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Dispute Settlement-It's What's for Dinner:
A Menu for Dispute Settlement in the Asia Pacific Region

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20 December 2022

In May 2022 the Biden Administration launched negotiations with thirteen countries throughout the Asia Pacific region on, what it described as, a new type of trade and economic agreement called the Indo-Pacific Economic Framework for Prosperity (IPEF). The first formal negotiating round took place 10-15 December 2022 in Brisbane, Australia and the next round has just been announced for 8-11 February 2023 in India. While the Administration has also launched a similar trade and economic initiative in the Americans called the Americas Partnership for Economic Prosperity (APEP), as well as a bilateral negotiation with Taiwan called the U.S. – Taiwan Initiative on 21st Century Trade, IPEF is the Administration's first major trade-related initiative and its provisions are likely to serve as a blueprint for APEP and any other future trade negotiations.

In addition to being broader in scope than an traditional trade agreement (IPEF's negotiating mandate covers trade, supply chains, climate and anticorruption) another key feature that distinguishes IPEF from other traditional trade agreements is the Administration's decision to not negotiate tariff reductions—or traditional market access commitments. While the Administration has said that the broad set of commitments in IPEF will be "enforceable", traditional trade agreements use dispute settlement mechanisms and the threat of the removal of tariff concessions, specifically, as leverage to enforce commitments. With no tariff concessions at play, the Administration faces the novel task of developing a new type of enforcement mechanism for IPEF – one that will look and operate differently from traditional dispute settlement under existing U.S. trade deals.

To explore where the Biden Administration could go in creating a new enforcement tool, this article reviews the evolution of dispute settlement provisions in recent major trade agreements in the Asia-Pacific. Until recently, there had been very few State v. State disputes brought under bilateral or regional trade agreements, with nearly all such disputes occurring at the World Trade Organization (WTO). However, with WTO dispute settlement in decline due to the collapse of the Appellate Body, the lack of progress in negotiating new modern commitments, and the rise of binding dispute settlement in trade agreements like the U.S.-Mexico-Canada Agreement (USMCA), we expect countries to increasingly exercise their rights to resolve disputes through other bilateral and regional trade deals. Analogously, we would expect that IPEF countries will seek to resolve IPEF-related disputes using IPEF's new enforcement mechanism. This article

[1] The authors gratefully acknowledge the assistance of Lyric Perot and Feven Yohannes, 2022 Summer Associates at Hogan Lovells.

explores how IPEF parties could create a mechanism that would both encourage compliance and discourage countries from breaking the rules using non-traditional tools.

To serve as a backdrop to IPEF, this article begins by reviewing the WTO dispute settlement mechanism, which for decades served as the premiere dispute settlement forum for trading partners. It then provides more background in the IPEF initiative before turning to other examples of dispute settlement mechanisms in the Asia-Pacific region, including the binding dispute mechanisms in the U.S.-Canada-Mexico Agreement (USMCA) negotiated by the Trump Administration and currently being enforced by the Biden Administration; the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) negotiated by the Obama Administration (but never enacted by the United States); and the Regional Comprehensive Economic Partnership (RCEP) negotiated by China, Japan, Korea, the Association of Southeast Asian Nations (ASEAN) countries, and others in the region (for which the U.S. is not a party). We also examine the U.S.-China Phase One Deal negotiated by the Trump Administration, which does not contain a traditional binding and enforceable dispute settlement mechanism, but provides a possible alternative example for addressing disputes under IPEF. We outline the key aspects of those agreements' dispute settlement provisions in this article.

WTO Dispute Settlement

Since the WTO's inception on 1 January, 1995, the WTO's binding dispute settlement mechanism served as the pre-eminent forum for settling trade disputes. Historically, the WTO dispute settlement system served as arguably the most enforceable system for settling disputes under international law. While it is difficult to measure compliance, in the overwhelming number of cases where a report was issued and adopted by the WTO's dispute settlement body (DSB) countries who were found to be violating WTO rules largely complied. To date, WTO Members (which are States or collections of States such as the European Union, but not private parties) have referred more than 600 disputes through requests for consultations, with more than 100 WTO Members participating in at least one dispute.[2]

