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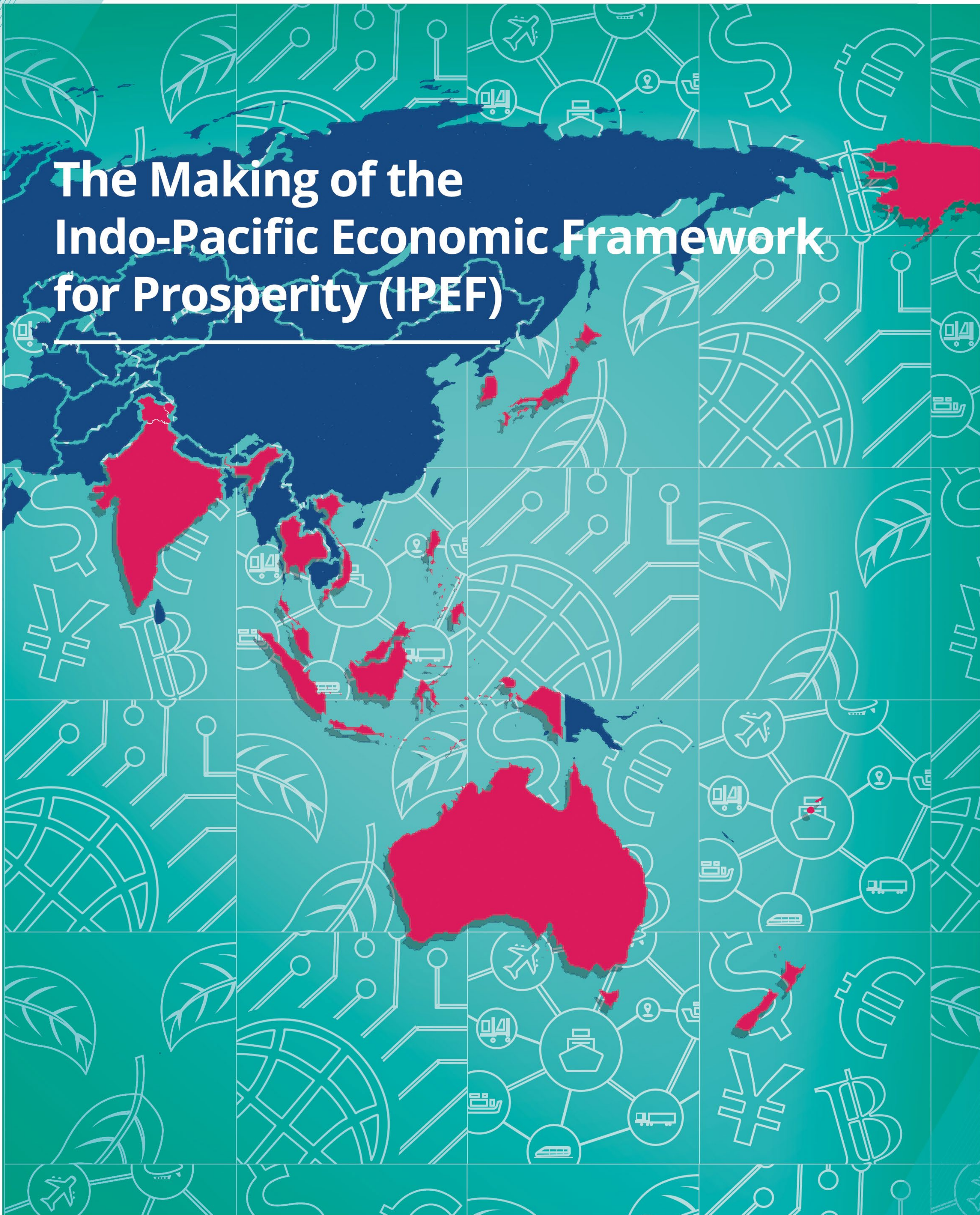
KONRAD ADENAUER STIFTUNG

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



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Indo-Pacific Economic Framework:

