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# DIGITAL TRADE AGREEMENTS IN ASIA AND THE PACIFIC



**NEXTRADE GROUP**  
World trade is changing. Are you?



**The Asia Foundation**

# Digital Trade and Digital Economy Agreements in Asia and the Pacific



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## Glossary

ADB	Asian Development Bank
AI	Artificial Intelligence
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CBPR	Global Cross-Border Privacy Rules
CSAP	Korea Cloud Security Assurance Program, requires the use of local data centers for a range of cloud services
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DEA	Digital Economy Agreement
DEFA	ASEAN Digital Economy Framework Agreement
DFFT	Japan's Data Free Flow with Trust
DigiSRII	UNESCAP's Digital and Sustainable Regional Integration Index
Digital trade	Digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered
DMA	Digital Markets Act
DTA	Digital Trade Agreement
ESCAP	UN Economic and Social Commission for Asia and the Pacific
FTA	Free Trade Agreement
FTAAP	Free Trade Agreement of the Asia-Pacific
FTC	U.S. Federal Trade Commission
ICT	Information and communications technology
IEC	International Electrotechnical Commission
IPEF	Indo-Pacific Economic Framework Agreement
ISO	International Organization for Standardization
ITU	International Telecommunication Union
JSI	World Trade Organization's Joint Statements Initiative
KFTC	Korean Fair-Trade Commission
FSC	Korean Financial Supervisory Commission

KORUS	Korea-U.S. Free Trade Agreement
LDC	Least Developed Countries
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Co-operation and Development
RCEP	Regional Comprehensive Economic Partnership
RDTII	Regional Digital Trade Integration Index assesses regional policy environment for digital trade and investment
SIDS	Small Island Developing States
SME	Small and medium sized enterprise
TCTP	WTO Third Country Training Program supports developing Members' participation JSI negotiations
TPP	Trans-Pacific Partnership
UNCTAD	United Nations Conference on Trade and Development
IGNITE	USAID project: Inclusive Growth In ASEAN Through Innovation, Trade And E-Commerce
USMCA	United States-Mexico-Canada Agreement
World Bank DATA Fund	Digital Advisory and Trade Assistance Fund; helps countries adopt policies and regulations to enhance digital trade
WTO	World Trade Organization

## Summary

Digital trade agreements (DTAs) set trade rules and economic collaboration in the digital economy, and the economies in Asia and the Pacific have been the key architects of trade rules for the digital era. DTAs also establish the minimum framework in which data and transactions are performed digitally between two or more economies. For example, for consumers and small and medium enterprises (SMEs), these agreements enhance data protection measures and enable access to new markets.

Countries in the region have formed both digital trade agreements that seek to promote digital trade flows among the members, and “DTA+” agreements, or so-called digital economy agreements (DEAs) that expand the scope of regulations in DTAs and promote digital interoperability among partner countries.

Regional economies have also collaborated via large-scale “mega-agreements” such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP) that include e-commerce chapters in a broader traditional trade agreement with disciplines on goods, services, investment, and such areas as intellectual property protection and competition policy. These agreements with digital trade provisions are overlaid on an intricate network (so-called “*noodle bowl*”) of over 220 signed and ratified traditional preferential trade agreements that have an Asia-Pacific member.

This document reviews the existing landscape of digital trade and digital economy agreements in Asia-Pacific. Section one describes the coverage of the provisions of the DTAs and DEAs up to the data collection date (October 2023). The comparison describes the different features of this complex network of agreements, including nearly cross-cutting and binding issues such as the ban on data localization, and recent non-binding emerging topics such as AI governance. The analysis considers the following agreements:

- ASEAN-Australia-New Zealand Free Trade Area AANZFTA
- Korea-United States Free Trade Agreement
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- United States-Mexico-Canada Agreement (USMCA)
- U.S.-Japan Digital Trade Agreement
- Singapore-Australia Digital Economy Agreement (SADEA)
- Digital Economy Partnership Agreement (DEPA)
- ASEAN Agreement on Electronic Commerce

- Regional Comprehensive Economic Partnership (RCEP)
- United Kingdom-Singapore Digital Economy Agreement (UKSDEA)
- Korea-Singapore Digital Partnership Agreement (KSDPA)
- EU-New Zealand Free Trade Agreement
- Australia-UK Free Trade Agreement
- UK-New Zealand Free Trade Agreement

Section two succinctly describes the impacts and the implementation of DTAs and DEAs. The results suggest that DTAs and DEAs promote trade in digitally deliverable services more than traditional FTAs. Additionally, CPTPP-style “Super-FTAs” or agreements with digital trade chapters drive trade and especially digital trade more than traditional FTAs. This occurs partially due to the e-commerce chapters within “Super-FTAs,” and in part because these agreements are a “package deal” that liberalize trade in goods, services, and data and thus accommodate modern production and business operations that leverage data and digital services and require market access for goods.

Subsequently, the study analyzes the future evolution of DTAs and DEAs’ scope. Particularly, there are three main reasons why their “anatomy” and contents are bound to evolve. First, Asia-Pacific economies are already adopting domestic policies that can have implications on digital trade and market access, such as on cloud governance, taxes on online sales and newer players like influencers and creators, and AI governance. The second driver of tomorrow’s digital regulations is the Asia-Pacific businesses’ interest in new rules both because they are adopting new technologies and because they are facing the rise of challenging digital policies in the region. A third component is the emergence of new stakeholders, such as content creators, affected by these sets of agreements.

