



ASIAN TRADE CENTRE

Using Trade Agreements to Foster Digital Trade

Dr Deborah Elms
Executive Director, Asian Trade Centre
elms@asiantradecentre.org

November 8, 2022



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

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

4

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

	Provision is identical (or very close to identical)
 (+)	Provision article is more comprehensive
 (-)	Provision article is less comprehensive
	No similar provision articles

Comparison of CPTPP/DEPA/DEA

NO.↓	Digital Trade Provisions	DEA	DEPA	CPTPP
1	Commitments to facilitate digital trade	✓	✓	✓
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

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

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?

The ATC is the premier regional thought leader, advocate and educator for trade in the Asia-Pacific. We are trade policy and supply chain subject matter experts uniquely positioned to meet the trade related needs of businesses—small and large—and governments—regional and foreign—operating across the region.



**ECONOMIC AND
POLICY
RESEARCH**



**CAPACITY
BUILDING**



**POLICY
ADVOCACY**



**STRATEGIC AND
SUPPLY CHAIN
ADVISORY**

**Asian Trade Centre
Singapore**

info@asiantradecentre.org
www.asiantradecentre.org

Follow us on



[linkedin.com/company/asian-trade-centre](https://www.linkedin.com/company/asian-trade-centre)

