American Association of the Indo-Pacific

Submission to IPEF Negotiators

MAY 2023

INTRODUCTION AND SUMMARY

AAIP is a leading private-sector supporter of the Indo-Pacific Economic Framework for Prosperity (IPEF).

AAIP believes this rare opportunity to develop a meaningful regional agreement can significantly enhance regional economic integration. We encourage the parties to work toward significant outcomes.

In addition to our previous submission from November (attached for reference), AAIP is providing new technical input based on public communications from USTR and the Department of Commerce.

Our key recommendations are as follows:

- Ensure a "living agreement" structure that futureproofs the agreement as the global trade environment evolves;
- Achieve a meaningful outcome on digital by adopting a "hybrid" approach that incorporates the strongest elements of both CPTPP and USMCA;
- Ensure that the Services Domestic Regulation goes beyond the commitments in the WTO Joint Initiative on Services Domestic Regulation;
- Push for a strong Trade Facilitation chapter that prioritizes meaningful commitments on express shipments;
- Ensure adaptable mechanisms under the Good Regulatory Practices Joint Committee that will continue to provide meaningful outcomes during implementation;
- Ensure consistency and commitment for the Green Economy chapter by adapting from the ASEAN Circular Economy Framework.

1. A 'FUTUREPROOF' AGREEMENT

It is readily apparent that IPEF members are adapting to a new trade environment, which will continue to evolve over the years and decades to come. With this in mind, it is vital that the following are key features of the agreement:

- Built-in review mechanism: Establish a periodic review mechanism for the agreement to assess its effectiveness and address any emerging issues or challenges. This will allow the parties to adapt the agreement to the evolving global economic and trade environment and make necessary updates.
- Living agreement structure: Design the IPEF trade agreement as a "living agreement" with provisions that permit the addition or modification of commitments over time. This will allow member countries to adopt new commitments or enhance existing ones, depending on technological advancements or changing economic circumstances.
- Enforcement mechanism: Provide mechanisms to ensure that the commitments are binding,
- Flexible accession provisions: Develop clear and transparent accession procedures for new members to join the IPEF agreement. This could involve a roadmap or guidelines that outline the required steps and any necessary technical assistance for potential members to meet the agreement›s standards.

2. DIGITAL

AAIP supports a strong and meaningful digital chapter that incorporates the best practices from global agreements. While many IPEF members have committed to the provisions in the Regional Comprehensive Economic Partnership (RCEP) agreement, these provisions have limited impact, and we urge the parties to adopt stronger provisions.

AAIP's preferred baseline for a strong and meaningful chapter is that of the USMCA. The USMCA is, in our view, the "gold standard" for digital. The CPTPP also includes some relevant provisions. At a minimum, the IPEF should:

- Prohibit customs duties on digital products: The IPEF should prevent the imposition of customs duties or other charges for the import or export of digital products transmitted electronically between parties.
- Ensure non-discriminatory treatment of digital products: The IPEF agreement should guarantee that digital products originating from one member country are not treated less favorably than similar digital products from other member countries or the country where they are being sold.

- Strengthen intellectual property rights protection: The IPEF should adopt strong provisions on intellectual property rights, including copyright, trademark, and patent protection, as well as enforcement measures against piracy and counterfeit goods.
- Establish a framework for the free flow of data: The IPEF should prohibit data localization requirements and support cross-border data flows, interoperability, and the growth of cloud computing services, including financial data. It should also include exceptions for specific regulatory purposes, such as protecting public order or national security.
- Safeguard personal information: Encourage member countries to adopt or maintain privacy laws, regulations, or policies that provide a comparable level of protection.
- Limit source code disclosure requirements: Drawing from both agreements, the IPEF should prevent member countries from requiring the transfer of, or access to, software source code as a condition for the import, distribution, sale, or use of such software.
- Encourage cooperation in cybersecurity: Promote collaboration among member countries on cybersecurity matters, including sharing information and best practices and cooperating on capacity-building initiatives.
- Promote open government data: Encourage member countries to make government data available to the public in machine-readable, open formats, as recommended in both agreements.
- Enhance e-commerce provisions: Adopt detailed, practical, and widely recognized provisions on electronic signatures, electronic authentication, and paperless trade administration to facilitate digital transactions and reduce administrative burdens.
- Strengthen consumer protection: Emphasize cooperation between member countries to address fraudulent and deceptive cross-border commercial practices.

As per our last submission, AAIP emphasizes the need for meaningful outcomes on the following:

Data Localization:

- Prohibitions on local data storage requirements, explicitly including financial services;
- Guarantees that private sector operators can transfer data effectively, that any associated regulations must be based on legitimate public policy objectives, and that members commit to removing discriminatory and protectionist barriers to data flows;
- Adequate protections for personal data and against forced disclosures of proprietary computer source code and algorithms.

Digitizing Trade

- Clear and consistent legal definitions covering the range of digital governance issues;
- Requiring members to review and amend their electronic and digital signature legal instruments;
- Endorsing the validity and acceptance of electronic documents to facilitate customs clearance for cross-border trade and government-private sector coordination through paperless trading and e-invoicing;
- Ensuring digital products and services originating in any party's market not be put at a competitive disadvantage in another party's market, including taxation measures;
- Sharing information on threats and building cybersecurity capacity;
- Facilitating public access to government data to foster economic and social development, public health, competitiveness, and innovation;
- Ensuring broader consumer protections in the digital marketplace, including protections for privacy and unsolicited communication in the digital marketplace, and promoting interoperability privacy regimes;
- Limiting civil liability for third-party content to prevent a chilling effect on innovation and potential hindrances to new market entrants and SMEs.

Digital Economy and Innovation

- Encouraging private sector and civil society participation in the formulation of governments' digital economy planning and experimentation, and encouraging governments to embrace digital innovation as an engine for digital growth;
- Ensuring sufficient protection for intellectual property in the agreement, acknowledging that intellectual property rights spur innovation and that due consideration is given to intellectual property rights for SMEs.
- Promotion of digital access and upskilling, including in Southeast Asia, for inclusive digital growth.

Artificial Intelligence

Artificial intelligence (AI) has, since the announcement of the IPEF negotiations, increased in prominence and will have a greater impact on commerce going forward. The IPEF has the opportunity to establish multilateral benchmarks on AI early and consider adaptation of the existing text in the Singapore Australia Digital Economy Agreement (Article 31), which encourages information sharing and commercialization alongside responsible use and AI governance frameworks, and provides a model for advancing cross-jurisdictional work.

Any elements of the agreement dealing with AI should adhere to clear principles and, where possible, the agreement should:

- Ensure access to AI products that is fair and inclusive, not discriminatory against any stakeholder group; it should promote the scientific soundness of models used in AI systems;
- Promote the safety of automated systems design that will protect consumers and manage risks through robust testing and human oversight;
- Promote the practice of privacy by design and limit the collection, use, and retention of customer data to essential aspects of service delivery.
- Ensure that AI systems and machine learning models are explainable, understandable, and auditable to ensure proper human oversight and have a reasonable connection to any data collection or other outcome achieved.

3. SERVICES DOMESTIC REGULATION

Most IPEF parties are participants in the World Trade Organization (WTO) Joint Initiative on Services Domestic Regulation (JISDR), with the exceptions of Brunei, Fiji, Indonesia, and Malaysia. However, it is also noted that not all IPEF parties have submitted their improved services commitment schedules to the WTO, nor given these schedules domestic legal effect.

The IPEF should include meaningful provisions on Services Domestic Regulation, including:

- Strengthening transparency and information exchange: Encourage member countries to submit regular reports on their services regulations and update their commitments in a database or schedule of commitments. Establish an online platform for sharing best practices and exchanging information on domestic regulation.
- Capacity building and technical assistance: Provide targeted support to developing countries and LDCs to build regulatory development and implementation capacity. This could include training sessions, workshops, and expert consultations on regulatory best practices.
- Regulatory impact assessments (RIAs): Encourage member countries to conduct RIAs to evaluate the potential impacts of new regulations on the services sector. This can help ensure that proposed regulations are cost-effective and efficient and do not create unnecessary barriers to trade in services.
- Mutual recognition agreements (MRAs): Promote the negotiation and implementation of MRAs among IPEF members to facilitate the recognition of qualifications, licenses, and certifications across borders. This would help reduce regulatory barriers and increase the mobility of skilled professionals.