Finally, the study identifies trends looking beyond 2024, such as the continued expansion of the CPTPP, as the anchor agreement in Asia-Pacific and discussions on new rules in CPTPP, calls by the U.S. private sector to promote trade rules conducive to the adoption of AI and cloud computing, and focused discussions among ASEAN Members States on the DEFA.

## **1. Digital trade and digital economy agreements: scope and evolution**

During the 1990s and 2000s, Asia-Pacific economies pursued deeper market access and incubated new trade and trade-related rules in areas such as services trade, investment regulations, and trade facilitation. One key reason for the turn to bilateral agreements were the challenges faced by the Asia-Pacific Economic Cooperation (APEC) formed in 1989, and the World Trade Organization (WTO) formed in 1994. These organizations helped to deliver Asian economies deeper market access and binding behind-the-border trade rules. Asia-Pacific economies were further encouraged to pursue regionalism and comprehensive free trade agreements (FTAs) when the United States turned to regionalism by signing North American Free Trade Agreement (NAFTA) in 1994 and subsequent FTAs with such countries as Singapore, Australia, Chile, and Peru. At the time, countries such as Japan, Korea, Singapore, Australia and New Zealand also set out to form agreements with each other and with extra-regional partners such as Mexico, Peru, and Chile. Australia, India, China, Korea, and Japan also formed agreements with the Association of Southeast Asian Nations (ASEAN).

The growing importance of digital technologies and digital trade in national economies was also reflected in bilateral and multilateral agreements. Asia-Pacific countries have over the past decade started to include dedicated e-commerce chapters into new comprehensive free trade agreements (especially the CPTPP and RCEP) or into renegotiated FTAs (such as the United States-Mexico-Canada Agreement, USMCA). Economies also paired their traditional FTAs with DTAs or DEAs (such as the Singapore-Australia DEA that complements the two economies' pre-existing FTA), and formed stand-alone DTAs or DEAs (such as the U.S.-Japan DTA of 2020). The digital provisions in these agreements were, to a good extent, pioneered by the 2012 Korea-U.S. Free Trade Agreement (KORUS) and further in the negotiation of the CPTPP – the expanded version of the Trans-Pacific Partnership (TPP) formed by Chile, New Zealand and Singapore in the 2000s (which had some e-commerce provisions) and built on top of multiple intersecting trade agreements in the region. Launched in 2018 among 11 economies, the CPTPP was a watershed and did what the idea of the Free Trade Area of the Asia-Pacific (FTAAP) was envisioned to do – bring greater coherence to the Asia-Pacific trade panorama. It also pioneered a comprehensive and binding e-commerce chapter. The CPTPP included provisions for countries to have consumer protection and data privacy laws, enable cross-border data flows, ban localization of



computing facilities, impose a moratorium on customs duties on electronic transmissions, protect member-country firms' source code, and so on.

Thus, CPTPP shaped subsequent trade agreements. The CPTPP text is adopted practically word for word in multiple agreements since, including RCEP, USMCA, and the Singapore-Korea and UK-Singapore DEAs, and many others. This is unsurprising in that these agreements are also formed mostly by CPTPP members which spent significant amount of time negotiating the CPTPP and which would clearly want to apply similar rules across their various agreements. However, RCEP, which has widely been seen as China's response to the CPTPP, has an e-commerce chapter that it is not subject to the agreement's dispute settlement. Meanwhile, the USMCA goes somewhat further than the CPTPP, by bringing intermediary liability rules into FTAs for the first time.

There is empirically very little difference between FTAs' e-commerce chapters and DTAs. These agreements all facilitate cross-border data flows, ban server localization, protect source code, and promote data privacy and consumer protection, among other provisions. This is to a good extent because the DTA members are the exact same ones that are CPTPP partners, and thus are simply carrying over their commitments from the CPTPP. Agreements such as U.S.-Japan DTA are essentially akin to digital trade and e-commerce chapters in trade agreements similar to the CPTPP: they are stand-alone agreements focused on facilitating digital trade among economies that either already have an FTA or that do not want to negotiate a full-scale FTA but can agree on digital issues.

The 2020 Digital Economy Partnership Agreement (DEPA) formed among Chile, New Zealand, and Singapore was the first DEA, introducing rules that went beyond the DTA language. DEPA to establish common aspirations to promote, for example, digital interoperability and inclusion. Singapore has subsequently pursued similar agreements with Australia, Korea, and the UK. Thus, DEAs are in many ways DTA+, covering a more ambitious set of digital provisions, essentially mainstreaming "digital" into such areas as financial services and trade facilitation. This reflects the evolution of the Asia-Pacific economies' domestic agendas, to tackle issues such as online liability, cloud computing, AI governance, and treatment of foreign financial service providers.

Despite all of this, the attention on digital trade is not entirely new. Several FTAs formed already in the 1990s have some types of e-commerce-related disciplines. A 2017 mapping revealed that altogether 75 FTAs around the world, over a third of them with Asia-Pacific members, had some provisions related to e-commerce, such as electronic signatures or consumer protection (Monteiro & Teh, 2017).

