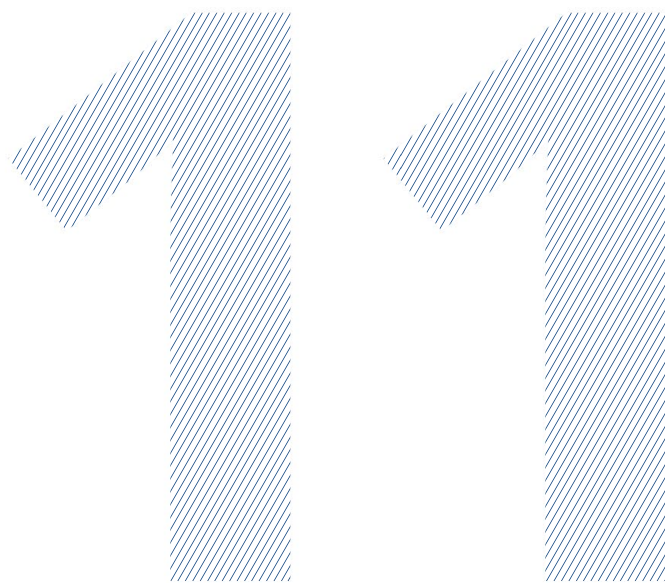


# The Making of the Indo-Pacific Economic Framework for Prosperity (IPEF)



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# **The EU, the Indo-Pacific and the US-led IPEF: Which Way Forward?**

Françoise NICOLAS

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Françoise Nicolas

The paper provides a European Union (EU) perspective on the Indo-Pacific Economic Framework (IPEF). First, the recent progress made by the IPEF has given new momentum to the EU's engagement with the Indo-Pacific (IP) partners and to its recently launched Indo-Pacific strategy. In terms of substance, two issues appear to be at the forefront of the IPEF as well as of the EU's Indo-Pacific strategy, namely supply chain resilience enhancement and various aspects of the digital economy. There is probably scope for convergence and cooperation between the EU and the IPEF countries on the former issue, which is addressed indirectly in different EU's digital partnerships, while it is the area where the IPEF has made most substantial progress. However, the differences between the EU's and the United States' (US) approaches to some aspects of the digital economy may act as stumbling blocks and give rise potentially to some form of competition in the IP region, making cooperation on data-based efforts to enhance supply-chain resilience rather complicated.

## List of Abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>DMA</b>	Digital Markets Act
<b>DSA</b>	Digital Services Act
<b>EC</b>	European Commission
<b>EIU</b>	Economist Intelligence Unit
<b>EPAs</b>	Economic Partnership Agreements
<b>EU</b>	European Union
<b>FTA</b>	Free-Trade Agreement
<b>G20</b>	Group of Twenty
<b>GDPR</b>	General Data Protection Regulation
<b>IP</b>	Indo-Pacific
<b>IPEF</b>	Indo-Pacific Economic Framework
<b>NZ</b>	New Zealand
<b>R&amp;D</b>	Research and Development
<b>RCEP</b>	Regional Comprehensive Economic Partnership
<b>TPP</b>	Trans-Pacific Partnership
<b>TSD</b>	Trade and Sustainable Development
<b>TTC</b>	Trade and Technology Council
<b>US</b>	United States
<b>USMCA</b>	United States-Mexico-Canada Agreement
<b>WTO</b>	World Trade Organization

## Introduction: Why the Indo-Pacific and the IPEF Matters for the EU

### The Indo-Pacific region, a priority for the EU

For the European Union (EU), the Indo-Pacific region is of utmost importance, both economically and strategically. Due to its growing economic, demographic, and political weight, the Indo-Pacific region is perceived both by individual member states and by the European Commission (hereafter the Commission or EC) as a key player in shaping the international order and in addressing global challenges.

France was the first member state to use the 'Indo-Pacific' concept and develop a specific strategy vis-à-vis the region (2018), and it was soon followed by Germany and the Netherlands (2020)<sup>1</sup>. As a result, the EC has also decided to step up its strategic engagement with the Indo-Pacific region through the definition of a new strategy issued in September 2021. As set out in the *EU Strategy for Cooperation in the Indo-Pacific*<sup>2</sup> (hereafter EU's IP strategy), the EU considers its relations in the region as a priority. The futures of the two regions are inextricably linked given the interdependence of the economies and the common global challenges.

The EU has a broader definition of the Indo-Pacific than the US; in the EU strategy the IP extends from the Eastern coast of Africa all the way to the South Pacific, including seven Group of 20 (G20) members – Australia, China, India, Indonesia, Japan, the Republic of Korea and the Republic of South Africa – as well as the Association of Southeast Asian Nations (ASEAN). Also, unlike the US Indo-Pacific strategy, “the EU strategy does not address the root cause of the Indo-Pacific discourse: the rise of China and its challenge to the US-led order in Asia.”<sup>3</sup> The EU's real added value is building inclusive, rules-based multilateralism and providing economic, health, physical and digital infrastructure.