Negotiating and Implementation Challenges for the US

Stephen OLSON

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As the Indo-Pacific Economic Framework (IPEF) negotiations intensify, significant challenges await the United States (US), both in successfully concluding an agreement that achieves US objectives, as well as ensuring successful implementation of the agreement once concluded. Complicated negotiating dynamics will deny the US important leverage that it has used in the past to get trade agreements over the finish line. Unique institutional features of the agreement call into question whether some objectives can be achieved and enforced. Divergent domestic interests on some issues will require US negotiators to walk a tightrope between energetic and diametrically opposed domestic constituencies. The IPEF is freighted with heavy geopolitical baggage which could complicate negotiations. The unorthodox use of Executive Orders (EOs) to effectuate the agreement will raise several significant implementation challenges of which the IPEF partners should take clear note. Ultimately, the most important impact of the IPEF could lie far beyond the Indo-Pacific. The IPEF could be an important bellwether for how US-European Union (EU) trade relations are handled in this post-Free Trade Agreements (FTA), post-World Trade Organization (WTO) world.

List of Abbreviations

AI	Artificial Intelligence
APEC	Asia-Pacific Economic Cooperation
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EOs	Executive Orders
EU	European Union
FTAs	Free-Trade Agreements
IPEF	Indo-Pacific Economic Framework
NAFTA	North America Free Trade Agreement
TPA	Trade Promotion Authority
TPP	Trans-Pacific Partnership
TTC	Trade and Technology Council
TTIP	Trans-Atlantic Trade and Investment Partnership
UK	United Kingdom
US	United States
USMCA	United States–Mexico–Canada Agreement
USTR	United States Trade Representative
WTO	World Trade Organization

As the Indo-Pacific Economic Framework (IPEF) negotiations intensify, what are the key negotiating and implementing challenges facing the United States (US)?

Setting the stage: a different US approach to trade

The US approach to the IPEF has to be understood in the context of the broader – and profoundly different – approach to trade being pursued by the Biden Administration. After four years of the erratic, norm-shattering, and frequently bombastic trade policy of the Trump Administration, many US trade partners hoped for a return to traditional free trade policies under the Biden Administration. Although Biden has dropped the over-the-top rhetoric, his administration has demonstrated no interest in returning to the free trade policies historically pursued by the US.

Quite to the contrary, the Administration has explicitly pursued a US worker-centric trade policy, Buy-American regulations, and most recently, expansive industrial policies that tilt the playing field in favour of US workers and US production.[1] Cumulatively, these policies represent a sharp rebuke of anything approaching 'free trade'. Indeed, the pursuit of traditional free trade agreements (FTAs) has been effectively ruled out by the Biden Administration. It has not even attempted to secure Congressional approval of the Trade Promotion Authority (TPA) – the mechanism under which FTAs are typically negotiated by the executive branch and approved by Congress in the US. Without the TPA in place, comprehensive FTAs are essentially a non-starter for the US.

Ambassador Tai spells out a new course

The US Trade Representative (USTR) – and lead US negotiator on the Trade Pillar of the IPEF – Katherine Tai has been forceful, articulate and entirely consistent in explicitly spelling out the fundamentally different US approach to trade being pursued by the Biden Administration. According to Tai:[2]

> "It is clear today—even to many who are accustomed to a more traditional approach to trade policy—that we must adapt to the realities of today's global economy.
>
> The traditional approach to trade … prioriti[s]ed aggressive liberali[s]ation and tariff elimination… produced significant benefits—massive increases in economic activity and historic reductions in poverty in some regions. But we must also acknowledge that the focus on maximum efficiency above all else had significant costs and side effects.

1 "Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration's "Worker-Centered Trade Policy", Office of the United States Trade Representative, June 2021, https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/june/remarks-ambassador-katherine-tai-outlining-biden-harris-administrations-worker-centered-trade-policy;

"Remarks by Ambassador Katherine Tai at the Roosevelt Institute's Progressive Industrial Policy Conference", Office of the United States Trade Representative, October 2022, https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/october/remarks-ambassador-katherine-tai-roosevelt-institutes-progressive-industrial-policy-conference

2 "Remarks by Ambassador Katherine Tai at American University Washington College of Law", Office of the United States Trade Representative, April 2023, https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/april/remarks-ambassador-katherine-tai-american-university-washington-college-law

> Prosperity without inclusiveness contributed to rising inequality and wealth concentration. Trade also played a role in shipping jobs overseas, which decimated manufacturing communities. And our supply chains became more dispersed and fragile.
>
> All of this has fuel[l]ed resentment and mistrust in global institutions and the international economic system here in the United States and elsewhere."