Furthermore, traditional provisions in FTAs, such as intellectual property protection, liberalization of trade in services, and paperless trade, also fuel digital trade.

Mostly advanced economies such as Singapore, Korea, the United States, and Japan have pursued DTAs and DEAs. For this group, digital technologies are a growth driver, which have numerous regional and global technology companies that require clear rules of the game in overseas markets, and which have already reaped market access gains for goods and services from numerous more traditional trade agreements. These countries are now looking for further gains through digital provisions.

In contrast, for developing economies such as Vietnam, The Philippines, and Indonesia, trade agreements such as the CPTPP (which Vietnam belongs to) and RCEP (where all three are members) are among their very first trade agreements. The e-commerce chapter in each of these agreements is not central, but only one element alongside the traditional elements of market access for goods and services and investment provisions, for example.

Altogether, Asia-Pacific countries belong to two DTAs, four DEAs, and eight encompassing FTAs with e-commerce or digital trade chapters (Tables 1-2). Singapore has formed the most agreements (including five DTAs/DEAs); 13 further economies in the region belong to at least one DTA/DEA (Figure 1).

**Table 1. DTAs, DEAs, and agreements with e-commerce chapters in Asia-Pacific (up to October 2023)**

Agreement	Year in Force	Agreement Type	Members		
<b>ASEAN-Australia-New Zealand Free Trade Area AANZFTA</b>	2010	FTA+ e-commerce chapter	<ul style="list-style-type: none"> <li>• Australia</li> <li>• Brunei Darussalam</li> <li>• Cambodia</li> <li>• Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>• Laos</li> <li>• Malaysia</li> <li>• Myanmar</li> <li>• New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• Philippines</li> <li>• Singapore</li> <li>• Thailand</li> <li>• Vietnam</li> </ul>
<b>Korea-United States Free Trade Agreement</b>	2012	FTA+ e-commerce chapter	<ul style="list-style-type: none"> <li>• Korea</li> </ul>	<ul style="list-style-type: none"> <li>• United States</li> </ul>	

<b>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)</b>	2018	FTA+ e-commerce chapter	<ul style="list-style-type: none"> <li>• Australia</li> <li>• Brunei Darussalam</li> <li>• Canada</li> <li>• Chile</li> </ul>	<ul style="list-style-type: none"> <li>• Japan</li> <li>• Malaysia</li> <li>• Mexico</li> <li>• New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• Peru</li> <li>• Singapore</li> <li>• UK</li> <li>• Vietnam</li> </ul>
<b>United States-Mexico-Canada Agreement (USMCA)</b>	2020	FTA+ e-commerce chapter	<ul style="list-style-type: none"> <li>• Canada</li> </ul>	<ul style="list-style-type: none"> <li>• Mexico</li> </ul>	<ul style="list-style-type: none"> <li>• United States</li> </ul>
<b>U.S.-Japan Digital Trade Agreement</b>	2020	DTA	<ul style="list-style-type: none"> <li>• Japan</li> </ul>	<ul style="list-style-type: none"> <li>• United States</li> </ul>	
<b>Singapore-Australia Digital Economy Agreement (SADEA)</b>	2020	DEA	<ul style="list-style-type: none"> <li>• Australia</li> </ul>	<ul style="list-style-type: none"> <li>• Singapore</li> </ul>	
<b>Digital Economy Partnership Agreement (DEPA)</b>	2021	DEA	<ul style="list-style-type: none"> <li>• Chile</li> </ul>	<ul style="list-style-type: none"> <li>• New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• Singapore</li> </ul>
<b>ASEAN Agreement on Electronic Commerce</b>	2021	DTA	<ul style="list-style-type: none"> <li>• Brunei Darussalam</li> <li>• Cambodia</li> <li>• Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>• Laos</li> <li>• Malaysia</li> <li>• Myanmar</li> <li>• Philippines</li> </ul>	<ul style="list-style-type: none"> <li>• Singapore</li> <li>• Thailand</li> <li>• Vietnam</li> </ul>
<b>Regional Comprehensive Economic Partnership (RCEP)</b>	2022	FTA+ e-commerce chapter	<ul style="list-style-type: none"> <li>• Australia</li> <li>• Brunei Darussalam</li> <li>• Cambodia</li> <li>• China</li> <li>• Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>• Japan</li> <li>• Korea</li> <li>• Laos</li> <li>• Malaysia</li> <li>• New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• Philippines</li> <li>• Singapore</li> <li>• Thailand</li> <li>• Vietnam</li> </ul>
<b>United Kingdom-Singapore Digital</b>	2022	DEA	<ul style="list-style-type: none"> <li>• Singapore</li> </ul>	<ul style="list-style-type: none"> <li>• UK</li> </ul>	

<b>Economy Agreement (UKSDEA)</b>					
<b>Korea-Singapore Digital Partnership Agreement (KSDPA)</b>	2023	DEA	• Korea	• Singapore	
<b>EU-New Zealand Free Trade Agreement</b>	2023	FTA+ e-commerce chapter	• EU	• New Zealand	
<b>Australia-UK Free Trade Agreement</b>	2023	FTA+ e-commerce chapter	• Australia	• UK	
<b>UK-New Zealand Free Trade Agreement</b>	2023	FTA+ e-commerce chapter	• New Zealand	• UK	

