



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



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IPEF: An Indian Perspective

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The Indo-Pacific Economic Framework for Prosperity (IPEF) is a predominantly United States (US) driven initiative that intertwines the economic and geopolitical strategic dimensions. The overall strategic dimension appears to be the driving force for India's IPEF engagement as well. The mobilisation of inbound investments, the potential shift of production centres in critical sectors, deeper integration with global supply chains, and access to low cost and long-term climate finance, are some of the expectations that India has from the IPEF. But there are several challenges as well. India has so far not acceded to labour conditionalities in any agreement pertaining to trade or economic cooperation, the underlying concern being the potential for the use of labour standards for protectionist purposes. The IPEF will, however, necessitate commitments on labour-related issues across each of the IPEF Pillars. While India has stayed out of the IPEF Trade Pillar, the substantial conclusion of the IPEF's Supply Chain Pillar indicates the possibility of advance notice of changes to tariffs and curtailment of export restrictions. The IPEF's Fair Economy Pillar is likely to necessitate adherence to digital taxation rules – an area where India and the US had called for a temporary truce pending the multilateral outcome of the Organisation for Economic Co-operation and Development – Base-Erosion and Profit-Shifting (OECD-BEPS) negotiations, which is yet to materialise. Finally, while the IPEF may not result in enforceable dispute settlement, it is likely to rely on monitoring of its rules through various institutional bodies and committees. Implications of this new architecture for global rules remains to be seen.

List of Abbreviations

APEP	Americas Partnership for Economic Prosperity
BEPS	Base-Erosion and Profit-Shifting
CII	Confederation of Indian Industry
CRS	Congressional Research Service
CSOs	Civil Society Organisations
EU	European Union
FATF	Financial Action Task Force
FICCI	Federation of Indian Chamber of Commerce and Industry
FTAs	Free-Trade Agreements
G20	Group of Twenty
ILO	International Labour Organization
IPCs	IPEF participating countries
IPEF	Indo-Pacific Economic Framework
IRA	Inflation Reduction Act
ITA	International Trade Administration
MSMEs	Micro, Small and Medium Enterprises
MSP	Minerals Security Partnership
OECD	Organisation for Economic Co-operation and Development
PLI	Production Linked Incentive
R&D	Research and Development
TTC	Trade and Technology Cooperation
UK	United Kingdom
UNCAC	United Nations Convention Against Corruption
US	United States
USMCA	United States-Mexico-Canada Agreement
USTR	United States Trade Representative
WTO	World Trade Organization

Introduction

Twelve months after the launch of the Indo-Pacific Economic Framework for Prosperity (IPEF), it has achieved “substantial conclusion of the negotiations of a first-of-its-kind international IPEF Supply Chain Agreement”, in one of its four Pillars.¹ The remaining three Pillars are Trade, Clean Economy and Fair Economy (taxation/anti-corruption). Significant progress on each of these remaining Pillars has also been announced, raising the expectation of conclusions by the end of this year.

This paper reflects on what the IPEF means for India. The structure of the paper is as follows: the first part traces the principal drivers for engagement in the IPEF, both from the United States (US) and the Indian perspectives; the second part identifies some of the key challenges for negotiation, anticipated outcomes as well as implementation challenges for India across its four Pillars, while dwelling deeper into the Supply Chain Pillar, which has seen substantial conclusion; the third part is the concluding section for assessing the future evolution of the IPEF.

As of now, the IPEF can best be characterised as a fluid arrangement that is still evolving. While the “substantial conclusion” of the Supply Chain Pillar has been announced, the publicly available statements only summarise its broad elements, and not the draft legal texts. This assessment is therefore a guesstimate on what the IPEF is all about.

The IPEF Way: Its Underlying Principles

The IPEF presents a new US vision for economic agreements, and a significant departure from traditional free trade agreements (FTAs). Starting with the basic premise that the Indo-Pacific is vital to US security and prosperity, the US’ Indo-Pacific Strategy lays down other objectives including a free and open region with connections within and outside of the region, and regional resilience to transnational threats.²

The fact that the IPEF was launched in Japan signifies that, along with the US, Japan too has strong commitment to ensure its emergence as a framework for regional security and partnership. The joint US-Japan statement welcoming the launch of the IPEF in May 2022, highlights the “challenges of the 21st century”, including an acknowledgment of the threats to international law arising from Russia’s invasion of Ukraine, reaffirmation of the United Nations (UN) as presenting the foundation of a “rules-based international order based on shared principles and universal values”, recognition of the Indo-Pacific as vital to the international economic order, including to respond to a challenging regional security environment, and specific reference to the need to address China’s actions relating to coercion by “economic and other means”.³

The economic rationale for the IPEF, as exemplified in this statement, lies not only in the shared economic interests of the Indo-Pacific countries (IPCs), but also in the interlinked geopolitical interests. In the absence of any draft legal texts, the official statements of the governments of

1 “Substantial Conclusion of Negotiations on Landmark IPEF Supply Chain Agreement”, US Department of Commerce, 27 May 2023, <https://www.commerce.gov/news/press-releases/2023/05/substantial-conclusion-negotiations-landmark-ipef-supply-chain>

2 “Indo-Pacific Strategy”, The White House, February 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>

3 “Japan-U.S. Joint Leaders’ Statement: Strengthening the Free and Open International Order”, The White House, 23 May 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/japan-u-s-joint-leaders-statement-strengthening-the-free-and-open-international-order/>

the IPCs perhaps offer the closest insights into the thinking and expectations from the IPEF. For instance, in a recent speech, the United States Trade Representative (USTR) Ambassador Katherine Tai noted that aggressive liberalisation and tariff elimination have seen benefits, but have also resulted in significant costs and side-effects, particularly in making the world dependent on China, shipping jobs overseas, decimating manufacturing communities, and making supply chains dispersed and fragile.⁴ She also noted that the US' key theme in its new story on trade is "strengthening our cooperation with like-minded economies to forge a fairer and more sustainable future for our people".⁵

A similar theme from the Indian side was expressed in India's Minister for External Affairs S. Jaishankar's recent interview with *The Economist*. Noting that the India-US relationship is not just about the trade and economic dimension, but the overall strategic dimension, he explained that the strategic dimension is the "centrepiece" of bilateral ties.⁶ He stressed on the increasing significance of India's emergence as a "political strategic partner" of the US in the Indo-Pacific, in the context of "a changing world".⁷ At the same time, he also emphasised the growing trade and investment relationship, and the close interconnectedness between technological security and economic security.⁸

The uniqueness of the IPEF

The IPEF is not an FTA. It stands out from the traditional model of an FTA on two counts: first, it does not deal with tariff related issues; and second, it is not backed by the relevant authority under US laws for negotiating FTAs. A recent report by the US Congressional Research Service (CRS) notes that the basis for the IPEF is that it would be an executive agreement drawn pursuant to US executive authority, for which there is no requirement for implementing legislation under US laws, particularly since it does not address any tariff related matters.⁹ Being the first of its kind, there is scepticism even within the US on the IPEF's scope and impact. The CRS report notes the divergence of views and scepticism within the US on the legal basis of the IPEF and issues arising from the lack of congressional debate and discussion on the IPEF.¹⁰ At the same time, it notes the view of US officials that the lack of tariff issues does not necessarily dent the IPEF's ability to secure market access, given its focus on facilitating trade and market access (for example, addressing nontariff barriers, digital trade, and small and medium-sized enterprises activities).¹¹

The IPEF cannot be seen in isolation. It is one of the several initiatives by the US to redefine and redraw economic partnership agreements. The US deviation from the traditional FTA model can be seen in at least three other arrangements: the Americas Partnership for Economic Prosperity

4 "Remarks by Ambassador Katherine Tai at American University Washington College of Law", Office of the United States Trade Representative, 5 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>

5 *Ibid.*

6 "In conversation with Subrahmanyam Jaishankar | Transcript of the Economist's interview with Mr. Jaishankar", by The Economist, 15 June 2023, <https://www.economist.com/asia/2023/06/15/in-conversation-with-subrahmanyam-jaishankar>

7 *Ibid.*

8 *Ibid.*

9 "Indo-Pacific Economic Framework for Prosperity (IPEF)", US Congressional Research Service, 10 August 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12373>

10 *Ibid.*

11 *Ibid.*

(APEP) with Barbados, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Peru, and Uruguay, is premised on a similar series of negotiations aimed at producing a similar set of commitments as the IPEF;¹² the Minerals Security Partnership (MSP) is an initiative to bolster critical mineral supply chains with key partner countries, Australia, Canada, Finland, France, Germany, Japan, the Republic of Korea, Sweden, the United Kingdom (UK) and the European Union (EU),¹³ which India also recently joined,¹⁴ and the Trade and Technology Cooperation (TTC) between the US and the EU aims at fostering cooperation in trans-Atlantic trade and investment, specifically focused on emerging technologies and infrastructure.¹⁵ A recent assessment notes that the US-EU TTC follows the approach that is very similar to the IPEF, and the only missing element in the TTC is the IPEF's fourth Pillar on Fair Economy dealing with anti-corruption and taxation aspects.¹⁶

In this context, the IPEF can perhaps best be summarised as the US' exploration of non-traditional formats of economic partnership agreements, with what seems to be a higher focus on regulatory harmonisation across a variety of aspects, including labour, environment, supply chains and clean energy.

India and the IPEF: Challenges and Opportunities

India is an active participant in three of the four Pillars of the IPEF: Pillar II (Supply Chains), Pillar III (Clean Economy) and Pillar IV (Fair Economy). It is an observer in Pillar I on Trade. Recent reports indicate that the decision of whether or not India would formally join the Trade Pillar continues to be an open one.¹⁷

While there are synergies in the vision of both India and the US with regard to the strategic and economic partnership in the Indo-Pacific, it is important to underscore that it is a US-led initiative, and an attempt by the US to set out a new framework of rules governing economic relationships. Even prior to the formal launch of the IPEF, detailed stakeholder consultations were initiated by the International Trade Administration (ITA)¹⁸ and the USTR.¹⁹ As noted by the US Chamber of

12 "FACT SHEET: President Biden Announces the Americas Partnership for Economic Prosperity", The White House, 8 June 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity/>

13 "Minerals Security Partnership", US Department of State, 14 June 2022, <https://www.state.gov/minerals-security-partnership/>

14 "Joint Statement from the United States and India", The White House, 22 June 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/22/joint-statement-from-the-united-states-and-india/>

15 "U.S.-EU Trade and Technology Council (TTC)", US Department of State, <https://www.state.gov/u-s-eu-trade-and-technology-council-ttc/>

16 Clete Willems and Niels Graham, "TTC, IPEF and the Road to an Indo-Pacific Trade Deal", Atlantic Council, 2022, https://www.atlanticcouncil.org/wp-content/uploads/2022/09/TTC_IPEF_and_the_Road_to_an_Indo-Pacific_Trade_Deal_.pdf

17 Sidhartha, "Govt. weighs options on trade under Indo-Pacific framework", *Times of India*, 3 May 2023, <https://timesofindia.indiatimes.com/business/india-business/govt-weighs-options-on-trade-under-indo-pacific-framework/articleshow/99946268.cms?from=mdr>

18 "Notice for Comments on Indo-Pacific Economic Framework", US International Trade Administration, 11 March 2022, (ITA-2022-0001-0001), <https://www.regulations.gov/document/ITA-2022-0001-0001>

19 "Fair and Resilient Trade Pillar for the Indo-Pacific Economic Framework", USTR, 10 March 2022, (USTR 2022-0002), <https://www.regulations.gov/document/USTR-2022-0002-0001/comment>

Commerce, the private sector and other stakeholders are the Administration's eyes and ears on the ground in the Indo-Pacific when it comes to commercial and economic issues.²⁰

The IPEF, in the Indian discourse, has so far been dominated by statements and updates from the government. While Indian business chambers like the Confederation of Indian Industry (CII) and the Federation of Indian Chamber of Commerce and Industry (FICCI) have welcomed recent FTAs entered into by India,²¹ there has been no specific assessment of what the IPEF would translate into. There appears to be an underlying assumption that commitments based on strategic interests as determined by the Indian government would naturally benefit the realisation of economic objectives for the private sector as well.

