trade negotiations. USTR should ensure transparency throughout the process of establishing APEP, seeking industry input and participation in APEP meetings. We strongly suggest USTR hold a public hearing to allow stakeholders to communicate its objectives and strategies for the foundation of the trade track.

USTR should seek commitments on streamlined customs procedures & trade facilitation in the APEP trade track.

A key barrier to making the Americas a more competitive hub for supply chains is antiquated and nontransparent customs processes and infrastructure. APEP should facilitate modernizing customs to increase digitization, non-intrusive inspection, and ultimately make it quicker and less expensive to clear goods across borders. In some countries, customs offices still require every product entering by express delivery to have a physical document with 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 growth of supply chains. Countries should share best practices and identify financing opportunities to adopt new technologies and modernize IT processes. As an interim step, customs agencies should update their IT systems to improve their risk analysis systems and ensure they can communicate directly with couriers' risk analysis systems. This will improve trade facilitation and facilitate better support public-private information sharing to target high-risk shipments.

U.S. businesses, particularly SMEs, benefit when the movement of goods across international borders is simple and streamlined. The entire customs clearance process in an APEP country should be digitalized in a single, centralized policy and regulatory process

coordinated through one single customs agency and not require any duplicate information via paper-based processes. In this regard, the APEP trade track should include binding commitments to:

- Avoid unnecessary trade import licenses for imports of digital hardware and software;
- Share information on seizures between governments and the private sector;
- Create a green lane for *de minimis* shipments that arrive with greater advance data;
- Implement a unified entry process through a Single Window from all government PGAs;
- Maintain authorized economic operator (AEO) programs (and, ideally, expand them to include trusted trader programs for individual sellers that do business via trusted ecommerce marketplaces); and
- Allow entities to secure advanced rulings for supply chains free of forced labor.

AEO programs are an invaluable means of trade facilitation that serve a variety of complementary objectives, including enhancing exporter competitiveness, building more resilient supply chains, making more effective use of limited customs resources, and facilitating low-risk trade. AEO programs are even more useful when coordinated internationally, allowing participants to receive border facilitation benefits in partner economies. The U.S. should use the trade track to extend these arrangements in the Latin American region, where there is both a significant need for trade facilitation and tremendous opportunity for export growth.

USTR should pursue a multi-geography “team approach” with APEP partners to secure value and supply chain resilience and sustainability.

We and our member companies have extensive expertise and insight in operating and diversifying supply chains that can assist USTR in shaping future trade and investment policy initiatives on supply chain resilience while promoting innovation, that should be considered for the APEP trade track. We have given tremendous thought to this topic since the pandemic and our recovery, including by launching our landmark study conducted by Kearny, “Building a Resilient U.S. Consumer Technology Supply Chain”, in October 2023.¹

CTA emphasizes three key messages regarding supply chain resilience that USTR should consider for the success of the APEP trade track:

- First, private sector companies, not governments, create and operate supply chains. USTR’s evident distrust of the private sector to manage supply chains is misplaced. U.S. companies and their foreign partners prioritize the reduction of time, costs, and uncertainty of moving goods across borders to deliver high quality

¹ <https://www.cta.tech/Resources/Newsroom/Media-Releases/2023/October/Landmark-Study-Shows-Bringing-All-Tech-Manufacturi>

technology products to as many consumers as possible around the world. These factors can make or break companies' decisions to invest in innovation here in the United States and in Latin American economies.

- Second, lowering trade costs will strengthen consumer technology supply chains and accelerate USTR's supply chain objectives. Supply chains must be both efficient AND resilient to shocks to meet both business and government objectives. Efficient supply chains located in and among U.S. allies, such as APEP partners, are resilient supply chains. Mitigating supply chain risks such as dependencies on single markets for strategic products is an important objective. Lowering the costs of trade for U.S. businesses across APEP partners will inherently mitigate sole source dependencies.
- Third, forced localization and other trade barriers imposed for the sake of "resilience" are inflationary, reduce competitiveness, and cause unintended consequences such as increased energy demands and adverse environmental impacts. Further, trade barriers particularly – those targeted at U.S. allies and trading partners – can lead to mistrust and retaliatory measures that harm U.S. businesses, workers, and consumers and hinder supply chain diversification. Trade barriers do not shift supply chains or promote resilience. Rather, they are inflationary, decrease productivity among U.S. industries, weaken job creation, and suppress new domestic investments, and increase poverty.