Source: Nextrade

Table 2. Selected Digital Trade Provisions in Leading Trade Agreements with Asia-Pacific Members, up to October 2023

Provision	AANZFTA	Korea-US FTA	CPTPP	USMCA	US-Japan DTA	Singapore-Australia DEA	DEPA	ASEAN Agreement on Electronic Commerce	RCEP	UK-Singapore DEA	Korea-Singapore Digital Partnership Agreement	EU- New Zealand FTA	Australia-UK FTA	UK- New Zealand FTA
	(2010)	(2012)	(2018)	(2020)	(2020)	(2020)	(2021)	(2021)	(2022)	(2022)	(2023)	(2023)	(2023)	(2023)
Moratorium on custom duties on electronic transmissions and digital products		•	•	•	•	•	•		•	•	•	•	•	•
Non-discriminatory treatment for digital products		•	•	•	•	•	•				•			
Ban on data localization			•	•	•	•	•	•	•	•	•	•	•	•
Free cross border transfer of data of personal information		•	•	•	•	•	•	○	•	•	•	•	•	•
Protect consumer's personal information	○		•	•	•	•	•	•	•	•	•	•	•	•
Consumer protection laws that define and prevent fraudulent and deceptive commercial activities	○	•	•	•	•	•	•	•	•	•	•	•	•	
Measures against spam or unsolicited messages			•	•	•	•	•		•	•	•	•	•	•
Prohibit parties from forcing transfer of source code as a condition for market access			•	•	•	•				•	•	•	•	
Collaboration on cybersecurity management		○	○	○	○	○	○	○	○	○	○	○	○	○

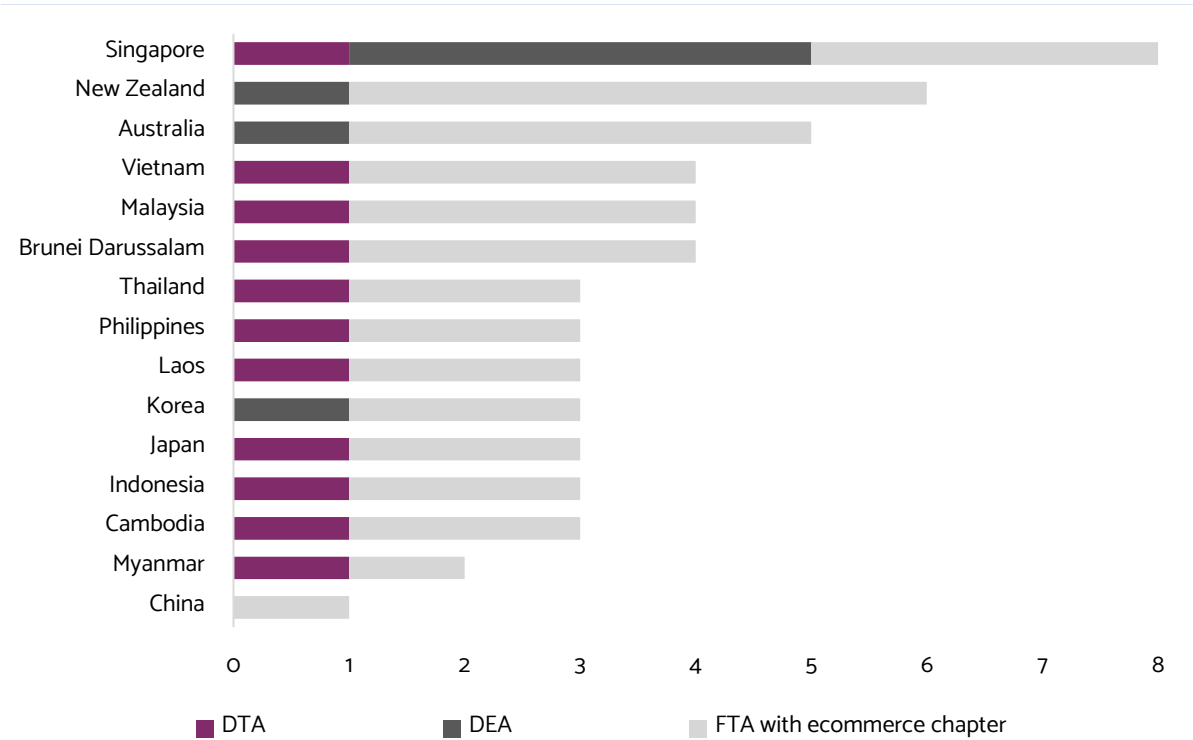
Provision	AANZFTA	Korea-US FTA	CPTPP	USMCA	US-Japan DTA	Singapore-Australia DEA	DEPA	ASEAN Agreement on Electronic Commerce	RCEP	UK-Singapore DEA	Korea-Singapore Digital Partnership Agreement	EU- New Zealand FTA	Australia-UK FTA	UK- New Zealand FTA
	(2010)	(2012)	(2018)	(2020)	(2020)	(2020)	(2021)	(2021)	(2022)	(2022)	(2023)	(2023)	(2023)	(2023)
Safe harbor for Internet intermediaries				●	●									
Open government data			○	○	○	○	○			○	○		○	○
Interoperable electronic invoicing						●	●			●	○	●	○	●
Interoperable electronic payments system						●	○	○		○	●			
Interoperable digital identities						○	○			○	○	○	○	○
Cooperation in fintech sector						○	○				○			
Ethical governance of AI						○	○			○	○			○
Data innovation						○	○			○	○		○	
Digital innovation and emerging technologies										○				○
Logistics best practices							○			○	○			
Standards and technical regulations										○	○			
Open Internet access to consumers		○	○	○		○	○				○	○	○	○
Cooperation on digital inclusion							○			○				○