- Inclusive stakeholder consultation: Encourage member countries to involve a broad range of stakeholders, including businesses, civil society organizations, and consumer groups, in the development and review of services regulations. This can help ensure that regulations are balanced and consider diverse perspectives.
- Regulatory cooperation and harmonization: Foster dialogue and collaboration among member countries to harmonize regulatory frameworks, particularly in sectors where divergent regulations can create significant barriers to trade.
- Monitoring and evaluation: Establish a regular review mechanism to assess the effectiveness of the agreement, including the progress made by member countries in implementing their commitments and the impact of these commitments on the services sector.
- Flexibility for developing countries: Recognize the unique challenges faced by developing countries in implementing domestic regulation reforms and provide them with the necessary flexibility and assistance to balance their domestic priorities with the objectives of the agreement.
- Expanding the scope of the initiative: Consider broadening the initiative›s focus to include emerging issues in services regulation, such as digital trade, data protection, and environmental sustainability.

4. TRADE FACILITATION – EXPRESS SHIPMENTS

We understand that new areas for discussion within the trade facilitation agreement relate to express shipments. We recommend that the following provisions be incorporated. Incorporating these provisions will promote faster and more efficient trade between member countries by modernizing customs procedures, promoting transparency, and encouraging the use of risk management systems.

- Expedited Shipments: To ensure efficient clearance of express shipments, we recommend that IPEF member countries adopt procedures allowing for a single electronic manifest for all goods in an express shipment. These shipments should be released as soon as possible, ideally within a few hours of arrival.
- Risk Management: Encourage the use of risk management systems to facilitate trade while ensuring compliance with customs laws and regulations. Member countries can focus resources on high-risk shipments by efficiently clearing low-risk shipments, including express deliveries.
- Advance Rulings: Require member countries to issue advance rulings on specific trade-related matters such as tariff classification and customs valuation upon request. This provision helps traders plan their express shipments and minimize disruptions at the border by providing certainty on the treatment of their goods.

- Release of Goods: Mandate that each country ensures the release of goods within a period no longer than 48 hours after the submission of required customs documentation, subject to certain exceptions. This provision promotes the timely clearance of express shipments.
- Automation and Electronic Processes: Encourage the use of automated systems and electronic processes to facilitate trade, including the electronic submission of customs documentation. These provisions help streamline the clearance of express shipments and reduce paperwork burdens.
- Transparency: Require each country to publish their customs laws, regulations, and procedures online, including those related to express shipments. This transparency ensures that traders are aware of the requirements for shipping goods across borders and can plan accordingly.

5. GOOD REGULATORY PRACTICES JOINT COMMITTEE

AAIP supports strong and meaningful provisions on good regulatory practices that incorporate the best practices from global agreements.

- The agreement must contain robust provisions that ensure rules and regulations are developed in a fair, open, and transparent manner and that all stakeholders, both foreign and domestic, have adequate and meaningful opportunities to provide input throughout the rule-making process.

A functioning joint committee under the Good Regulatory Practices chapter is essential. We make the following recommendations:

- Ensure a structured dispute resolution mechanism: Incorporate a well-defined process for resolving disputes that may arise between member countries, helping to prevent conflicts from escalating and ensuring that issues are resolved fairly and efficiently.
- Ensure regular monitoring and review: Include provisions for ongoing monitoring and review of the agreement›s implementation, allowing member countries to assess its impact and make necessary adjustments or updates to keep the agreement effective and relevant.
- Promote transparency and inclusiveness: Encourage transparency in the IPEF committee›s operations and engage with a diverse range of stakeholders, including businesses, labor organizations, and civil society groups. This will help ensure that various perspectives and concerns are considered in the decision-making process.

- Strengthen enforcement mechanisms: Incorporate stronger enforcement mechanisms to ensure compliance with the agreement›s provisions, addressing any limitations of the JCRC model and enhancing the effectiveness of the IPEF committee in dealing with non-compliance issues.
- Allocate adequate resources: Ensure that the IPEF committee has sufficient staff, funding, and technical expertise to carry out its mandate effectively, addressing any potential resource constraints.
- Minimize politicization: While the IPEF committee will likely include representatives from each member country, it is essential to establish mechanisms that minimize the influence of political considerations and national interests on the committee›s decisions and actions. This will help to maintain the trade agreement's overall objectives and integrity.

6. CLEAN ECONOMY

The Clean Economy Pillar provides the opportunity to harmonize IPEF member countries' green financing commitments. AAIP has previously provided a specific set of reference points for green taxonomies and other standards. AAIP emphasizes:

- The Green Energy Transition must remain a key priority. Mobilizing finance for energy transition projects and reducing barriers to investment to move away from fossil fuels must be a core part of the commitment.
  - » Voluntary early decommissioning of coal-fired plants results in economic and financial costs.
  - » IPEF member countries undertaking an energy transition may have limited capacity to absorb the economic cost; investors, as fiduciaries, are limited in their ability to absorb those costs.
  - » Current initiatives such as the Just Energy Transition Partnership for Indonesia launched at the G20 should be considered a framework for member economies and a model platform.

A clear framework for the agreement text can be the ASEAN Circular Framework, which was adopted in 2021 and has set a precedent for ASEAN member economies in addition to their "+1" agreement partners in Japan, the Republic of Korea, Australia, and New Zealand. Based on the framework, the following should be the minimum within the agreement:

- Harmonize sustainable finance regulations: Commitment to aligning and harmonizing sustainable finance regulations to facilitate cross-border investment and the flow of capital toward sustainable projects.

- Enhance disclosure and reporting standards: Agreement to establish transparent and consistent ESG disclosure and reporting standards, ensuring increased access to relevant information for investors and stakeholders.
- Foster capacity building and knowledge sharing: Active engagement in capacity-building initiatives and knowledge-sharing platforms, enabling the exchange of best practices, tools, and resources for sustainable finance and ESG investments.
- Encourage inclusive finance and SME support: Commitment to developing strategies to promote access to sustainable finance for SMEs, ensuring their participation in the transition toward a more sustainable and circular economy.
- Develop green taxonomies and standards: Commitment to collaboratively creating and adopting unified green taxonomies and standards to facilitate the identification and classification of sustainable investments.
- Promote public-private partnerships (PPPs): Encouragement of the establishment of PPPs to leverage private sector capital and expertise in financing and implementing sustainable and circular economy projects.
- Strengthen green bond markets: Commitment to developing and expanding local and regional green bond markets, offering additional avenues for financing sustainable projects.
- Advance ESG integration in investment decisions: Commitment to supporting the incorporation of ESG factors in investment decision-making processes, fostering long-term value creation, and mitigating systemic risks.
- Encourage sustainable infrastructure investment: Prioritizing sustainable infrastructure investment, promoting projects that incorporate circular economy principles, and contributing to climate change mitigation and adaptation.
- Facilitate financial innovation for sustainability: Promoting innovative financial instruments, platforms, and mechanisms that enable the scaling up of sustainable finance and ESG investments.

7. SUPPLY CHAINS

It has been stated publicly that a key function of the Supply Chain pillar is to avoid the trade disruptions that emerged as a result of the pandemic. With this in mind, we would like to underline points from our previous submission. The agreement should:

- Introduce public-private working groups/committees to define the critical goods/materials within each sector to include sharing best practices between IPEF members;
- Include disciplines that prevent limits on goods carried by essential sectors in times of public health or other emergencies, preventing the spread of pathogens and allowing businesses to remain open;

- Commit to greater levels of regulatory harmonization and coherence across the supply chain, in addition to that being sought in the Trade Pillar, particularly for the healthcare sector;
- Provide a mechanism for "trusted importers" to eliminate redundant testing-on-importation requirements;
- Prioritize the transport of critical supplies and equipment at ports of entry ("fast pass" concept) in coordination with the relevant customs authorities.

8. FAIR ECONOMY

Fair and transparent taxation regimes are vital to the functioning of commerce across the region. The IPEF should provide incentives for capacity building to:

- Continue to upgrade and finetune national taxation systems to make them progressive and business-friendly and administer taxation in a fair and transparent manner that promotes business continuity and stability; and
- Increase transparency and adherence to international OECD tax norms and provide greater capacity-building and enforcement tools for tax administration.

As noted in our previous submissions, the agreement should:

- Introduce new initiatives for cooperation and capacity-building among anti-corruption and anti-bribery agencies of IPEF member countries:
  - Such initiatives should encourage IPEF member countries (1) to publish clear "safe harbor" guidelines for permissible promotional and commercial practices and (2) to adopt policies encouraging the implementation of corporate compliance programs, including consideration of compliance programs in connection with enforcement actions.
- Introduce novel cooperation and capacity-building programs for competition rules and policies outside the Trade Pillar:
  - These programs should seek to build on existing activities taking place within other regional agreements (e.g., RCEP, AANZFTA, ASEAN).
  - The programs should seek to follow and potentially institutionalize the model of the work of the International Competition Network (ICN) and the ICN Framework for Competition Agency Procedures (CAP).
  - These programs should facilitate the publication by parties' competition authorities of clear guidelines on current substantive competition rules, the adoption of best practices in enforcement procedures, and convergence in substantive competition rules where practical.