The WTO has a multi-stage dispute settlement process. If disputes are not resolved through consultations, upon a WTO Member's request the dispute is referred to a three-person panel which hears the dispute and produces a report to decide upon the issues before it. The parties to the dispute then have the right to appeal the panel's legal determinations to the standing seven-person Appellate Body. A three-member division of the Appellate Body hears and decides upon the appeal. If parties do not come into conformity with a panel determination (and if relevant, an Appellate Body determination), the victorious party can bring the dispute before a compliance panel. The parties can also settle the dispute at any time through a mutually-agreed solution. Third party WTO Members have the right to participate in the disputes, but private parties have much

[2] *See Dispute settlement activity – some figures*, World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm#:~:text=Between%20the%20entry%20into%20force,in%20at%20least%20one%20dispute.

more limited rights to submit their views to the panel and Appellate Body and do not have the right to bring cases themselves. If the losing WTO Member still refuses to resolve the dispute, the victorious party can request trade compensation up to the amount of harm it has suffered, and withdraw trade concessions up to that level of harm.

Concerns over the WTO dispute settlement system can be traced back to the Obama Administration's decision to block the reappointment of one Appellate Body Member in 2016 based on longstanding U.S. concerns that the Appellate Body was engaging in "judicial activism." The Trump Administration, which shared the same concerns, took it a step further by blocking the appointment and reappointment of additional Appellate Body Members. The block, which continues today, eventually resulted in the collapse of the functioning of the Appellate Body, which means that there is currently no operational second level of review in the WTO dispute settlement system. Without an Appellate Body, countries can still bring a dispute through the panel phase, but a losing party can now opt to "appeal into the void," which leaves the complaining party with no legal recourse. Some countries have adopted an alternative appellate mechanism called the Multiparty Interim Appeal Arbitration Arrangement (MPIA), which allows for cases to continue past the panel stage, but not every country has signed up and there are still efforts in Geneva to formally resurrect the Appellate Body, although doing so will require consensus from all WTO Members.

For now, most WTO members believe that the dispute settlement system has been weakened, which is partly a result of the Appellate Body crisis and partly due to the fact that WTO rules don't cover some modern trade issues – all of which has driven some countries to bring disputes under bilateral and regional trade deals instead. For all these reasons disputes settlement provisions contained in trade and investment agreements outside of the WTO system have become more important than ever.

Indo Pacific Economic Framework (IPEF)

The IPEF is an economic framework agreement that aims to strengthen U.S. and Indo-Pacific ties between its 14 partners: Australia, Brunei, Fiji, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Vietnam, and the United States. U.S. foreign direct investment in the region amounted to over $969 billion in 2020 and continually grows.[3] Implementation of a trade framework such as the IPEF is projected to generate over three million U.S. jobs, global growth, and foreign direct investment.[4] Negotiations were launched in May 2022 and the first formal negotiating round took place this month in Brisbane, Australia.

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3 *See FACT SHEET: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity*, White House (23 May 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/./

4 *Id.*

The parties have sets forth four key pillars of the IPEF:[5]

(1) A connected economy. Trade partners will work to improve interconnectedness in the digital economy by addressing issues related to privacy, labor and environmental standards, and corporate accountability.
(2) A resilient economy. The framework intends to improve supply chain commitments by establishing an early warning system, mapping mineral supply chains, and improving traceability and diversification efforts.
(3) A clean economy. The framework will focus on improving clean energy usage and the climate crisis.
(4) A fair economy. The framework aims to enforce the tax, anti-money laundering, and anti-bribery regimes aligned with UN standards.

Unlike most prior U.S. trade agreements, IPEF will not include tariff reductions or traditional market access commitments. Rather, the Biden Administration has characterized IPEF as a much broader initiative where trade serves as one pillar, alongside supply chains, climate, and anticorruption pillars. U.S. Trade Representative (USTR) Katherine Tai stated that the IPEF is a dispute settlement mechanism that "goes into more cooperative modes and is looking at holding accountable not just the other country but also what is happening within the economic ecosystem and whether or not the participants . . . are abiding by the requirements and expectations of the agreement itself."[6] USTR Tai has signaled the goal of a more cooperative dispute mechanism that creates an "incentive structure and try to create a couple that are powerful enough . . . [to] create incentives both through sticks, but also with carrots."[7] When asked about U.S. settlement mechanisms setting precedent for trade outside of North America, the U.S. Trade Representative Tai said that "no matter how high you dial the standards, no matter how modern the rules that you've brought in, if you can't enforce them, then really it's not worth very much."[8] Deputy U.S. Trade Representative Sarah Bianchi said the agreement is "high-ambition and high-standards."[9] However, it is still unclear whether IPEF will adopt binding dispute settlement to enforce the agreement or create a novel mechanism all together.