Binding: ●

Non-binding: ○

Source: Nextrade

**Figure 1. Participation in DTAs, DEAs, and selected FTA agreements with e-commerce chapters, by country up to October 2023**



Source: Nextrade

**1.1 Evolving trade architecture: DEFA, IPEF, FTAAP**

The language of DTAs and DEAs formed “on top of” existing mega-regional agreements, particularly the CPTPP and RCEP, is similar to that of CPTPP and RCEP on core provisions. Moreover, the region’s advanced economies such as Korea and Singapore are able to use their bilateral DEAs to develop and experiment with even more forward-looking provisions than those included in the CPTPP and RCEP. For example, areas such as Artificial Intelligence (AI) governance and interoperability of digital payments.

Three further developments shape the regional trade architecture:

1. Developing countries and emerging markets are also starting to form DTAs. Most notably, in September 2023, ASEAN Economic Ministers launched the negotiations on the ASEAN Digital Economy Framework Agreement (DEFA), which is expected to focus on digital trade, cross-

border data flows, cybersecurity, digital identity and payments and add as much as US\$2 trillion to the regional digital economy by 2030.

2. There is increasing interest to become part of CPTPP, as countries such as Korea, Ecuador, Costa Rica, Ukraine, and both China and Taiwan formally submitted their application.
3. United States international economic policies are shaping the trade agreement panorama. The U.S.-led 14-country Indo-Pacific Economic Framework Agreement (IPEF) (CPTPP members minus the UK, plus U.S., Indonesia, India, and Fiji) has four pillars: trade (which does not include India), supply chains, clean economy, and fair economy. While the supply chain pillar has progressed, the trade pillar is stagnant after the successive rounds in 2023 failed to produce results, partly due to U.S. reluctance to negotiate market access. Moreover, in November 2023, the U.S. retreated from endorsing the key principles of digital trade agreements such as free data transfer and protection of source code, and partly because of Asian countries' growing interest in data localization (Lawder, 2023).

Nonetheless, there is a keen interest by businesses in including digital trade provisions in the IPEF, especially among the U.S. private sector (InsideTrade, 2023). A recent survey by Nextrade Group shows that almost two-thirds of Asia-Pacific firms reported wanting to see the United States as a CPTPP member, and the CPTPP's e-commerce provisions to be scaled to the IPEF region.

In addition, the FTAAP concept discussed in the early 2000s was revived by the Thailand APEC chairmanship in 2022 (APEC, 2022). This is a continuation of previous efforts. There has been significant activity since the 2016 Lima Declaration called for further work related to trade and investment issues to promote the FTAAP. By early 2024, more than 120 initiatives have been completed addressing traditional and next-generation trade and investment issues (e.g., non-tariff measures, services, customs procedures, digital trade, e-commerce, and environment) (McMichael & Adams, 2022). However, the FTAAP is unlikely to become a binding trade agreement – but it can be a useful umbrella for catalyzing further pro-trade new initiatives in the consensus-based APEC fora.



## **1.2 Multilateral digital trade talks**

Some Asia-Pacific economies such as Australia, Singapore, and Japan have been the leading drivers of the e-commerce talks at multilateral level, particularly at the Joint Statements Initiative process (JSI), among 89 WTO members (IISD, 2013). These economies are promoting the adoption of the same provisions they have agreed to at the regional level. Thus, the JSI process includes a very similar set of rules as do the CPTPP and other Asia-Pacific DTAs and DEAs -unsurprising, as the countries sponsoring the CPTPP are largely the same as have pioneered the CPTPP.

JSI member countries have also largely agreed on texts that have precedent in DTAs and DEAs, such as paperless trade, electronic transactions frameworks, e-signatures, electronic contracts, open government data, online consumer protection, and unsolicited electronic messages. There are greater challenges to agree on regulations related to data privacy and data transfer. It is important to note that the main proponents of the text on free data transfer have included major Asia-Pacific economies as Australia, Japan, Singapore, Taiwan, South Korea, as well as Canada, United Kingdom, and the United States. Further areas where agreement is difficult include the treatment of ICT products that use cryptography, source code protection, e-invoicing, and moratorium on customs duties on electronic transmission.

Overall, the JSI is quite contested. Not only are the major world economy's governance models for the digital economy are quite distinct, but many economies such as Nigeria, India, and South Africa call for some restrictive data policies and greater "policy space" for developing countries. The United States adopted this position after its October 2023 retreat from supporting the key provisions under consideration in the JSI process, especially on free transfer of data, data localization, and source code protection, and the abandonment of U.S. proposal on non-discriminatory treatment of digital products" (Lawder, 2023). For now, it can be expected that the most substantial progress and adoption of new rules will likely continue to be made through regional and bilateral agreements.

