

ASIAN TRADE CENTRE

Using Trade Agreements to Foster Digital Trade

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Existing Digital Commitments Poor

- Almost no explicit digital rules at the global level at all
 - Governments left trying to interpret offline rules for online world
- More focus on digital services but:
 - Overall services coverage can be quite thin, with many "missing" or uncovered service sectors and subsectors
 - Often limited commitments to services trade under "Mode 1"
 - No rules governing trade in data or wide range of digital trade-related issues that
 increasingly matter to services
- Current WTO services schedules coincide with launch of public "World Wide Web" in 1995
- Given high levels of uncertainty at time, many governments reluctant to bind commitments for Mode 1
- Extremely limited progress at WTO in creating greater consistency in rules or further liberalization
- Hence, Asian governments increasingly moving to bilateral and regional arrangements to cover digital trade and services



Fours Ways of Managing Digital in Asian FTAs

- To embed coverage in bilateral free trade agreements (FTAs)
 - In practice, many bilateral FTAs in Asia continue to have limited services sector coverage
 - Many do not include provisions on other elements of digital services like data rules, intellectual property rights in the digital sphere, digital investment provisions, etc
- To include digital services more explicitly in regional FTAs
 - Increasingly popular approach including through ASEAN, the Regional Comprehensive Economic Partnership (RCEP), and Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)
- To create a "stand-alone" digital trade arrangement
 - One with Chile, New Zealand and Singapore called the Digital Economy Partnership Agreement (DEPA)
- To create a deeper set of rules for digital trade attached to an existing FTA
 - Several in place with Singapore and Australia, South Korea, and the United Kingdom



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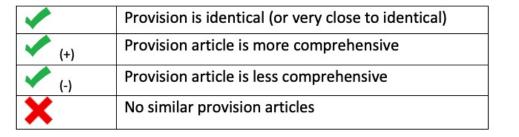
Digital Trade Rules Vary in Each

- Digital not just about e-commerce chapter
- Also enabling provisions for e-commerce goods trade
 - Such as paperless trade commitments, e-signatures, digital submissions of documentation and so forth
- Services delivered digitally
 - May include specific commitments for digital trade
 - Rules in telecommunications and/or financial services chapters too
- Specific sectoral commitments on some aspects of digital trade, including services that are supplied via digital means
- Intellectual property rights adjustments for digital environment
- All trade is increasingly digital



Three Specific Agreements to Watch

- Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)
 - In force since late 2018, now at 9 members
 - Australia, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam
 - Accession talks underway with UK, possible China/Taiwan/Ecuador
- Digital Economy Partnership Agreement (DEPA)
 - Chile, New Zealand and Singapore
 - "Modular" approach to a digital-only deal
 - Accession underway: Korea, Canada, China
- Digital Economy Agreement (DEA)
 - Australia and Singapore, SG/UK
 - DEA signed SG/Korea, but not public yet
 - Updated and extended existing FTA with digital provisions
 - Innovative use of MOUs to address newest issues not yet "ripe" for inclusion in agreement rules



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Comparison of CPTPP/DEPA/DEA

NO.	Digital Trade Provisions	DEA	DEPA	СРТРР
1	Commitments to facilitate digital trade	1	1	1
2	No customs duties on electronic transmissions	Article 5	Article 3.2	Article 14.3
3	Non-discrimination of digital products	Article 6	Article 3.3	Article 14.4
4	Domestic electronic transactions framework	Article 8	Article 2.3	Article 14.5
5	Electronic authentication and signatures	(+) Article 9	×	(-) Article 14.6
6	Paperless trading	(+) Article 12	(+) Article 2.2	(-) Article 14.9
7	Electronic invoicing	(+) Article 10	(-) Article 2.5	×
8	Electronic payments	Article 11	Article 2.7	×
9	Express shipments	Article 13	Article 2.6	Article 5.7
10	Online consumer protection	Article 15	Article 6.3	Article 14.7
11	Cooperation on competition policy	Article 16	Article 8.4	×
12	Personal information protection	(-) Article 17	(+) Article 4.2	(-) Article 14.8

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13	Unsolicited commercial electronic messages	(+) Article 19	(-) Article 6.2	(-) Article 14.14
14	Submarine telecommunications cable systems	Article 22	×	×
15	Location of computing facilities for financial services	Article 25	×	×
16	Data innovation	(-) Article 26	(+) Article 9.4	×
17	Open government data	Article 27	Article 9.5	×
18	Source code	(+) Article 28	×	(-) Article 14.17
19	Digital identities	Article 29	Article 7.1	×
20	Standards and conformity assessment for digital trade	Article 30	×	×
21	Artificial intelligence	(+) Article 31	(-) Article 8.2	×
22	FinTech and RegTech Cooperation	(+) Article 32	(-) Article 8.1	×
23	Dispute settlement	(+) Article 21	(+) Article 14	(-) Article 14.18

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What Explains Specific Variations?

- Part of the variation between these three agreements is about timing: older models tend to have less comprehensive commitments
 - Not all commitments are equal—some are currently "cooperation" only
- Similarities come from past experiences working together
- Differences from diverse objectives:
 - Create stand-alone FTA
 - Modernize and update an existing FTA
 - Design digital-only deal with the intention of replicating provisions elsewhere by members and non-members
- Bottom line: lots of ways to get to a solution to provide greater consistency in digital trade rules suitable for the future



Conclusions



- Asian governments increasingly using trade agreements as one mechanism to tackle newer issues
- Digital trade, including digitally delivered services, makes up a growing share of overall trade flows in the region
- Past commitments failed to capture many digital services or provide consistent rules of managing trade in services
- A variety of trade arrangements, including stand-alone digital only agreements, are one way forward
- But, as these approaches apply only to members, they also can discriminate against non-members by providing less access and fewer consistent rules
- Digital trade does not recognize geographic boundaries: having a global agreement would be clearly best solution to future challenges



Questions?

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