



The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

May 23, 2023

Dear President Biden:

The undersigned civil rights, consumer protection, and other civil society organizations write to express concern about digital trade negotiations underway as part of the proposed Indo-Pacific Economic Framework (IPEF).

Civil society advocates and officials within your own administration have raised increasing concern about discrimination, racial disparities, and inequities that may be “baked into” the algorithms that make decisions about access to jobs and housing, health care, prison sentencing, educational opportunity, insurance rates and lending, deployment of police resources, and much more. To address these injustices, we have advocated for anti-discrimination protections and algorithmic transparency and fairness. We have been pleased that these concepts are incorporated into your recent Executive Order on racial equity,¹ as well as the White House’s AI Bill of Rights² and many other policy proposals. The DOJ, FTC, CFPB, and EEOC also recently released a joint statement underscoring their commitment to combating discrimination in automated systems.³ Any trade agreement must be consistent with, and not undermine, these policies and the values they are advancing.

Now, we have learned that the U.S. may be considering proposals for IPEF and other trade agreement negotiations that could sabotage efforts to prevent and remedy algorithmic discrimination, including provisions that could potentially preempt executive and Congressional

¹ Exec. Order No. 14091, 88 Fed. Reg. 10825, Feb. 16, 2023, *available at* <https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>.

² The White House, Blueprint for an AI Bill of Rights, Oct. 22, 2022, *available at* <https://www.whitehouse.gov/ostp/ai-bill-of-rights>.

³ Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems, CFPB, DOJ, EEOC, FTC, April 25, 2023, *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf.

legal authority to advance these goals. Such provisions may make it harder or impossible for Congress or executive agencies to adopt appropriate policies while also respecting our international trade commitments. For example, trade provisions that guarantee digital firms new secrecy rights over source code and algorithms could thwart potential algorithmic impact assessment and audit requirements, such as testing for racial bias or other violations of U.S. law and regulation. And because the trade negotiations are secret, we do not know how the exact language could affect pivotal civil rights protections.

Including such industry-favored provisions in trade deals like IPEF would be a grievous error and undermine the Administration's own policy goals.

We urge the administration to not submit any proposals that could undermine the ability to protect the civil rights of people in the United States, particularly with regard to digital trade. Moreover, there is a great need for transparency in these negotiations. Text already proposed should be made public so the civil rights community and relevant experts can challenge any provisions that could undermine administration goals regarding racial equity, transparency, and fairness.

We know that your administration shares our goals of advancing racial equity, including protecting the public from algorithmic discrimination. Thank you for your leadership in this area. For questions or further discussion, please contact Harlan Yu (harlan@upturn.org), David Brody (dbrody@lawyerscommittee.org), and Emily Peterson-Cassin (epetersoncassin@citizen.org).

Sincerely,

American Civil Liberties Union
Center for Democracy & Technology
Center for Digital Democracy
Data & Society Research Institute
Demand Progress Education Fund
Electronic Privacy Information Center (EPIC)
Fight for the Future
Lawyers' Committee for Civil Rights
Under Law

The Leadership Conference on Civil and
Human Rights
NAACP
National Urban League
Public Citizen
Sikh American Legal Defense and
Education Fund
Upturn

CC:

Secretary of Commerce Gina Raimondo
U.S. Trade Representative Katherine Tai
National Economic Council Director Lael Brainard
National Security Advisor Jake Sullivan
Domestic Policy Council Director Susan Rice
Incoming Domestic Policy Council Director Neera Tanden
Domestic Policy Council Deputy Director for Racial Justice and Equity Jenny Yang