New issues, such as AI governance, are creating new demands and challenges for countries' trade ministries and negotiators. Private sector stakeholders, particularly tech companies, are promoting collaboration among countries on AI governance models and risk-based assessments of AI applications. The Australia-Singapore DEA has mentions on AI, generating the expectation of provisions to come; calling for members to "*collaborate on and promote the development and adoption of frameworks that support the trusted, safe, and responsible use of AI technologies*", and recognize the "*the importance of*

*developing ethical governance frameworks for the trusted, safe and responsible use of AI technologies that will help realize the benefits of AI* (Singapore-Australia DEA, 2020). The New Zealand-UK FTA of 2023 goes somewhat further, noting that “*parties recognize the importance of (...) utilizing risk-based or outcome-based approaches to regulation that take into account industry-led standards and risk management best practices; and having regard to the principles of technological interoperability and technological neutrality*” (New Zealand-UK FTA, 2023).

## **2. Impacts and implementation of DTAs and DEAs**

The impact of DTAs and DEAs on trade and on digital trade is an unexplored area of research, partially due to the small number of agreements and formed only recently among a handful of economies. Additionally, data on digital trade and especially data on bilateral flows of trade in goods has been limited.

There do exist two significant bodies of literature on the impacts of trade agreements and digitization on trade and economic outcomes (Suominen, Enhancing Coherence and Inclusiveness in the Global Trading System in the Era of Regionalism, 2016; Siyu, Wensha, Hongbo, Xiaomeng, & Qinghua, 2020):

- Studies concluding that FTAs that liberalize trade promote trade among members. Agreements that liberalize trade among members and do not raise barriers toward third parties<sup>1</sup> promote trade among the FTA members and third countries, as the FTA stimulates increased import demand among the members and from third countries. Comprehensive FTAs are also found to promote investment flows among members, catalyze collaboration among members on customs and infrastructure integration, and enable members to overcome protectionist pressures and negotiate multilateral trade agreements (Monteiro & Teh, 2017).
- Literature documents the positive impacts of the Internet and broadband use on trade in goods and services, and, more recently, export diversification<sup>2</sup>. There is also long-standing evidence

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<sup>1</sup> Agreements that adhere to the principle of open regionalism.

<sup>2</sup> Two decades ago, (Freund & Weinhold, 2002) found that internet penetration promotes trade in services. In 2014, (Riker, 2014) found that growth in broadband use between 2000 and 2011 increased countries' trade-to-GDP ratios by 4.2 percentage points on average.

Additionally, (López González & Ferencz, 2018) found that internet use is associated with market and product diversification in trade. In CPTPP region, this study finds that companies that use e-commerce and are digitized

that digitizing paper-based processes involved with exporting and importing goods reduces firms' trade costs and facilitating trade. An OECD study noted a positive relationship between FTAs, use of internet, and bilateral trade in goods and services across sectors (López González & Ferencz, 2018). This study did not, however, capture whether an FTA has e-commerce provisions.

One way to learn about DTAs and DEAs' effects is via firm-level surveys. For example, surveys run by Nextrade in 2021-23 in the CPTPP region show that e-commerce provisions are valuable for the firms within the member countries, as they allow new market access in goods and services and set common rules for e-commerce. Firms especially value commitments to consumer protection, cybersecurity, free cross-border data flows, and ban on server localization.

Another way to explore the effects of DTAs is through econometric analysis. Suominen (2021) performs a gravity model for bilateral trade among countries for goods between 1970 and 2020 and for services and digitally deliverable services between 2005 and 2019, disaggregating FTAs into four types that cover trade in goods; trade in services; trade in goods and services; and trade in goods, services, and digital trade (Suominen, 2021). The results suggest that:

- DTAs and DEAs promote trade in digitally deliverable services more than traditional FTAs.
- CPTPP-style “Super-FTAs” or agreements with digital trade chapters drive trade, and especially digital trade, more than traditional FTAs. This occurs partially because of the e-commerce chapters, and in part because these agreements are a “package deal” that liberalizes trade in goods, services, and data. Thus, these agreements accommodate modern production and business operations that leverage data and digital services and require market access for goods. Several other studies have highlighted complementarities between digital services, services liberalization, and trade in goods (Lodefalk, 2015).

There are research gaps assessing the value-added of DTAs and DEAs and trade agreements with robust e-commerce chapters. There could also be work ahead to understand the distributional effects, if any, of DTAs and DEAs. This has not been a topic in the context of digital trade agreements. One reason is that distributional impacts in the digital economy have many other causes than trade

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are especially likely to export and export to many markets, a finding echoed by dozens of surveys carried out by Nextrade Group.

agreements, such as lack of digital skills and connectivity. There is also less to analyze than traditional trade agreements with liberalization schedules for various sectors, which can entail job losses in import-competing industries. DTAs and DEAs do not have such sector-specific liberalization schedules; rather, they are sector-agnostic and seek to promote open markets and the free flow of data across all firms. They also often promote the digital inclusion of underserved populations and small businesses without further details.