In Tai's view, the IPEF is not "just any traditional trade deal—it is our vision for how countries can collaborate to deliver real opportunities for our people. Trade should work for the common good and help set responsible standards on labo[u]r, the environment, and other priorities that reflect American values. It should also promote fair and healthy cooperation that lifts up workers and communities, and that is the focus for IPEF."[3]

In Tai's judgment at least, "our IPEF partners are on board to negotiate high-standard rules that can spur inclusive economic growth and resilience throughout the region."[4] Presumably, the other 13 participants will have something to say about exactly how high those standards will be and the extent to which the agreement should reflect 'American values'.

In any case, lest anyone was still clinging to the notion that the US would be returning to traditional free trade policies any time soon, Tai closed a recent speech at American University by saying: "Let us not be content with reruns of old. Let us write a new script".[5] The IPEF is intended to be the opening scene in that new script.

Challenges and impact

Significant challenges await the US, both, in successfully concluding an agreement that achieves the US' objectives, as well as ensuring successful implementation of the agreement once concluded:

1. Complicated negotiating dynamics will deny the US important leverage that it has used in the past to get trade agreements over the finish line.

2. Unique institutional features of the agreement call into question whether some objectives can be achieved and enforced.

3. Divergent domestic interests on some issues will require US negotiators to walk a tightrope between energetic and diametrically opposed domestic constituencies. For instance, consumer groups and big tech companies have different visions for what should be accomplished under the digital provisions. Progressives and supporters of traditional free trade have different views on the inclusion of social- and values-laden issues in the IPEF, such as the inclusion of anti-whaling language that is culturally very sensitive in Japan.[6]

4. The IPEF is freighted with heavy geopolitical baggage which could complicate negotiations.

5. The unorthodox use of Executive Orders (EOs) to effectuate the agreement will raise several significant implementation challenges of which the IPEF partners should take clear note.

3 *Ibid.*
4 *Ibid.*
5 *Ibid.*
6 Demetri Sevastopulo and Kana Inagaki, "US-Japan whaling spat threatens Indo-Pacific trade deal", *Financial Times*, 11 August 2023, https://www.ft.com/content/bad6fb05-8836-4f9e-9b71-1a5183be816c

Traditional FTAs are subject to Congressional approval. The Administration has taken the stance that the IPEF is not a traditional FTA and therefore does not require Congressional approval. It intends to implement the IPEF through EOs, which only require the President's signature.

6. Ultimately, the most important impact of the IPEF could lie far beyond the Indo-Pacific. The IPEF could be an important bellwether for how US-European Union (EU) trade relations are handled in this post-FTA, post-World Trade Organization (WTO) world.

Each of these issues deserves a closer look.

Complicated negotiating dynamics[7]

The modular approach of the IPEF completely upends the most cherished *cliché* about trade negotiations: 'nothing is agreed until everything is agreed.' Under traditional FTAs, this essentially means that everything is interconnected, and no portion of the agreement is considered to be 'agreed' until the entire deal – down to the last detail – is done. A standoff in one area can sink the whole agreement. There can be 'horse trading' across chapters (for instance, one party gives up a little more under the investment chapter in order to secure what it really wants under services). This forces negotiators to be pragmatic and provides an incentive to work towards agreements with balanced benefits, or else run the risk of the whole deal unravelling.

The modular IPEF approach removes that dynamic. The IPEF will not be negotiated as a 'single undertaking' as is the case with most traditional FTAs. There will be no connection, for example, between the package of benefits and concessions negotiated under the Trade Pillar and the benefits and concessions under the Supply Chain Pillar. In fact, any member can be uncompromising under one pillar, or indeed walk away from the negotiating table, without jeopardising its seat at the broader IPEF table or its ability to secure benefits under the other pillars. It remains to be seen exactly how this will play out, but one plausible scenario is that the inability to exert pressure for higher standard outcomes across pillars could produce a lowest common denominator agreement.

The extremely tight negotiating timeline unfortunately also increases the probability of a low-ambition agreement. It is unofficially understood that the US would like to have the IPEF substantially, if not entirely, completed by the time it hosts the Asia-Pacific Economic Cooperation (APEC) Leaders' meeting in San Francisco in November 2023. The limited time available for negotiations, combined with the complexity of the issues of the diversity of viewpoints among participants, will make it challenging to achieve deep and significant progress.