While voices from the Indian industry have been muted, voices of caution against India's engagement in the IPEF have also been expressed particularly from civil society organisations (CSOs). In a communication to the government, farmers groups and other CSOs have reportedly raised concerns with regards the lack of adequate scrutiny of the IPEF and the need for parliamentary scrutiny with respect to the IPEF's implications for "India's economic and development policy space".²² It also notes that the IPEF's wide-ranging Pillars are arguably more 'intrusive' than FTAs, and that even though the IPEF may not deal with market access, its emphasis on regulations and standards, would indirectly lead to market access.²³

Notwithstanding the scepticism, the government-to-government level of engagement between the US and India, which had been gradually deepening through the US-India Comprehensive Global and Strategic Partnership, is perhaps the strongest it has ever been. This has significant implications for India's engagement in the IPEF. During the 21-24 June 2023 visit by the Indian Prime Minister to the US, the joint statement of Prime Minister Narendra Modi and President Joe Biden touched upon a range of issues including defence, technology, clean energy transition, deepening strategic convergence through a rules based international order, deeper trade and investment partnership, and significantly, India's entry into the exclusive MSP initiated by the US.²⁴ The statement also emphasised the IPEF as central to the interests of both countries.²⁵ On the trade side, both countries concluded mutually agreed solutions of six outstanding World Trade Organization (WTO) disputes.²⁶

As noted above, as of now, India is not a part of the IPEF's Trade Pillar. A year ago, when India had opted out of the IPEF's Trade Pillar, India's Minister for Commerce and Industry Piyush Goyal had indicated that the reasons holding India back were the expectations of commitments under the

20 "Indo-Pacific Economic Framework: Business Recommendations", US Chamber of Commerce, 25 February 2022, <https://www.uschamber.com/international/indo-pacific-economic-framework-business-recommendations>

21 "Negotiating deeper free trade agreements", Financial Express, 16 May 2023, <https://www.financialexpress.com/opinion/negotiating-deeper-free-trade-agreements/3088923/>

22 "Farmers outfit, civil society caution government against joining IPEF trade pillar", *The Economic Times*, 26 May 2023, <https://economictimes.indiatimes.com/news/economy/policy/farmers-outfit-civil-society-caution-government-against-joining-ipef-trade-pillar/articleshow/100536225.cms?from=mdr>

23 *Ibid.*

24 *op. cit.*

25 *Ibid.*

26 "India-US WTO disputes trade-off", Ministry of Commerce and Industry, Government of India, <https://commerce.gov.in/press-releases/india-us-wto-disputes-trade-off/>

Trade Pillar on “environment, labour, digital trade and public procurement”.²⁷ In this context, it is important to underscore that labour-related issues are imbued in each of the IPEF Pillars, and not limited to the Trade Pillar. The Ministerial Statements in May 2022 in each of the Pillars emphasise “promoting labo[u]r rights based on the ILO [International Labour Organization] Declaration on Fundamental Principles and Rights and Work”, among other worker-related aspects.²⁸

It is also worth noting here that India is already negotiating FTAs with the UK and the EU which are likely to have chapters on labour, environment, gender and Micro, Small and Medium Enterprises (MSMEs). Indian business chambers like the CII and FICCI have not resisted the intertwining of non-trade issues such as these in FTAs. However, they have highlighted the need for building adequate safeguards while agreeing to any new commitments.²⁹

It is in this context that it would be interesting to examine the publicly available information on the IPEF’s Supply Chain Pillar.

The Supply Chain Pillar: Mapping what we know

While the text of the substantially concluded IPEF Supply Chain Agreement is not available in the public domain, press releases from the US and the Indian governments provide a glimpse of its scope and coverage. The agreement is expected to present a unique bottom-up approach with each country engaging with businesses and utilising technical assistance and capacity building to increase investment in critical sectors, key goods, physical and digital infrastructure, transportation and workforce projects.³⁰

The Government of India’s press release on this subject lists a positive and forward-looking vision of the agreement, including that it would lead to the potential shift of production centres in key goods/critical sectors to India, thereby bolstering domestic manufacturing capabilities and giving a boost to *Aatmanirbhar Bharat* (self-reliant India). It is also expected to benefit from Production

27 “Indo-Pacific Economic Framework (IPEF) for Prosperity ministerial meet was inclusive and fruitful: Shri Piyush Goyal”, Ministry of Commerce and Industry, India, 10 September 2022, <https://pib.gov.in/PressReleasePage.aspx?PRID=1858243>

28 The four Ministerial Statements are as follows:

“Ministerial Statement for Pillar I of the Indo-Pacific Economic Framework for Prosperity, Pillar I- Trade”, 22 May 2022, [https://ustr.gov/sites/default/files/2022-09/IPEF%20Pillar%201%20Ministerial%20Text%20\(Trade%20Pillar\)_FOR%20PUBLIC%20RELEASE%20\(1\).pdf](https://ustr.gov/sites/default/files/2022-09/IPEF%20Pillar%201%20Ministerial%20Text%20(Trade%20Pillar)_FOR%20PUBLIC%20RELEASE%20(1).pdf); “Ministerial Statement for Pillar II of the Indo-Pacific Economic Framework for Prosperity, Pillar II- Supply Chains”, 22 May 2022, <https://www.commerce.gov/sites/default/files/2022-09/Pillar-II-Ministerial-Statement.pdf>; “Ministerial Statement for Pillar III of the Indo-Pacific Economic Framework for Prosperity, Pillar III- Clean Economy”, 22 May 2022, <https://www.commerce.gov/sites/default/files/2022-09/Pillar-III-Ministerial-Statement.pdf>; and “Ministerial Statement for Pillar IV of the Indo-Pacific Economic Framework for Prosperity, Pillar IV- Fair Economy”, 22 May 2022, <https://www.commerce.gov/sites/default/files/2022-09/Pillar-IV-Ministerial-Statement.pdf>

29 *op. cit.*

30 “Press Statement on the Substantial Conclusion of IPEF Supply Chain Agreement Negotiations”, Ministry of Foreign Affairs of Japan, 27 May 2023, <https://www.mofa.go.jp/files/100510680.pdf>;

“PRESS STATEMENT FOR THE INDO-PACIFIC ECONOMIC FRAMEWORK’S CLEAN ECONOMY PILLAR, FAIR ECONOMY PILLAR, AND ON THE SUBSTANTIAL CONCLUSION OF IPEF SUPPLY CHAIN AGREEMENT NEGOTIATIONS”, Press Information Bureau, Government of India, 27 May 2023, <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2023/may/doc2023528205801.pdf>

Linked Incentive (PLI) schemes.³¹ The press release also highlights the potential of the IPEF to ensure India's deeper integration into Global Supply and Value chains, and thereby mitigate risks of economic disruptions and enhance India's exports within a seamless regional trade ecosystem.³² Additionally, it also highlights the possibility of joint Research and Development (R&D) and workforce development.³³

Actualisation of this wish-list will be clear only from the IPEF legal texts which, as of now, are not available.

The publicly available press statement only dwells on the institutional framework under the Supply Chain Pillar, comprising the following three IPEF Supply Chain bodies:³⁴

1. IPEF Supply Chain Council, which is tasked with the development of sector-specific action plans designed to build resilience in critical sectors, including through private sector reporting of supply chain vulnerabilities;
2. IPEF Supply Chain Crisis Response Network that will facilitate early response mechanisms to any supply chain threats, including by establishing emergency communications channels, and facilitating information sharing and collaboration, especially in times of crisis; and
3. IPEF Labor Rights Advisory Board consisting of government, worker, and employer representatives, as well as a subcommittee composed of government representatives, to support the IPEF partners' promotion of labor rights in their supply chains, promotion of sustainable trade and investment, and facilitation of opportunities for investment in businesses that respect labor rights.

From a brief review of available information, implementation challenges for India arise in at least two specific contexts.

First, the basis for the Supply Chain agreement is that each IPC member will identify critical sectors and key goods (such as raw materials, or other inputs relevant for those sectors). It is perhaps then logical to anticipate obligations on those IPC members supplying key goods for critical sectors of another IPC member, to not impose trade restrictions such as export restraints. Recent reports indicate that the Government of India has sought the industry's views on the US' proposal for advance notices on tariff changes and possible curtailment of export restrictions under the Supply Chain Pillar.³⁵ These requests need to be considered with caution, keeping in view the policy space available under the multilateral rules of the WTO to impose export restrictions or prohibitions, as legitimate tools to prevent critical shortages of foodstuffs or other products essential for a country.

Another development is the US' ambitious plan of up to US\$369 billion in subsidies under its recently enacted Inflation Reduction Act (IRA), to support electric vehicles, key minerals, clean energy and power generation facilities production, with incentives based on production and

31 "Negotiations for the Supply Chains (Pillar-II) Agreement substantially concluded during 2nd IPEF Ministerial Meeting", Press Information Bureau, Government of India, 1 June 2023, <https://pib.gov.in/PressReleasePage.aspx?PRID=1929184>

32 *Ibid.*

33 *Ibid.*

34 *op. cit.*

35 *op. cit.*

sales in the US or North America.³⁶ The IRA skews the conditions of competition in favour of the US industries. Certain preferential treatment is, however, allowed for US' FTA partners. During the recent dialogue between Modi and Biden, India has sought to be recognised as a "Trade Agreements Act-designated country" by the US,³⁷ which could potentially entitle it to specific benefits under US law. However, this is unlikely without an underlying trade agreement with the US, and a consequent change in US law to implement this, an aspect which, as explained above, the US plans to avoid in its IPEF engagement.

The second issue is about the IPEF's focus on labour rights. India is a member of the ILO and has ratified more of its core labour conventions than the US itself.³⁸ The Constitution of India also guarantees several protections including against forced labour and child labour. However, India has so far not agreed to conditions relating to labour as part of trade or economic partnership agreements, the concern being that labour standards in trade agreements could manifest as protectionist measures in the guise of humanitarian concerns.

An underlying issue is that labour as a factor of production, leads to comparative advantages. In fact, at the behest of India and several other developing economies, a WTO Ministerial Declaration at the Singapore Ministerial held in 1996 had emphasised that labour standards should not be used for protectionist purposes, and that the comparative advantage of countries, particularly low-wage developing countries must in no way be put into question.³⁹ Recent US FTAs, which have exalted the need for labour-centric approaches, are a response to core labour concerns within the US, the rationale being that if a trade deal cannot result in more prosperity of the workforce, it is a futile agreement. To achieve this, however, the US appears to be considering upending the very notion of comparative advantage. A stark example of this is the US-Mexico-Canada Agreement's (USMCA) labour value content criteria which require vehicle producers seeking USMCA preferential treatment to certify that a certain percentage of the imported automobile's content (by value) is sourced from manufacturing facilities in the USMCA parties that pay workers at least US\$16 per hour.⁴⁰ While there is nothing in the IPEF negotiating agenda texts to suggest that a similar approach may evolve in any of the IPEF outcome texts, nevertheless, it is an aspect to remain cognisant about, given the centrality of labour across each of the IPEF Pillars.

The IPEF Labor Rights Advisory Board under the Supply Chain Pillar is likely to translate into close scrutiny over domestic regulatory practices, not only by the governments of the IPCs, but by the private sector entities of the IPCs. The advisory board itself will be tripartite with members from the government, industry and workers. Thereafter, a second-tier sub-committee of government

36 The Inflation Reduction Act (IRA) of 2022 is a legislation slated to bolster American energy security and address the climate crisis. It contains a new corporate minimum tax, multiple green energy credits and enhanced enforcement resources. Therefore, it is expected to reduce energy costs for businesses and households and generate manufacturing jobs for Americans. See "Inflation Reduction Act of 2022", *Public Law* 117-169, 16 August 2022, <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>

37 *op. cit.*

38 The Core/Fundamental ILO Conventions ratified: India - 6/10 (C029, C100, C105, C111, C138 and C182) and the US - 2/10 (C105 and C182). See "Ratifications for India", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::p11200_country_id:102691;

"Ratifications for United States of America", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102871

39 "SINGAPORE WTO MINISTERIAL 1996, WT/MIN(96)/DEC", World Trade Organization, 18 December 1996, https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm

40 "USMCA Automotive Sector", US International Trade Administration, <https://www.trade.gov/usmca-auto-report>

representatives would oversee its role in assessing businesses that respect labour rights, and incentivise investment into such businesses.

To the extent that the Labour Rights Advisory Board and its sub-committee are deferential to the government's assessment as regards the compliance of labour laws, the implementation challenges would likely be limited to mechanisms for monitoring and communication. However, if such external scrutiny is with a view of an implementation of labour standards that are higher than that provided under domestic laws, there are likely to be several sensitivities on the desirability of such external scrutiny and the determination of what is lawful or not, under Indian law.

The IPEF Pillar on Clean Economy

The IPEF's Clean Economy Pillar will be one of the most consequential ones for the path to green development of each of the IPCs, especially the developing country members. It would be logical to see the natural linkages between the Clean Economy and Supply Chain Pillars, particularly for India which is seeking access to key goods and technology transfers in critical sectors for environmentally sustainable development. It would also be good to see an alignment between the Clean Economy Pillar with international climate change negotiations, particularly as a means to further implement obligations relating to emission reduction, and to achieve the same through financial and technical assistance and capacity building initiatives between the IPCs. Low cost and long-term carbon finance is part of India's wish-list for this Pillar.⁴¹ The press release of May 2023, which announced "good progress" on Pillar III, also indicated the launch of a green hydrogen initiative among interested IPCs, which includes India.⁴²

The IPEF Pillar on Fair Economy

The IPEF's Pillar IV on Fair Economy covers two broad areas: anti-corruption and taxation. But there is little information on what the "Fair Economy Agreement" would look like. The May 2022 Ministerial Statement launching the IPEF, references two international conventions under this Pillar: the United Nations Convention Against Corruption (UNCAC) that India has ratified; and the Organisation for Economic Co-operation and Development's (OECD) Anti-Bribery Convention, which India is not a party to. India is a member of the Financial Action Task Force (FATF), an intergovernmental standard-setting body, which also evaluates compliance of its signatories. Since FATF standards are recommendatory in nature, and since India is not a signatory to the OECD convention, it would be important to ensure that obligations under this Pillar are worded in a manner that ensures adequate policy flexibility.

Pillar IV's taxation component refers to support for the OECD/Group of Twenty (G20) Inclusive Framework on Base Erosion and Profit Sharing (BEPS) negotiations, which is focused on finding a global understanding on taxation in a digital economy. The OECD discussions had commenced in 2013, but sluggishness in progress, including because of the US' own lack of engagement, had led to India and several other countries implementing their own laws for taxing entities engaged in digital services. India's equalisation levy on digital advertising has been implemented since 2016.