The EU's engagement with Indo-Pacific partners is already important: the EU is the top investor, the leading development partner and one of the biggest trading partners in the Indo-Pacific region. However, it is among the EU's ambitions to further deepen its relations with the region and to diversify supply chains with reliable partners, in particular after the COVID-19 pandemic and the Russian war of aggression against Ukraine, as well as in the context of the green transition.

### Potential implications of the IPEF for the EU

While the US approach to the Indo-Pacific had shifted almost exclusively towards security and away from economic issues after President Trump withdrew from the Trans-Pacific Partnership (TPP) agreement in 2017, it has changed quite dramatically under the Biden administration, especially with the launch of the IPEF in May 2022. This initiative marks the US' comeback in the economic sphere. The first-of-its-kind framework includes relatively challenging US requests for higher labour, environmental, and other standards that are not counterbalanced by market access. In this respect, it differs substantially from the EU's approach. In spite of differences, there

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- 1 Gudrun Wacker, “European Approaches to the Indo-Pacific, Same, Same, But Different”, in *European Strategic Approaches to the Indo-Pacific*, ed. by Christian Echle and Jan Kliem (Panorama: Insights into Asian and European Affairs, KAS, Singapore, 2022), 7 - 23.
  - 2 “Joint Communication to the European Parliament and the Council”, European Union External Action, 16 September 2021, [https://www.eeas.europa.eu/eeas/joint-communication-indo-pacific\\_en](https://www.eeas.europa.eu/eeas/joint-communication-indo-pacific_en)
  - 3 Frederick Kliem, “The EU Strategy on Cooperation in the Indo-Pacific: A Meaningful Regional Complement?”, in *European Strategic Approaches to the Indo-Pacific*, ed. by Christian Echle, Jan Kliem (Panorama: Insights into Asian and European Affairs, KAS, Singapore, 2022) 55 – 69.

is undeniably an increased alignment in views between the EU and the US on the importance of the Indo-Pacific and of economic engagement in the region, with the US moving, on the latter point, closer to the EU.

The objective of this paper is to examine how the EU is engaging Indo-Pacific partners today, and how it will engage them in the future, while taking into account the existence of the IPEF. A key issue is to figure out whether and how the EU's and US' initiatives may dovetail (or not) with respect to the Indo-Pacific region.

### The EU's Current Engagement with IPEF Countries

#### EU's Free Trade Agreements with IPEF countries

The EU's IP strategy as a framework provides broad directions to be followed in the multiple bilateral relations with Indo-Pacific partners, but it does not offer any details on how these relations should be operationalised. Even before the EU's IP strategy was defined, the number of Free Trade Agreements (FTAs) negotiations launched with IP partners is a testament to the EU's long-standing interest in deepening its trade engagement with the Indo-Pacific region. The EU has FTAs or Economic Partnership Agreements (EPAs) in force or under negotiation with nine of the 14 IPEF countries.

FTAs with South Korea, Japan, Singapore and Vietnam have been in force for some time already, while the EU-New Zealand (NZ) FTA was concluded recently (late June 2022). The EU has had an EPA in force with Fiji since 2014, and negotiations with Australia were restarted in late 2022, after their abrupt interruption due to the Morrison government's French submarine decision.<sup>4</sup> Moreover, negotiations are still ongoing with Indonesia and India. Lastly, although some serious obstacles must be overcome, EU negotiators are still assessing the possibility of the resumption of FTA negotiations with Malaysia, the Philippines, and Thailand, and perhaps even on a region-to-region basis with ASEAN.

Although the degree of commitment may vary from one agreement to another, all of them offer standard trade liberalisation; tariff reduction and market access commitments are at the heart of these arrangements. Moreover, new issues are now almost systematically included in FTAs negotiated by the EU, such as sustainable development (environmental) or labour rights considerations, and deals with IP partners are no exceptions.<sup>5</sup> In contrast, rules on digital services and e-commerce are rather thin in these agreements. Since 2021, the EU has developed a 'model' digital chapter that advances its own digital trade regulatory agenda, which has only been included in the most recent deals.

