



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/PressReleaselframePage.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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