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5 *See On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework*, White House (23 May 2022), https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework/; *Statement on Indo-Pacific Economic Framework for Prosperity*, White House, (23 May 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/statement-on-indo-pacific-economic-framework-for-prosperity/.

6 *U.S. Trade Representative Tai on Indo-Pacific Economic Framework*, C-SPAN at 00:16:22 (6 Jun 2022, 2:11pm) https://www.c-span.org/video/?520750-1/us-trade-representative-tai-discusses-indo-pacific-economic-framework.

7 *U.S. Trade Representative Tai on Indo-Pacific Economic Framework*, C-SPAN at 00:18:18 (6 Jun 2022) https://www.c-span.org/video/?520750-1/us-trade-representative-tai-discusses-indo-pacific-economic-framework.

8 Simon Lester, *Katherine Tai on Enforcing Trade Agreements*, International Economic Law and Policy Blog (11 Oct. 2022), https://ielp.worldtradelaw.net/2022/10/katherine-tai-on-enforcing-trade-agreements.html

9 *Deputy U.S. Trade Representative Sarah Bianchi,* The Nation Thailand, at 1:50 (1 June 2022) https://m.facebook.com/TheNationThailand/videos/ipef-framework-for-stronger-more-inclusive-ties-in-se-asia/596910931490297/.

U.S.-Mexico-Canada Agreement (USMCA)

The United States-Mexico-Canada Agreement (USMCA) is a comprehensive international trade and investment agreement which updates and modernizes the legacy North American Free Trade Agreement (NAFTA). USMCA negotiations were led by the United States during the Trump Administration and entered into force in July 2020. Hogan Lovells has handled several disputes under USMCA since its enactment, including a State v. State dispute involving solar panels from Canada which was resolved with a removal of tariffs on imports from Canada and multiple disputes involving petitions under the novel Rapid Response Labor Mechanism.

USMCA made several changes to the prior dispute settlement structure contained in NAFTA. Although NAFTA contained its own State v. State dispute settlement mechanism, it was rarely used. USMCA in its Chapter 31 State v. State dispute settlement chapter closed the loophole that existed in NAFTA which had allowed NAFTA Parties to block panelist appointments. Under the USMCA, the Parties are required to appoint a roster of candidates who could act as panelists. The roster is established by each Party appointing ten individuals, ideally through consensus, but if that is not feasible then merely through designation. A panel in any given case will be comprised of five panelists, although the Parties may agree to only three panelists. Each Party is responsible for selecting two panelists with the nationality of the other Party, and the Parties will endeavor to agree on the chair of the panel within 15 days of the request to establish a panel. If the Parties cannot agree, then one Party chosen by lot will be responsible for choosing a chair who is not a national of their Party. If any Party does not select panelists within 15 days of the selection of the chair, the panelists will be selected by lot from among the roster members who are nationals of the other Party. Because USMCA includes provisions addressing what happens when one Party fails to appoint a panelist or agree to a chair, no Party is able to block panelist appointments from occurring, unlike what existed in NAFTA.

USMCA also contains a unique international dispute settlement system that allows aggrieved parties in domestic antidumping and countervailing duty (AD/CVD) proceedings to bypass the domestic court appeal systems and adjudicate their appeals before binational panels formed under the USMCA. Appeals of AD/CVD measures under the trade remedies chapter in USMCA (Chapter 10) are treated virtually the same as previously under nearly identical commitments that were contained in NAFTA Chapter 19. In particular, no specific improvements were made to the panel formation process, which depends on the good will of the parties to nominate the panelists promptly and objectively. This lack of efficient procedural rules for appointing panelists has resulted in significant delays in past cases, for example in the Softwood Lumber dispute between the United States and Canada.

USMCA also contains a new form of dispute settlement not previously found in any trade agreement: The Rapid Response Labor Mechanism (RRLM). This innovation allows parties to bring fast and targeted disputes under the Labor Chapter of USMCA. The Rapid Response Labor Mechanism exists to ensure the "remediation of a Denial of Rights… for workers at a Covered

Facility." In other words, the Mechanism applies when one Party has a good faith basis belief that workers at a facility that creates products or services traded with or in competition with the other Party are being denied the right of free association and collective bargaining. This new tool also gives an impacted stakeholder the right to raise violations that could give way to a State v. State dispute. However, the facility, or company, that is at issue in the investigation has no formal direct rights in the proceeding. Rather it is the government, not the company, that is the party to the case.