As a preliminary attempt to upgrade existing FTAs, the EC seeks to build Digital Partnerships with some of its IP partner countries to enhance reciprocal technical, policy, and Research and

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4 Justin Brown, "EU in the driver's seat on Indo-Pacific trade deals", *The Interpreter*, 10 October 2022, <https://www.lowyinstitute.org/the-interpreter/eu-driver-s-seat-indo-pacific-trade-deals>

5 For instance, the recently concluded EU-NZ agreement integrates the new approach on trade and sustainable development (TSD) with strong sustainability commitments. The TSD commitments are legally binding and enforceable through dispute settlement, and for the first time in an EU trade agreement, as a matter of last resort, there is the possibility of trade sanctions for serious violations of core TSD commitments like the International Labor Organization fundamental principles and rights at work and the Paris Agreement on Climate change.

Development (R&D) cooperation on key technologies, such as artificial intelligence, the digital transformation of businesses and public services, and the facilitation of digital trade. The main goal is to develop and entrench standards for emerging technologies in line with EU principles and values. Such partnerships have been negotiated with Japan, South Korea and Singapore, and creating a digital partnership with ASEAN is also part of the EU's IP strategy.<sup>6</sup> The aim of these partnerships is to advance cooperation on the full range of digital issues, including trade facilitation, trusted data flows and data innovation, digital trust, standards, digital skills for workers, and the digital transformation of businesses and public services. Although these digital partnerships are initially non-committal, they are expected to pave the way towards binding rules covering diverse aspects of digital trade.

Importantly, the EU-NZ FTA<sup>7</sup> includes a full-fledged digital trade chapter, which contains, among other things, details provisions on cross-border data flows, the protection of privacy and personal data, customs duties on electronic transmissions, electronic contracts, electronic authentication and trust services, the transfer of or access to source code, online consumer trust, unsolicited direct marketing communications, open government data, and regulatory cooperation on digital trade. This will facilitate cross-border data flows by prohibiting unjustified data localisation requirements while preserving a high level of personal data and privacy protection. It also includes ambitious articles on the protection of source code, the use of e-contracts, and e-invoicing or paperless trading.

### **The EU as a normative power**

The EU is used to developing new rules on trade policy in its bilateral FTAs with the hope that some of these rules – for example on subsidies and sustainability – will eventually make it to the World Trade Organization (WTO) rulebook. The exclusive supranational power of the Commission to negotiate trade deals on behalf of the member states comes with significant regulatory power through setting trade, industrial, labour, and human rights standards, and its large market (the EU is the second largest economy in the world) gives Brussels a great deal of political leverage in the pursuit of its objectives.

With respect to its IP partners, the EU's aim is to engage them to build more resilient and sustainable global value chains by diversifying trade and economic relations, and by developing technological standards and regulations that are in line with its values and principles. As a normative actor, in both self-perception and practice, the EU's strengths lie in setting and raising regional standards of good governance, equitable trade, and capacity building in many non-traditional security areas as well as in advancing ecological sustainability and high-quality infrastructure. This regulatory objective is reflected in the increasing width and depth of trade agreements.

The EU's overall IP strategy is meant to compensate for the lack of an economic strategy vis-à-vis the region. However, in concrete terms, the EU still relies on an array of bilateral agreements. In contrast to the US, the EU is approaching its IP partners in a patchy way, on a bilateral basis. This is a major difference compared to the IPEF, which works as a platform.

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6 In the Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023-2027), which was issued in early 2022, the two regional organisations reaffirmed their commitment to cooperate in the realm of the digital economy, and a joint working group has been created to scope out the parameters of a future deal.

7 "Key elements of the EU-New Zealand trade agreement", European Commission – Directorate-General for Trade, 30 June 2022, [https://policy.trade.ec.europa.eu/news/key-elements-eu-new-zealand-trade-agreement-2022-06-30\\_en](https://policy.trade.ec.europa.eu/news/key-elements-eu-new-zealand-trade-agreement-2022-06-30_en)