## **2.1 Value added of best endeavor provisions**

DTAs and DEAs have “*best endeavor*” provisions, where parties “*shall endeavor*” to carry out a practice, such as promote their cybersecurity capabilities. These types of provisions enable the various partners to establish common principles that are easy to approve, and experiment with newer provisions that could ultimately become binding provisions. Agreement partners can use various FTA Commissions and committees to review the implementation and emerging best practices in these best endeavor provisions.

In addition, for developing countries, best endeavor provisions can be of useful guidance for their domestic policymaking – for example, a best endeavor provisions on internationally interoperable Fintech regulations can support a country’s development of Fintech regulations. For advanced economies, best endeavor provisions are often policies that they have already pursued unilaterally.

## **2.2 Implementation of DTAs and DEAs**

DTAs and DEAs’ implementation is critical, and still under-analyzed, to produce their intended effects to promote digital trade and interoperability among parties. However, there is recent work by Nextrade Group in 2022 and 2024 measuring the implementation of the CPTPP’s provisions. Given that the CPTPP includes many countries, and its provisions are adopted by multiple other DTA and DEAs, countries’ implementation records in the CPTPP provide insight into their DTA implementation in general.

The 2024 study finds that all CPTPP members comply well with the agreement’s call for members to have an electronic transactions framework, ban customs duties on electronic transmissions, make electronic signatures legal and enforceable, and promote consumer protection online. However, many CPTPP members have more work ahead to ensure commitments on data transfer, ban on server localization, protection of source code, cybersecurity, and paperless trade are well-implemented.

Regarding the RCEP, China does not meet the e-commerce provisions in several key areas, such as the requirement of an electronic transaction law consistent with the principles of the UN Commission on International Trade Law (UNCITRAL) Model Law, the adoption of a non-discrimination approach in protecting users of e-commerce from personal information protection violations, the free transfer of data across borders, and the ban against server localization. Korea (RCEP member) retains restrictions to the outbound flow of location data, which discriminates against foreign suppliers seeking to incorporate such data into services offered from outside the country and thus may contradict RCEP commitments on cross-border data transfer.

Moreover, many economies such as Brunei Darussalam, Canada, Chile, Japan, New Zealand, the United Kingdom, and Vietnam have additional measures to implement before attaining fully paperless trade.

In addition, the IEC (International Electrotechnical Commission), ISO (International Organization for Standardization) and ITU (International Telecommunication Union), are all developing various initiatives to promote voluntary standards and conformity assessments. This work is perhaps more practical, for example on common blockchain standards or common standards on electronic bills of lading, while digital trade agreements set more general principles and policies. In other words, the work on ISO and other bodies can further clarify how a specific sector or technology may be treated under and without conflicting with a broader trade agreement.

Some of the implementation challenges of DTAs and DEA may involve setting boundaries within administrations. For example, in Vietnam, ministries other than the economy and trade ministries drive the agenda on topics such as cybersecurity, data transfer and localization; meanwhile, the trade officials, while having a role in vetting all mandates against Vietnam's international commitments, appear to have limited capabilities to reverse regulations issued by other parts of the government.

The CPTPP membership launched an E-commerce Committee in 2021 to discuss issues related to the implementation and operationalization of these high-quality rules. However, more still needs to be done by current members to implement the agreement, and to push countries that are falling behind to live up to their commitments.

### 3. Future evolution of DTAs and DEAs' scope

DTA and DEAs are a recent development in the global trade landscape, and they have already evolved and expanded in scope. However, there are three main reasons why their “anatomy” and contents are bound to evolve.

First, Asia-Pacific economies are already adopting domestic policies that can have implications on digital trade and market access, such as on cloud governance, taxes on online sales and newer players like influencers and creators, and AI governance. At some point, these issues will need to be addressed, possibly through new or binding trade commitments. In addition, many governments in Asia-Pacific have adopted digital policies such as limits to data transfer, liability for online content, and taxes that can undermine trade. For example, there are such challenges as:

- **Data localization.** China’s 2021 Personal Information Protection Law (PIPL) states that information infrastructure operators and personal information processors “*whose processing of personal information reaches the number prescribed by the state cyberspace administration*” must store personal information collected and generated in China locally (Yang, 2021). Additionally, South Korea has restrictions to the outbound flow of location data (such as map data), that discriminates against foreign suppliers seeking to incorporate such data into services offered from outside the country (Feigenbaum & Nelson, 2021).
- **Discrimination against foreign cloud providers.** China has imposed barriers to foreign cloud providers, giving preferential access to Chinese companies. China provides additional support to Chinese firms, such as US\$1.4 trillion toward digital infrastructure<sup>3</sup> (Hillman, 2021). Korea’s Cloud Security Assurance Program (CSAP) requires the use of local data centers for a range of cloud services. Korean Financial Supervisory Commission (FSC) retains measures that favor local cloud service providers by requiring cloud service providers serving financial institutions by using servers located only in Korea (USTR, 2023). There are similar challenges and limitations in The Philippines, where foreign cloud service providers face constraints that limit their competition for government projects (USTR, 2023). Vietnam also has various registration and content control requirements for cloud service providers.

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<sup>3</sup> There are reports noting that the United States administration is looking to limit Chinese companies’ access to US. cloud services (Wall Street Journal, 2023).