41 "Successful and substantial conclusion of text-based negotiations of IPEF Pillar-II (Supply Chains); good progress under other Pillars, Shri Piyush Goyal calls for expeditious implementation of action-oriented elements of the Agreement including mobilizing of investments in IPEF supply chains, Regional Hydrogen Initiative introduced by some IPEF partners", Press Information Bureau, Ministry of Commerce and Industry, Government of India, 28 May 2023, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1927826>

42 *Ibid.*

A two per cent equalisation levy on non-resident digital entities engaged in e-commerce supply of services was introduced in 2020.⁴³ The US initiated “Section 301” proceedings against India, the EU, the UK, Indonesia, and several other countries, since the impact of this tax was on digital corporations headquartered in the US. Section 301 of the Trade Act of 1974 grants the USTR the authority to investigate and take action to enforce US rights under trade agreements and respond to certain foreign trade practices. Such unilateral action, clearly, is against any multilateral rules and in case of the equalisation levy, impinged directly on the sovereign right to impose appropriate taxation measures. Nevertheless, the US succeeded in forging an agreement with India which obligates India to withdraw the two per cent levy in March 2024, subject to conclusion of the multilateral convention at the OECD.⁴⁴

While negotiations at the OECD are progressing, there is still no sign of the multilateral convention which was expected to be finalised by mid-2023. The issue has significant implications for law and policy in India, as it is expected that agreeing to the multilateral convention at the OECD will require passing of a new law in India, as well as being subject to binding dispute resolution.⁴⁵ There are concerns that the rules of the agreement will be predominantly dictated by the US, and will impinge on significant revenue potential for countries like India.⁴⁶ In view of this uncertainty, it is unclear whether the IPEF Fair Economy Agreement would simply reference a commitment to ensure the conclusion of the OECD agreement, or arrive at more concrete obligations. It also remains to be seen whether India would discontinue its two per cent levy by March 2024, even in the absence of an OECD conclusion.

It is interesting to note that digital tax is an area where there continues to remain significant divergences between the EU and the US. It is perhaps for this reason that the US-EU TTC covers elements of the first three IPEF Pillars but is silent on the issue of digital taxation.

What Next for the IPEF

The US and the EU had a significant role in shaping the rules of the multilateral system, under the UN, the Bretton Woods institutions, the General Agreement on Tariffs and Trade and subsequently, the WTO. While the emergence of other economic powers, including India, has, to a certain extent diluted the ability of the US to have a unilateral reign as rule-maker, it is not a significant dent. The IPEF is a prime example of the US’ attempt at reclaiming the space as a rule-maker through an intelligent linkage of the economic with the geopolitical strategic interests of countries in the Indo-Pacific, which constitute 40 per cent of the world economy.

The IPEF, however, is clearly not an exclusive club of best friends. This is evidenced in the US’ multi-pronged approach to secure its strategic interests with like-minded countries. With the EU, this is most clearly manifested in the US-EU TTC. As the assessment by the Atlantic Council notes, the

43 “Equalisation Levy”, Income Tax Department, <https://incometaxindia.gov.in/booklets%20%20pamphlets/equalization-levy-english.pdf>

44 “India and USA agree on a transitional approach on Equalisation Levy 2020”, Press Information Bureau, Ministry of Finance, Government of India, 24 November 2021, <https://pib.gov.in/PressReleasePage.aspx?PRID=1774692#:~:text=India%20and%20United%20States%20have,regarding%20the%20said%20Equalisation%20Levy>

45 Rashmin C. Sanghvi, “India should not adhere to the proposed global rules on digital tax”, *The Economic Times*, 26 June 2023, <https://economictimes.indiatimes.com/opinion/et-commentary/why-india-should-not-adhere-to-the-proposed-global-rules-on-digital-tax/articleshow/101262049.cms>

46 *Ibid.*

IPEF and the TTC have a “heavy issue overlap”,⁴⁷ ranging from addressing supply chain disruptions and enhancing its resilience to coordinating on rules and standards for the digital economy to green technology development.

India’s role and strategic geopolitical significance has been increasing over the years, in terms of the growing size of its economy, an increasingly attractive investment destination, and as a possible counter to the dependence of other countries on China. India is part of both the IPEF and the MSP – two new initiatives by the US to redefine multilateral rules. While these are indicative of India’s growing strategic relevance for the US, the rules of these new frameworks and initiatives are as yet unclear.

Any international negotiation involves the ceding of sovereign space and agreeing to a common set of rules. This weighing and balancing however depends on the nitty-gritties of the legal obligations, and a clear cost-benefit assessment. It is here where the uncertainties of the IPEF appear daunting. Contrast this with the fact that during the negotiations leading up to the WTO in 1995, the ‘Dunkel Draft’ was released in 1991.⁴⁸ This allowed for public scrutiny, debate and discussion, and consequent refinements. One would expect that 21st century rules would be subject to a higher level of transparency and scrutiny. Instead, the IPEF appears to demand implicit trust and faith in the ability of governments to set the rules for the benefit of all. It is this element of the unknown that makes the IPEF somewhat worrisome. This is particularly because of the challenges it poses for domestic law and policy, and possible changes that would need to be considered, in respect of each of the IPEF Pillars that are agreed to.

Very little is known as of now regarding the enforcement of the IPEF obligations. Unlike traditional FTAs that focus on enforcement through binding dispute settlement, the current range of statements in the public domain indicate that the IPEF is likely to be focused on cooperation and dialogue, rather than on binding dispute settlement. But as USTR Tai noted, the focus of the IPEF is on mechanisms for verifying that the rules are being followed and looking beyond traditional dispute settlement.⁴⁹ Perhaps this is the role of each of the institutional bodies notified under the IPEF Supply Chain Pillar, which are likely precursors to similar bodies under the other Pillars. This, clearly, is not without consequence. The fact that something is a soft obligation does not make it meaningless. At a minimum, this would entail subjecting domestic law and policy open to external scrutiny, not only by foreign governments, but by the private sector as well, as is likely to be the consequence of the IPEF Labor Rights Advisory Board for supply chains.

The underlying philosophy of the IPEF is laudable: enhanced cooperation for collective resilience. The USTR hailed the IPEF as a new chapter in the story of resilience, “focused on raising the tide for all our citizens, not only now, but also for future generations”.⁵⁰ That same principle should govern India’s engagement as well; the legal texts will have implications for both current and future generations. Ultimately, any speculation about the IPEF remains woefully incomplete without the benefit of an assessment of those underlying legal texts.

47 *op. cit.*

48 The then GATT director-general, Arthur Dunkel, who chaired the Uruguay Round negotiations at officials’ level, tabled the draft “Final Act” in 1991, which became the basis for negotiations.

49 “Indo-Pacific framework will ‘push envelope’ on enforcement: USTR”, interview by Taisei Hoyama, Nikkei Asia, 29 May 2022, <https://asia.nikkei.com/Editor-s-Picks/Interview/Indo-Pacific-framework-will-push-envelope-on-enforcement-USTR>

50 “Remarks by Ambassador Katherine Tai at the 2023 Indo-Pacific Business Forum”, Office of the United States Trade Representative, May 2023, <https://ustr.gov/node/12515>

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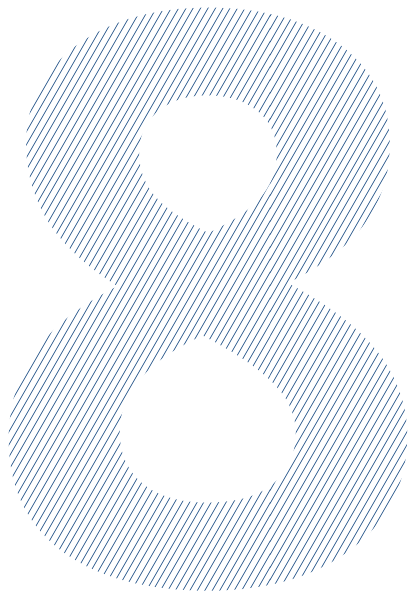
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The Making of the Indo-Pacific Economic Framework for Prosperity (IPEF)



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Malaysia's Interests in the IPEF: Managing Trade Frictions and Restoring Market Access

Jayant MENON

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Jayant MENON

To re-engage economically with the Indo-Pacific region, United States (US) President Biden launched the Indo-Pacific Economic Framework for Prosperity (IPEF) in May 2022. For Malaysia, the IPEF could help restore market access to the US by relaxing Withhold Release Orders (WROs) that ban exports of companies facing forced labour allegations. Malaysia also expects that the ease and frequency with which trade sanctions are applied in the future will be better managed as a result of the IPEF. These potential benefits of the IPEF need to be weighed against a worst case scenario where the creation of the IPEF further fuels US-China tensions. Another problem is that the IPEF without China is almost economically meaningless to countries with China-centred supply chains like Malaysia. Worse than that, any potential benefits could be more than offset if it fuels US-China tensions leading to actions that further disrupt supply chains and trade.

List of Abbreviations

APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BEPS	Base-Erosion and Profit-Shifting
CMIM	Chiang Mai Initiative Multilateralisation
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
FDI	Foreign Direct Investment
FTA	Free-Trade Agreement
G7	Group of Seven
GATT	General Agreement on Tariffs and Trade
GLCs	Government Linked Companies
IPEF	Indo-Pacific Economic Framework
IRA	Inflation Reduction Act
MITI	Ministry of International Trade and Industry
RCEP	Regional Comprehensive Economic Partnership
US	United States
USMCA	United States-Mexico-Canada Agreement
USTR	United States Trade Representative
WROs	Withhold Release Orders
WTO	World Trade Organization

Introduction

In a bid to re-engage economically with the region, United States (US) President Biden launched the Indo-Pacific Economic Framework for Prosperity (IPEF) in Tokyo on 23 May 2022. Malaysia joined six other Association of Southeast Asian Nations (ASEAN) members – Brunei Darussalam, Indonesia, the Philippines, Singapore, Thailand and Vietnam – to sign on as participating countries, together with Australia, Fiji, Japan, India, Republic of Korea, and New Zealand.

The much-awaited return of the US to the region as an economic partner was met with great expectations, and the standards by which the IPEF was to be judged were set accordingly high, also leaving a lot of room for disappointment, especially in terms of perceived benefits and costs. Expectations may be unreasonably high because they are probably still based on the view that the US is the original guarantor of a rules-based trading order, rather than its more recent performance that has seen it undermine the World Trade Organization's (WTO's) Dispute Settlement Mechanism and disregard some of its rulings, among other things.

The Framework comprises four policy pillars: Trade; Supply Chains; Clean Economy (energy, decarbonisation and infrastructure); and Fair Economy (tax and corruption). Employing a modular approach, member countries can choose which policy pillar to sign up for but have to abide by all the commitments within the selected pillar(s). The price for this flexibility is possible 'cherry-picking', which has already seen India pull out of the Trade Pillar and could leave difficult reforms behind.¹

The IPEF is not a Free-Trade Agreement (FTA) or a traditional trade agreement. In this respect, the lack of market access provisions through exchange of concessions is greatly lamented and calls for reconsideration to bring them back onto the negotiating agenda are frequent. The IPEF is very much about market access, however, but just not in the way that it is traditionally understood. While it may not improve market access of the IPEF members to the US, it will certainly affect market access of US firms to other members' markets, because almost every other item on the agenda, from digital trade rules to environmental or labour standards, will affect competitiveness. In the same vein, Malaysia's interpretation of market access is also slightly different and the IPEF could be used to serve its interests in this area.

For Malaysia,² the IPEF is important in at least two ways, as it relates to the Trade and Supply Chain Pillars. The first relates to market access. In Malaysia's case, it is not so much about increasing market access to the US but about restoring market access where it has been denied and then preserving it. That is, reversing the remaining Withhold Release Orders (WROs)³ that currently ban exports to the US market and ensuring that the ease and frequency with which trade sanctions are applied in the future is better managed.

1 Jayant Menon, Tham Siew Yean and Maria Monica Widharja, "Biden wants Asia to trade with the US as an 'alternative to China' but details are scant", *Channel News Asia Commentary*, 3 June 2022, <https://www.channelnewsasia.com/commentary/us-biden-ipef-asean-indopacific-china-trade-economic-partnership-2722771>

2 Malaysia does not have an explicit Indo-Pacific strategy, although the Indo-Pacific is frequently referred to in various defence and other non-economic policies and strategies. Therefore, apart from participating in the ASEAN Outlook on the Indo-Pacific, it is the IPEF that will form the basis of any formal economic engagement with the US and the Indo-Pacific region.

3 "Withhold Release Orders and Findings List", US Customs and Border Protection, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>

Second is balancing key relationships and managing the fallout from the escalating US-China trade and technology war. With the Regional Comprehensive Economic Partnership (RCEP), the world's largest FTA, Malaysia may hope that the IPEF will provide greater balance in managing its relationship with its two key trade and investment partners, China and the US. Thus, jumping on the IPEF bandwagon now may be part of its 'balancing' strategy as it avoids having to pick sides and therefore risk being cut off from either the US or China. But will the IPEF's creation or Malaysia's membership of it help with or hinder this balancing act? Only time will tell.

At the very least, the IPEF should not fuel US-China tensions and worsen the fallout on regional trade and supply chains. At the 2023 Group of Seven (G7) Summit in Tokyo, President Biden tried to clarify that the US objective was not to decouple (from China), but to de-risk and diversify.⁴ This statement would have been welcomed by Malaysia and other ASEAN countries whose manufacturing supply chains are intricately linked to China. The big question, however, is whether this statement will translate into action, with a stalling of punitive measures initially, followed quickly by a reduction in them, or whether it will turn out to be a play on words. If it turns out to be just ratcheting of the rhetoric, as many fear, then the real risk to the ASEAN region will quickly shift from China to the US.