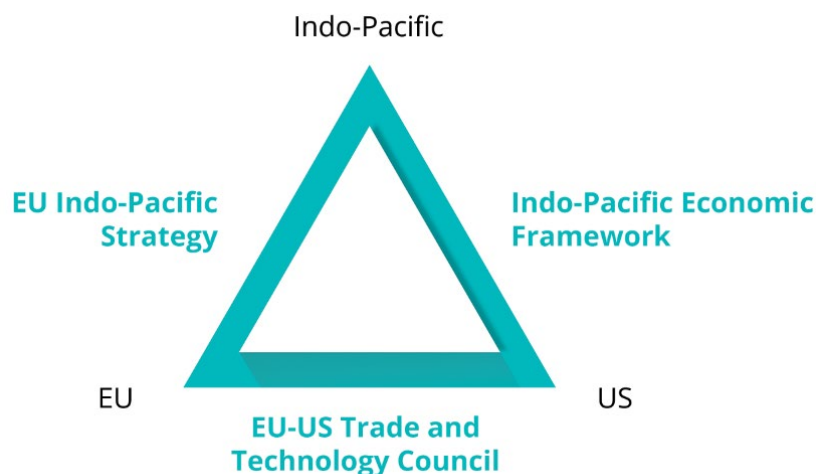


### The EU-US Trade and Technology Council (TTC)

At the same time, the EU has also set up a platform together with the US (EU-US Trade and Technology Council - TTC)<sup>8</sup> where various trade-related issues (also covered in the IPEF) will be discussed. Interestingly, the EU-US TTC will not exclusively focus on bilateral trade-related tensions but will also potentially contribute to upholding the international order based on the rule of law, multilateral institutions, and free trade, and contribute to addressing the challenges raised by non-market economies. What happens between the EU and the US also must be taken into consideration for two reasons. First, because the EU-US TTC format is quite close to the IPEF format: both of them work as platforms of discussion to address specific trade-related issues. Secondly, the outcome of the discussions conducted in the EU-US TTC may shed light on the respective positions of the two partners.

Three simultaneous dialogues are thus currently being conducted with implications for the IP region (see Figure 1): i) between the EU and its IP partners (under the umbrella of EU's Indo-Pacific Strategy), ii) between the US and several IP partners (through IPEF), and iii) between the EU and the US (through the TTC).

**Figure 1:** Various discussion formats between IP partners



Source: Compiled by author

### Two dreams in one bed: contrasting IPEF and the EU's IP strategy

Both the EU and the US are engaging their IP partners, but through different instruments and with different objectives. This section focuses on two interrelated issues, namely supply-chain resilience, which is the area where the US has progressed the most, and the digital economy.

8 The TTC is a diplomatic forum aimed at harmonising the US-EU approach to trade and technology policy, including by developing a common approach to supply chain issues and emerging technology areas where regulation is sparse. See (from TTC, IPEF and the Road to... 2022, Atlantic Council.)

## Different approaches to supply-chain resilience

### The IPEF Supply Chain Agreement

Although the IPEF is a recent endeavour, it has made unexpectedly quick progress, leading as early as May 2023 to the substantial conclusion of the negotiations of a first-of-its-kind international Supply Chain Agreement.<sup>9</sup> Through this agreement, the IPEF partners aim to identify items that are at risk of supply network disruption, share information in normal times, expand sources for the procurement of important goods and items among participating countries, as well as allow for flexible procurement during crises.<sup>10</sup>

The supply chain agreement would establish an emergency communications channel for the IPEF partners to seek support during a supply chain disruption and to facilitate information-sharing and collaboration among the IPEF partners during a crisis. The proposed mechanisms include (1) an *IPEF Supply Chain Council* to oversee the development of sector-specific action plans designed to build resilience in critical sectors, and (2) an *IPEF Supply Chain Crisis Response Network* that can serve as an emergency communications channel. In addition, a tripartite body made up of government, worker, and employee representatives (*IPEF Labour Rights Advisory Board*) is to be set up to help identify areas where labour rights concerns pose risks to the resilience and competitiveness of partners' supply chains.<sup>11</sup>

### EU's supply-chain cooperation with IP partners

In parallel to the IPEF progress, there has also been some degree of US-EU convergence, most notably on supply chain issues and export controls.<sup>12</sup> On the former issue, there is a clear overlap between the IPEF and the EU-US TTC. Under working group 10 of the TTC, the US and the EU have agreed to establish early warning and monitoring mechanisms to prevent and prepare for possible supply chain disruptions.

Supply chain security, controls over technology transfers, industrial policy, and strategic sectors are at the heart of the EU's public debate. Cooperation on supply chain resilience is also part of the strategic partnerships between the EU and several of its IP partners (such as South Korea or India).<sup>13</sup> While EU's and US' goals appear to be clearly aligned on the need to enhance supply-chain resilience through cooperation with IP partners, the difficulty will lie in the operationalisation or the definition of the measures to be put in place to achieve the set goal.

9 "Press Statement on the Substantial Conclusion of IPEF Supply Chain Agreement Negotiations", US Embassy and Consulates in Indonesia, 31 May 2023, <https://id.usembassy.gov/press-statement-on-the-substantial-conclusion-of-ipef-supply-chain-agreement-negotiations/>

10 Seiya Sukegawa, "Can the IPEF Protect Corporate Supply Chains?", *The Diplomat*, June 12, 2023, <https://thediplomat.com/2023/06/can-the-ipef-protect-corporate-supply-chains/>

11 Aidan Arasasingham, Emily Benson, Matthew P Goodman and William Alan Reinsch, "Domestic Perspectives on IPEF's Digital Economy Component", Center for Strategic and International Studies, *CSIS Briefs*, 26 January 2023, <https://www.csis.org/analysis/domestic-perspectives-ipefs-digital-economy-component>