USTR should leverage the APEP to support circular economy, environment, and climate goals.

The circular economy provides an opportunity for the U.S. to simultaneously advance several objectives it has set out for the APEP, including climate change mitigation, supply chain resilience, and trade facilitation. Used goods generally – and used technology products in particular – provide an important source of raw materials that can be recovered and returned into the production process for new goods. Doing so reduces the need for mining, processing, and production of virgin materials, reduces waste, and enhances supply chain resiliency by capitalizing on the supply of critical materials already embedded in ubiquitous consumer products. Resource recovery of this nature does not occur at scale today, due in large part to regulatory impediments. APEP is a forum that could offer new collaborative opportunities to address such impediments for the benefit of the United States and the Western Hemisphere.

USTR should also leverage the APEP trade track to collaborate on building sustainability throughout supply chains, by prioritizing clean/renewable energy, reducing waste, improving recyclability, and encouraging responsible product design. For example, the APEP could address international rules that limit the cross-border movement of both used consumer technologies and resources recovered from them serve as a primary impediment to greater extraction and use of recoverable materials. While these rules are designed to safeguard against the potential harms of uncontrolled trade in waste products,

they lack efficient mechanisms to allow safe and lawful movement of materials even among trusted entities.

The APEP trade track also provides an opportunity to explore the creation of “resource recovery lanes” among trusted partners, within which individual companies could be certified to operate based on their willingness to adhere to standards set out by participating governments. Such a program among APEP partners could be developed in stages, for example, by initially covering only certain materials and by expanding over time to include other materials or non-APEP governments, with a long-term objective of creating cost parity between the use of recovered vs. virgin raw materials.

USTR should emphasize APEP commitments related to technical barriers to trade, good regulatory practices, and transparency.

The APEP must address the myriad non-tariff measures (e.g., technical regulations, conformity assessment practices, duplicative testing requirements, and standards-based measures) that impede trade in non-agricultural products and in services. These measures are challenging for companies operating in foreign markets, growing in prevalence, and particularly difficult for small businesses to navigate and overcome. Several studies indicate that the costs of non-tariff measures are significantly more than the costs of tariffs, especially for developing economies and SMEs.² This is particularly so in the consumer technology industry, where innovation is rapid and quickly outstrips the pace at which governments regulate.

Thus, at a minimum, the APEP should include the provisions contained in the USMCA Technical Barriers to Trade (TBT) chapter and the related Sectoral Annexes.³ The APEP could also provide opportunities for industry and government to work together to ensure greater alignment of both regulatory and nonregulatory policies for new technologies, to avoid market segmentation among APEP parties, and to keep markets open. We encourage the United States to seek the elimination of local content requirements and other localization policies (e.g., requirements to locate IT infrastructure or store data locally or to create in-country joint ventures) that interfere with trade and investment in the Americas.

USTR should use the occasion of the APEP trade track to go further still, however. TBT-related challenges that frustrate goods trade also increasingly act as barriers to digital trade and services trade. The basic principles of the WTO TBT Agreement and USMCA TBT Chapter lend themselves equally well to the oversight of standards, regulations, and conformity assessment procedures for services. Thus, good governance principles

² “Trade costs of non-tariff measures now more than double that of tariffs,” UN Trade and Development (Oct. 14, 2019).

³ USMCA – Chapter 11 – Technical barriers to trade, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/11_Technical_Barriers_to_Trade.pdf.
USMCA – Chapter 12 – Sectoral annexes, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/12_Sectoral_Annexes.pdf.

developed in the trade in goods context (e.g., opportunities for stakeholder participation, non-discriminatory participation, and incorporation of standards developed through inclusive international processes) should be extended to all areas of trade and activity, including the digital economy.