The paper is divided into five parts. The next section provides context by examining the political economy of the IPEF and the underlying motivation of the US in proposing it in the way that it has. This section also provides an overview of Malaysian trade policy, focusing on its FTAs, and trade governance. Section 3 deals with the two most important pillars for Malaysia, Trade and Supply Chains. The discussion on these two pillars is combined because it does not make sense to separate the two from an economic point of view for a country like Malaysia, although it might from a national security or geopolitical standpoint, for a country like the US. The pillars on Clean and Fair Economy are discussed in Section 4. The discussion on these two pillars is combined because there is little here that is likely to have a material impact on Malaysian policy making. A final section concludes.

Political Economy of the IPEF and Malaysian Trade Policy

To understand the likely impact of the IPEF on Malaysia and other members, it is important to first come to terms with the motivation underlying it. To do this, it is useful to understand the environment within which it was created, by reviewing recent changes that have occurred in the trade policy setting agenda in the US under President Biden.

For decades, US trade policy was run by the US Trade Representative's (USTR's) office. The USTR negotiated all key trade agreements and was strongly pro-trade and liberalisation. Under the Biden Administration, some argue that the power to set the trade agenda has shifted to the Commerce Department.⁵ This shift in power has already had a profound influence on US trade policy. Unlike the USTR, whose mission is to promote trade and investment through advancing liberalisation and maintaining a rules-based order, the Commerce Department is focused on the defence and

4 At the closing press conference of the G7 meetings in Japan on 21 May 2023, President Biden stated that: "We're not looking to decouple from China. We're looking to de-risk and diversify our relationship with China,". See Trevor Hunnicutt and Jeff Mason, "Biden sees shift in ties with China 'shortly'", *Reuters*, 21 May 2023, <https://www.reuters.com/world/biden-sees-shift-relations-with-china-shortly-says-g7-wants-de-risk-not-decouple-2023-05-21/>

5 Edward Alden, "Why the U.S. Trade Office No Longer Runs Trade", *Foreign Policy*, 7 March 2023, <https://foreignpolicy.com/2023/03/07/ustr-tai-trade-biden-america-first-china-decoupling/>

promotion of US companies and the protection of US technologies. It has also been overseeing the rollout of the massive subsidies being offered to re-shore semiconductor manufacturing, restricting sales of advanced US technologies to various Chinese companies and various other distortionary and protectionist policies. In addition to semiconductors, the subsidies being offered to the production of clean energy and electric vehicles is already affecting competitors not just in China but also US allies in Europe.⁶ This had led one commentator to conclude that “the US shift to a more nationalist trade policy, driven by domestic industrial interests and national security concerns, will be durable”.⁷

The stark contrast between the USTR and the Commerce Department is also why the IPEF is a White House initiative. The USTR and Commerce Department simply could not come to agreement on how the IPEF should be structured and the White House was forced to take it over.

Malaysia is a small, open economy that has a long history of embracing free and open trade and investment policies. In fact, prior to the 1997 - 98 Asian Financial Crisis, Malaysia was often hailed as a model worthy of emulation by the developing world of how such liberal trade and investment policies could transform economies and avoid the middle income trap.

Malaysia has pursued liberalisation through its participation in the WTO, unilateral actions and FTAs. As of June 2023, Malaysia is implementing 18 FTAs (Table 1) and is negotiating five more.⁸ It has bilateral FTAs with four IPEF member countries – Australia, India, Japan and New Zealand – and is in the process of negotiating with two others – Republic of Korea and the US. Despite negotiations having commenced in 2006, Malaysia does not look like concluding an FTA with the US anytime soon. The question that then arises is by what extent the IPEF can effectively substitute the absence of a bilateral FTA with the US. The short answer appears to be “very little, if at all”. So far, the US is not providing the same treatment to the IPEF members as it is to countries with whom it has an FTA. A stark contrast that highlights this discrepancy arises in relation to the Clean Economy Pillar and ‘green’ investments (see Section 4).

6 Edward Alden, “Biden’s ‘America First’ Policies Threaten Rift with Europe”, *Foreign Policy*, 5 December 2022, <https://foreignpolicy.com/2022/12/05/biden-ira-chips-act-america-first-europe-eu-cars-ev-economic-policy/>

7 *op. cit.*

8 The five FTAs that Malaysia is negotiating are with the European Union, the Gulf Cooperation Council, Iran, Republic of Korea and the US.

Table 1: Malaysia's trade agreements in effect, June 2023

IPEF MEMBERS (1)	TRADE AGREEMENT	ENTRY INTO FORCE
IPEF (7)	ASEAN Free Trade Area	1993
IPEF (9)	ASEAN-Australia and New Zealand Free Trade Agreement	2010
--	ASEAN-Hong Kong, China Free Trade Agreement	2019
IPEF (8)	ASEAN-India Comprehensive Economic Cooperation Agreement	2010
IPEF (8)	ASEAN-Japan Comprehensive Economic Partnership	2008
--	ASEAN-People's Republic of China Comprehensive Economic Cooperation Agreement	2005
IPEF (8)	ASEAN-Republic of Korea Comprehensive Economic Cooperation Agreement	2007
IPEF (2)	Australia-Malaysia Free Trade Agreement	2013
IPEF (7)	Comprehensive and Progressive Agreement for Trans-Pacific Partnership	2018
IPEF (2)	India-Malaysia Comprehensive Economic Cooperation Agreement	2011
IPEF (2)	Japan-Malaysia Economic Partnership Agreement	2006
--	Malaysia-Chile Free Trade Agreement	2012
--	Malaysia-Pakistan Closer Economic Partnership Agreement	2011
--	Malaysia-Türkiye Free Trade Agreement	2015
IPEF (2)	New Zealand-Malaysia Free Trade Agreement	2010
IPEF (2)	Preferential Tariff Arrangement-Group of Eight Developing Countries	2011
IPEF (11)	Regional Comprehensive Economic Partnership	2022
--	Trade Preferential System of the Organization of the Islamic Conference	2022

Note: The number in parentheses refers to the number of countries participating in the IPEF.

Source: Asia Regional Integration Center, ADB⁹

The question of overall value-addition combined with the recent political and policy climate in Malaysia may also affect its appetite to aggressively pursue a new and challenging agreement like the IPEF. Since 2020, Malaysia has had four Prime Ministers and three Ministers of the Ministry of International Trade and Industry (MITI). To provide context, it has had the same number of Prime Ministers and Ministers of MITI in the last three years as it has had in the preceding three decades. In short, the political and trade policy environment has been in a state of flux over recent years. This is why Malaysia kept delaying ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) until 30 September 2022, making it the ninth (out of 11) members to do so.

Some stability has returned with the current Anwar Ibrahim Administration, with Tengku Zafrul Azis, the former Finance Minister, in charge of MITI. The CPTPP came into effect on 29 November 2022, soon after the Anwar Administration took office. The current administration has reiterated

9 "Free Trade Agreements", Asia Regional Integration Center, <https://aric.adb.org/fta>

support for the CPTPP, despite some concerns from domestic lobbies. The Minister of MITI said in January 2023, “There were obviously some issues that were raised by various groups, and we have addressed that by taking action to mitigate some of the concerns, so we are very much committed to participating in [the CPTPP]”.¹⁰ This bodes well for the current administration’s free trade credentials, and therefore, for the IPEF.

Malaysia is already a beneficiary of the IPEF’s technical assistance and capacity-building activities, even claiming some responsibility for bringing it onto an agenda that has very few unilateral concessions. The IPEF Upskilling Initiative aims to provide seven million training opportunities to women across the region to acquire digital skills that prepare them for high-quality jobs. Malaysia has also called for the establishment of an IPEF Centre for Excellence to provide training and capacity building in areas covered by the various pillars such as supply chain resilience, energy transformation and decarbonisation.¹¹ These types of initiatives may go some way towards providing more incentives in the form of carrots in an agreement that is heavy on sticks.

Pillars 1 and 2 – Trade and Supply Chains

As noted, Pillars 1 and 2 on Trade and Supply Chains, respectively, are the most important to Malaysia. In fact, most of Malaysia’s trade involves supply chains and separating the two does not make much economic sense for it. Nevertheless, the issues in the Trade Pillar are already having a significant impact on trade relations with the US, particularly as they relate to labour and environmental standards.

Former MITI Minister Azmin Ali has indicated that Malaysia sees the IPEF as providing a platform to open engagement with the US in seeking a solution to the WROs that have been imposed by US authorities on Malaysian exports. US authorities currently have six active WROs on Malaysian companies, four on rubber gloves and two on palm oil, due to allegations of forced labour. The WROs prohibit the import of products originating from companies facing forced labour allegations. Will the IPEF be able to deliver on helping address the WROs or other punitive trade measures? Two out of the six WROs have been modified in early 2023 and there is another precedent of sorts that provides room for optimism that the IPEF can help. Just two weeks after the IPEF was launched on 23 May 2022, the Biden Administration lifted a transshipment ban that had been imposed following a complaint by a US-based solar company.¹² Malaysia (and Cambodia, Thailand and Vietnam) were suddenly provided 24-month duty-free access to the US market for their exports of solar cells and modules.

Therefore, even if the IPEF does not include the exchange of market access concessions in the traditional sense, it may provide the opportunity to reverse binding restrictions and restore market access for countries like Malaysia. It may also allow Malaysia an avenue to better manage similar issues should they arise in the future. The recent relaxation of WROs on two companies and the removal of the transshipment ban on solar products suggest that this might be possible.

10 Quoted in “Malaysia ‘fully committed’ to CPTPP, says Tengku Zafrul”, *Free Malaysia Today*, 5 January 2023, <https://www.freemalaysiatoday.com/category/highlight/2023/01/05/malaysia-is-fully-committed-to-cptpp-says-tengku-zafrul/>

11 “FACT SHEET: IPEF Upskilling Initiative”, US Department of Commerce, <https://www.commerce.gov/sites/default/files/2022-09/IPEF-Upskilling-Fact-Sheet.pdf>

12 See Nichola Groom, “US places tariffs on some big solar companies for dodging China duties”, *Reuters*, 19 August 2023, <https://www.reuters.com/sustainability/us-slaps-tariffs-some-big-solar-companies-dodging-china-duties-2023-08-18/>

Nevertheless, the increasing influence of the US Department of Commerce in setting the trade agenda (see Section 2) has increased the *weaponisation* of trade policy and this needs to be checked and better managed. Otherwise, its impacts on a growing number of non-trade related areas will cause significant disruption to countries on the receiving end.

Malaysia is keen to grow its digital economy, and the rules relating to it coming from the IPEF may be significant. If the IPEF negotiations on digital trade and data flows can further the agenda beyond that of other bilateral (for example, the Framework of Cooperation with Singapore), regional (CPTPP, but also ASEAN, Asia-Pacific Economic Cooperation [APEC], et cetera.), or multilateral (WTO) frameworks, then the impact of the IPEF could be transformative. Details are still sparse but the potential is certainly there to make the IPEF a significant part of Malaysia's trade policy. The negotiations in this area, however, are not without risk. With the European Union and China also pursuing their own approaches to digital governance, the possibility of a 'splinternet' emerging, which fractures the global system, needs to be avoided.

Malaysia will also be impacted by the first tangible results of the year-long negotiations, relating to supply chain resilience. Following the meeting in Detroit on 27 May 2023, US Commerce Secretary Gina Raimondo announced "substantial progress" towards an IPEF Supply Chains Agreement, although the final text is yet to be agreed upon.

Three new structures are being created to operationalise the agreement:

The first is the IPEF Supply Chain Council for better coordination of supply chain activities and building resilience and competitiveness in certain critical sectors. The Council will oversee the development of 'action plans' for these sectors that may help companies identify and address supply chain vulnerabilities.

The second is an IPEF Supply Chain Response Network for giving early warnings to members on potential supply disruptions. With a new 'emergency communications channel', it is expected that the IPEF members can streamline communication and coordinate a response when one or more IPEF parties face a supply chain crisis.

Finally, an IPEF Labo[u]r Rights Advisory Board made up of government, worker, and employee representatives is being proposed. This Board is to identify areas where certain labour rights are being violated. Analysing the language in the agreement's press statement, some experts suggest the board can recommend action under a new facility-specific mechanism for addressing allegations of labour rights inconsistencies similar to that in the United States-Mexico-Canada Agreement's (USMCA's) Facility-Specific Rapid-Response Labo[u]r Mechanism.¹³ An important difference with the USMCA's Rapid-Response mechanism relates to enforcement, however, as the IPEF mechanism is unlikely to be binding or reciprocal.

Although a tangible outcome such as the IPEF Supply Chain Agreement after just one year should be welcomed, the operational details, once available, need to be studied before reaching conclusions on its practical use. The Press Statement on the Substantial Conclusion of the IPEF Supply Chain

13 Aidan Arasasingham, Emily Benson, Matthew P. Goodman, and William Alan Reinsch, "Assessing IPEF's New Supply Chains Agreement", CSIS, Washington, DC., 31 May 2023, <https://www.csis.org/analysis/assessing-ipefs-new-supply-chains-agreement>

Agreement Negotiations, posted on the US Department of Commerce official website,¹⁴ reveals very little of substance, unfortunately. Indeed, the announcement, which is all that is available as of June 2023, has been described as “a mass of abstract verbiage with a tangle of subclauses festooned with adjectives and adverbs layered two or three deep”.¹⁵ It is mostly aspirational and very thin on practical details, with whatever little details provided being so heavily qualified that they can be interpreted to suit a diverse range of interests.¹⁶

China’s not being a part of the IPEF and the Supply Chain Agreement is a major concern for Malaysia and the other ASEAN members involved in regional supply chains. This is because almost all manufacturing supply chains that involve Malaysia and other ASEAN countries are China-centred. It is with this Pillar that the exclusion of China is most significant, and greatly undermines its value to a country like Malaysia. The high level of interdependence that characterises supply chains highlight the importance of including all players, especially critical ones like China. The exclusion of China can undermine the usefulness of this pillar to ASEAN members of the IPEF, including Malaysia.