CONCLUSION

AAIP is encouraged by the progress to date and urges all parties to continue to work toward meaningful outcomes that will achieve the goals of regional economic integration.

Strong digital provisions can be drawn from global best practices. The Services Domestic Regulation provides opportunities for integration as well. A strong Trade Facilitation chapter should prioritize express shipments to bolster global trade efficiency.

Establishing adaptable mechanisms under the Good Regulatory Practices Joint Committee will ensure continued meaningful outcomes during the agreement›s implementation. Finally, the Green Economy chapter should align with the ASEAN Circular Economy Framework, fostering consistency and commitment among member countries in promoting sustainable and responsible economic development.

Implementing these recommendations will result in a robust, forward-looking trade agreement that addresses its members' diverse needs and priorities while supporting sustainable and inclusive growth in the global economy.

American Association of the Indo-Pacific

Submission to U.S. IPEF Negotiators

NOVEMBER 2022

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ACKNOWLEDGEMENT

AAIP expresses its deep appreciation to the IPEF Taskforce members and advisors who contributed so thoughtfully to this submission, especially to Khalil Hagerty, AAIP Senior Policy Advisor, for drafting the submission.

INTRODUCTION

The American Association of the Indo-Pacific is a membership-led organization that works to strengthen American business and investment in the Indo-Pacific region. AAIP does this through policy initiatives, ongoing engagement with policymakers in Washington, D.C., and in the region, and close collaboration with other business associations. AAIP is legally registered in the United States as a 501c6 non-profit corporation.

AAIP membership is only held by U.S.-headquartered companies and business associations. It seeks to further U.S. business interests, specifically through its affiliate operations in the Indo-Pacific region. This means that rather than advocating only for U.S. exports to the region, AAIP can advocate for U.S. companies that have broader economic and financial interests in the region through services, investment, and global value chains. The Indo-Pacific Economic Framework (IPEF) is an important initiative for the region to promote higher standards, collaboration, and partnerships in key markets. While the IPEF is not a traditional free trade agreement (FTA), it is an important first step for economic engagement.

AAIP has an extensive network across member economies and is in a strong position to act as a conduit to and from member country governments.

AAIP has structured this document to include the following:

- A **summary** of key positions and proposals for IPEF negotiation under its four pillars;
- A **technical** annex that includes text recommendations and references under the relevant pillar.

PILLAR ONE: TRADE

GENERAL

USTR and Commerce officials have indicated that the text structure of the trade agreement will likely follow those of other agreements, specifically the USMCA. There are many elements of the USMCA that are yet to be fully implemented. The inclusion of robust investment provisions modeled on those in the USMCA (and CPTPP/TPP) is vital to promoting investment between IPEF members to support other objectives within the agreement, including supply chains, green energy, and infrastructure.

While the Administration has indicated that it does not intend to include market access commitments in these negotiations, AAIP recommends leaving the door open to the liberalization of at least some goods and services to support the goals of this initiative, including those on supply chains diversification, climate transition, and digital transformation. In addition, AAIP recommends the inclusion of a review mechanism in the agreement that would contemplate further liberalization, with a review to take place after a defined number of years following entry into force.

High-level summaries for particular areas are below, with specific text and technical recommendations in the Annex.

STRONG AND SECURE DATA TRANSFER PROVISIONS

The agreement should include provisions that:

- Prohibit local data storage requirements which explicitly include and fully incorporate financial services;
- Guarantee that private sector operators are able to transfer data effectively; any associated regulations must be based on legitimate public policy objectives, and members must commit to removing discriminatory and protectionist barriers to data flows and prohibit data localization;
- Ensure adequate protections for personal data and against forced disclosures of proprietary computer source code and algorithms.

DIGITIZING TRADE

The agreement should include provisions that:

- Establish clear and consistent legal definitions in the digital trade chapter that cover the range of digital governance issues;
- Require members to review and amend their electronic and digital signatures as legal instruments and ensure that their use is widely permitted, broadly recognized, not subject to local vendor requirements, and without paper-based and/or in-person requirements. This has the potential to unlock significant economic value for businesses across IPEF economies;

- Endorse the validity and acceptance of electronic documents to facilitate customs clearance for cross-border trade and government-private sector coordination through paperless trading and e-invoicing, and promote digital transactions as the primary payment method to reduce the environmental costs associated with physical payment;
- Ensure digital products and services originating in any party's market not be put at a competitive disadvantage in another party's market, including taxation measures;
- Secure market access commitments on investment and cross-border services, including those delivered digitally;
- Agree to sharing information on threats and building cybersecurity capacity;
- Facilitate public access to government data to foster economic and social development, competitiveness, and innovation;
- Ensure broader consumer protections in the digital marketplace, including protections for privacy and unsolicited communication in the digital marketplace, and promote interoperability privacy regimes;
- Limit civil liability for third-party content to prevent a chilling effect on innovation and potential hindrances to new market entrants and SMEs.

DIGITAL ECONOMY AND INNOVATION
The agreement should include provisions that:

- Encourage private sector and civil society participation in the formulation of governments' digital economy planning and experimentation, and encourage governments to embrace digital innovation as an engine for digital growth;
- Consider frameworks to streamline, standardize, and align the lines of communication across multiple stakeholders;
- Ensure due consideration is given to SMEs in the establishment of rules and frameworks for the digital economy;
- Ensure that there is sufficient protection for intellectual property in the agreement, acknowledging that intellectual property rights are a spur to innovation, and that due consideration is given to intellectual property rights for SMEs;
- Cooperate to promote digital access and upskilling, including in Southeast Asia, for inclusive digital growth.

TRADE FACILITATION
The agreement should include provisions that:

- Ensure fair, non-discriminatory treatment of delivery service providers by addressing the unique challenges associated with postal operators through the inclusion of a delivery services sectoral annex;
- Commit to expanding the unified entry process based on the "single window" concept for all government partner agencies;
- Agree to expand the scope of Authorized Economic Operators (AEOs) to permit mutual recognition across all IPEF members and increase the tangible benefits of AEO certification, including by creating trusted trader programs for individual sellers that do business via trusted e-commerce marketplaces;

- Build upon the provision in the USMCA Customs Procedures Chapter to provide "fewer customs formalities" than are required for formal clearance by committing to more specific facilitation measures to replace these informal entry procedures;
- Set rules that establish simplified customs procedures to ease the entry requirements for shipments with values above the customs de minimis levels but below an agreed formal clearance threshold. An informal clearance regime could include the following features (based on the current U.S. regime):
  - Prohibition of the application of customs duties and other discriminatory measures to digital products distributed electronically, such as e-books, videos, music, software, and games;
  - Avoid unnecessary trade import licenses for imports of digital hardware and software;
  - Promote data sharing between governments and the private sector on seizures.
- Commit to market liberalization in specific sectors to promote domestic manufacturing for growth industries, like the high-tech industry. This could entail, for example:
  - Tariff liberalization and elimination of cross-border services barriers for construction materials and equipment used to construct a manufacturing or processing facility for high-tech goods;
  - Tariff liberalization for manufacturing equipment and supporting equipment used in the production of high-tech goods;
  - Simplification of the permit application and assignment process.

REGULATORY COHERENCE AND STAKEHOLDER ENGAGEMENT

Regulatory transparency is a critical first step in facilitating trade and investment. Laws, rules, and regulations developed with meaningful opportunities for stakeholder involvement provide the best outcomes in terms of "fit-for-purpose" policies that avoid unintended consequences. Further, regular communication of accurate, up-to-date, detailed information on trade and investment-related laws, rules, and regulations reduces trade costs and difficulties, particularly for small and medium-sized enterprises (SMEs), in complying with regulatory requirements and processes across markets.

The agreement should include provisions that:

- Secure commitments to promote greater transparency, participation, and accountability in the development of regulations and other government decisions, including by:
  - Promptly publishing laws, regulations, administrative rulings of general application, and other procedures that affect trade and investment in member countries using information and communication technology to the maximum extent possible;
  - Providing meaningful opportunities for stakeholders to provide input throughout the process from development to finalization and implementation, including setting up mechanisms for prior consultation on new or amended laws and regulations with stakeholders;

    - Allowing reasonable intervals between publication and implementation to enable businesses to respond to regulatory change;
    - Setting up enquiry points within government agencies to respond to questions on rules, regulations, and procedures; developing effective appeals mechanisms with rulings provided in a timely manner;
    - Related to pharmaceuticals and medical devices specifically, adopt, as a minimum, provisions contained in the KORUS on access to innovation, transparency, dissemination of information, ethical business practices, and regulatory cooperation;
- Establish disciplines on regulatory coherence, including provisions on widely-accepted good regulatory practices, already standard in the United States, such as impact assessments, public transparency and communications around regulations, and public notice of government measures:
    - Commit to regulatory harmonization similar to the APEC Regulatory Harmonization Steering Committee, including:
        - Best practices under the Global Harmonization Task Force (GHTF)
        - International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) standards for pharmaceuticals;
- Reaffirm commitments to TRIPS patent enforcement and patent linkage;
- Encourage:
    - HTA capacity-building in economies such as Thailand, Indonesia, and Vietnam;
    - Inclusivity in access to medicine and healthcare for indigenous populations, particularly in Australia and New Zealand.

