Mongolia's Digital Trade Week
27 March 2025

Session 5. International agreements and their implications for Mongolia digital trade policies and negotiations: Focus on WTO E-commerce Agreement and RCEP Text

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RCEP Overview

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Accession

- By December 2024, Hong Kong (China), Sri Lanka, Chile formally requested accession to the RCEP.
- Bangladesh has expressed interest in becoming RCEP members.

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Article 20.9: Accession

1. This Agreement shall be open for accession by any State or separate customs territory 18 months after the date of entry into force of this Agreement.[2] Such accession shall be subject to the consent of the Parties and any terms or conditions that may be agreed between the Parties and the State or separate customs territory.

2. A State or separate customs territory may seek to accede to this Agreement by submitting a request in writing to the Depositary.

3. The instrument of accession shall be deposited with the Depositary.

4. A State or separate customs territory shall become a Party to this Agreement subject to the terms and conditions agreed pursuant to paragraph 1, either:

   (a) 60 days after the date on which it deposits an instrument of accession with the Depositary indicating it accepts such terms and conditions; or

   (b) on the date on which all Parties have notified the Depositary that they have completed their respective applicable legal procedures,

   whichever is later.

5. In addition to this Article, the accession process shall be carried out in accordance with the procedures for accession to be adopted by the RCEP Joint Committee.

Special and Differential Treatment (SDT) provisions

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ANNEX 11A

PARTY-SPECIFIC TRANSITION PERIODS

For the purposes of this Annex:

(a) "transition period" means a period of time, before the expiry of which a Party shall fully implement the certain provisions of Chapter 11 (Intellectual Property);

(b) the number of years, such as "five years", indicates the transition period of a Party which begins on the date of entry into force of this Agreement for that Party; and

(c) Articles, paragraphs, or subparagraphs indicate certain provisions, the implementation of which a Party may delay until the expiry of its transition period.

Cambodia:

Provisions	Transition Periods
Subparagraph 1(e) of Article 11.9 (Multilateral Agreements) (with respect to the WCT)	10 years, which may be extended once for five years
Subparagraph 1(f) of Article 11.9 (Multilateral Agreements) (with respect to the WPPT)	10 years, which may be extended once for five years
Article 11.14 (Circumvention of Effective Technological Measures)	10 years, which may be extended once for five years
Article 11.15 (Protection for Electronic Rights Management Information)	10 years, which may be extended once for five years
Article 11.19 (Trademarks Protection) (with respect to sound marks)	10 years, which may be extended once for five years

Article 12.15: Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.[13]

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

   (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,[14] provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

   (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not

[12] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

[13] Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

[14] For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

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Technical assistance and Capacity building provisions

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Article 12.4: Cooperation

1. Each Party shall, where appropriate, cooperate to:

   (a) work together to assist small and medium enterprises to overcome obstacles in the use of electronic commerce;

   (b) identify areas for targeted cooperation between the Parties which will help Parties implement or enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance;

   (c) share information, experiences, and best practices in addressing challenges related to the development and use of electronic commerce;

   (d) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and

   (e) actively participate in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international fora.

ANNEX 11B

LIST OF TECHNICAL ASSISTANCE REQUESTS

Cambodia:

Related Provisions	Technical Assistance
Subparagraph 2(a) of Article 11.22 (Registration and Applications of Trademarks)	With a view to supporting the operational needs of Cambodia, support in setting up a system for the electronic application for processing, registering, and maintenance of trademarks.
Subparagraphs 1(e) and (f) of Article 11.9 (Multilateral Agreements), Article 11.14 (Circumvention of Effective Technological Measures), Article 11.16 (Limitations and Exceptions to Providing Protection and Remedies for Technological Measures and RMI), Article 11.19 (Trademarks Protection), paragraph 2 of Article 11.22 (Registration and Applications of Trademarks), Article 11.48 (Protection of New Varieties of Plants), Article 11.62 (Destroying Infringing Goods and Materials and Implements), subparagraph 1(a) of Article 11.64 (Provisional Measures), subparagraphs 3(b) and (c) of Article 11.74 (Criminal Procedures and Penalties), and Article 11.75 (Effective Action against Infringement in the Digital Environment)	1. Support in capacity building for: (a) staff members and experts involved in law amendment processes to cover sound mark protection; (b) trademark examiners, with respect to the protection of sound marks; (c) information technology experts, with a view to maintaining and developing an electronic application system for trademarks, patent, and new varieties of plants; and (d) staff members and experts involved in RMI, technological measures, and enforcement. 2. Providing expertise on accession to the WCT and the WPPT.