More than being of limited use due to the exclusion of China, the Supply Chain Agreement could actually harm Malaysia and other countries with China-centred supply chains. This is because the US expects to get the IPEF members to buy into its ‘resilience and competitiveness’ framework and support its national security interests by limiting engagement and dependency on China. The US hopes the agreement will encourage other members to also start reshaping their supply chains in line with the broader US ‘friend-shoring’ agenda that incentivises supply chain relocation to countries that do not pose a perceived national security threat.¹⁷ In exchange for this, members are being offered various capacity building and training programmes, and the possibility of greater Foreign Direct Investment (FDI) flows during an unspecified future. This is not a bargain that countries like Malaysia are likely to find beneficial.

When it comes to regional supply chains, an early warning system will be useful only if its predictions are reliable. This in turn will depend on the willingness of member states to share information on a timely basis. Although supply chain networks are highly interdependent, countries involved can sometimes operate more as competitors than collaborators, and may be unwilling to share information on a timely basis, especially if the information is sensitive or proprietary in nature. An example of the problem that can arise is illustrated by the ASEAN+3 financial and economic surveillance process, which is also supposed to provide an early warning system of emerging risks and vulnerabilities for ensuring pre-emptive actions to avert a contagious financial crisis. The process has become a beauty contest of sorts, with members tending to highlight strengths rather than potential vulnerabilities, with the latter seen as failures of economic management. It appears that members are reluctant to air their dirty laundry in public and would rather prefer either

14 “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>

15 Alan Beattie, “The US trade pledge to the Indo-Pacific is empty”, *Financial Times*, 8 June 2023, <https://www.ft.com/content/42a87796-8228-445b-8ad5-63a5c35d5144>

16 To illustrate the point, consider the following statement, which is representative of many of the pledges made in the press release: “ensure that workers and the businesses, especially micro-, small-, and medium-sized enterprises, in the economies of IPEF partners benefit from resilient, robust, and efficient supply chains by identifying disruptions or potential disruptions and responding promptly, effectively, and, where possible, collectively.”

17 *op. cit.* As in 10 earlier.

disguising or glossing over them, while focusing on the positive aspects, which undermines the purpose of the surveillance.

Another problem illustrated by the ASEAN+3 process, which could equally apply to the IPEF's early warning initiative, is the absence of effective remedial and response measures for addressing risks emerging from the early warning system. The Multilateralised Chiang Mai Initiative (CMIM), which is supposed to provide emergency liquidity support in the event of a rapidly evolving crisis, has never been used because the operational procedures remain unclear and arduous, almost as if it is designed not to be used.¹⁸ Similarly, the global climate crisis was not due to any lack of early warning, but rather inter-generational choices and trade-offs.

The supply chain initiative should be able to not only identify emerging risks but also to respond to them in an effective and timely manner. The details must be examined before it is hailed as a breakthrough, as the US Commerce Secretary Gina Raimondo already has : "I can tell you I would have loved to have had that Crisis Response Network during [the COVID-19 pandemic]. It absolutely would have helped us secure American jobs and keep supply chains moving".¹⁹ How a Crisis Response Network that excludes a critical player like China might have helped keep supply chains moving during a global pandemic that shut down economies around the world for months on end is difficult to comprehend. If anything, the pandemic demonstrated how resilient supply chains already were, despite the incredible pressures they faced.²⁰ A properly functioning early warning system may at best help in limiting the fallout from a country- or region-specific shock, given the highly interdependent nature of supply chain networks, but certainly not a global shock.

As noted earlier, embedded within the Supply Chains Agreement is a new labour rights advisory board aimed at raising labour standards in supply chains. Labour issues were meant to be part of Pillar 1 on Trade but have found their way into Pillar 2 on Supply Chains and might arise in other pillars as well, further emphasising the so-called 'worker-centric' nature of the IPEF. The extent to which this body will raise standards to protect workers, as opposed to removing the cost competitiveness that developing countries have with labour supply, is yet to be seen. It would suffice to say that developing countries tend to view the introduction of labour standards into trade negotiations with a high level of suspicion.

Pillars 3 and 4 – Clean Economy and Fair Economy

For the issues covered in the pillars on Clean and Fair Economy, Malaysia's main policy response will be determined by either national actions and priorities, or commitments to existing international agreements, rather than the IPEF. For Clean Economy, Malaysia has updated its Nationally Determined Contribution target to reach net-zero greenhouse gas emissions by 2050.

18 Jayant Menon and Hal Hill, "Does East Asia Have a Working Financial Safety Net?", *Asian Economic Journal*, Vol. 28, no. 1, (2014): 1-17, <https://researchprofiles.anu.edu.au/en/publications/does-east-asia-have-a-working-financial-safety-net>

19 Quoted in David Lawder, "U.S.-led Indo-Pacific talks produce deal on supply chain early warnings", *Reuters*, 28 May 2023, <https://www.reuters.com/markets/asia/us-led-indo-pacific-talks-produce-deal-supply-chain-early-warnings-2023-05-27/>

20 Jayant Menon, "Supply chains are more resilient than they appear", *East Asia Forum*, 3 July 2022, <https://www.eastasiaforum.org/2022/07/03/supply-chains-are-more-resilient-than-they-appear/>

This is a major challenge.²¹ The IPEF can play a complementary role in helping Malaysia meet its commitments, but not with its current configuration. At the moment, the IPEF will not have much of an impact, unless it is upgraded to at least the standard applied in US FTAs.

The US has comprehensive FTAs in force with 20 countries, of which four are with IPEF members, namely Australia, Republic of Korea, Japan and Singapore. Since Malaysia has not concluded an FTA with the US, it will not receive the same treatment as these four IPEF members, or other non-IPEF countries that have FTAs with the US, and this discrepancy is at its greatest in relation to the green economy. The Inflation Reduction Act (IRA) grants tax credits to companies if a certain percentage of the value of critical minerals in electric vehicle batteries, for instance, is extracted or processed in the US or FTA partner countries.²² This does not automatically extend to the IPEF members. The fact that the US signed a critical minerals agreement bilaterally with Japan in March 2023 that allows Japan to access IRA tax credits erodes the relevance of the IPEF to other members. It is this type of discrepancy and discrimination that is undermining the value of the IPEF in this area in particular, and as a serious attempt to economically re-engage with the region, in general.

With respect to the Fair Economy Pillar, it should be noted that Malaysia is already a signatory to the Multilateral Instrument to Prevent Base Erosion and Profit Shifting (BEPS). There are also various governance issues relating to corruption and the performance of Government Linked Companies (GLCs) that need to be addressed but this will mainly require national actions.²³ Furthermore, with Malaysia ratifying the CPTPP, there may be little that the IPEF can add to the binding commitments already made to the reform agenda in this area.

What is missing from the Fair Economy agenda is a mechanism for addressing the unintended consequences of industrial policy actions of one (or more) member(s) on the other(s). The question arises as to how a pillar on fair economy can be consistent with uncompensated impacts on the IPEF members of actions by the US targeting China for non-economic reasons, for instance. Malaysia and other supply chain partners may suffer the indirect consequences of actions designed to safeguard perceived threats to US national security, and there is no mechanism in place for redress or compensation. This issue needs attention because the measures being employed may not be fully covered by global trade rules, as they mostly relate to subsidies and export controls, not traditional measures such as tariffs or other import restrictions.

Although discriminatory subsidies are forbidden under WTO disciplines, contraventions have been widely ignored. Even when an attempt is made to justify such measures on national security grounds – as permitted under Article XXI of the General Agreement on Tariffs and Trade (GATT) – the legitimacy of the claim is often suspect. If a WTO ruling determines the national security claim spurious, the US has simply ignored the decision, as it did with the ruling on the Trump-era tariffs on steel, for instance. Indeed “US decisions as to whether a country, company, product or technology

21 The International Renewable Energy Agency has noted that meeting the target would require a doubling in investments in renewable energy transition to at least US\$375 billion in order to expand renewables capacity, infrastructure and energy efficiency. See Mei Mei Chu, “Malaysia needs to invest \$375 bln in renewables to reach 2050 climate goals – report”, *Reuters*, 9 March 2023, <https://www.reuters.com/business/energy/malaysia-needs-invest-375-bln-renewables-reach-2050-climate-goals-report-2023-03-09>

22 See “Inflation Reduction Act of 2022 (IRA): Provisions Related to Climate Change”, Congressional Research Service, 3 October 2022, <https://crsreports.congress.gov/product/pdf/R/R47262>

23 Jayant Menon and Thiam Hee Ng, “Do State-Owned Enterprises Crowd Out Private Investment: Firm Level Evidence from Malaysia”, *Journal of Southeast Asian Economies*, Vol. 34, no. 3, (September 2017): 507-522.

threatens US national security are shielded both from public and judicial scrutiny and deliberately ignore economic costs”.²⁴ These costs, however, are not confined to the US but are also imposed on the country being targeted as well as its trading and supply chain partners. When the supposed original guarantor of the rules-based trading order becomes one of its major violators, any new proposals purporting to promote fair trade or fair economy needs to be carefully scrutinised.

Conclusion

Using trade agreements for pursuing non-economic ends, whether through formal FTAs or frameworks like the IPEF, is neither new nor unique to the US. In fact, most trade agreements probably have more to do with international diplomacy and politics than with trade or investment. The IPEF is not an exception. The outstanding difference with the IPEF, however, is how much it asks of its members in return for how little it promises to provide – it is almost all stick and no carrot. This is particularly problematic since there is no mechanism to bind countries to make good on their commitments. Unless this changes, the policy impact of the IPEF, as opposed to the fanfare that is likely to accompany the conclusion of negotiations, will be vast. The IPEF may happen but will hardly be noticed in practical terms. There is still time to negotiate a better agreement. But even if little changes between now and its conclusion, expected at the APEC Summit in San Francisco in November 2023, the impact of the IPEF will vary by country and sector.

What Malaysia expects to derive from the IPEF may differ from other members. For Malaysia, participation in the IPEF could serve as insurance against punitive trade policy actions by the US and could provide the opportunity to resolve existing trade frictions. Therefore, Pillars 1 and 2 on Trade and Supply Chains will be most significant. With the Trade Pillar, it is not so much about increasing market access to the US, which the IPEF does not currently provide, but rather with restoring and preserving market access by reversing the remaining WROs that currently ban exports to the US market by targeted companies. Malaysia also expects that the ease and frequency with which trade sanctions are applied in the future will be better managed due to the IPEF. The recent relaxation of WROs on certain companies and the removal of the transshipment ban on solar products suggest that this might be possible.

A remaining unknown relates to digital trade. The potential exists for the IPEF to be transformative for countries like Malaysia if it can deliver in this area in a way that moves the frontier while avoiding the risk of a ‘splinternet’ emerging. These potential benefits of the IPEF need to be weighed against a worst case but highly plausible scenario where the creation of the IPEF further fuels US-China tensions that lead to further retaliatory actions. This is likely if the IPEF is viewed as an attempt by the US to export its national security agenda to the region. If retaliatory actions further disrupt the operations of regional supply chains, leading to possible bifurcation, then the cost to Malaysia and other ASEAN countries will be high enough to outweigh any benefits.

The reality, however, is that the IPEF without China is, to a large extent, economically meaningless to countries like Malaysia, and potentially disruptive and costly. To expect that this might change in the future would be unrealistic if a key underlying motivation of its main proponent(s) is to counter the rise of China’s influence in the region.

24 Gary C. Hufbauer, “Washington’s turn to neo-mercantilism”, *East Asia Forum*, 4 June 2023, https://www.eastasiaforum.org/2023/06/04/washingtons-turn-to-neo-mercantilism/?utm_medium=email&utm_campaign=newsletter2023-06-03

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



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Thailand's Perspectives on the IPEF

Kaewkamol PITAKDUMRONGKIT

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This chapter investigates Thailand's perspective on the Indo-Pacific Economic Framework for Prosperity (IPEF). It introduces different views on the Framework from the Thai government, businesses, and civil society. The negotiation challenges facing the country and some anticipated outcomes of each Pillar are highlighted. Thailand will likely find it difficult to partake in the IPEF in the areas of digital economy, labour standards, environmental cooperation and anti-bribery practices. Yet, some difficulties can be ameliorated by the other IPEF members' capacity building programmes. The domestic political factors stemming from the General Election (GE) in May 2023 and how they will shape the country's implementation of the IPEF are also examined. This chapter ends with the discussion of the prospects of engaging Europe from Thailand's viewpoint. The analysis finds that the state prefers to advance its economic ties with Europe via regular Free Trade Agreements (FTAs) rather than the IPEF.