REGULATORY COHERENCE AND STAKEHOLDER ENGAGEMENT
The agreement should:

- Require parties to publish new regulations in English and a local language version to assist foreign operators and other nations in the understanding of legal developments;
- Introduce disciplines on best practice principles. The OECD, for example, has developed significant material on best practices for regulators, particularly on public comment processes and stakeholder engagement.

AGRICULTURE
The agreement should:

- Adopt standards on anti-microbial resistance (AMR) and commit to stronger and accelerated collaboration on the adoption of the WHO's One Health approach to curbing AMR.

TECHNICAL BARRIERS TO TRADE (TBT)

The topic of TBT provides an opportunity for the U.S. government to demonstrate commitment to the World Trade Organization (WTO). The WTO Agreement on TBT, the WTO TBT Committee Decision on International Standards, and USMCA Chapter 11 (TBT) establish important baselines. We recommend:

- The U.S. government negotiates text that reinforces and restates WTO TBT principles and overall WTO institutional relevance;
- Negotiate for horizontal inclusion of TBT; that is, language to codify the application of TBT provisions across chapters, sectors, and elements of any new trade arrangement which should be governed by TBT (e.g., standards and conformity assessment aspects);
- Referring to USMCA Chapter 11 (TBT) language for specific text on TBT and the inclusion of a TBT section/chapter in any new arrangement.

PILLAR TWO: SUPPLY CHAIN

GENERAL

The Supply Chain Pillar is intended to enhance supply chain resiliency and flexibility and reduce over-reliance on any one market for manufacturing or supply. The IPEF also provides a critical opportunity to address export restrictions and other localization policies that contributed to global shortages of food, raw materials, PPE, and medical equipment during COVID.

The IPEF can help by promoting non-discrimination, a stable regulatory environment, harmonized and internationally-recognized legal and regulatory standards, incentives for innovation (including intellectual property protection), and a free and open flow of goods and services.

At a high level, this means governments should:

- Recognize that multiple partners make supply chains more resilient, expand global connectivity, increase partnerships, and reduce barriers that impede trade;
- Promote policies that help foster and accelerate the adoption of supply chain digitalization;
- Foster policies that encourage investment in manufacturing and new technologies;
- Ensure that government policies and programs are providing the appropriate skills base;
- Ensure that digital innovation is fostered and intellectual property is protected, particularly for SMEs;
- Improve regulatory harmonization, particularly for the healthcare sector, to get medical supplies to those in need.

A successful agreement will also depend on a continuous dialogue between industry and government at the multilateral and national levels as key building blocks to building more resilient supply chains in critical sectors such as healthcare and transport services. Fundamental principles for the private sector are:

- Stability and confidence in the political, legislative, and regulatory environments;
- An enabling environment for free trade;
- Business continuity planning as key to mitigating risk;
- Digitalization of supply chains, as early indications of disruptions allow companies to remain agile and engage in best practices;
- Autonomy to protect the geographical diversity of manufacturing and sourcing, enabling supply chains to respond to disruptions.

CRITICAL GOODS AND SERVICES

Every commercial enterprise will consider its goods critical. In terms of health, the next public health crisis may be completely novel. Rather than defining goods, principles and policies are more appropriate as a starting point.

It should be noted that tariffs remain in place on critical goods such as those in critical minerals and medicines. To strengthen supply chain resiliency and linkages between and among IPEF countries, the IPEF should include tariff liberalization, at least on select goods.

The Department of Commerce's International Trade Administration is currently seeking comments in the Federal Registrar in support of the Executive Order for America's Critical Supply Chains. There is already confusion about which goods are covered because of a lack of specificity in the definition of "critical goods", sectors covered, and what type of crisis (e.g., weather event, labor strike, energy shortage, power grid disruption, conflict) would trigger government supply chain action or programs.

The agreement should:

- Introduce public-private working groups/committees to define the critical goods/ materials within each sector to include sharing best practices between IPEF members.
  - This process should commence with existing or in-development lists by sector, then collate across all sectors/industries for a prioritized whole-of-government list (e.g., for medical/healthcare, the initial focus should be on things like the critical minerals list, essential medicines list, essential medical devices list, etc.);
  - Prioritize sectors as mission critical similar to other goods shipped under the economic security umbrella.
- Establish IPEF national contact points (e.g., the Office of Supply Chain Resiliency) on supply chain, who would:
  - Meet quarterly;
  - Establish a formal notification process (e.g., "early warning") between governments and industry partners.
- Develop programs and provide incentives for investments in and deploying digital infrastructure that automates supply chain processes, and enables fully digital supply chain execution and enhanced traceability.

CRITICAL TRANSPORT SERVICES

IPEF members should remain open to incorporating market access for services in the future. The USTR's list of negotiation objectives states that the need to promote resilience, inclusion, and sustainability in the framework is paramount, and that supply chain resilience is dependent on "the smooth movement of goods and services across borders".

IPEF members should consider adopting the following measures regarding "essential" sectors, services, and workers in preparation for the next pandemic or wide-scale global disruption, such as war, invasion, or natural disasters:

- Include disciplines that prevent limits on goods carried by essential sectors in times of public health or other emergencies, preventing the spread of pathogens and allowing businesses to remain open;
- Introduce clear delineations between civil cargo carriers and passenger airlines to support the necessary response to a global crisis and recognize air cargo operations, inclusive of pilots and crew, as low risk and minimize future restrictions on air cargo crews;
- Develop crisis support measures and guidelines for transportation companies in the form of relaxed hours of service rules for drivers, license renewals, and training requirements and "green lanes" for cargo trucks at land borders to reduce backups and delays;
- Incorporate the WHO Public Health Corridor concept and a best practice model for "closed loop" systems that support cargo crew personnel needs;
- Establish a designated supply chain disruption task force with representatives from each IPEF participant's primary government agencies to communicate through a single channel regarding official crisis responses, decisions, rules, and guidelines.

CRITICAL HEALTHCARE GOODS AND SERVICES

Over the past three years and during the pandemic period, access to healthcare products has become a national security issue. It has amplified nationalism, with every country seeking to bolster its domestic capability to produce key products and services.

Governments worldwide, including in the Indo-Pacific, have introduced onshoring/localization policies to support local industry, shore up domestic production capabilities, and drive local investment. The IPEF should have broad commitments reflecting that resilience comes from diversity and partnership, not always going it alone.

Restricting the export of raw materials, PPE, and medical equipment was incredibly disruptive to not only the production of vaccines and therapeutics to fight COVID, but also to conducting trials and maintaining existing healthcare products.

The IPEF provides a critical opportunity for members to ensure that the same mistakes are not repeated in the future.

It should be noted that tariffs remain in place on medicines. AAIP is aware that market access is not part of the IPEF scope, but due consideration can and should be given to eliminating tariffs on medicines.

The agreement should:

- Commit to greater levels of regulatory harmonization and coherence for the healthcare sector across the supply chain, in addition to that being sought in the Trade Pillar;
- Provide a mechanism for "trusted importers" of medicines and vaccines to eliminate redundant testing-on-importation requirements;
- Prioritize the transport of medical supplies and equipment at ports of entry ("fast pass" concept) in coordination with the FDA/CBP and equivalent host-nation organizations;
- Establish a transparent and connected network to share supply chain data that can facilitate the investigation of the parallel importation of patented medicine and the investigation of counterfeit medicines;
- Establish a "trusted partner" designation for healthcare within the IPEF, potentially based on the AEO or CTPAT model, to inject certainty and predictability for policy among IPEF members:
    - » Authorized Economic Operator and similar programs (e.g., CTPAT) could be explored and expanded to include regulatory reciprocity under Emergency Use Authorization (EUA). The objective would be to harmonize standards and regulatory requirements for medical devices and vaccines/therapeutics through mutual agreements with EUAs.
- Establish new conceptual frameworks for the standardization and digitization of healthcare supply chains;
- Prevent export restrictions and commit to not restricting exports but instead using platforms like the IPEF to ensure sufficient stocks are maintained during emergencies.