12 Frances Burwell and Andrea G. Rodríguez, "The US-EU Trade and Technology Council: Assessing the record on data and technology issues", *Issue Brief*, The Atlantic Council, 20 April 2023, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/us-eu-ttc-record-on-data-technology-issues/>

13 The EU and India are working together on resilient value chains as part of the EU-India Trade and Technology Council. See "First EU-India Trade and Technology Council focused on deepening strategic engagement on trade and technology", European Commission, 16 May 2023, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2728](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2728)

The issue of supply-chain resilience has primarily been addressed by the EU through the digital partnerships mentioned earlier. These instruments are meant, among other things, to facilitate supply-chain cooperation. The EU-Japan Digital Partnership,<sup>14</sup> that was concluded in May 2022, is not a treaty but “an ambitious statement of intent to develop the relationship in the digital economy.”<sup>15</sup> This effort furthers the ‘Data Free Flow with Trust’ agenda, aimed at facilitating safe and secure cross-border data flows. In a joint statement, the two partners stressed that “they intend to work towards achieving joint monitoring, exchange of information in anticipation of disruptions in the supply chain, effective early warning mechanisms, crisis preparedness, exchange of information on long-term investment strategies and coordination of export controls among the relevant authorities.”<sup>16</sup>

Similarly, through the EU-Korea<sup>17</sup> and the EU-Singapore<sup>18</sup> Digital Partnerships, the two parties have agreed to work together on a range of diverse issues including semiconductors, trusted data flows and data innovation, digital trust, standards, and digital trade facilitation. The two parties will work together to make safe data exchange possible and use digital solutions to enhance supply chain resilience. The two digital partnerships (with South Korea and Singapore) have an important trade-aspect and include as a key deliverable Digital Trade commitments between the EU and its two partners. They demonstrate a high level of convergence with the EU’s approach to digital trade,<sup>19</sup> and are designed to provide a common framework for digital strategies.

Whether the EU’s approach to supply-chain resilience enhancement fits with all IP partners’ objectives remains to be seen.

### EU – US divergences on the digital economy

#### The digital noodle bowl in the Indo-Pacific

With the development of the digital economy, data has become a key factor of production that has been the basis for new services such as cloud computing or the Internet of Things. Different categories of data may be part of digital trade transactions, including data that can be used to identify natural persons, that is, personal data. A key aspect of digital trade concerns the cross-border flow of data.

Digital economy issues constitute one of the nine sub-components of the IPEF’s trade pillar and are arguably its most consequential facets. The IP is witnessing the world’s fastest growth in digital

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14 “Joint Statement EU-Japan Summit 2022”, European Council, 12 May 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/05/12/joint-statement-eu-japan-summit-2022/>

15 Mathieu Duchâtel, “Economic Security: The Missing Link in EU-Japan Cooperation”, *Policy Paper*, Institut Montaigne, April 2023.

16 Dreyer on digital partnerships 2023.

17 “Joint statement European Union - Republic of Korea Summit 2023”, European Commission, 22 May 2023, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_2863](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_2863)

Ramon Pacheco-Pardo, “The EU-ROK Digital Partnership”, *Brussels School of Governance*, 1 December 2022 <https://brussels-school.be/publications/other-publications/eu-rok-digital-partnership>

18 Goh Yan Han, “New Singapore-EU pact to boost cooperation and establish common framework in digital realm”, *The Straits Times*, 15 December 2022, <https://www.straitstimes.com/singapore/politics/new-singapore-eu-pact-to-boost-cooperation-and-establish-common-framework-in-digital-realm>

19 “Recommendation for a COUNCIL DECISION authorising the opening of negotiations for digital trade disciplines with the Republic of Korea and with Singapore”, Council of the European Union, 14 April 2023, <https://data.consilium.europa.eu/doc/document/ST-8304-2023-INIT/en/pdf>