This dispute settlement process under the RRLM has specific rules of procedure, including panel selection. The process requires the respondent Party to conduct a review and remedy any violations within 45 days of the complainant Party's request. If the complainant Party is unsatisfied with the outcome of the review or the measures taken to remedy the violation, they may request a special panel comprised of labor panelists. This panel will then proceed to verify the respondent Party's review and determination and will make a decision within 30 days. If the panel finds there has been a violation, the complainant Party can impose proportional remedies with five days written notice until the respondent Party takes appropriate action, determined either through agreement or panel decision. The Rapid Response Labor Mechanism thus allows a complainant Party to impose proportional remedies very quickly after a violation has occurred. This is consistent with the U.S. Trade Representative comments that "one of our highest priorities is making sure that the spirit and the letter of the USMCA are preserved and that we are investing in ensuring that the USMCA is meaningful."[10] Hogan Lovells is the leading firm in North America for advising and representing companies impacted by the RRLM. We previously provided details on these innovative dispute settlement provisions here.

Investor-State Dispute Settlement (ISDS) under USMCA is more limited than in prior U.S. agreements, including NAFTA. Canada has opted out of ISDS entirely. ISDS brought by a U.S. investor in Mexico, or by a Mexican investor in the United States, allows investors to bring claims for expropriation and discrimination, but not claims under other substantive protections such as fair and equitable treatment. There are also additional procedural hurdles to bringing ISDS claims, including that claimants must first seek resolution in domestic courts for at least 30 months. However, the USMCA broadens dispute settlement rights for government contracts related to certain sectors. These sectors include: (1) activities with respect to oil and natural gas; (2) the supply of power generation services to the public; (3) the supply of telecommunications services to the public; (4) the supply of transportation services to the public; and (5) the ownership or management of roads, railways, bridges, or canals that are not for the exclusive or predominant use and benefit of the government of the U.S. or Mexico. For these sectors, if investors have a contract with the host government, they can bring broader claims, including for fair and equitable treatment. In addition, these investors are not required to first submit to domestic courts before commencing arbitration. More details on the USMCA investment chapter are available here.

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[10] Simon Lester, *Katherine Tai on Enforcing Trade Agreements*, International Economic Law and Policy Blog (11 Oct. 2022), https://ielp.worldtradelaw.net/2022/10/katherine-tai-on-enforcing-trade-agreements.html

ISDS under NAFTA will expire on 1 July 2023. Investors wishing to take advantage of the more investor-friendly ISDS provisions under NAFTA should assess their rights prior to this expiration date, as discussed in further detail here.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a trade agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Vietnam. CPTPP does not include the United States, despite the United States having led the negotiations of the nearly identical Trans-Pacific Partnership (TPP) Agreement. While the United States signed the original TPP, the Obama Administration never formally submitted the agreement to Congress, and following his inauguration President Trump formally withdrew the U.S. signature from the TPP.[11] After U.S. withdrawal, the remaining 11 signatories created a revised version (pairing back certain IP, labor and other provision) and renamed it the CPTPP, which entered into force on 30 December 2018. Despite the United States never enacting it, CPTPP provides the example of U.S. trade agreement negotiating goals at the time of the Obama Administration, particularly with respect to dispute settlement, which remained unchanged in CPTPP.

On State vs. State dispute settlement, CPTPP has a similar structure to USMCA. The Parties must establish a roster of at least 15 individuals, and if they fail to do so, the decision-making body of CPTPP would create it for them. Such a roster was not agreed upon, and therefore the decision-making body of CPTPP agreed to one on 9 October 2019. Panels on any given case are composed of three members, with each Party appointing one panelist and the third panelist agreed upon by both parties. If the parties cannot agree to a third panelist, the two chosen panelists will pick the third from the roster. If they fail to agree, the process moves to a random selection from the roster for the third panelist. If the respondent Party fails to appoint a panelist at the outset, the complainant Party is allowed to appoint the panelist from the respondent Party's list. If there is no list, they can select from the roster of panel chairs, or if there is no roster of panel chairs, the panelist will be chosen by random selection from a list of three candidates nominated by the complaining Party. Thus, just like USMCA, no Party in CPTPP has the ability to block a panel appointment.