GOODS

IPEF countries should:

- Commit to greater levels of regulatory harmonization and coherence for critical goods (e.g., strategic materials, healthcare) across the supply chain, in addition to that being sought in the Trade Pillar;
- Provide a mechanism for "trusted importers" of an agreed list of critical goods to eliminate redundant testing-on-importation or other requirements;
- Prioritize import of such critical goods at ports of entry ("fast pass" concept) in coordination with the FDA/CBP and equivalent host-nation organizations;
- Establish a transparent and connected network to share supply chain data that can facilitate the investigation of fraud, circumvention, and parallel importation;

- Establish a "trusted partner" designation for critical goods within the IPEF, building on the AEO or CTPAT model:
    - » Authorized Economic Operator and similar programs (e.g., CTPAT) could be explored and expanded to include regulatory reciprocity under Emergency Use Authorization (EUA). The objective would be to harmonize standards and regulatory requirements for medical devices and vaccines/therapeutics through mutual agreements with EUAs.
- Establish new conceptual frameworks for the standardization and digitization of critical goods and services supply chains;
- Prohibit export restrictions with limited exceptions and commit to sharing stockpiles of critical goods or other policies to support IPEF members during emergencies.

SERVICES

IPEF members should remain open to incorporating market access for services in the future. The USTR's list of negotiation objectives states that the need to promote resilience, inclusion, and sustainability in the framework is paramount, and that supply chain resilience is dependent on "the smooth movement of goods and services across borders".

IPEF members should consider adopting the following measures regarding "essential" sectors, services, and workers in preparation for the next pandemic or wide-scale global disruption, such as war, invasion, or natural disasters:

- Include disciplines that prevent limits on goods carried by essential sectors in times of public health or other emergencies, preventing the spread of pathogens and allowing businesses to remain open;
- Introduce clear delineations between civil cargo carriers and passenger airlines to support the necessary response to a global crisis and recognize air cargo operations, inclusive of pilots and crew, as low risk and minimize future restrictions on air cargo crews;
- Develop crisis support measures and guidelines for transportation companies in the form of relaxed hours of service rules for drivers, license renewals, and training requirements and "green lanes" for cargo trucks at land borders to reduce backups and delays;
- Incorporate the WHO Public Health Corridor concept and a best practice model for "closed loop" systems that support cargo crew personnel needs;
- Establish a designated supply chain disruption task force with representatives from each IPEF participant's primary government agencies to communicate through a single channel regarding official crisis responses, decisions, rules, and guidelines.

SUPPLY CHAINS AND INTELLECTUAL PROPERTY

To attract the private sector investment that will be needed to build resilient supply chains, legal and regulatory protections must be strengthened, including by providing:

- Enabling environments for research and development and innovation;
- Strong intellectual property protections, including implementation and enforcement of the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), and in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, prohibitions on the theft of trade secrets, and enforcement standards that include civil and criminal penalties.

In addition, IPEF countries should consider:

- Development of a blacklist of firms and entities that participate in the predatory theft of intellectual property and potential sanctions.

PILLAR THREE: CLEAN ECONOMY

High-level summaries for particular areas are below, with specific text and technical recommendations in the Annex.

CARBON MARKETS

Both regulated and voluntary carbon markets (VCMs) need to be scaled to help meet net-zero objectives. On the voluntary side, there is considerable scope to scale up VCMs.

To establish greater trust in VCMs, clear and stringent measurement, reporting, and verification (MRV) standards will be needed. At present, existing VCMs in this area often lack credibility due to a lack of common standards.

The heterogeneity of the credits themselves (based on project type, credit type–removal or avoidance, and vintage) and a lack of taxonomy reduce transparency. The absence of a widespread reference index against which credits could be compared and traded also limits market activity.

Ensuring the quality of credits and their exportability in a way that provides certainty to the purchaser while also protecting the country's Nationally Determined Contributions in which the credit is generated are two key elements to the viability of carbon trading.

The IPEF should:

- Incorporate emerging VCM standards, such as those developed by the Taskforce on Scaling Voluntary Carbon Markets, into the Clean Energy Pillar;
- Assess mechanisms to allow for the export of carbon credits bearing in mind concerns around the protection of host country NDCs.

GREEN TAXONOMIES, FRAMEWORKS, AND STANDARDS

Sustainable taxonomies are critical to helping investors identify sustainable activities across borders. Many IPEF countries, including Australia, Singapore, Thailand, and India, are designing these taxonomies to provide clarity and help mobilize investment.

The risk, however, is that this proliferation in standards is difficult for investors, global corporations, and financial institutions to apply classifications across jurisdictions. The corollary is a fragmentation risk that could inhibit investment and growth rather than drive it, as investors apply the highest common standard (likely that established by the EU).

Similar to the taxonomy issue, there is a need for frameworks that require greater levels of disclosure at the company level to help price and manage risk across jurisdictions.

It is critical that the information provided is credible and usable and does not create greenwashing risks.

The private sector has also developed decarbonization standards for financing hard-to-abate sectors. By establishing global frameworks for assessing and disclosing the climate alignment of portfolios in specific industries, these self-governing agreements assist transition efforts in the shipping and steel sectors.

The IPEF should:

- Include recognition/equivalence procedures for existing cross-jurisdictional standards around classification and disclosure;
- Incorporate pre-existing sectoral standards in the Clean Energy Pillar, such as the Poseidon Principles for shipping and the Sustainable STEEL Principles for the steel industry.

ENERGY TRANSITION

The IPEF should be ambitious but also realistic on clean energy and carbon-related issues, recognizing that many countries in the region will need assistance in transitioning the energy mix to cleaner sources, including gas-fired and LNG.

IPEF members seek to mobilize private capital for infrastructure that promotes clean energy and decarbonization. Governments have a significant role in facilitating the energy transition by de-risking the revenue gaps likely to be created in the process.

This can clearly be seen in the transition from coal to gas to renewable energy. Voluntary early decommissioning of coal-fired plants results in economic and financial costs. IPEF member countries undertaking an energy transition may have limited capacity to absorb the economic cost; investors, as fiduciaries, are limited in their ability to absorb those costs. Current initiatives such as the Just Energy Transition Partnership for Indonesia launched at the G20 should be considered a framework for member economies and a model platform for incorporation into the IPEF text.

INFRASTRUCTURE

With regard to infrastructure and infrastructure projects, guidelines for project decision-making are key. The adoption of guidelines across member economies would be ideal. Infrastructure Australia's Assessment Framework for projects has been cited by a number of key AAIP stakeholders as the "gold standard" for infrastructure development. This comprises a four-stage process of:

- Defining problems and opportunities
- Identifying and analyzing options
- Developing a business case followed by project delivery
- Post-completion review

Infrastructure Australia has developed detailed guidelines and assessment templates for each stage of the process, including highly developed procedures for each stage, such as governance, impact assessments, risk, and resilience.

The framework goes beyond using a cost-benefit ratio to use 15 indicators for the three assessment criteria, including:

- Quality of life: mobility and connectivity, cultural outcomes, living standards, learning and earning, and health and safety;
- Sustainability: long-term drivers of change, externalities, and sustainability in design;
- Resilience: future scenarios; response to shocks, population, natural hazards, war, pandemic, climate change, and risks.
- The assessment framework is open to novel data approaches rather than using a rigid CBR methodology.

AAIP's view is that the IPEF has the opportunity to move away from existing conventional assessment frameworks and take a novel approach; the Infrastructure Australia example provides a starting point.

PILLAR FOUR: FAIR ECONOMY

ANTI-CORRUPTION

U.S. laws have a strong compliance regime and provide severe penalties for non-compliance. The Foreign Corrupt Practices Act (FCPA) does not provide flexibility for business activities overseas that would be considered legal in the United States because they are regulated domestically. This includes, for example, the provision of sample goods that may be considered a form of remuneration. Consequently, regulatory agencies promulgate "safe harbors" exempting categories of "payment practice[s]" from being considered remuneration.

The severity of the penalties under the FCPA has had a "chilling effect" in that some activity that might be considered legal in the U.S. domestic context (and simultaneously conventional in a non-U.S. context) is avoided altogether because of any legal uncertainty. This has a significant impact on affiliates of U.S. companies across the Indo-Pacific region.

The IPEF should:

- Introduce requirements for anti-corruption and anti-bribery agencies of IPEF member countries to work cooperatively and establish and publish clear "safe harbor" guidelines for activities that delineate payment practices from remuneration.