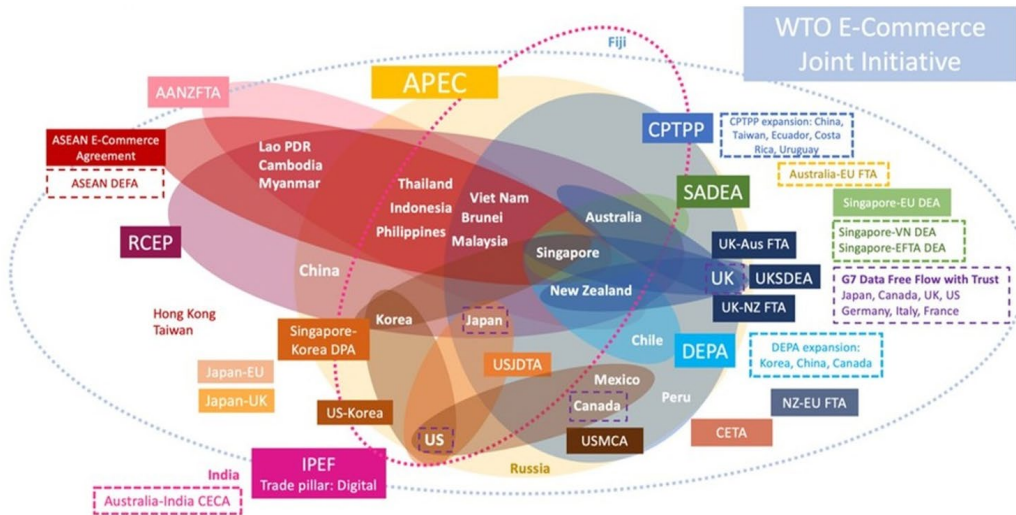
connectivity and internet access, and evolving digital rules are poised to shape the development of industries and national economies. E-commerce and digital services make up a growing contribution to economic growth across the region, and digital skills development is increasingly a priority for regional economies.<sup>20</sup>

Countries in the IP region have been, in the last few years, developing a rich network of regional and bilateral agreements that are progressively building standards on digital trade. These standards are sometimes set out in a dedicated chapter with digital trade rules of a comprehensive free trade agreement providing detailed rules on market access.<sup>21</sup> In other cases, IP countries have concluded specific agreements on digital trade, as in the case of the Digital Economy Partnership Agreement (DEPA) between Singapore, New Zealand and Chile.

While all the major regional models ostensibly support cross-border flows of data and reject forced data localisation, there may be substantial differences on other points. Furthermore, the existing agreements provide different levels of commitments on digital trade, with a variety of rules and formulations resulting in a spaghetti bowl that may lead to a fragmentation of the rules applied to digital trade.<sup>22</sup>

For instance, the Regional Comprehensive Economic Partnership (RCEP) allows broad and self-judging exceptions to the ban on forced data localisation<sup>23</sup> while the United States-Mexico-Canada Agreement (USMCA) contains more limited exceptions. Similarly, the US pushes for the elimination of barriers to digital trade while the EU seeks to maintain a more cautious stance on allowing the transfer of personal data.

**Figure 2:** The 'Digital Noodle Bowl'



Source: Hinrich Foundation<sup>24</sup>

20 *op. cit.*  
 21 This is for instance the case in the CPTPP.  
 22 Hyo-Young Lee, “Digital Trade Rules in the Asia-Pacific Region: Fragmentation of Rules and the Way Forward”, *Ifans Perspectives*, no. 02 (24 January 2022).  
 23 To be more specific, the twin provisions on data flows and data localization allow members to adopt any measures considered necessary to protect national security.  
 24 Stephanie Honey, “The long road to a seamless global digital economy”, *Hinrich Foundation*, 30 May 2023, <https://www.hinrichfoundation.com/research/article/digital/the-long-road-to-a-seamless-global-digital-economy/>

China, the EU, and the US are each pursuing their own approach to digital governance. The 'US approach' (or the "firm sovereignty model", as reflected in the CPTPP/USMCA), the 'Chinese approach' (or the state sovereignty model), and the 'EU approach' (or the "individual sovereignty model") form three distinct global 'data realms' or 'digital kingdoms'.<sup>25</sup>

The IPEF trade pillar is expected to include comprehensive digital trade rules building upon the far-reaching digital commitments in the USMCA's digital trade chapter<sup>26</sup> and the US – Japan Digital Trade Agreement.<sup>27</sup> But aligning all the IPEF countries on digital policy will require intensive dialogue, and achieving a convergence of views on issues such as data privacy, cross-border data flow, digital payments, and taxation may prove elusive.

While for different reasons and through different means, Beijing and Brussels are both restricting free cross-border data flows in ways that are unacceptable to the US. The EU seeks to regulate the market for industrial data and restrict that for private data,<sup>28</sup> while the US does not have a settled policy. With regards to digital platforms, the EU seeks to constrain their behaviour, while the US favours a more *laissez-faire* approach. Achieving regulatory convergence in this area seems almost out of reach.

### The EU as a digital norm-setter

With respect to the digital economy, the EU defends a human-centric vision that seeks to ensure that technology serves the people, that human rights are respected, and that societies are open, democratic, and sustainable.<sup>29</sup> This is exemplified by the enactment of the Global Data Protection Regulation (GDPR) in 2018<sup>30</sup> and confirmed by several other measures such as the Digital Services Act (DSA) of 2022.<sup>31</sup> The EU approach has become a *de facto* global standard for many countries

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25 Susan Ariel Aaronson and Patrick Leblond, "Another Digital Divide: The Rise of Data Realms and its Implications for the WTO", *Journal of International Economic Law*, vol. 21, June, 2018, pp. 245-72;

Henry Gao, "Data sovereignty and trade agreements: Three digital kingdoms", *Hinrich Foundation*, January 2022, <https://www.hinrichfoundation.com/research/article/digital/data-sovereignty-trade-agreements-digital-kingdoms/>

26 Tech companies managed to add digital trade rules to the US-Mexico-Canada Agreement that prohibits parties from reviewing the source code for artificial intelligence programmes, and there are efforts to include similar provisions in the IPEF trade talks.