The other interesting negotiating dynamic to keep an eye on is that unlike any previous FTA negotiation, the US will not be offering market access concessions, at least not in the traditional sense of tariff reductions. Typically, granting access to the largest single consumer market in the world provides the US with considerable leverage to secure concessions in other areas from its negotiating partners. In the absence of that critical piece of leverage, how will the US convince partners to agree to provisions they might find difficult, for instance, in digital trade?

7 This section is heavily drawn from Stephen Olson, "Three things to know as IPEF negotiations heat up", *Hinrich Foundation*, 28 March 2023, https://www.hinrichfoundation.com/research/article/ftas/three-things-of-ipef-negotiations-heat-up/

It should be noted however that although market access will not be granted through the traditional means of tariff reductions, it is entirely possible that other provisions, for instance, regulatory convergence or supply chain cooperation, could indirectly result in a degree of *de facto* market access. If this in fact does materialise, it could prove to be a significant IPEF accomplishment. It would demonstrate that non-traditional means – that is, measures other than the elimination of tariffs and quantitative restrictions – can be used to achieve market access, perhaps changing the way negotiators think about these issues. This would hold important implications for future trade agreements both within and beyond the region.

Unique features[8]

More so than any agreement the US has ever negotiated, the IPEF will require substantial buy-in and cooperation from the private sector, especially under the Supply Chain Pillar. One primary focus under that pillar will be supply chain mapping, especially in critical products. This would allow members to be better prepared to cope with – and ideally avoid – future disruptions. To do this in a comprehensive and granular manner, however, would require private companies to share a good deal of data and operational information they might not be comfortable divulging.

Also, it is important to note that the overriding objective of the pillar is to create more resilient supply chains. But governments do not build supply chains. Private companies do – through dozens of decisions about sourcing, investments, and the location of production facilities. Governments can prod and encourage, but at the end of the day, the key decisions – on information sharing or logistics – will rest in the hands of private business executives. No previous trade agreement has ever been this dependent on the private sector for its success. If businesses are not willing to play ball, the achievements of the IPEF could be limited.

Perhaps the most unique feature of the IPEF is the ambiguity over whether there will be a meaningful enforcement mechanism. Traditional FTAs contain legalistic dispute settlement provisions which ultimately can result in trade sanctions being applied if a member fails to honour its commitments. In the absence of meaningful enforcement provisions, there is a risk that whatever is agreed under the IPEF remains just words on paper that are never fully enforced or implemented. When asked about enforceability, Commerce Secretary Raimondo recently said: "Is it enforceable? I would say yes and no. It's not enforceable insofar as the tariffs don't come back up if there's non-compliance, but it is enforceable because countries that don't follow the rules or live up to their commitments don't see the benefits."[9]

Domestic challenges within the US

The IPEF negotiations will intersect an intensifying domestic policy debate in the US over digital policy. It is unclear how the US will resolve divergent domestic interests, let alone reach a consensus with the IPEF negotiating partners.

Consumer and other civil society groups in the US are taking aim at Big Tech as more is being learned about the extent to which technology giants like Facebook, Google, and Twitter collect,

8 *Ibid.*

9 "A Conversation on the Indo-Pacific Economic Framework with Secretary of Commerce Gina Raimondo", interview by Dr. Sadek Wahba, Wilson Centre, 25 July 2023, https://www.wilsoncenter.org/event/conversation-indo-pacific-economic-framework-secretary-commerce-gina-raimondo?utm_medium=social&utm_source=twitter.com&utm_campaign=wilson

manipulate, and sell data on their users. Concerns over data privacy are morphing with rising questions about the power wielded by large technology companies and their potentially monopolistic practices. While previously concluded trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the United States–Mexico–Canada Agreement (USMCA) contained digital provisions that largely aligned with the interests and objectives of Big Tech companies, a rising tide of political and civil groups seem determined to prevent these 'tech-friendly' provisions from being included in the IPEF. A consortium of 18 such groups wrote to President Biden in March, expressing their concerns on the IPEF negotiations:

> "It is essential that digital trade rules do not undermine Congress's ability to protect online privacy or data security. That is why we urge you not to replicate the Big-Tech-favo[u]red terms that were slipped into the U.S.-Mexico-Canada Agreement (USMCA) and the Trans-Pacific Partnership (TPP) that cede control of our personal data to firms, including rights to move, process, and store personal data wherever they choose."[10]

On the other side of the issue are the tech firms themselves, along with companies whose business plans rely on their platforms. The powerful Coalition of Service Industries, for example, is pushing for the IPEF to replicate – if not expand upon – the tech-friendly provisions from the previous agreements.[11] They point out that those agreements contain exceptions that would permit regulatory agencies to review things like source code, and that it is not their intention to limit Congress' ability to legislate in this area. That is a particularly important point as Congress is considering legislation that would impose curbs on Artificial Intelligence (AI) technology, and address privacy, content moderation and antitrust enforcement.[12] Critics charge that Big Tech is pushing for commitments in trade deals that would circumscribe Congress' ability to subsequently impose curbs. Influential legislators, including Senator Elizabeth Warren, are intently focused on this issue, and will be holding the USTR's 'feet to the fire' to ensure that this does not happen.

In order to ensure at least a requisite level of domestic US support for the digital provisions of the IPEF, US negotiators will need to structure nuanced positions that will be acceptable to both Big Tech and the various interests that would like to reign them in. The IPEF negotiating partners are unlikely to accept these US proposals at face value and will counter-propose modifications or alternative provisions. Any digital agreement the US is ultimately able to secure with its IPEF partners could prove to be far from acceptable to one or more of the strong advocacy interests in the US that will pore over every small detail in the digital trade section of the agreement.

It remains to be seen if US negotiators will be able to successfully triangulate between the IPEF partners and their two opposing domestic constituencies. This task will be made more difficult by the fact that digital issues are increasingly becoming a political 'hot button' issue in the US and elections are approaching.

10 "Letter to President Biden: Don't Replicate Big-Tech-Favored Terms in IPEF!", *Rethink Trade*, 10 March 2023, https://rethinktrade.org/wp-content/uploads/2023/03/IPEFdigitalrulesletter.pdf

11 "Big Tech's Big Con: Rigging Digital Trade Rules to Block Antitrust Regulation", Office of Senator Elizabeth Warren, May 2023, https://www.warren.senate.gov/imo/media/doc/USTR%20REPORT.pdf

12 Diane Bartz and David Shepardson, "U.S. Congress to consider two new bills on artificial intelligence", *Reuters*, 10 June 2023, https://www.reuters.com/technology/us-congress-consider-two-new-bills-artificial-intelligence-2023-06-08/

Impact of geopolitical baggage on negotiations[13]

From its inception, the IPEF has been freighted with heavy geostrategic baggage. Taiwan was eager to join the negotiations, but the US judged – correctly, in all probability – that the inclusion of Taiwan would preclude other members from joining for fear of antagonising China. The US politely rebuffed Taiwan's interest and is instead working on a separate deal. For the partner countries that have joined the US, it is fair to wonder to what extent the IPEF is actually about the IPEF, and to what extent it is about encouraging a deeper US engagement in the Indo-Pacific. For most countries in the region, their best interests are served by balancing the US and China, benefiting from economic and strategic ties with both, and avoiding a definitive tilt towards one or the other. For many in the region, greater US engagement in the region would be a desirable counterweight to China's growing assertiveness. While there is undoubtedly interest in the substantive agenda that the IPEF will tackle, the geopolitical realities are playing a role as well. If a key objective is to simply 'get something done' with the US to draw it more deeply in the region – even just symbolically – then it is fair to wonder how much appetite there will be for hammering through the tough issues and pushing the substantive agenda.

Significant implementation challenges for the US

The Biden Administration does not intend, at least as of now, to submit the IPEF for Congressional approval. The typical route for approval and implementation of traditional FTAs in the US has been under the TPA. Under the TPA, the administration is obligated to consult closely with Congress on negotiating objectives, engage in detailed and regular consultations with Congress as the negotiations unfold, and ultimately submit the agreement to Congress for approval. In exchange for playing a partnership role with the administration during the course of the negotiations, Congress agrees to take a simple up or down vote on the agreement, without a possibility to offer amendments. The longstanding belief has been that if the 535 members of the US Congress were able to amend an FTA, it would quickly unravel. TPA – or Fast Track – as it was previously known – has been traditionally seen as a practical solution which allows the executive branch to lead negotiations rather than coping with the impossible situation of having 535 different *de facto* 'lead' negotiators in Congress.