List of Abbreviations

ACTWG	Anti-Corruption and Transparency Experts' Working Group
APEC	Asia-Pacific Economic Cooperation
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASEAN-PAC	ASEAN Parties Against Corruption
BCG	Bio-Circular-Green
BEPS	Base Erosion and Profit Shifting
BP	Bhumjaithai Party
COP	Conference of the Parties
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership
CSIS	Center of Strategic and International Studies
DEPA	Digital Economic Partnership Agreement
EEC	Eastern Economic Corridor
EFTA	European Free Trade Association
EU	European Union
EVs	Electric Vehicles
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FTAs	Free-Trade Agreements
GDPR	General Data Protection Regulation
GE	General Election
HS	Harmonised System
ILO	International Labour Organization
IMD	International Institute for Management Development
IPEF	Indo-Pacific Economic Framework
ISEAS	Institute of Southeast Asian Studies
MFP	Move Forward Party
MOU	Memorandum of Understanding
OECD	Organisation for Economic Co-operation and Development
PDPA	Personal Data Protection Act
PM	Prime Minister
PP	Phalang Pracharath Party
PPP	Public-Private Partnership
PTP	Pheu Thai Party

R&D	Research and Development
RCEP	Regional Comprehensive Economic Partnership
SDGs	Sustainable Development Goals
SEP	Sufficiency Economy Philosophy
UN	United Nations
UNCAC	United Nations Convention against Corruption
US	United States
USMCA	United States-Mexico-Canada Agreement
USTR	United States Trade Representative
UTN	United Thai Nation Party
WTO	World Trade Organization

This paper investigates Thailand's perspectives on the Indo-Pacific Economic Framework for Prosperity (IPEF). It scrutinises how the government, the private sector, civil society and other stakeholders view the Framework. It also reflects on the key challenges facing Thailand during the talks and anticipated negotiation outcomes. The recent changes in Thai politics and how they will affect the implementation of the IPEF are also examined. The paper concludes with views on Thailand's IPEF membership in relation with other global actors and the prospects of the framework's implementation in the next five years.

What the IPEF Means for Thailand

Government Sector

From the government's viewpoint, Thailand does not see the IPEF as a replacement for Free Trade Agreements (FTAs). Yet, it can serve as a scheme that can mint out innovative initiatives against the backdrop of the post-COVID-19 economic recovery and changing geopolitics. The benefits of the IPEF include generating new trade and investment opportunities for the region and Thailand.¹ In other words, the cooperation will improve the business environment, which can attract more foreign direct investment (FDI) and create new jobs.² This will in turn enable Thailand to obtain the objectives outlined in the 13th Nation Economic and Social Development Plan (2023 – 27) including boosting per capita income, narrowing income inequality, and lessening greenhouse gas emissions.³

Bangkok also sees its Eastern Economic Corridor (EEC) gaining from the IPEF. EEC is striving to transform the nation's eastern part into the Indo-Pacific region's production hub of 12 targeted industries: Next-Generation Automotive, Intelligent Electronics, Advanced Agriculture and Biotechnology, Food for the Future, High-Value and Medical Tourism, Robotics, Aviation and Logistics, Medical and Comprehensive Healthcare, Biofuel and Biochemical, Digital, National Defence, and Education and Human Resource Development.⁴ The IPEF could better the business environment and raise investors' confidence, allowing the country to attract more investment in these sectors.

The Thai authorities are aware of the geopolitical underpinnings of this Washington-led initiative. The IPEF is a product of the intensifying United States (US)-China power contestation. In May 2022, US Secretary of State Anthony Blinken labelled China as "the most serious long-term challenge to the international order" and revealed the US' three-pronged strategy – "invest, align, compete".⁵

1 Author's conversation with the Thai government officers, 24 February 2023.

2 "ASEAN Digest", *Bangkok Bank*, June 2022, https://www.bangkokbank.com/-/media/files/international-banking/aec-connect/asean-digest/2022/asean-digest_jun2022.pdf

3 Kavi Chongkittavorn, "Behind the scenes: Thailand's IPEF talks", *Bangkok Post*, 24 May 2022, <https://www.bangkokpost.com/opinion/opinion/2314838/behind-the-scenes-thailands-ipef-talks>;

"Parliament okays NESDC's new development plan for Thailand", *The Nation*, 30 August 2022, <https://www.nationthailand.com/in-focus/national/40019519>

4 "Developing EEC to Support MICE Industry and the Investment of 12 Focused Industries", Thailand Convention and Exhibition Bureau, 2022, <https://www.businesseventsthailand.com/en/support-solution/success-story/detail/631-developing-eeec-to-support-mice-industry-and-the-investment-of-12-focused-industries>

5 "The Administration's Approach to the People's Republic of China", Speech by Anthony Blinken, Secretary of State at George Washington University, Washington D.C., 26 May 2022, <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/>

Under the 'align' aspect, the Biden Administration intends to promote an alternative vision of the regional order different from Beijing's. The IPEF was cited as a mechanism to revitalise the US rule-making leadership for emerging matters such as "digital economy, supply chains, clean energy, infrastructure, and corruption".⁶ In short, Washington attempts to lean on the IPEF to counterweigh China in the Indo-Pacific economic governance area.

Due to the US-China rivalry, global supply chain calculations will likely be based more on strategic than economic factors as exemplified by the concept of *friendshoring*. Bangkok welcomes this trend as an opportunity for it to attract more investments as other states reconfigure their production networks. This would entail windfall gains for Thailand as it will receive more investments in EEC's key sectors.

Regarding Pillar 1 (Trade), while the IPEF is not a regular FTA, the country's view is that it can be another mechanism that Bangkok can leverage to craft international rules and standards for its own and regional interests. The state must partake in this Framework especially after it suspended its plan to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). Due to the anti-CPTPP domestic backlash, Bangkok postponed its formal application to join the pact.⁷ As a result, the IPEF is regarded a practical pathway that Thailand can utilise to deepen its economic engagement with other regional states. As far as the US-Thailand trade relations are concerned, this initiative has come after the US-Thailand FTA talks stalled.⁸ Thus, the IPEF can be a forum for Bangkok to cooperate economically with Washington, voice its concerns with the latter (for example, US protectionism), and sort out joint solutions.

Thailand's participation in Pillar 2 (Supply Chains) stems from the latter's focus on supply chain resilience, which Bangkok sees as a new area that has not been adequately addressed by other frameworks.⁹ Thailand's comparative advantages in certain sectors can be further exploited if cooperation on Pillar 2 comes into fruition. Thailand's exports to and imports from the other IPEF members in 2018 – 21 accounted for 42.7 per cent and 52 per cent of the country's total exports and imports respectively.¹⁰ Moreover, the nation's outward investment to and inward investment from the other IPEF members in 2018 – 22 amounted to 46.8 per cent and 45.4 per cent of the country's total outward and inward investment respectively.¹¹ The collaboration on Pillar 2 will permit companies in these industries to expand abroad, raise funds for their future investments, and deepen their supply chains in the region. Furthermore, Bangkok aims to foster new and

6 *Ibid.*

7 *op. cit.*

8 The US-Thailand FTA talk commenced in October 2003. Six negotiation rounds took place from October 2003 to January 2006. In February 2006, the negotiation was suspended after the military putsch ousted the democratically-elected Thaksin Shinawatra government.

9 Author's conversation with the Thai government officers, 24 February 2023.

10 "Trade Data", UN Comtrade Database, <https://comtradeplus.un.org/TradeFlow?Frequency=A&-Flows=all&CommodityCodes=TOTAL&Partners=764&Reporters=all&period=all&Aggregate-By=none&BreakdownMode=plus>

The top traded goods during this period were: (1) Machinery, boilers, nuclear reactors and mechanical appliances; parts thereof (HS Code 84); (2) Electrical machinery and equipment and parts thereof; sound recorders and reproducers; television image and sound recorders and reproducers, parts and accessories of such articles (HS Code 85); and (3) Vehicles; other than railway or tramway rolling stock, and parts and accessories thereof (HS Code 87).

11 The most invested sectors were: manufacturing, wholesale and retail trade, repair of motor vehicles and motorcycles, financial and insurance, accommodation and food services, and real estate. The information was gathered from the Bank of Thailand database.

emerging supply chains via the EEC. For instance, electrical vehicles (EVs) are under the EEC's Next-Generation Automotive industry, whose growth and expansion the government encourages. The IPEF will raise investments in EVs, allowing the state to maintain and bolster its position as the 'Detroit of Asia.'

Pillar 3 (Clean Economy) is seen as complementary to Thailand's pursuit of a bio-circular-green (BCG) economy.¹² BCG economy is a new model enabling the state to accomplish inclusive and sustainable growth and development. This approach rides the country's strengths in biological diversity and cultural richness, and employs technology and innovation to transform Thailand into a value-based and innovation-driven economy. The model conforms with the United Nations (UN) Sustainable Development Goals (SDGs) and aligns with the Sufficiency Economy Philosophy (SEP), the key principle of Thailand's social and economic development.¹³ The country has been practising this model domestically and advocating it internationally. For instance, as the host of the Asia-Pacific Economic Cooperation (APEC) Summit last year, it played a pivotal role in making the APEC adopt the Bangkok Goals on the BCG Economy at the APEC Economic Leaders' Meeting in November 2022.¹⁴ With its experience and expertise on sustainability, the state intends to make contributions to the cooperation under this Pillar.

Thailand views Pillar 4 (Fair Economy) as important for upgrading the regional economies' anti-corruption and taxation legislations. Also, successful cooperation in Pillar 4, will enhance both transparency and good governance, improving the Indo-Pacific business climate and making the region a more attractive FDI destination. Another reason undergirding Bangkok's engagement in the IPEF pertains to capacity-building. The government believes that the participation will boost its capabilities to better implement international initiatives such as the Paris Agreement, the UN Conventions, and the Organisation for Economic Cooperation and Development (OECD)'s two-pillar solutions.¹⁵

Private Sector

Thailand's private sector generally welcomes the Framework. The business community feels the IPEF will lead to some degree of regional standard upgrading. However, it has difficulty conducting usual cost-benefit analyses because the IPEF is not an FTA. Put differently, this framework's unique nature poses challenges to the Thai firms' abilities to anticipate their potential gains and losses. These stakeholders are uncertain over whether they will emerge as winners or losers from the Framework. As a result, they are unable to plan strategies such as lobbying with the government to refrain from engaging in any arrangements that undercut their interests.¹⁶

The private sector is optimistic about the IPEF yielding tangible and beneficial outcomes. The Upskilling Initiative for Women and Girls launched in September 2022 is a case in point.¹⁷ This programme strives to train 7 million women and girls in the IPEF middle-income and emerging economies by 2032. Fourteen American tech firms such as Apple, Amazon, Cisco, Dell, IBM, and

12 Author's conversation with the Thai government officers, 24 February 2023.

13 "Bio-Circular-Green Economic Model (BCG)", The Royal Thai Embassy, Washington D.C., August 2021, <https://thaiembdc.org/bio-circular-green-bcg/>

14 "2022 Leaders' Declaration", Asia-Pacific Economic Cooperation (APEC), Bangkok, Thailand, 19 November 2022, <https://www.apec.org/meeting-papers/leaders-declarations/2022/2022-leaders-declaration>

15 Author's conversation with the Thai government officers, 24 February 2023.

16 *Ibid.*

17 "FACT SHEET: IPEF Upskilling Initiative", US Department of Commerce, <https://www.commerce.gov/sites/default/files/2022-09/IPEF-Upskilling-Fact-Sheet.pdf>

HP will boost digital skills of at least 500,000 of these individuals during the ten-year period. The Thai female workforce will receive training from this initiative. From the businesses' perspective, this will galvanise their long-term development and competitiveness in the increasingly digitalised world economy. Consequently, businesses hope for additional concrete public-private partnership (PPP) projects like the Upskilling Initiative to come out of the Framework.¹⁸

Civil Society

The Thai civil society actors are either unsure or positive about the impact of the IPEF on the economy and society. There is no obvious domestic backlash. The sentiments manifest in the 2023 survey conducted by the Institute of Southeast Asian Studies (ISEAS) - Yusof Ishak Institute which gathers the opinions of Southeast Asian academic and thinktank scholars, business communities and civil society actors. This study reveals that 46.5 per cent and 41.7 per cent of the Thai respondents said they were unsure, and positive, respectively, about the IPEF's benefits on the country.¹⁹ Among those expressing a positive stance, more than one-third articulated that the IPEF "will complement existing ASEAN [Association of Southeast Asian Nations] initiatives" and signal Washington "to be economically engaged in the region." Among those unsure, the key factors were "[t]here is little information available" and "[i]t depends on what emerges from the negotiations".²⁰

Negotiation Challenges and Anticipated Outcomes

Pillar 1 (Trade)

This analysis foresees two main challenges facing Thailand under Pillar 1. The first one concerns the digital economy. While the country's e-commerce market is the second largest in Southeast Asia and is projected to reach US\$32 billion by 2025,²¹ the progress of fostering transnational digital governance architectures via international arrangements is relatively sluggish when compared to other Indo-Pacific states such as Australia and Singapore. While Bangkok is a signatory to the Regional Comprehensive Economic Partnership (RCEP) that has an e-commerce chapter, it is neither a member of the CPTPP, nor is it pursuing any digital economy agreements. It is also not participating at the WTO (World Trade Organization) talks on the trade-related aspects of e-commerce. The gaps in rulemaking would hinder Thailand's participation under this Pillar.