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Digital trade provisions in trade agreements

Topics	Competition	Cooperation	Cross-border transfer of information by electronic means	Customs duties	Cybersecurity	E-trade facilitation (other, varied)	Electronic authentication	Electronic contracts	Electronic invoicing	Electronic payments	Electronic signatures	Electronic transactions	ICT Products and use of cryptography	Location of computing facilities	Online consumer protection	Open government al data	Open internet access	Paperless trading	Personal data protection	SMEs, MSMEs	Source code	Spam	Stakeholder engagement	Telecommunications	Transparency
RCEP (Ch.12)		X	X	X	X		X	X			X	X		X	X			X	X	X	X	X	X		X
WTO JSI on e-commerce (2024)	X	X		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X		X	X	X	X

Topics	Artificial intelligence	Data innovation	Digital identities	Digital inclusion	Digital products	Express shipments	Fintech	Government procurement	Interactive computer services	Internet interconnection charge sharing	Location of financial computing facilities	Online safety and security	Regtech	Standards for digital trade	Submarine cable systems
RCEP (Ch.12)															
WTO JSI on e-commerce (2024)															

Blue = common e-commerce provisions (e.g., cybersecurity, e-signatures, paperless trade),
Orange = moderately common provisions (e.g., open gov data, source codes),
Green = Less common promvisions (e.g., AI, digital identities, digital inclusion)

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Exercises

Exercise 1. Assessing the Extent of Legalization

Exercise 2. Identifying “Digital” elements under RCEP

Exercise 3. Mapping existing domestic regulations to RCEP provisions and WTO Joint Statement Initiative (JSI) on E-commerce

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Exercise 1
Assessing the extent of legalization

Objective

Understand how to evaluate the legal strength of provisions under trade agreements by distinguishing between binding, non-binding, and mixed commitments.

Why does it matter?

Assessing the level of commitment is important for:

- Understand the enforceability of RCEP's obligations.
- Recognize the scope for policy space.
- Prioritize areas for implementation and legal reform and set timelines for compliance.

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Tasks

- Analyze a provision under RCEP E-Commerce Chapter (Chapter 12).

Discussion points for presentation

- **Determine whether the selected provisions are binding, non-binding or mixed commitments (i.e., both binding obligations and aspirational language)?**
- **What does this imply for domestic implementation?**

Discussion time: 10 minutes, Presentation time: 5 minutes

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Soft Commitments

'Soft' commitment refers to non-enforceable obligations— no legal recourse through dispute settlement for non-compliance.

Nature:

- Parties agree to make their best efforts.
- Provide flexibility.

Cooperation provisions:

- Always considered non-binding unless explicit obligation to cooperation is included, or specific framework and timeline are defined in the treaty.

Keywords:

- For example, “Recognize the importance…”, “Shall work towards…”, “Promote”, “Shall endeavor”, “Should”, “May”.

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Hard Commitments

'Hard' commitment refers to legally binding obligations—non compliance can be challenged under the dispute settlement mechanism under the agreement.

Nature:

- Parties are required to comply.

Keywords:

- For example, "Shall", "Must", "Is/ Are required to"

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! Binding language can become non-binding with qualifiers

Treaties often use formal language like “shall”, which usually indicates a binding obligation. However, when it is paired with softer verb, the commitment becomes non-binding or hortatory (i.e., encouraging rather than mandatory).

Party shall implement → Binding commitment.

Party shall endeavor to implement → Non-binding

! Exceptions

A provision may appear binding, but exceptions can limit its enforceability:

- Self-judging clauses: e.g., ”It considers necessary”
- Public interest exceptions
- General exceptions chapter
- Footnote

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Discussion points for presentation

- **Determine whether the selected provisions are binding, non-binding or mixed commitments (i.e., both binding obligations and aspirational language)?**
- **What does this imply for domestic implementation?**

Regional Comprehensive Economic Partnership Agreement (RCEP) - 2022 1 exact match found!

Parties of the Agreement :

CHAPTER 12, [ELECTRONIC COMMERCE], Section C. Article 12.8 - CREATING A CONDUCIVE ENVIRONMENT FOR ELECTRONIC COMMERCE. Online Consumer Protection
1 exact match found!

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence. 2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers.6 3. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection. 4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how: (a) consumers can pursue remedies; and (b) business can comply with any legal requirements. 6 Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

Explain in simple terms | Give an example | Implication

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Explanation: mixed commitment

Binding

- Paragraph 2 *(Shall adopt or maintain law…)*

--> *temporary exemption for 3 LDCs*

- Paragraph 4 *(Shall publish information…)*

Non-binding

- Paragraph 1 (*Recognise the importance of …)*
- Paragraph 3 *(Recognise the importance of cooperation…)*



Exercise 2

Identifying “Digital” elements under RCEP

Objective

Recognize digital trade-related provisions under RCEP chapters beyond the E-commerce Chapter.