27 "U.S.-Japan Digital Trade Agreement Text", Office of the United States Trade Representative, 7 October 2019, <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text>

28 EU diverges from the CPTPP approach to data flows by seeking to enjoin partners to recognise that data privacy is a human right and to carve out privacy protection from any necessity or proportionality test.

29 "Responsible digitalisation", European Commission, [https://international-partnerships.ec.europa.eu/policies/digital-and-infrastructure/responsible-digitalisation\\_en](https://international-partnerships.ec.europa.eu/policies/digital-and-infrastructure/responsible-digitalisation_en)

30 The landmark legislation of the GDPR set the global standard for the fundamental rights of data privacy and data protection.

31 Florina Pop, Jannigje Bezemer and Laura Grant, "The Digital Services Act: creating accountability for online platforms and protecting users' rights?", *European Institute of Public Administration*, 6 September 2022, <https://www.eipa.eu/blog/the-digital-services-act-creating-accountability-for-online-platforms-and-protecting-users-rights/>

when it comes to designing data protection rules.<sup>32</sup> This ‘Brussels effect’<sup>33</sup> is reflected in many countries either adopting GDPR-like frameworks or negotiating adequacy decisions.<sup>34</sup>

### EU’s and US’ approaches to the digital economy: can they be reconciled?

There are clear differences in the philosophy underlying the EU’s and the US approaches to data governance and to the digital economy at large. On the one hand, the EU seeks to regulate the market for industrial data (and restrict that for personal data), while on the other hand, the US does not have a settled data policy (although the Biden administration has recently endorsed the idea of a privacy law at the federal level).<sup>35</sup> Also, the EU seeks to constrain the behaviour of platforms through its regulations (The Digital Markets Act [DMA] and the DSA), while the US favours a more *laissez-faire* approach.<sup>36</sup> The EU’s digital regime is characterised by heavy regulation, which may be in contradiction with the US vision and US digital companies’ interests.<sup>37</sup>

The divergence between the EU and US approaches is discussed in the EU-US TTC, with Working Group 5 in charge of Data Governance and Technology Platforms. But until now, no agreement has been reached on sensitive regulatory areas, such as platform regulation or data governance. The TTC’s work in this area is a prime example of values alignment (defence of democracy, of a free, open global internet, et cetera) without requiring regulatory convergence or harmonisation.

## A Perspective on EU’s Future Engagement with IPEF Countries

### EU’s scepticism about the IPEF

Both EU experts and EU officials follow the development of the IPEF with some scepticism. First, they tend to anticipate a difficult negotiation for many reasons that have to do with the negotiation method of the IPEF. The *à la carte* approach is expected to prevent potential trade-offs and to give rise to a weak agreement since it will, by definition, not be signed and ratified in full by all negotiating parties. EU officials’ scepticism is primarily due to their strong preference for FTAs,

32 This may be in the hope to be accorded adequacy status by the EU in the future, and therefore, facilitate the access to the EU market, and/or it may reflect a view that the EU approach constitutes good practice.

33 After the title of Anu Bradford’s book (*The Brussels Effect – How the EU Rules the World*, New York, Oxford University Press, 2020), which makes the EU the world’s regulator by default;

“Is the EU overreaching with new digital regulations?”, *The Economist*, 1 September 2022, <https://www.economist.com/europe/2022/09/01/is-the-eu-overreaching-with-new-digital-regulations>

34 An adequacy decision is one of the tools provided under the GDPR to transfer personal data from the EU to third countries guaranteeing a comparable level of protection of personal data to that in the EU. The decision covers both data transfers for commercial and regulatory purposes. Adequacy does not require the third country’s data protection system to be identical to the one of the EU but is based on the standard of ‘essential equivalence’.

35 Gerhard Peters and John T. Woolley, “Joseph R. Biden, Op-Ed by the President: Republicans and Democrats, Unite Against Big Tech Abuses”, *The American Presidency Project*, 11 January 2023, <https://www.presidency.ucsb.edu/documents/op-ed-the-president-republicans-and-democrats-unite-against-big-tech-abuses>

36 op. cit.