- **Restrictive content regulations and increasing platforms' liability.** Indonesia's 2020 MR5 law gives Indonesian authorities the power to force online platforms to take down content the government has determined to be illegal or a threat to public order, sometimes as quickly as within 4 hours if it is considered urgent (Bonifacic, 2022). On the other hand, India's 2022 amendments to the IT Intermediaries Rules imposed more obligations onto platforms to ensure no illegal content is posted (Doval, 2022). In 2023, Vietnam issued regulation that defines secondary liability for internet intermediaries, establishing joint obligations if a user of the platform commits copyright infringement, when the internet intermediary failed to comply with the conditions for liability immunity (Le Quang, 2023).
- **New taxes.** In Korea, internet service providers have campaigned for regulation that imposes network usage fees on content and application providers serving Korean consumers over the Internet, while demand is increasing among telecom companies in India and Australia for the government to impose similar types of fees as well (Singh, 2023; Clark, 2023).
- **Discriminatory competition policy.** The European Union has rolled out its Digital Markets Act (DMA), which requires so-called gatekeepers (i.e., large digital services providers) to adhere to ex ante competition policy rules that preempt various potential future behaviors. The DMA targets largely U.S. platforms and is thus seen as discriminatory. Some large Asian economies such as Japan, India, and Korea have been exploring similar rules. The Korean Fair-Trade Commission (KFTC) has issued new abuse of dominance guidance clarifying how the agency will approach multihoming restrictions, interlinked services, and self-preferencing such as preventing search businesses from using algorithms to highlight their own products and services (Reinsch & Suominen, 2023). There are also local dynamics in Asia that affect competition; for example, Indonesia decided to ban e-commerce transactions on social media platforms such as TikTok, citing predatory pricing practices, causing TikTok to close its online retail operation in Indonesia (Tarigan & Karmini, 2023).

The second driver of tomorrow's digital regulations is the interest of Asia-Pacific businesses interest in new rules, both because they are adopting new technologies and because they are facing the rise of challenging digital policies in the region. For example, per 2023 surveys by Nextrade, businesses in the CPTPP region are calling for the CPTPP members to adopt rules in such areas as digital standards for trade documents, internet intermediary liability, and digital identity for businesses to promote trust with their customers.

Third, there are also new stakeholders in the region as the local tech ecosystems expand and new small players, such as creators and influencers, with their own views on the regulatory environment. On the one hand, SME-related agencies, ministries of culture, and trade ministries will likely be promoting rules that enable these small players to grow and develop, while ministries in charge of cybersecurity, privacy, and content regulation will likely be concerned about the behaviors of these players.

#### **4. New trends in the trade policy agenda**

East and Southeast Asian economies have been highly active in seeking digital trade agreements in the past few years, and they are global leaders in building trade disciplines for the digital era. The disciplines that have emerged are similar across agreements, partly because the adopting economies are largely the same, and thus helpfully promote de facto convergence among their various digital trade agreements. On the other hand, Central and South Asian economies have been less interested in digital trade agreements, and many emerging ASEAN economies are in the early phases on adopting binding digital trade rules. There are several likely trends in the trade policy agenda:

**Continued expansion of the CPTPP, as the anchor agreement in Asia-Pacific and discussions on new rules in CPTPP.** It is possible that the CPTPP will expand to members that comply with its rules, such as Costa Rica, Ecuador, and possibly Korea, while the consideration of Taiwan and China's application's may be delayed.

**Continued calls by the U.S. private sector to promote trade rules conducive to the adoption of AI and cloud computing,** and growing contestations about competition policy issues in the digital economy. The U.S. private sector will lead the charge on opposing the challenging data privacy and transfer rules emerging in the region and championing data initiatives such as Japan's Data Free Flow with Trust (DFFT) and U.S. Commerce Department-championed Global Cross-Border Privacy Rules (CBPR).

**Focused discussions among ASEAN members on the DEFA negotiations.** There are important opportunities to learn about and implement likely core DEFA provisions, such as protection of source code, non-discrimination of digital products, and ban on data localization. The region's emerging economies such as Cambodia, Lao PDR, Philippines, and Vietnam, will benefit from technical assistance to consider and negotiate these types of newer disciplines, as well as to implement them, measure their effects, and raise especially SMEs' awareness about them.



There are also opportunities to guide policy development in areas that are very needed in the ASEAN, such as cross-country interoperability of digital payments and Fintechs. ASEAN economies and global companies will also likely want to learn more about the ways to regulate AI and establish common AI standards. In addition, with the regional digital policy landscape fragmenting and economies such as Vietnam and Indonesia enacting digital policies that risk undermining trade, ASEAN economies will benefit from technical assistance on structuring the DEFA to be acceptable to all –for example, to consider variable geometry (some countries agreeing on common rules in some areas) and longer implementation schedules for countries that are reluctant to agree on certain rules, for example on data transfer.

**Growing weight of China is the regional digital economy.** China has increased its digitally deliverable service exports rapidly to one-half of its commercial service exports, and services embedded in Chinese products are increasingly made in China. In addition, China is an increasingly important source of supplier of goods and services for Southeast Asian nations, especially Vietnam (Dahlman & Lovely, 2023). Undoubtedly, China will play a significant role in the region’s digital economy, alongside Singapore and Japan.

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