One unique aspect of CPTPP State vs. State dispute settlement process is that it allows for monetary compensation as an enforcement mechanism. If a panel determines that a Party violated the CPTPP, the respondent Party may choose to pay a monetary assessment in place of the complaining Party suspending equivalent benefits. If the Parties cannot agree on the monetary assessment, the amount of assessment will be set at a level equal to 50% of the level of the benefits

[11] *See Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement*, White House (23 Jan. 2017), https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific-partnership-negotiations-agreement/.

the panel determined to be equivalent (or if they have made no such determination, 50% of the level the complaining Party proposed to suspend).

CPTPP contains a traditional ISDS mechanism which guarantee investors protections for national treatment, most-favored nation, fair and equitable treatment, protection against performance requirements, and direct or indirect expropriation. However, some chapters, such as investment agreements between investors and a central government authority (such as relating to natural resources or infrastructure projects) are exempt from the ISDS mechanisms included in CPTPP.

Regional Comprehensive Economic Partnership (RCEP)

Beginning in 2013, Indonesia's Ministry of Trade and the Association of Southeast Asian Nations (ASEAN) Secretariat led negotiations for the RCEP among 15 Asia-Pacific countries including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam, Australia, China, Japan, New Zealand, and Republic of Korea. RCEP is a trade agreement aiming to create a comprehensive economic partnership among the ASEAN and its partners. RCEP is a broad agreement covering areas including trade in goods and services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement, e-commerce, and small and medium enterprises (SMEs). RCEP was signed in November 2020 and entered into force for many of the RCEP countries starting in early 2022.

Regarding State v. State dispute settlement, any Party may request consultations. Parties first consult about a composition procedure. Then, each Party to a dispute appoints a panelist. All Parties must jointly agree on the appointment of the third panelist, the Chair. If they cannot agree, the WTO Director-General may appoint the Chair. If unavailable, the Secretary-General of the Permanent Court of Arbitration may appoint the Chair. The Chair should have previously served on a WTO panel or the Appellate Body. Unless Parties to the dispute otherwise disagree, the Chair should not be a national of any disputing Party or Third Party or have their usual place of residence in any Party to the dispute. Panelists must: (1) have experience in law; (2) have experience in international trade; (3) have experience in other matters covered by the Agreement; (4) remain independent; (5) have no involvement with the matter at issue; (6) comply with the code of conduct; and (7) serve in their capacity and not as a government or organization representative. The findings and determinations of a panel are final and binding. If the Responding Party fails to comply with this order, the complainant party can initiate a compliance review, which results in payment of compensation by the respondent party to the Complaining Party or, if compensation is not agreed by the disputing parties, the Complaining Party may suspend concessions given to the Responding Party. Both options are temporary measures and are not preferable to complying with obligations.

ISDS is not currently available in RCEP. Under RCEP Article 10.18, the parties agreed that ISDS will be discussed within two years following the date of entry into force, where ISDS

discussions are aimed to conclude three years after commencement of those discussions (potentially as soon as 2027, but still uncertain).

Overall, RCEP may strengthen China's relations with neighboring countries and improve trade relations as the largest global trade deal, but the benefits may take significant time to manifest. We previously provided details on RCEP here.

U.S. – China Phase One Deal

The U.S. – China Phase One trade deal is an agreement includes both significant purchasing commitments by China as well as structural changes to China's trade and economic scheme in the following areas: intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange.

While there is a section on dispute settlement the Phase One agreement's dispute settlement mechanism unique compared with USMCA, CPTPP, or RCEP. There are no provisions for neutral arbitrators to issue dispute rulings. Rather, disputes are intended to be resolved entirely between the two parties, without the involvement of any third parties.

To begin, the Complaining Party can submit an appeal to the Bilateral Evaluation and Dispute Resolution of the Party Complained Against. The U.S. Bilateral Evaluation and Dispute Resolution office is headed by a designated Deputy U.S. Trade Representative, and for China the Office shall be led by a designated Vice Minister under the designated Vice Premier.

The arrangement establishes bilateral consultations at the principal and working levels. Once a dispute is raised, the Complained Against Party has 10 days from the receipt of an appeal to carry out and complete an assessment. Designated officials have 21 calendar days from the receipt of an appeal to reach a resolution. If an appeal is not resolved, the designated Vice Minister and Deputy U.S. Trade Representative have 45 calendar days from the receipt of the appeal to reach a resolution. If a resolution is still not resolved, the Vice Premier and U.S. Trade Representative must have a meeting within 30 calendar days of a Complaining Party requesting a meeting. If concerns of the Complaining Party are not resolved in a meeting, the parties should engage in expedited consultations in the response to the damages incurred by Complaining Party.