A possible outcome in digital economy will depend on how the IPEF stakeholders decide to adopt elements from different existing frameworks such as the United States-Mexico-Canada Agreement (USMCA), the CPTPP and other arrangements. The final outcomes might also reflect some influence from the Digital Economic Partnership Agreement (DEPA) signed in June 2020 between Chile, New Zealand, and Singapore. The DEPA has 14 sections and is built on the modular approach.²² Such modality allows states to pick and choose among these modules to construct their own

18 Author's conversation with the Southeast Asian trade consultant, 24 February 2023.

19 "The State of Southeast Asia: 2023 Survey Report", Institute of Southeast Asian Studies (ISEAS) - Yusof Ishak Institute, 9 February 2023, <https://www.iseas.edu.sg/wp-content/uploads/2025/07/The-State-of-SEA-2023-Final-Digital-V4-09-Feb-2023.pdf>

20 *Ibid.*

21 "Thailand's roaring digital economy set to hit THB1.28 trillion this year", *The Nation*, 10 November 2022, <https://www.nationthailand.com/business/tech/40021907>

22 "Digital Economy Partnership Agreement (DEPA)", Ministry of Trade and Industry – Singapore, 2020, <https://www.mti.gov.sg/-/media/MTI/Microsites/DEAs/Digital-Economy-Partnership-Agreement/Text-of-the-DEPA.pdf>

arrangements. This advantage-by-design will facilitate the making of subsequent agreements including the IPEF.

Thai domestic legislations are more restrictive in terms of cross-border data flows. The Personal Data Protection Act (PDPA) of 2019, which has been in effect since June 2022, is a case in point. The Act is largely derived from the EU's General Data Protection Regulation (GDPR). The GDPR is in force since May 2018 and is regarded as *the world's toughest data privacy and security legislation as it offers the most restrictive provisions regarding these matters*.²³ Illustratively, similar to the GDPR, the Thai PDPA's Section 28 puts restrictions on transnational transfers of personal data. The transmissions are permitted only to the destinations that provide an adequate level of protection.²⁴ Such a provision clashes with the CPTPP and the USMCA. The CPTPP's Article 14.11 mandates all CPTPP parties to "allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business."²⁵ Likewise, USMCA's Article 19.11 posits that "[n]o Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business."²⁶ Hence, the discrepancies among the Thai laws, CPTPP and USMCA (coupled with a high likelihood that Washington will ride on the latter's modality to advance the IPEF talks) may prevent Bangkok from reaching agreeable details pertaining to cross-border data transmission.

But there is room for collaboration. The Digital Upskilling Initiative is welcomed by Bangkok since it lags behind its regional peers in the area of digital workforce. Illustratively, according to the 2022 International Institute for Management Development (IMD)'s World Digital Competitiveness Index, the country ranks 38 among 64 economies, and 10 among 14 Asian economies surveyed.²⁷ Going forward, Thailand will likely call for additional capacity-training programmes especially those catered towards entrepreneurs, which the US and other advanced IPEF nations can offer.

Another negotiation challenge for Thailand in Pillar 1 is labour standards. With the United States Trade Representative (USTR) leading negotiations in Pillar 1, this issue will be contentious, as the USTR has a strong pro-labour position. In June 2021, USTR Katherine Tai clarified the Biden Administration's worker-centred trade policy.²⁸ She contended that it involves "addressing the damage that [US] workers and industries have sustained from competing with trading partners that do not allow workers to exercise their internationally recogni[s]ed labo[u]r rights... We will be more effective if our trading partners also commit to promoting, protecting, and enforcing

23 "What is GDPR, the EU's new data protection law?", The European Union, 2023, <https://gdpr.eu/what-is-gdpr/>

24 Personal Data Protection Act, B.E. 2562 (2019), Section 28, Government of Thailand, 27 May 2019, <https://thainetizen.org/wp-content/uploads/2019/11/thailand-personal-data-protection-act-2019-en.pdf>

25 "Electronic Commerce", Article 14.11, Chapter 14 in CPTPP, <https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/14.-Electronic-Commerce-Chapter.pdf>

26 "Digital Trade", Article 19.11, Chapter 19 in USMCA, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>

27 "IMD World Competitiveness Yearbook 2022 – Thailand" International Institute for Management Development (IMD), 2022, <https://wwwcontent.imd.org/globalassets/wcc/docs/wco/pdfs/countries-landing-page/TH.pdf>

28 "Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration's 'Worker-Centered Trade Policy'", Office of the United States Trade Representatives, 10 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>

internationally recogni[s]ed workers' rights as part of their trade policies".²⁹ On another occasion in June 2021, Tai praised the USMCA as "a better deal for workers and a new model for trade agreements able to secure a broad base of support".³⁰ This stance will likely entail that Washington would press for the USMCA-styled high labour standards at the IPEF talks. This is reflected by the fact that all IPEF Pillars call for the promotion of labour rights under the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work.

Bangkok can face some challenges stemming from the discrepancies between its degree of compliance or conformity, on the one hand; and what is stipulated in the ILO Conventions, and what the IPEF and USMCA cover, on the other. The USMCA's Chapter 23 (Labour) does not require the adoption of the Convention. Nevertheless, it stresses that '[t]he Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration on Rights at Work and the ILO Declaration on Social Justice for a Fair Globali[s]ation.' A close look at the ILO Declaration on Rights at Work³¹ divulges that the parties are mandated to uphold the labour principles and rights as outlined in the ILO Conventions. According to the text, 'all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organi[s]ation, to respect, to promote and to reali[s]e, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) a safe and healthy working environment.³²

Regarding the ILO Conventions, Bangkok ratified several ILO conventions including minimum age, child labour, and forced labour. The amended Anti-Trafficking Act No 2 of 2015 increases the penalties for human traffickers. The national labour protection laws cover minimum wages, maximum working hours, and entitlement to sick and maternity leaves.³³

However, Bangkok has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (ILO No. 98). The government is working to conform with these laws. "[T]he Ministry of Labour is proposing a draft amendment to the Labour Relations Act and the State Enterprise Labour Relations Act. The draft amendments are being examined by the Office of

29 "Remarks of Ambassador Katherine Tai at the 'USMCA at One' Event at the Wilson Center", Office of the United States Trade Representatives, 30 June 2021, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/june/remarks-ambassador-katherine-tai-usmca-one-event-hosted-wilson-center>

30 *Ibid.*

31 The full name is the Declaration on Fundamental Principles and Rights at Work and Follow-up to the Declaration

32 "ILO Declaration on Fundamental Principles and Rights at Work", International Labour Organization, 2022, <https://www.ilo.org/declaration/lang-en/index.htm>

33 "Thailand joins the global movement to combat forced labour", Press Release, International Labour Organization, 4 June 2018, https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_631435/lang-en/index.htm

the Council of State.”³⁴ At the IPEF talks, if Washington fervently rejects Thailand’s equivalent legislations or demands the latter to upgrade or adjust its domestic laws to be closer to what the US aspires, this could lead to clashes during the negotiation. Without market access offer, it will be difficult for the US to extract buy-ins from Thailand.³⁵

Pillar 2 (Supply Chains)

On 27 May 2023, the members announced the substantial conclusion of negotiation on an IPEF Supply Chain Agreement which is the first multilateral deal striving to galvanise resilience and connectivity of supply chains.³⁶ This proposed deal will establish three mechanisms. First, the IPEF Supply Chain Council is a crisis-prevention entity which will devise sector-specific action plans to bolster the resilience of critical industries and essential goods. The second one is the IPEF Supply Chain Crisis Response Network – a crisis-management body. It will create emergency communication channels to help the parties address supply chain disruptions. Finally, the IPEF Labo[u]r Rights Advisory Board will ensure that supply chain cooperation promotes labour rights.³⁷ At the fourth Negotiation Round in South Korea on 9-15 July 2023, the government “advanced the legal review of the proposed IPEF Supply Chain Agreement”.³⁸

This outcome is unsurprising because of convergence of interest among the Indo-Pacific nations including Thailand. Recent global events, especially the intensifying Sino-American rivalry, the COVID-19 pandemic, and the conflict in Ukraine have taught the regional states the importance of diversifying supply chains for their economic resilience. The stakeholders believe that the Framework would set rules and offer a pathway to obtain such resilience. In other words, this mechanism would further augment their ability to weather future market uncertainties and crises. Another reason stems from the fact that no prior multilateral framework has focused on transnational supply chain collaboration, such as establishing an early warning system. This apparatus would enable the participating economies to collectively identify supply chain bottlenecks and re-configure their production lines to ensure smooth and timely flows of goods. For Thailand, creating such a system at the regional level is significant, as the current cooperation in this regard is bilateral through the Memorandum of Understandings (MOUs). Because supply chains are multilateral in nature, multilateral mechanisms should be more effective than bilaterals for achieving economic diversification and resilience.³⁹

Although this Agreement is a positive development, negotiation challenges remain. The details concerning how these entities will operate are subject to further talks which can cause clashes among the members. For one thing, the IPEF nations may not be able to reach a common ground

34 “Country Baseline under the ILO Declaration Annual Review – Thailand – 2021 (Freedom of Association and the Effective Recognition of the Right to Collective Bargaining)”, International Labour Organization, 2021, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_857831.pdf

35 Author’s conversation with the Thai government officers, 24 February 2023.

36 “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>

37 *Ibid.*

38 “Joint USTR and U.S. Department of Commerce Readout of Fourth Indo-Pacific Economic Framework Negotiating Round in South Korea”, The United States Trade Representative, 16 July 2023, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/july/joint-ustr-and-us-department-commerce-readout-fourth-indo-pacific-economic-framework-negotiating>

39 Author’s conversation with the Thai government officers, 24 February 2023.

concerning how the Supply Chain Crisis Response Network handles data. In other words, they may disagree on the modality of sharing and protecting confidential business data. Due to their dissimilar data privacy and protection laws, their ideas about how to store, transfer and safeguard data diverge. Also, issues concerning an enforcement mechanism to monitor and ensure that all participants comply with the Agreement will be contentious. This matter can trigger concerns over sovereignty which some ASEAN members at the IPEF talks dearly guard. Therefore, if the stakeholders cannot arrive at a common approach to share and protect the information, it can hinder the progress of concluding the Agreement.

This analysis anticipates that the actual cooperation under this Agreement will likely begin among more advanced IPEF stakeholders first. It is because they have capacities to collect, store, share and protect the international flows of confidential business data. These IPEF members, such as Australia, New Zealand, Japan, South Korea and Singapore focus on the economic security of the IPEF.⁴⁰ Given the high level of economic advancement of these countries, their collaboration will tend to concentrate on high-technology and knowledge-intensive products such as semiconductors and large capacity batteries.

Pillar 3 (Clean Economy)

The Pillar 3 cooperation highly aligns with Thailand's BCG model which has been rolled out in 2021. As mentioned earlier, the country has been adopting this model and promoting it abroad. It is because the state is suffering from global warming and threatening weather conditions. According to the 2021 Global Climate Risk Index, Thailand ranked ninth in the *extreme risk* list of countries most vulnerable to the effects of climate change in the next three decades.⁴¹ The recent haze incident in the Chiang Mai province leaving 1.7 million people ill further triggered public concerns over the environment.⁴² One of the BCG model's goals is to attract investment into four cluster industries: 1) agriculture and food, 2) wellness and medicine, 3) energy, materials and biochemicals, and 4) tourism and creative economy.⁴³ As this Pillar seeks to mobilise investment and sustainable finance for clean energy and green projects, this will be welcomed by Bangkok.

Regarding the domestic legal landscape, the authorities have adjusted and enacted legislations to steer the country towards green economy. Illustratively, the Ministry of Energy is implementing the *Alternative Energy Development Plan* of 2018 – 37. The Plan promotes the domestic use and production of renewable energy. Moreover, the revised *Building Energy Code* in effect since March 2021 requires all new constructions of commercial and government buildings to reduce greenhouse gas emissions and meet the energy conservation and efficiency targets.

Concerning the aspect of 'Sustainable Land, Water, and Ocean Solutions' under this Pillar, while Thailand is not a signatory to the International Convention for the Prevention of Pollution from Ships, it has domestic rules and regulations addressing this issue. For instance, the Navigation

40 Sang Chul Park, "The Biden Administration and Expectations for IPEF", *Australian Outlook*, Australian Institute of International Affairs, 16 December 2022, <https://www.internationalaffairs.org.au/australianoutlook/the-biden-administration-and-expectations-for-ipef/>

41 "Global Climate Risk Index 2021", *Germanwatch*, 25 January 2021, <https://www.germanwatch.org/en/19777>

42 Kocha Olarn and Heather Chen, "Smoke from forest fires blankets northern Thailand in thick pollution", CNN, 5 April 2023, <https://edition.cnn.com/2023/04/05/asia/chiang-mai-air-pollution-thailand-intl-hnk/index.html>

43 "BCG Concept: Background", National Science and Technology Development Agency, 2021, <https://www.bcg.in.th/english/background/>

in the Thai Waters Act (No. 14) of 1992 mandates that “[i]f the Thai or foreign vessel or object contains substance that causes or may cause pollution to the environment, the owner or his or her agent shall clean or prevent such pollution within a period specified by the Master of Harbour.”⁴⁴ Also, the 2017 Civil Liability for Oil Pollution Damage Caused by Ships Act further sets up rules governing the oil spill problems in the territorial waters.⁴⁵ The Climate Change Act, which is being drafted, outlines the action plans for greenhouse gas mitigation and adaptation as well as citizens’ rights concerning these matters.⁴⁶

These domestic achievements notwithstanding, Thailand’s international commitments lag behind other Indo-Pacific nations. It has ratified the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Trade in Endangered Species, and the Paris Agreement. Nevertheless, the government’s pledges for the latter, namely, to peak its greenhouse gas emissions in 2030 and reach carbon neutrality by 2065, pale in comparison to the other signatories’ targets. Also, Bangkok did not ink the 2021 United Nations Climate Change Conference (COP 26)’s deal to end deforestation by 2030 and is not part of the Forests and Climate Leaders’ Partnership at the 2022 United Nations Climate Change Conference (COP 27) which will deliver the countries’ pledges at COP 26.⁴⁷

Therefore, the state may face challenges when partaking in Pillar 3 due to differences between its own and other IPEF members’ climate change ambitions and implementation timelines. A close look at Thailand’s moves above reveals that the issue can be attributed to the country’s lack of manpower and financial support that is needed to uphold international commitments. For example, it may not have sufficient research and development (R&D) capacities and technologies to expand clean energy production and storage. As a result, Bangkok may not be able to cooperate on some aspects of this Pillar.