As part of the Congressional approval process, so-called implementing legislation is also approved. This provides legal authority to effectuate the commitments contained in the trade agreement. Since the IPEF will not include typical features of an FTA such as tariff reductions, the Administration has taken the position that Congressional approval is not needed. Not surprisingly, many in Congress disagree and have been sharply critical of what they see as usurpation of Congressional authority under Article 1, Section 8 of the US Constitution which gives Congress authority for regulating "commerce with foreign nations".[14]

The disagreement hinges on differing views over whether the IPEF should be considered a full-blown, comprehensive 'trade agreement'. Traditionally, comprehensive trade agreements have required Congressional approval. More limited trade actions have usually been interpreted to fall within the President's executive authority, in which case the executive branch can largely run

13 *op. cit.*

14 "Menendez, Colleagues Raise Concerns About Process To Approve And Implement Indo-Pacific Trade Pact And Other Trade Agreements", Bob Menendez, 1 December 2022, https://www.menendez.senate.gov/newsroom/press/menendez-senate-finance-committee-members-raise-concerns-about-process-to-approve-and-implement-indo-pacific-trade-pact-and-other-trade-agreements

the show. If this scenario applies to the IPEF, the administration would implement the agreement through one or more EOs. These are orders issued by the President directing federal agencies to take certain actions – but only in areas clearly under the President's authority. For example, a US president could not attempt to use an EO to amend the US Constitution because that power resides with Congress and the states. The President could, however, issue an EO directing the Commerce Department, for example, with instructions on how specifically to administer trade restrictions on high technology products. Over the course of recent administrations, Presidents have attempted to push the envelope on what actions they can authorise under EOs. President Obama in particular was accused of executive overreach on issues ranging from homeland security to workplace protections.[15] Attempting to implement the IPEF through EOs would be a further broadening of the scope and has already (and will continue to) elicit Congressional pushback.

The question of implementation through an EO versus Congressional approval is not merely an esoteric administrative detail. It holds import implications for the US' 13 IPEF partners as well as the ability of the US to actually implement the agreement. Three potential complications should be well understood.

Executive Orders are easily overturned

The President effectuates an EO through the stroke of a pen, that is, by signing the order. Since no laws have been passed, the EO can be undone without legislative action. A subsequent President can rescind any EO signed by a predecessor in the same manner. Given the current political mood in Washington, should President Biden fail to be re-elected, it is entirely possible – if not likely – that his successor will undo the IPEF with a stroke of a pen after assuming office in January 2025, as Donald Trump did with the TPP on his first full day in office. This is a reflection of both the highly partisan nature of the US political system as well as ambivalence about the IPEF itself. Supporters of free trade feel that it does not go far enough; opponents of free trade feel it goes too far. The IPEF partners should be aware that the durability of the IPEF could rest to a large degree on President Biden successfully gaining re-election.

Executive Orders can create legal ambiguities

With the scope of EOs being expanded, a complex legal question has arisen without any clear resolution. If the President issues an EO which requires a federal agency to contradict a law duly passed by Congress, which takes precedent? If the EO takes precedent, then the US President essentially has power to unilaterally override US law. If the EO does not take precedent, then the ability of the US to fulfil the commitments contained in the IPEF might be impaired in any place where it differs from existing US law. The IPEF partners will have to carefully monitor and weigh the extent to which the US will actually be able to live up to its obligations under the IPEF.

Use of Executive Orders could lead to a stand-off

Congress and the Biden Administration have been talking past each other on the question of Congressional approval. In hearing after hearing, members of Congress have routinely repeated their strongly held belief that the agreement will require a vote. Trade officials, principally the USTR Tai, have avoided answering the question with respectful niceties but offer absolutely no indication that they would consider going the Congressional route.

15 Erin Hawley, "Obama's curtain call: A look back on a legacy of executive overreach", The Hill, 24 December 2016, https://thehill.com/blogs/pundits-blog/the-administration/311608-obamas-curtain-call-a-look-back-on-a-legacy-of/

There would be significant complications even if the Biden Administration was to switch gears and seek Congressional approval. The mechanism for Congressional approval – TPA – has expired and an extension would need to be passed by Congress. This would be far from *pro forma*, as negotiating objectives and timelines would need to be agreed between the legislative and executive branches. The process can become contentious or at the very least, time-consuming. It is unlikely that it could be completed fast enough to be relevant for the IPEF – even if the Biden Administration was inclined to move in that direction.