COMPETITION RULES AND POLICY

Although the competition policy of the Trade Pillar may provide a conventional approach to competition as found in other agreements, the IPEF provides an opportunity to consider novel approaches to competition policy. Negotiators will likely be aware that the WTO considered a work program on competition rules and policy in 1996.

Arguably, negotiation and the horse-trading it can entail is not the ideal modality for reaching an agreement on competition policy across jurisdictions; good competition policy benefits foreign and domestic stakeholders alike. Economies should, therefore, be seeking regulatory convergence across jurisdictions and in the application of competition policy.

The IPEF should:

- Introduce novel cooperation and capacity-building programs for competition rules and policies outside the Trade Pillar.
    - » These programs should seek to build on existing activities taking place within other regional agreements (e.g., RCEP, AANZFTA, ASEAN).
    - » The programs should seek to follow and potentially institutionalize the model of the work of the International Competition Network (ICN) and the ICN Framework for Competition Agency Procedures (CAP).

ANNEX

DIGITAL

CONTEXT

The financial sector (including banks, non-banks, and other financial services suppliers) is global and interconnected. Financial services rely on the flow of data across borders to ensure global operations, undertake effective fraud mitigation, fight money laundering, conduct integrated risk management on a global basis, ensure compliance with regulatory and sanctions requirements, and increase cyber security.

The responsible movement and storage of data, coupled with domestic privacy regulations, are vital to building and sustaining trust in the digital economy, and enable private sector-led innovations that make financial services accessible to a broader range of citizens and small businesses.

Global data sets and the ability to move data securely across borders have proven benefits: effective fraud and anti-money laundering prevention, enhanced cybersecurity, and financial inclusion via new technologies. Fraud, for example, is a global challenge that requires a truly global solution.

RECOMMENDATION

We encourage IPEF negotiators to incorporate rules that allow for responsible data flows and prohibit local data storage requirements, which explicitly include and fully incorporate financial services. Specifically:

Enable cross-border data flows: Companies and consumers engaging in digital trade must be able to move data freely, consistent with regulations based on legitimate public policy objectives. Parties commit to removing discriminatory and protectionist barriers to data flows—including onerous data localization requirements, which is crucial for building global value chains and allowing companies, large and small, to access the global market and increase efficiency.

Prohibit requirements for the localization of computing facilities, including the localization of financial service computing facilities: Companies engaging in digital trade need to be able to operate without requirements to use local infrastructure or build expensive and redundant data centers.

EXAMPLE / REFERENCE

The Singapore-Australia Digital Economy Agreement (SADEA) represents the first-ever digital economy agreement in Asia with rules to ensure cross-border financial data flows (Articles 23-25) in addition to a range of other comprehensive commitments on digital trade and emerging technologies. The agreement also expands the focus areas of cooperation to include standards for development and conformity assessment and encourages vehicles for regular dialogue between governments and industry stakeholders on emerging technologies such as artificial intelligence, data privacy, and small business participation in trade.

U.S.-Mexico-Canada Agreement (USMCA), U.S.-Japan Digital Trade Agreement (Article 13), and Hong Kong-Australia agreement (e-commerce chapter, Article 11.7-8)

Specific IPEF member concerns:

The Philippines: Officials from relevant agencies (Department of Budget and Management, Department of Information, Communication and

Being able to monitor transactions across national borders benefits all participants in the ecosystem by making predictive and AI learning more accurate and, therefore, better able to identify transactions that have a higher likelihood of being "bad".

Ensure adequate protection of personal data: Personal data protection is a key condition to the free flow of data across borders.

Parties should recognize the importance of the adequate protection of sensitive data and the privacy of consumers for liberalized trade between trading partners.

Ensure adequate protection against forced disclosures: Include protection against forced disclosure of proprietary computer source code and algorithms.

Technology) favor data localization paths for government digital transformation programs.

This is despite Philippine participation in the APEC-Cross Border Privacy Rules (APEC-CBPR) System.

Vietnam: The Vietnam government consistently adopts a strict approach to data regulation. In particular, the recently passed Decree 53, guiding the Law on Cybersecurity, requires the localization of certain data (personal information of users in Vietnam, data generated by users in Vietnam, data about the relations of service users in Vietnam) for local companies and cross-border services in certain situations.

Indonesia: Data sovereignty is a highly sensitive issue for the Indonesian government, and it is likely they will ensure national interests are being taken care of against the landscape of cross-border data flow. We have seen this from Bank Indonesia's Payment Systems Blueprint and the recently-passed Personal Data Protection (PDP) Bill. Also, growing calls for data localization in Indonesia as part of implementing regulations from the PDP Bill may necessitate discussions on some agreeable minimum standards that are palatable for regulators and businesses at large.

DIGITIZING TRADE

CONTEXT

Trade digitization is a long-standing objective of public policymaking in the Indo-Pacific. Trade finance, in particular, remains heavily paper-based. There are thought to be around four billion documents in the trade finance system at any one point, and in some instances, the cost of documentation can account for 20 percent of the cost of shipping.

Digital and electronic signatures are fundamental to e-commerce, business, and finance. Their broad use has the potential to increase efficiencies in both domestic and cross-border transactions and unlock significant economic value.

According to the United Nations Economic and Social Commission for Asia and the Pacific, paperless cross-border trade with the implementation of the WTO Trade Facilitation Agreement could reduce trade costs by more than 25 percent, potentially decreasing international transaction costs in Asia and the Pacific by 0.6 trillion USD annually.

Most IPEF member economies have some form of electronic/digital signature law, but these laws remain fragmented and often ineffective.

RECOMMENDATION

IPEF member economies should be encouraged to review and amend their e-signature legal instruments with the view to extending permitted use cases, dispensing with paper-based and physical attendance requirements, and revising rules and requirements governing local platforms to allow for the use of alternative e-signing platform service providers.

Consider mechanisms to establish definitional consistency as to basic terminology used among IPEF member economies. The current absence of this is a key attribute impeding the establishment of consistent rules on the use of e-signatures and digital signatures.

Ensure protections for digital authentication: Instruments for the use of electronic signatures and authentication must also protect consumers' and businesses' confidential information and guarantee that enforceable consumer protections are applied to the digital marketplace.

Secure non-discrimination principles: The IPEF should ensure digital products and services originating in any party's market should not be put at a competitive disadvantage in another party's market, including taxation measures.

EXAMPLE / REFERENCE

In Australia, the Electronic Transactions Act 1999 defines "e-signature" simply, without the imposition of any technological requirements, prescribed methods, or standards required to give legal effect to e-signatures and digital signatures (as required with the prescriptive and two-tiered approaches in relation to qualified e-signatures).

The Model Law on Electronic Signatures (MLES) was adopted in 2001 by the UN General Assembly. MLES rules and standards are focused more specifically on e-signatures. In particular, its purpose is to harmonize and establish fair legal frameworks governing the use of e-signatures to give certainty to their legal treatment. In particular, the MLES provides model rules and standards that establish technical reliability requirements for equivalence between e-signatures and traditional "wet signatures"; guidelines for the assessment of the duties and liabilities of signatories, relying on parties and third parties involved in the signing process; and provisions for the recognition of foreign certificates and e-signatures.

In particular, regulation often limits their effectiveness by:

- Permitting their use in only limited use cases
- A lack of recognition by various institutions, including courts
- Requiring the use of local vendors rather than regional or global suppliers
- Require paper-based documentation in addition to the digital versions, as well as in-person attendance
- Cross-border financial services, such as payments, play a critical role in the global digital economy. For this reason, the IPEF should pursue open and competitive financial markets to increase consumption and economic growth, advance financial inclusion, enable the economic success of small- and medium-sized enterprises (SMEs), promote cybersecurity, and incentivize local innovation.

As digital products and services support millions of jobs, such principles provide important protection for workers.

Secure market access commitments on investment and cross-border services, including those delivered digitally: Strong investment and cross-border services commitments in digital trade agreements allow digital service providers the certainty of knowing that many of the services they provide can be offered in other countries. This commercial certainty benefits export-intensive services, businesses, and their workers.

Promote cooperation on cybersecurity: Through digital trade agreements, parties should agree to cooperate on sharing information on threats and building cybersecurity capacity, which is key to preventing cyber-attacks and stopping the diffusion of malware. Cybersecurity is a key contributor to consumers' trust in digital trade and provides reassurance to companies that utilize digital tools, especially SMEs.

Promote public access to government-generated public data: Facilitating public access to government data fosters economic and social development, competitiveness, and innovation.

UNCITRAL Model Law on Electronic Transferable Records: The Model Law on Electronic Transferable Records (MLETR) was adopted in 2017 by the UN General Assembly. Its primary purpose is to enable the legal use of electronic equivalents of paper-based transferable documents on a cross-border basis and domestically. In the usual course, these paper-based transferable documents entitle the holder to claim performance of the obligations contained therein or to transfer the claim to the performance to another party. Examples of such documents include bills of exchange, bills of lading, and promissory notes.