The outcome would partially depend on the technical and financial assistance that developing IPEF nations including Thailand will receive. ASEAN countries and Fiji reportedly expressed their desire for US support in helping them develop clean energy technologies.⁴⁸ Washington is also looking to fund IPEF’s decarbonisation efforts via its entities such as the Export-Import Bank and International Development Finance Corporation.⁴⁹ Such assistance would allow Bangkok and other developing members to foster environment collaboration more effectively under the IPEF.

44 “Navigation in Thai Territorial Waters Act (No. 14), B.E. 2535. (1992)”, Government of the Kingdom of Thailand.

45 “Civil Liability for Oil Pollution Damage Causes by Ships Act, B.E. 2560. (2017)”, Government of the Kingdom of Thailand.

46 Nuanporn Wechsuanarux, Supavadee Sirilerkwipas, and Punika Dasom, “Thailand’s First Climate Change Bill to be Submitted for Approval”, *Chandler MHM*, 1 August 2022, <https://www.chandlermhm.com/content/files/pdf/Newsletter/2022/CMHM%20Newsletter%20-%20Thailand%20First%20Climate%20Change%20Bill%20to%20be%20Submitted%20for%20Approval%201%20August%202022.pdf>

47 “News story: World Leaders Launch Forests and Climate Leaders’ Partnership at COP27”, The Government of the United Kingdom, 8 November 2022, <https://www.gov.uk/government/news/world-leaders-launch-forests-and-climate-leaders-partnership-at-cop27>

48 Du Juan, “Experts: India not alone in difficulties lying ahead for IPEF”, *China Daily*, 21 September 2022, <https://global.chinadaily.com.cn/a/202209/21/WS632a414aa310fd2b29e78c4e.html>

49 Andrew Schwartz, Scott Miller, and William Alan Reinsch, “Nothing is complete without a 301 investigation”, Podcast, Center of Strategic and International Studies (CSIS), The United States of America, 15 September 2022, <https://www.csis.org/podcasts/trade-guys/nothing-complete-without-301-investigation>

Pillar 4 (Fair Economy)

As far as Pillar 4 is concerned, Thailand is a party to or has endorsed some international arrangements outlined under this Pillar. For example, it ratified the United Nations Convention against Corruption (UNCAC) in March 2011. Since then, the government has adjusted domestic legislations to conform with the UNCAC. In 2017, Bangkok endorsed the OECD/G20 Inclusive Framework for Implementing Measures against Base Erosion and Profit Shifting (BEPS). It also agreed to the Two-Pillar Solution to Address the Tax Challenges Arising from digitalisation of the economy. Moreover, the authorities have participated in several anti-corruption groupings such as the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Experts' Working Group (ACTWG) and ASEAN Parties Against Corruption (ASEAN-PAC).

Nonetheless, Bangkok can face some negotiation challenges as it lags behind other IPEF nations in certain areas. For example, Thailand scored 36 out of 100 (100 score indicates 'very clean' while 0 means 'highly corrupt') in the Corruption Perceptions Index of 2022, putting it behind several IPEF peers.⁵⁰ Regarding anti-money laundering, Thailand is not a member of the Financial Action Task Force (FATF). Its revised Anti-Money Laundering Act (No 6) B.E. 2565 (2022) purposed to tackle the funding of illicit activities in Thailand came into effect on 23 December 2022.⁵¹ In addition, Thailand is not a signatory to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD Anti-Bribery Convention). The country is attempting to make headway on this front. For example, it signed the inaugural three-year Thailand Country Programme with OECD on 31 May 2018. Sponsored by the Organisation, this scheme's main objective is to enhance Bangkok's structural reform efforts in four aspects: good governance and transparency, business climate and competitiveness, Thailand 4.0, and inclusive growth.⁵² As a result, Thailand may not be able to comply with all obligations mentioned under Pillar 4. The negotiation outcomes will partly depend on how the country bargained for its implementation timelines to espouse the international conventions as well as the capacity training programmes which other members will provide to Bangkok to accelerate its adoption of these treaties.

Implementation Challenges

The General Election (GE) was held on 14 May 2023. All 500 seats in the House of Representatives were up for grabs. However, all 250 seats in the House of Senate were not up for contestation as their term is yet to expire. The implementation of the IPEF's commitments will largely depend on the composition of a coalition government and the choice of the Prime Minister (PM). These outcomes will set the tone and direction of the country's international economic policy going forward, including the IPEF.

Defying all the polls, the opposition parties won most seats in the House of Representatives. Move Forward Party (MFP) gained 151 seats. Pheu Thai Party (PTP) came second with 141 seats. Because it won most seats, MFP was given an opportunity to form the next government. On 18 May 2023,

50 "Corruption Perceptions Index 2022", Transparency International, https://images.transparencycdn.org/images/Report_CPI2022_English.pdf

51 "Thailand Issues a New Anti-Money Laundering Act", *Mahanakorn Partners Group*, 12 January 2023, <https://mahanakornpartners.com/thailand-issues-a-new-anti-money-laundering-act/>

52 "A solid partnership between Thailand and the OECD", Organisation for Economic Co-operation and Development (OECD), 2023, <https://www.oecd.org/southeast-asia/countries/thailand/>

the MFP (together with PTP and other parties) announced an 8-party coalition. This pact possessed 313 out of 500 House seats. It also nominated Mr Pita Limjaroenrat as the PM candidate.⁵³

However, Pita's path to the premiership was blocked by the Senate and Constitutional Court. According to the current Constitution, at least 376 out of the 750 votes from both parliamentary chambers are needed to elect the PM. In short, 250 senators cast their votes along with 500 representatives in the PM selection.

Concerning the senators' decision, military-linked parties, namely the Phalang Pracharath Party (PP) and the United Thai Nation Party (UTN), have influence over this matter. It is because all of these individuals were appointed by the National Council for Peace and Order, which overthrew the democratically-elected government in May 2014.

Thus, the 8-party grouping must get at least 63 votes from the Senate to meet the 376 vote threshold. It turned out that it was unable to secure sufficient votes from the Upper House. On 13 July 2023, most senators either voted down or abstained their votes. As a result, Pita lost his first PM bid.⁵⁴ On 19 July 2023, the Parliament refused his requested second try.⁵⁵ The final blow to his premiership was delivered by the Constitutional Court. On 16 August 2023, the Court dismissed a petition challenging the Parliament's blockade of Pita's second bid, sealing his fate of becoming the PM. Because Pita is the only MFP's PM candidate and his party is not allowed to nominate another candidate after the GE, such verdict in effect prevented MFP from being part of the new government.

The first runner-up PTP then had a chance to form the government. It eventually decided to break away from the 8-party pact and unite with ten other parties including the military-linked ones – PP and UTN – which gained only 40 and 38 seats respectively. Thanks to the senators' linkages to PP and UTN outlined above, this PTP-led coalition received enough votes in the Upper house to pass the 376-vote threshold. On 22 August 2023, the Parliament chose the PTP's candidate Mr Srettha Thavisin – a businessman-turned-politician – as the PM.⁵⁶ On 5 September 2023, he and his cabinet were sworn into office.⁵⁷

This outcome bodes well for the IPEF implementation. PTP is known for its pro-market stance. Its predecessor, Thai Rak Thai Party, was widely praised for its significant role in spearheading Thailand's economic recovery after the Asian Financial Crisis of 1997 - 98. Just a week after he was elected as the PM, Srettha started implementing plans to boost tourism such as easing the visa requirement rules for Chinese and Indian travellers and permitting long-stay for all sojourners in the last quarter of 2023.⁵⁸ With regard to the IPEF, his Administration will likely amend the

53 Tan Hui Yee, "Thailand's Move Forward Party announces 8-party coalition, aims to form government", *The Strait Times*, 18 May 2023, <https://www.straitstimes.com/asia/se-asia/thailand-s-winning-move-forward-party-announces-8-party-coalition-with-eye-on-forming-government>

54 "Pita loses first PM vote", *Bangkok Post*, 13 July 2023, <https://www.bangkokpost.com/thailand/politics/2611078/pita-loses-first-pm-vote>

55 "Thai parliament refuses opposition leader Pita second PM vote", *Le Monde*, 19 July 2023, https://www.lemonde.fr/en/international/article/2023/07/19/thailand-s-opposition-leader-pita-suspended-from-parliament_6058859_4.html

56 "Srettha Thavisin elected Thailand PM as Thaksin returns from exile", *Al Jazeera*, 22 August 2023, <https://www.aljazeera.com/news/2023/8/22/srettha-thavisin-elected-thailand-pm-as-thaksin-returns-from-exile>

57 "Thailand's king swears in new PM and cabinet", *The Straits Times*, 5 September 2023, <https://www.straitstimes.com/asia/thailands-king-swears-in-new-pm-and-cabinet>

58 "Thailand mulls easing visa rules to lure Chinese, Indian tourists", *Bangkok Post*, 30 August 2023, <https://www.bangkokpost.com/business/general/2638495>

domestic rules and regulations to comply with Thailand's commitments and create more feasible conditions for doing business in the country.

Prospects for the Future

Looking ahead, how will Thailand's IPEF membership alter the other FTAs that Bangkok is negotiating especially with countries outside the Framework such as Canada and the EU? Regarding Canada, it applied to join the IPEF and all existing members expressed support for its bid.⁵⁹ However, when Ottawa will officially accede to the Framework remains unclear. From Thailand's point of view, it will continue to negotiate the Thailand-Canada FTA slated to be completed in 2024. The progress will likely be made due to the complementary nature of the bilateral goods trade which reached US\$6.4 billion in 2022 and both sides' desire to diversify.⁶⁰ The Thai government strives to increase its exports of electrical appliances, canned seafood and processed food, steel, and rubber.⁶¹ With such FTA, Ottawa can boost its exports of fertilizers, paper products, grains and cereals, and machinery.⁶²

The EU is Thailand's fourth-biggest trading partner behind China, the US and Japan. The two-way goods trade in 2022 figured at US\$53 billion.⁶³ While the grouping's probability of entering the IPEF is unknown, Bangkok plans to tighten the bilateral ties with the bloc via an FTA. Their FTA talk was recommenced on 15 March 2023 and both sides aim to conclude it by 2025.^{64 65} Bangkok wants to increase its exports of food, raw materials, and electronic products to the EU's market of 447 million people. Yet, the success of this negotiation will partially rely on how both sides reach a deal. On the one hand, it would depend on how much the Thai government can offer to the grouping, namely additional market access for the latter's financial, insurance, and information and communication sectors as well as loosening government procurement requirements. On the other hand, it would rely on whether the EU opens more markets for Bangkok's exports namely agricultural and electronics goods.⁶⁶

59 "U.S.-led Indo-Pacific Economic Framework backs Canada's bid to join", *Kyodo News*, 16 December 2022, <https://english.kyodonews.net/news/2022/12/870e187f6d92-update2-us-led-indo-pacific-economic-framework-backs-canadas-bid-to-join.html>

60 "Canada-Thailand relations", The Government of Canada, 15 August 2023, <https://www.international.gc.ca/country-pays/thailand-thailande/relations.aspx?lang=eng#a2>

61 "ASEAN-Canada Tok kem FTA Rob See Keubna Duay Dee Tang Pao Pid Deal Pee Hokjed" [ASEAN-Canada FTA Progressing, Expected to Conclude in 2025], Press Release, The Department of Trade Negotiation, The Government of Thailand, 29 June 2023, <https://www.dtn.go.th/th/content/category/detail/id/22/iid/12205>

62 Julie Beun, "3 markets to watch: Vietnam, Thailand and the Philippines," *Export Development Canada*, 6 September 2023, <https://www.edc.ca/en/article/markets-to-watch-indo-pacific.html>

63 Francesca Regalado, "Thailand, EU agree to restart trade talks halted by 2014 coup", *Nikkei Asia*, 16 March 2023, <https://asia.nikkei.com/Economy/Trade/Thailand-EU-agree-to-restart-trade-talks-halted-by-2014-coup>

64 The talk originally commenced in 2013 but was suspended after Thailand's coup in May 2014. The negotiation was later restarted after the latter made progress towards democracy. The EU's goal to re-engage Bangkok was mentioned in the 2021 European Commission's Report. See "Joint Communication to the European Parliament and the Council: The EU strategy for Cooperation in the Indo-Pacific", European Commission, 16 September 2021, https://www.eeas.europa.eu/sites/default/files/jointcommunication_2021_24_1_en.pdf

65 "Thailand, EU to resume FTA talks in March", *Vietnam Investment Review*, 27 January 2023, <https://vir.com.vn/thailand-eu-to-resume-fta-talks-in-march-99411.html>

66 Author's conversation with a trade expert involved in the Thailand-EU FTA, 29 March 2023.

As mentioned above, Thailand just has a new government led by the pro-business PTP. However, this 11-party coalition looks less stable. It is mainly because the PTP and the military-linked PP and UTN are long-time rivals which joined hands to specifically prevent the MFP from becoming the government. Their feud will likely exacerbate rifts within the Srettha Administration. This risks entailing a Parliamentary dissolution and another GE within the next five years. If it happens, it could disrupt the country's IPEF implementation going forward.

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