APEP member countries should align on and codify uniform safety and environmental standards for imported information and communications technology (ICT) equipment or allow for mutual recognition of compliance assessments. The absence of harmonized compliance standards for hardware, software, and communications equipment among the APEP countries undermines the potential of a secure and resilient information and communications technology ecosystem in the region. APEP should support the alignment of safety and environmental inspection standards for imports of hardware, software, and communications equipment, and in cases where alignment is not possible, explore the possibility of 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.

The APEP trade track should also include binding commitments on good governance procedures to promote transparency and accountability in the development and implementation of regulations, particularly as they relate to emerging technologies. We urge USTR to build on Chapter 28 of the USMCA on Good Regulatory Practices in the APEP trade track.⁴ The APEP should also include services-specific “good governance” provisions that supplement the provisions in USMCA Chapter 28. In the USMCA, the former provisions are found in the “development and administration of measures” article of the Services chapter (e.g., USMCA Art. 15.8), and address matters such as fair administration of licensing procedures, and transparency and timeliness in regulatory processes.⁵

For the APEP to be at least as ambitious as other agreements, USTR should also ensure that it incorporates the results of the WTO Joint Initiative on Services Domestic Regulation, which the United States and 66 other participants concluded in December 2021. Importantly, the Joint Initiative was one of the first trade agreements to address gender-based discrimination. Incorporating these principles or suggesting that APEP participants sign on to that initiative, would serve USTR’s inclusive trade policy objectives.

USTR should build on high standard commitments on anticorruption.

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. APEP should build on high standard commitments that promote integrity among public officials, establish confidential and protected systems for

⁴ USMCA – Chapter 28 – Good Regulatory Practices, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/28_Good_Regulatory_Practices.pdf.

⁵ USMCA – Chapter 15 – Cross-border trade in services, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/15-Cross-Border-Trade-in-Services.pdf>.

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

USTR should encourage allies to pursue adherence to international tax frameworks through the APEP.

Tax measures can have a significant bearing on the international competitiveness of businesses. USTR should use the APEP to articulate and encourage adherence to predictable tax policies that are based on sound international practices and principles. Additionally, USTR should seek commitments from APEP partners to refrain from tax measures that disproportionately target U.S. companies as well as taxes on digital services or other aspects of the digital economy in a manner not aligned with multilateral frameworks. CTA also urges USTR to use APEP to secure commitments from countries to implement the OECD Inclusive Framework on Base Erosion and Profit Shifting.⁶

In October 2021, 137 countries, including 31 from Latin America and the Caribbean, reached a landmark agreement on international corporate income tax reform under the OECD-coordinated Inclusive Framework. However, some governments in the region have unilaterally imposed retroactive and discriminatory digital services taxes, which contravene international tax principles and discriminate against U.S. companies. This action undermines the OECD and WTO guidelines.

APEP partners should recommit to the OECD's Inclusive Framework and refrain from unilateral tax measures that discriminate against U.S. companies or jeopardize global coordination efforts.

USTR should engage APEP partners on safe, responsible, interoperable Artificial Intelligence.

APEP should establish an AI agreement centered on the U.S.-led risk-based and use-case specific approach to AI governance, particularly as governments around the region are rushing to introduce AI legislation that will limit AI innovation. 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. It 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 that includes new amendments to address concerning trends in AI legislation across the region.⁷ Finally, it could facilitate governments and

⁶ OECD/G20 Inclusive Framework on Base erosion and profit shifting (BEPS), OECD, <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>.

⁷ Recommendation of the Council on Artificial Intelligence, OECD, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>.

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

Conclusion

CTA is pleased to provide the above specific recommendations on possible USTR negotiating objectives and positions for the trade track. We look forward to serving as a resource for USTR during the APEP negotiations.

Sincerely,



Ed Brzytwa
Vice President of International Trade
Consumer Technology Association



Michael Petricone
Senior Vice President of Government Affairs
Consumer Technology Association