Why does it matter?

Digital trade provisions are not limited to E-commerce chapter. Understanding how other chapters intersect with digital trade is important for:

- Identify cross-cutting regulatory implications.
- Holistic policy interpretation and implementation.

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Tasks

- Identify provisions outside the RCEP E-commerce Chapter (Chapter 12) and assess whether they relevant to digital trade?

Discussion point for presentation

- **Why are these provisions relevant in a digital context?**

Discussion time: 10 minutes Presentation time: 5 minutes

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How to identify digital related provision?

- Look for keywords, such as “digital”, “online”, ”electronic”, “ICT”, and “cross-border”.
- Consider provisions impacting ICT products and online services.

For example: RCEP Chapter 11 (Intellectual Property)

Article 11.43: Electronic Patent Application System

Each Party is encouraged to adopt an electronic patent application system so as to facilitate ease of application by patent applicants.

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Discussion points for presentation

- **Identify provisions outside the RCEP E-commerce Chapter (Chapter 12) and assess whether they relevant to digital trade?**
- **Which provision(s) are relevant to digital trade, and why or why not?**

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(1) Copyrights: Exclusive Rights of Authors, Performers, and Producers of Phonograms

CHAPTER 11, [INTELLECTUAL PROPERTY], Section B. Article 11.10 - COPYRIGHT AND RELATED RIGHTS. Exclusive Rights of Authors, Performers, and Producers of Phonograms 1 exact match found!

1. Each Party shall provide to authors of works the exclusive right to authorise any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. 2. Each Party shall provide to performers and producers of phonograms5 the exclusive right to authorise the making available to the public of their performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. 3. Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorise or prohibit the reproduction of their works, performances fixed in phonograms, and phonograms in any manner or form. 5 For the purposes of this Chapter, a Party may interpret 'producers of phonograms' as having the same meaning as 'authors of sound recordings'.

(2) Geographical Indications: Protection of Geographical Indications

CHAPTER 11, [INTELLECTUAL PROPERTY], Section D. Article 11.29 - GEOGRAPHICAL INDICATIONS. Protection of Geographical Indications 1 exact match found!

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognises that such protection may be provided through a trademark system, a sui generis system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.

(3) Patents: Rights Conferred

CHAPTER 11, [INTELLECTUAL PROPERTY], Section E. Article 11.37 - Patents. Rights Conferred 1 exact match found!

1. Each Party shall provide that a patent shall confer on its owner the following exclusive rights: (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing33 for these purposes that product; and (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process. 2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts. 33 This right, like all other rights conferred under this Chapter in respect of the use, sale, importation, or other distribution of goods, is subject to Article 11.6 (Exhaustion of Intellectual Property Rights).

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Copyrights: Relevant

CHAPTER 11, [INTELLECTUAL PROPERTY], Section B. Article 11.10 - COPYRIGHT AND RELATED RIGHTS. Exclusive Rights of Authors, Performers, and Producers of Phonograms 1 exact match found!

1. Each Party shall provide to authors of works the exclusive right to authorise any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. 2. Each Party shall provide to performers and producers of phonograms5 the exclusive right to authorise the making available to the public of their performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. 3. Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorise or prohibit the reproduction of their works, performances fixed in phonograms, and phonograms in any manner or form. 5 For the purposes of this Chapter, a Party may interpret 'producers of phonograms' as having the same meaning as 'authors of sound recordings'.

Subject matter

- Copyright protects original works (e.g., music, films, books, software) that are commonly created, distributed, and accessed online.
- Digital platforms (e.g., streaming, e-books, online music stores) rely on copyright frameworks to manage access and distribution

Content of the provision

- RCEP includes commitments to grant and enforce exclusive rights to: Authors (e.g., writers, composers), Performers (e.g., singers, actors), and Producers of phonograms (e.g., music recordings).
- Right to reproduce, distribute, communicate, and make available works online.

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Geographical Indications: Not relevant

CHAPTER 11, [INTELLECTUAL PROPERTY], Section D. Article 11.29 - GEOGRAPHICAL INDICATIONS. Protection of Geographical Indications 1 exact match found!

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognises that such protection may be provided through a trademark system, a sui generis system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.

Subject matter = Physical goods

Protect product names (branding and quality) linked to a specific place of origin.