The USMCA and the CPTPP both contain commitments to non-discrimination and aim to ensure a level playing field for domestic and foreign companies in the financial services space. (USMCA, Article 19.4; U.S.-Japan DTA, Article 8; DEPA, Article 3.3; SADEA, ANNEX A, Article 6)

Cooperation on cybersecurity frameworks has been featured in many recent trade agreements, including the DEPA (Article 5.1), SADEA (Annex A, Article 34), USMCA (Article 19.15), and the U.S.-Japan DTA (Article 19).

Access to government data is included in the NZ-UK FTA Chapter 15, Article 15.17. Malaysia is seeking to make e-invoicing mandatory in 2023.

Ensure broader consumer protections in the digital marketplace: This should include protections for privacy and unsolicited communication in the digital marketplace.

Limit civil liability for third-party content: Excessive overreach on the liability of internet platforms for third-party content (with the exception of intellectual property) can have a chilling effect on innovation and is a potential hindrance to new market entrants and SMEs.

Endorse paperless trading: Endorse the validity and acceptance of electronic documents to facilitate customs clearance for cross-border trade and government-private sector coordination through paperless trading and e-invoicing.

Encourage digital transactions to reduce environmental costs: Governments can promote digital transactions as the primary payment method to reduce environmental costs associated with physical payment. Production and the delivery of cash, plastic credit cards, and paper receipts all contain environmental costs during their lifecycle. E-payment serves as an environmental-friendly alternative.

Specific economy concerns include:

Thailand: Thailand has enforced an e-service tax on operators from overseas, which may overlap with similar rules in SEA markets.

The Philippines: A proposed measure to regulate e-commerce transactions, called the Internet Transactions Act, may hinder players in the e-commerce ecosystem, including payment processing systems. Under this act, the Secretary of Trade has the power to forbid all entities from transacting with e-commerce platforms identified as “non-compliant”. The impact of such an order from the Trade Secretary will automatically make payment processing companies liable for any payments processed to these non-compliant platforms.

DIGITAL ECONOMY AND INNOVATION

CONTEXT

Participation of the private sector and civil society in the formulation of governments' digital economy planning and experimentation should be encouraged, along with member governments, to embrace digital innovation as an engine for digital growth.

RECOMMENDATION

Consider frameworks to streamline, standardize, and align the lines of communication across multiple stakeholders. This could be beneficial in the Indonesian context as the government is also trying to reduce various barriers to communication with foreign investors.

Ensure due consideration is given to SMEs in the establishment of rules and frameworks for the digital economy.

Encourage governments to promote digital access and upskilling in Southeast Asia for inclusive digital growth. Regional variations in digital literacy and digital infrastructure development need to be tackled to raise participation in the digital economy and overall adoption of digital payments.

Discourage penalizing alternative work arrangements.

EXAMPLE / REFERENCE

Vietnam: State Bank of Vietnam (SBV) has been actively working with partners from the private sector to promote non-cash payment (e.g., Non-cash Payment Day) and complete a regulatory framework for fintech services (e.g., draft decree prescribing a fintech regulatory sandbox). However, these developments have moved slowly as the government continues to debate internally on the balance between embracing experimentation in digital payments vs. retaining state oversight and control.

Indonesia: There is a considerable level of complexity in communicating with multiple stakeholders in Indonesia that are involved in digital finance, such as the Ministry of Communications and Informatics (MoCI) and Bank Indonesia. There are also other related State actors, like the Ministry of Trade (MoT) and Financial Services Authority (OJK), that also have different approaches to communicating regulatory updates or obtaining industry feedback.

The Philippines: The government enforced policies that required firms within economic zones to adopt a 100 percent return to office policy or face tax incentive cuts.

TRADE FACILITATION – DELIVERY SERVICES

CONTEXT

A draft Delivery Services Annex was included in the TPP and suspended when the U.S. withdrew. It has been held in suspension; therefore, there is some agreement among IPEF members that were also party to TPP negotiations. The new UK-Australia FTA also contains an Express Delivery Services Annex that ensures a level-playing field for express delivery operators by ensuring postal monopolies do not engage in market-distorting practices while allowing the UK and Australia to maintain their universal service obligations.

RECOMMENDATION

The IPEF agreement should require fair, non-discriminatory treatment of delivery service providers by addressing the unique challenges associated with postal operators through the inclusion of a delivery services sectoral annex in the initiative.

The annex can build off the Delivery Services Annex in the USMCA or UK-Australia FTA, but at the least should:

- Prohibit postal operators from cross-subsidizing services in the competitive environment (e.g., courier services) with benefits and revenues derived from non-competitive (i.e., monopoly or market-dominant) services;
- Require that the regulation of delivery services be independent of postal governance;
- Prohibit the assessment of fees or other charges on delivery service suppliers to fund the supply of universal services that are the responsibility of the public postal operator.

EXAMPLE / REFERENCE

Delivery Services Annex in the USMCA or UK-Australia FTA

TRADE FACILITATION – CUSTOMS PROCEDURES AND REGULATORY COOPERATION

CONTEXT

The USMCA provides a model agreement for customs procedures and regulatory cooperation. Customs areas that are a priority and not consistently practiced by IPEF member countries include: online publication, advance rulings, the release of goods, use of information technology, single window, and protection of trader information.

RECOMMENDATION

Introduce and amplify all Chapter 7 requirements of the USMCA, with emphasis on: Article 7.2 Online Publication; Article 7.5 - Advance Rulings; Article 7.7 - Release of Goods; Article 7.9: Use of Information Technology; Article 7.10: Single Window; and Article 7.22: Protection of Trader Information.

Expand the unified entry process based on the "single window" concept for all government partner agencies.

Expand the scope of Authorized Economic Operators (AEOs) to permit mutual recognition across all IPEF members and increase the tangible benefits of AEO certification, including by creating trusted trader programs for individual sellers that do business via trusted e-commerce marketplaces.

Build upon the provision in the USMCA Customs Procedures Chapter to provide "fewer customs formalities" than are required for formal clearance by providing more specific facilitations for these informal entry procedures. Real gains could be made in adopting rules that establish simplified customs procedures to ease the entry requirements for shipments with values above the customs de minimis levels but below a certain formal clearance threshold.

EXAMPLE / REFERENCE

USMCA text Chapter 7

Technical work has taken place within APEC (e.g., the de minimis Pathfinder program) that can and should be further implemented under the auspices of the IPEF.

While the implementation of this provision is still ongoing, an informal clearance regime could include the following features (based on the current U.S. regime):

1. A dollar threshold that countries must periodically revisit;[1]
2. Elimination of the import bond required for formal entries;
3. Lesser paperwork burden, e.g., substantially fewer data elements than formal entries;
4. Immediate liquidation – i.e., the final assessment of any duties, taxes, and fees owed – removing the uncertainty and customer surprise that can come with liquidation for formal entries, which can take approximately one year to complete;
5. No certification of origin requirement for preferential treatment; and
6. Express-style consolidated clearance where duty and tax collection can be done on a periodic, account-based basis.

However, USMCA also included a footnote purportedly giving the U.S. unilateral authority to lower its de minimis level to match that of its trading partners. We do not support that footnote, and it should not be included in any IPEF trade facilitation/ customs text.

[1] The Trans-Pacific Partnership requires revisiting de minimis thresholds.

TRADE FACILITATION AND THE DIGITAL ECONOMY

CONTEXT

Prohibiting data localization and establishing ambitious standards to ensure the free movement of data are key to optimizing supply chains. Establishing modern, high-level standards in the IPEF talks will promote the adoption of these standards worldwide. IPEF can capitalize on the digital services component of the U.S.-Japan trade talks.

RECOMMENDATION

Prohibit the application of customs duties and other discriminatory measures to digital products distributed electronically, such as e-books, videos, music, software, and games.

Avoid unnecessary trade import licenses for imports of digital hardware and software.

Promote data sharing between governments and the private sector on seizures.