For now, Congress and the White House remain at loggerheads on the question of legislative approval. It remains to be seen how Congress would react – and what means of disruption they might employ – if their entreaties are ignored. The fact that elections are drawing close only heightens the stakes and the political appeal of drawing contrasts – and sometimes picking fights – with political opponents. In the worst case, the IPEF could spark a mini-brawl between the executive and legislative branches. The US' IPEF negotiating partners need to be acutely aware of how this issue plays out in the US for an additional reason. If legislative approval is ultimately not sought, it could signal that the US does not intend to make any changes under the IPEF that would require changes to US law. It is unclear how this would sit with the IPEF partners, especially those that might be called on to make substantial changes to their legal or regulatory regime in order to meet IPEF commitments.

IPEF outcomes could shape US engagement with the EU

One interested outside observer to the IPEF negotiations will be the EU. The outcomes – both in terms of substance and format – could provide a useful point of reference for how the US and the EU will manage similar issues themselves.

Despite the apparent overwhelming logic, the US and the EU have never been able to conclude an FTA. The most recent attempt, the Trans-Atlantic Trade and Investment Partnership (TTIP) was foundered during the Obama Administration, and no serious efforts to revive the initiative have been undertaken since. At least for the foreseeable future, prospects for a comprehensive, traditional FTA between the US and the EU appear close to zero. Recognising, however, the imperative for the two trans-Atlantic partners to work together on trade and related issues, they have settled on an alternative format: a looser framework known at the US-EU Trade and Technology Council (TTC) – a concept which bears at least some similarity to the approach of the IPEF. The US-EU TTC was established in June 2021 to coordinate approaches to key global trade, economic and technology issues, and to deepen transatlantic trade and economic relations.

Depending on what precisely is accomplished in the IPEF, a couple of different scenarios might present themselves. If the IPEF produces a maximalist outcome – significant and meaningful progress on issues of shared interest – there is nothing to prevent the parties from considering EU admission to the IPEF. The rationale would be to avoid 'reinventing the wheel' and simply utilise the proven framework at hand. The United Kingdom's (UK) admission to the CPTPP has already demonstrated that geographic indicators applied to trade deals do not preclude prospective members from outside the region from successfully seeking membership. Undoubtedly, neither the agendas nor the respective interests are identical across the IPEF and the TTC. The TTC could perhaps hope for greater progress in some areas and less in others. A more likely outcome than EU membership might be that US and EU officials pick and choose what might be relevant from the IPEF and apply and incorporate them into their workstream in the TTC.

In the worst-case scenario, if the IPEF comes up short on concrete deliverables or falters altogether, it could be viewed as a cautionary tale for US-EU efforts in the TTC. Both, the IPEF and the TTC represent ambitious new attempts to address pressing trade and economic integration challenges in a far more amorphous, less-structured and less legalistic framework than have been previously undertaken. It is entirely unclear how successful this looser approach will be. In either event, however, EU interlocutors should closely follow the progress (or lack thereof) of the IPEF negotiations.

Supply Chain Pillar "substantially concluded"[16]

Meeting on the fringes of an APEC Ministerial in Detroit in May, the IPEF negotiators announced that they had "substantially concluded" the Supply Chain Pillar.[17] Although complete details are not yet available, the successful conclusion of the Supply Chain Pillar is good news and reflects a Herculean effort on the part of undoubtedly exhausted negotiators. It would, however, be premature to celebrate an IPEF victory. Based on what we know so far, there are reasons for both optimism and pessimism.

Reasons for optimism[18]

The agreement ostensibly accomplishes several useful things, including the establishment of measures intended to limit supply chain disruptions in the event of future pandemics or other disasters. A Crisis Response Network will be established to send up an early warning signal as potential supply chain disruptions are forming on the horizon and facilitate collective responses to shortages of critical materials.

According to a US Commerce Department press release, the 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, enabling a faster and more effective response that minimi[s]es negative effects on their economies".[19]

IPEF members will also share information during non-crisis periods to increase procurement among members and provide assistance when shortages do arise.