37 “US/EU data flows stuck between surveillance and privacy”, *Economist Intelligence Unit (EIU)*, 29 March 2022, <https://viewpoint.eiu.com/analysis/article/1331989516>, “Transatlantic data flows are only one area of conflict between the US and the EU when it comes to data and digital trade. Another is the idea of sovereign cloud. The 2018 Cloud Act and a following court order gives US authorities the right to access data hosted by a US company anywhere in the world, without informing the country involved.”

which are still perceived by most as the best instrument to improve European resilience. The EU's approach (through FTAs and a more normative approach) is unlikely to be questioned.

Secondly, the asymmetrical nature of the negotiation, with many US requests and only few US offers, is again expected to make the negotiation more complicated and the opportunities for bargaining and trade-offs limited. Moreover, the IPEF seems to be about the US offering adhesion to its own standards, without offering anything in exchange. Usually, market access is provided as an incentive for partner countries to trade off economic reforms as part of an FTA. With the absence of such an incentive, getting partners to agree to engage in economic reforms may be daunting.

Thirdly, there is a problem of durability of the agreement in the absence of support from the US Congress. This will create uncertainty both for the parties as well as for their partners (including the EU).

Fourthly, the substantial development gaps between the negotiating parties will make it difficult for all of them to be on the same page, particularly with regards to digital, labour and environmental standards. The digital economy is arguably one of the most important facets of the agreement, but it may also be one of the most difficult to agree on.

### **The IPEF giving new momentum to EU's Indo-Pacific economic engagement**

The EU will no doubt continue its engagement with the IPEF countries. Interestingly, the progress made by the IPEF has supposedly given renewed momentum to the EU's initiatives in the region, as exemplified by the acceleration in the FTA negotiation with Australia, and the multiplication of digital partnerships with Japan, South Korea and Singapore.

With the IPEF advancing, the EU is probably feeling the need to be more proactive *vis-à-vis* its IP partners. As argued by Dreyer,<sup>38</sup> the EU cannot expect the 'Brussels effect' of the EU's new regulations – as with its GDPR for data privacy – to work 'just by magic'. What has worked for data governance and digital trade regulation may be replicated in other domains, but if the EU wants to promote its basic regulatory principles for other issues such as artificial intelligence platforms and the like, then it needs to be more proactive, engage in negotiations and do deals.

Interestingly, the Commission and the business sector clearly do not see eye to eye on how to approach the IP region. To be fair, the EU used to favour a bloc-to-bloc approach (in particular, between the EU and ASEAN), but this is no longer the case for essentially pragmatic reasons. The business community, by contrast, would undoubtedly like to see the Commission approach the IP region as one single entity. As explained by the European Services Forum's Managing Director Pascal Kerneis, "There is frustration in the business community with the EU's Indo-Pacific strategy. They fail to see the coherence in holding discussions on a digital partnership agreement separately instead of jointly with all interested partners, so as to create synergies in terms of regulation and standardisation of the digitalisation of the economy."<sup>39</sup>

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38 Iana Dreyer, "Digital Partnerships in Asia -Pacific: EU needs to be more than non-committal", *Borderlex*, 12 May 2022.

39 "Interview with Pascal Kerneis: EU and Singapore need to upgrade their trade agreement", interview by Iana Dreyer, *Borderlex*, 3 October 2022, <https://borderlex.net/2022/10/03/interview-eu-and-singapore-need-to-upgrade-their-trade-agreement/>

### Whither EU's engagement with IP partners?

The EC will keep an eye on the progress made under the IPEF and adjust its strategy accordingly. Moreover, the existence of IPEF negotiations will likely have an impact on how the EU deals with the region.

Due to the divergences highlighted earlier, both in terms of approach and of content, joining the IPEF is out of the question for the EU, at least for the time being. But further engagement with IP partners may also go through joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), for instance, even though the membership differs to some extent. This is an option that has been advocated for by former Commissioner Cecilia Malmström<sup>40</sup> as well as by the European Parliament<sup>41</sup>, but the violent and negative reactions generated by this proposal make it also highly unlikely. A major reason for opposing the EU joining the CPTPP is that the latter is no longer at the cutting edge of trade policy. As a result, there may be better alternatives such as deepening dialogues with IP partners on genuinely new trade issues.

Perhaps another direction would be to expand the EU-US TTC to bring other countries (such as Japan, South Korea and Singapore) into its fold.

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40 Cecilia Malmström, "The EU should expand trade with the Indo-Pacific region", *Peterson Institute for International Economics*, 7 November 2022, <https://www.piie.com/blogs/realtime-economics/eu-should-expand-trade-indo-pacific-region>

41 "European Parliament resolution of 5 July 2022 on the Indo-Pacific strategy in the area of trade and investment (2021/2200(INI))", European Parliament, 5 July 2022, [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0276\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0276_EN.html)



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