If the Parties reach a consensus, the response will be implemented. Likewise, if the offices fail to reach a conclusion, the Bilateral Evaluation and Dispute Resolution Offices shall: (a) assess specific issues relating to implementation of this Agreement, (b) receive complaints regarding implementation submitted by either Party, and (c) attempt to resolve disputes through consultations. Ultimately, if the Complaining Party achieves no resolution, a remedial measure such as suspending an obligation under the Agreement may be applied or a Party may choose to cancel the agreement altogether.

Conclusion

There are several approaches to dispute settlement in trade agreements. Each approach has benefits and costs for both countries and companies trading and investing in the Asia Pacific region. Interested parties should carefully consider their rights when creating, expanding, and/or changing trade and investment structures and supply chains in the regions to best protect their interests.

Each of the agreements reviewed, above, contain some form of mechanism to resolve the dispute with the threat of tariffs or other sanctions for countries (or facilities in the case of the RRLM) that fail to comply. How IPEF will handle dispute settlement without the use of tariffs remains an interesting dilemma for the Biden Administration and IPEF countries to resolve. On the one hand, Deputy U.S. Trade Representative Sarah Bianchi has said that IPEF will include "binding commitments" – on the other, there are scarce examples of an effective binding State-to-State dispute settlement mechanism without the threat of retaliatory tariffs. The Biden Administration has been clear that it does not want to include tariff commitments in the IPEF framework, but does that mean that all trade-related sanctions or penalties are off the table?

One recent U.S. approach is the China Phase One Deal, where one of the remedies is simply for the United States to pull out of the agreement. While this could serve as an example for the Administration it's also hard to see the Biden Administration adopting an approach the involves either the United States or another country completely withdrawing from the agreement in the event a country fails to comply with a single commitment. It's also not clear whether the IPEF countries will opt to have formal dispute settlement mechanism that involves third party arbitrators or, if they did, what "stick" would be involved with a formal finding of non-compliance. Ultimately, whether IPEF is truly binding will depend on what the substantive commitments are ultimately in the agreement and whether, in USTR Tai's words, the "incentives both through sticks, but also with carrots" are sufficiently attractive (or threatening) to incentivize compliance. In other words, the benefits of the agreement must be so significant that an IPEF country will not want to lose them.

In terms or procedural mechanism for resolving disputes, where one country claims that another country has violated the rules and the other disagrees, most models to-date involve resorting to independent arbitrators and panelists. The exception is the Phase One deal, which was self-judging between the two parties—the United States and China. Whether the Administration and other IPEF countries will agree to a formal mechanism involving third party arbitrators or will stick with a realpolitik form of adjudicating the merits of alleged violations remains to be seen. This, too, may depend on the depth of substantive commitments and whether or not the benefits of the agreement are worth the resources to set up a new form of international adjudication – but the process itself certainly will be the subject of ongoing negotiations.

Finally, the Biden Administration has signaled its interest in taking the IPEF framework to other regions of the world. It recently announced the launch of APEP at the Summit of the Americas which USTR Tai stated will aim to build upon existing trade agreements and arrangements in the region.[12] IPEF will mostly likely serve as the blueprint not just in substantive commitments but also procedural enforceability, including whether the commitments are in fact binding and enforceable. As U.S. Trade Representative Tai recently said, "the credibility of a trading system, whether it's regional or multilateral, really goes to whether or not the rules are enforceable. Otherwise, the rules are just words on a page."[13]

[12] *See FACT SHEET: President Biden Announced the Americas Partnership for Economic Prosperity*, White House (8 June 2022), https://insidetrade.com/sites/insidetrade.com/files/documents/2022/jun/wto2022_0382a.pdf.; *Tai: APEP will build on existing trade ties, feature multiple pillars*, Inside U.S. Trade (23 Aug. 2022), https://insidetrade.com/daily-news/tai-apep-will-build-existing-trade-ties-feature-multiple-pillars.

[13] *See* Simon Lester, *Katherine Tai on Enforcing Trade Agreements*, International Economic Law and Policy Blog (11 Oct. 2022), https://ielp.worldtradelaw.net/2022/10/katherine-tai-on-enforcing-trade-agreements.html