IPEF members will cooperate on technical assistance and capacity building to strengthen regional supply chains. The parties intend to mobili[s]e investments and promote regulatory transparency in order to help prevent significant future supply chain and economic disruptions.

The parties will cooperate on the promotion of high labo[u]r standards, upskilling workers, and making customs procedures more compatible. Members will engage with business to manage and ideally avoid supply chain bottlenecks.

16 This section is heavily drawn from Stephen Olson, "IPEF seals supply chain deal. Don't pop the champagne yet.", *Hinrich Foundation*, 30 May 2023, https://www.hinrichfoundation.com/research/article/ftas/ipef-seals-supply-chain-deal

17 "Press Statement on the Substantial Conclusion of IPEF Supply Chain Agreement Negotiations", US Department of Commerce, 27 May 2023, https://www.commerce.gov/news/press-releases/2023/05/press-statement-substantial-conclusion-ipef-supply-chain-agreement

18 *op. cit.*

19 *op. cit.*

The supply chain pillar generates positive momentum for the other three pillars and ensures that the new, innovative IPEF approach will produce at least one concrete outcome.

Although it is a fairly limited agreement, this is the first substantial agreement the US has reached in the region since the Trump Administration's decision to pull the US out of the Trans-Pacific Partnership (TPP)[20]. It could therefore be interpreted as a signal that the US is committed to working with partners in the region. Proponents of a more robust US engagement in the Indo-Pacific will point to this – correctly or incorrectly – as evidence that the US is "back".

Reasons for pessimism[21]

It appears the agreement will contain a good deal of aspirational language ("IPEF partners will seek to...") rather than concrete, enforceable commitments. Will such provisions actually be implemented?

It is as yet unclear as to whether the councils or advisory boards established by the agreement will be sufficiently empowered to actually accomplish anything meaningful, or if they will simply become bureaucratic talk shops.

The agreement may or may not be a done deal. The US Commerce Department press release announced only the "substantial conclusion" of the agreement.[22] Parties will now engage in domestic consultations and legal review in order to prepare a final text for signature. Modifications are possible, perhaps likely.

Where are things headed?

One should exercise extreme caution in attempting to draw too many conclusions about ultimate outcomes when trade negotiations are still ongoing. Yet, while considerable twists and turns will undoubtedly play out as the IPEF negotiations gather steam, several initial propositions can be cautiously articulated.

The IPEF is an important test case. If the IPEF succeeds, it will provide a template for how future trade agreements – certainly any involving the US – are negotiated and structured. As the USTR Tai has made abundantly clear, the US is out of the business of pursuing traditional FTAs at least for the foreseeable future. Yet, the desire to form blocs and to fragment along geopolitical dividing lines is unfortunately intensifying. Framework agreements modelled after the IPEF could become the preferred means for attempting to accomplish that goal. On a more micro-level, the IPEF has the opportunity to play a path-finding role on trade issues where comprehensive multilateral rules are lacking. Irrespective of its breadth or depth on other issues, if useful progress is made on – for instance – digital trade, expect other initiatives, both regional and global, to borrow liberally from what has been accomplished in the IPEF.

Should, however, the IPEF either fail to be concluded or fail to achieve meaningful results, the US' economic and strategic interests in the Indo-Pacific will be set back dramatically for years if not decades to come. An IPEF misfire would appear to validate the point of view that suggests that the US is a waning power in the Indo-Pacific, while China is ascendant. Having started this journey, the US will need to do everything in its power to bring it to a successful conclusion.

20 *op. cit.*
21 *op. cit.*
22 *op. cit.*

About the author

Mr Stephen OLSON is Senior Research Fellow at the Hinrich Foundation. His areas of expertise are in sustainable trade, the World Trade Organization, trade negotiations, free trade agreements, and tariffs and non-tariff barriers.

Mr Olson began his career in Washington DC as an international trade negotiator and served on the United States negotiating team for the North American Free Trade Agreement negotiations. He subsequently became president of the Hong Kong-based Pacific Basin Economic Council, and vice-chairman of Cairo-based ARTOC Group for investment and development. He is also a visiting scholar at the Hong Kong University of Science and Technology. He has a master's degree in International relations from the Johns Hopkins School of Advanced International Studies and a BA from the State University of New York.