

US Opens New Trade Forum As Questions Swirl Over Scope

By **Alex Lawson**

Law360 (May 23, 2022, 6:24 PM EDT) -- After a year-and-a-half of calls to launch new trade talks, the Biden administration began laying the groundwork for a deal in the Indo-Pacific Monday, but the arrangement's nebulous structure has already generated debate about its scope and viability.

In a joint statement, President Joe Biden and the leaders of 12 other nations unveiled the Indo-Pacific Economic Framework for Prosperity, a sweeping engagement effort that looks to include new commitments on trade, supply chains, clean energy, tax and anti-corruption.

But the leaders framed the effort as a preliminary step in a potentially involved process, saying they were beginning "collective discussions toward future negotiations."

That led to a cold reception among Republicans, who have led the call for Biden to continue meaningful trade talks with partners like the U.K., Kenya and others, which were in the works when he took office but have effectively been put on ice.

"The Indo-Pacific Economic Framework is a strong opportunity for the United States to raise standards and open markets for American-made products and services, but the administration's current plan isn't nearly ambitious enough," Rep. Kevin Brady of Texas, the House Ways and Means Committee's Republican leader, and trade subcommittee ranking member Rep. Adrian Smith, R-Neb., said in a statement Monday.

Thus far, the administration has made no effort to renew Trade Promotion Authority, a key tool looping Congress into the negotiating process in exchange for speedy votes on completed deals, but it may do so later if the effort gains steam.

Materials circulated by the U.S. and other IPEF countries — Australia, Brunei, India, Indonesia, Japan, South Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand and Vietnam — list a broad range of pressing trade issue areas they intend to tackle in the coming months and potentially years.

It remains to be seen, though, whether those areas will be addressed with new "high-standard rules of the road" as the countries said in their statement, or through new channels of dialogue similar to the U.S.-EU Trade and Technology Council, which is aimed at enhancing cooperation.

The trade section of the effort seems to prioritize the broad category of "digital trade," which itself encompasses a host of sub-areas like cross-border data flows, data localization, online piracy and

expanding e-commerce opportunities to smaller companies, according to a White House fact sheet.

Former Trump and Obama administration trade official Kelly Ann Shaw, now with Hogan Lovells LLP, told Law360 that there are more questions than answers about the realistic possibilities of the forum at this point.

"While IPEF has the potential to be significant — and I agree with the idea of broadening it beyond the scope of a traditional trade agreement — at the same time it's difficult to envision how to negotiate high-standard binding commitments without putting any market access on the table at all," Shaw told Law360 on Monday.

U.S. trade policy in the region has been somewhat adrift ever since former President Donald Trump pulled the U.S. out of the Trans-Pacific Partnership, a sweeping trade deal completed during the Obama administration. The remaining TPP countries have since enacted the deal without the U.S., leading calls for Washington to rejoin the massive accord as a counter to China.

That strategy has thus far not developed and the Biden administration now appears to be forging its own path. The IPEF includes many countries that are also in the TPP, but five large economies that are not — India, Indonesia, Thailand, the Philippines and Korea.

Crowell & Moring LLP partner Robert Holleyman, who served as deputy U.S. trade representative in the Obama administration, said that while IPEF is not a typical trade deal, he saw it "well-suited" for the current policy environment.

"From a U.S. perspective, it will be politically viable at home — in a way that a binding multiparty trade agreement would not be, while providing a framework for further U.S. economic integration in the Indo-Pacific and raising standards through the U.S. presence and engagement," Holleyman told Law360 on Monday.

The IPEF, like the TPP before it, has been at least partially sold as a means of putting an indirect check on China's growing regional influence in the wake of its own massive accord, the Regional Comprehensive Economic Partnership, taking effect this year.

But the U.S. is also still honing its approach toward China directly, and both those policies and regional initiatives like the IPEF will have to coexist.

Former Trump administration USTR official Jamieson Greer, now a King & Spalding LLP partner, pointed out that the administration is reviewing the Trump-era tariffs on more than \$300 billion worth of Chinese goods and any decision to peel them back could chip away at any gains the U.S. tries to make elsewhere.

"The net result of the removal of Section 301 tariffs would be to shift those supply chains back to China after over three years of steady movement to other Asian countries, which would seem to be the opposite of what IPEF is intended to do," Greer told Law360 on Monday.

--Editing by Janice Carter Brown.