EXAMPLE / REFERENCE

U.S.-Japan Trade Agreement (Digital Chapter)

PHARMACEUTICAL PRODUCTS AND MEDICAL DEVICES

CONTEXT

The Korea-U.S. Free Trade Agreement (KORUS) resulted in a specific chapter covering pharmaceutical products and medical devices. The chapter contains the following:

- Principles on facilitating high-quality healthcare and improving access to safe and effective innovative and generic pharmaceutical products, biologics, and medical devices.
- Commitments to ensure fair, reasonable, and non-discriminatory treatment for pharmaceutical products and medical devices.
- Commitments to provide predictability and transparency in the pricing and reimbursement process for pharmaceutical products and medical devices.
- Agreement to adopt, maintain, and enforce measures to promote ethical business practices by prohibiting improper inducements by pharmaceutical product and medical device manufacturers.
- Agreement to establish a Medicines and Medical Devices Working Group for continued dialogue between the United States and Korea on emerging healthcare policy issues.
- Agreement to establish and maintain an independent body to review recommendations or determinations regarding the pricing and

RECOMMENDATION

The IPEF should adopt, as a minimum, provisions contained in the KORUS on access to innovation, transparency, dissemination of information, ethical business practices, and regulatory cooperation.

IPEF members should further reaffirm commitments to TRIPS patent enforcement and patent linkage.

IPEF members should commit to regulatory harmonization with global or International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) standards for pharmaceuticals.

The IPEF should also seek to lower government procurement thresholds and local content rules for pharmaceuticals and medical devices and improve procurement processes. This could include capacity-building for health technology assessments (HTAs) in economies such as Thailand, Indonesia, and Vietnam.

As with other sectors, there should be no specific requirements for data localization, particularly for clinical trial data.

EXAMPLE / REFERENCE

Relevant examples:

- KORUS Chapter 5, Articles 5.2 to 5.6
- ICH Standards

- reimbursement of pharmaceutical products and medical devices.
- The KORUS chapter has provided a level playing field for private sector companies to provide cutting-edge treatments for patients that otherwise may not be available.
- It also does not prevent economies from taking measures to protect the public health of its residents from HIV/AIDS, tuberculosis, malaria, and other epidemics by ensuring access to medicines. The FTA reaffirms each country's commitment to the WTO TRIPS/ Health Declaration.
- The IPEF also provides an opportunity to push for greater regulatory harmonization for the pharmaceutical sector, which can lead to significant positive health outcomes for all economies.
- In addition, the COVID-19 pandemic has underlined that the government procurement rules for healthcare – particularly local content rules – are not suitable for potential health crises. They have hindered the delivery of care to patients and will likely do so again unless a new approach is taken for health going forward.
- Digital technologies are also playing a greater role in healthcare, whether through the use of clinical trial data, patient data, or other proprietary information.

The IPEF should also consider inclusivity in access to medicine and healthcare for indigenous populations, particularly in Australia and New Zealand.

REGULATORY COHERENCE AND STAKEHOLDER ENGAGEMENT

CONTEXT

NTMs can be the result of poor policy development and regulatory incoherence, which can be avoided by following international best practice principles.

For example, in Thailand: A typical period for a public hearing for draft legislation is around 1-2 weeks, which may not be sufficient for legal text translation and contemplation of the provisions.

RECOMMENDATION

Regulators should follow best practice principles. The OECD, for example, has developed significant material on best practices for regulators, particularly on engagement. This could include:

- Focus group discussions and additional engagements with the private sector to discuss proposed new or amended regulatory measures;
- Designating a champion for IPEF public-private partnership collaboration, acting as the PoC for private engagements. Assigning a clear PoC will facilitate coordination work and provision of assistance from the private sector;
- A mechanism to ensure there is non-discrimination in the application of laws and regulations. Discrepancies have been noted in the treatment of foreign entities in Thailand, for example.
- Use of lingua franca: Governments should publish an English translation, alongside the local language version, of new regulations to assist foreign operators and other nations in understanding legal developments.

EXAMPLE / REFERENCE

OECD Guidelines for Regulatory Policy

AGRICULTURE

CONTEXT

Antimicrobial resistance (AMR) is a global health and development threat that requires multisectoral action.

The IPEF provides a new opportunity to undertake specific work on AMR and adopt standards within the agreement.

Countries committed to the Global Action Plan1 (GAP) 2015 on AMR during the 2015 World Health Assembly and committed to developing and implementing multisectoral national action plans.

It was subsequently endorsed by the governing bodies of the Food and Agriculture Organization of the United Nations (FAO) and the World Organisation for Animal Health (OIE).

The WHO is working closely with FAO and OIE in a “One Health” approach to promote best practices to reduce the levels of AMR and slow its development.

RECOMMENDATION

IPEF members should commit to stronger and accelerated collaboration on the adoption of the WHO’s One Health approach to curbing AMR.

HIGH-QUALITY CARBON CREDITS

CONTEXT

Both regulated and voluntary carbon markets (VCMs) need to be scaled to help meet net zero objectives. On the voluntary side, there is considerable scope to scale up VCMs. Several areas of policy could also help in this respect:

Standards: To establish greater trust in VCMs, clear and stringent measurement, reporting, and verification (MRV) standards will be needed. At present, there are challenges with the credibility of existing VCMs in this area due to a lack of common standards. Regulatory intervention is required to set the rules of the market and the MRV standards. Statutory regulation can help drive integrity, especially around issues like conflict of interest, transparency of methodology, data quality, and due diligence processes.

Credits: The heterogeneity of the credits themselves (based on project type, credit type–removal or avoidance, and vintage) and a lack of taxonomy in this area reduce transparency. The absence of a widespread reference index against which credits could be compared and traded also limits market activity.

RECOMMENDATION

Seek to incorporate emerging VCM standards, such as those developed by the TSVCM (below), into the Clean Energy Pillar.

Explore mechanisms to ensure the exportability of carbon credits and protection of host country NDCs.

EXAMPLE / REFERENCE

The Taskforce for Scaling Voluntary Carbon Markets (TSVCM) has developed a detailed series of recommendations, which include:

- Addressing MRV issues by establishing a threshold quality criterion and a taxonomy of attributes for carbon credits;
- Introducing standardized spot and futures contracts to allow trading at scale;
- Establishing principles on the use of offsetting to guide corporations in using carbon credits;
- Establishing legal and accounting frameworks (such as standard documentation, financial accounting frameworks, and carbon reporting mechanisms) to allow the market to scale;
- Taking AML/KYC best practices and tailoring them to a VCM context;
- Increasing consumer awareness via product labeling and carbon credit literacy.

As well as ensuring the quality of credits, ensuring their exportability in a way that provides certainty to the purchaser while also protecting the country's Nationally Determined Contribution in which the credit is generated are two key elements to the viability of carbon trading.

TAXONOMIES AND DISCLOSURE FRAMEWORKS

CONTEXT

Sustainable taxonomies are critical to helping investors identify sustainable activities across borders. Many IPEF countries, including Australia, Singapore, Thailand, and India, are designing these taxonomies to provide clarity and help mobilize investment.

The risk, however, is that this proliferation in standards is difficult for investors, global corporations, and financial institutions to apply classifications across jurisdictions. The corollary is a fragmentation risk that could inhibit investment and growth rather than drive it, as investors apply the highest common standard (likely that established by the EU).

Similar to the taxonomy issue, there is a need for frameworks that require greater levels of disclosure at the company level to help price and manage risk across jurisdictions.

It is critical that the information provided is credible and usable and does not create greenwashing risks. Therefore, standardization of disclosures is very important.

RECOMMENDATION

Explore ways in which the Clean Energy Pillar can provide recognition/equivalence procedures for existing cross-jurisdictional standards around classification and disclosure.

EXAMPLE / REFERENCE

ASEAN Taxonomy Board's *ASEAN Taxonomy* Version 1 provides a principles-based foundation framework to assess activities and a plus standard for further benchmarking.

Emerging sustainable taxonomy frameworks in Singapore, Japan, India, Thailand, etc.

The Taskforce for Climate-Related Financial Disclosures is an emerging international standard adopted by more than 1,600 companies and organizations globally. Several IPEF jurisdictions are making TCFD-aligned reporting mandatory, including the U.S., Japan, and Singapore.

The International Sustainability Standards Board is developing a disclosure framework that will likely be an important global reference point, including for IPEF jurisdictions.

DECARBONIZATION STANDARDS

CONTEXT

The private sector has also developed decarbonization standards for financing hard-to-abate sectors. By establishing global frameworks for assessing and disclosing the climate alignment of portfolios in specific industries, these self-governing agreements are assisting transition efforts in the shipping and steel sectors.

RECOMMENDATION

Explore incorporation of/reference to sectoral standards in the Clean Energy Pillar.

EXAMPLE / REFERENCE

Poseidon Principles for financing in the shipping sector

Sustainable STEEL principles were launched in September 2022, inspired by the Poseidon Principles and allowing banks to measure the climate alignment of their steel lending portfolios and ensure that climate considerations are incorporated into the lending decisions of participating financial institutions, consistent with commitments made by the Net Zero Banking Alliance.

Glasgow Financial Alliance for Net-zero: Net Zero Transition Plan framework

International Capital Market Association Green Bond Principles