- E.g., Champagne (sparking wine – region in France)

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Patents: Relevant

CHAPTER 11, [INTELLECTUAL PROPERTY], Section E. Article 11.37 - Patents. Rights Conferred 1 exact match found!

1. Each Party shall provide that a patent shall confer on its owner the following exclusive rights: (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing33 for these purposes that product; and (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process. 2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts. 33 This right, like all other rights conferred under this Chapter in respect of the use, sale, importation, or other distribution of goods, is subject to Article 11.6 (Exhaustion of Intellectual Property Rights).

Subject matter

- Patents protect inventions—including those critical to the digital economy (e.g., algorithms, encryption, e-commerce systems, digital health tools, AI models, etc.).

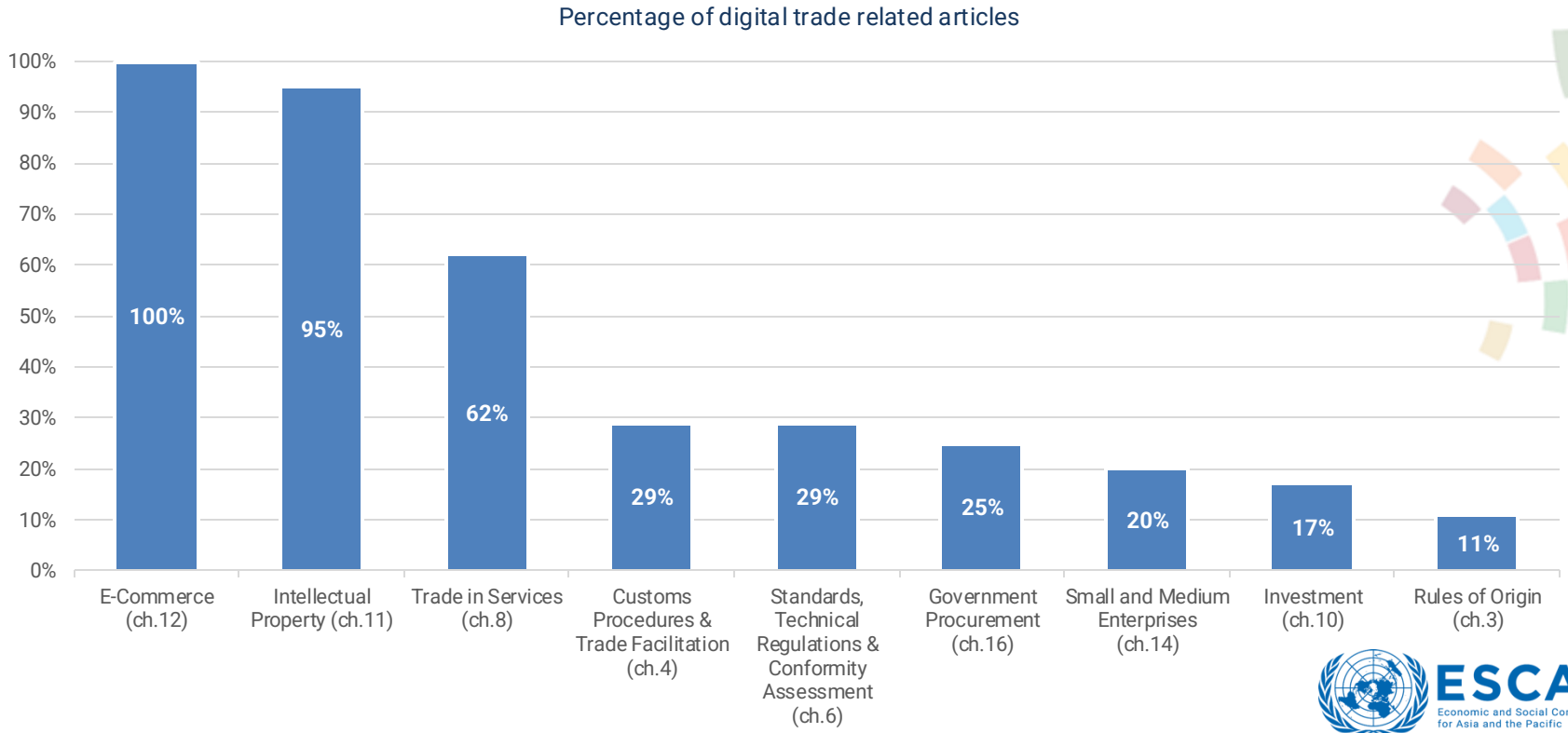
Content of the provision

- RCEP requires Parties to grant exclusive rights to patent holders, in line with the TRIPS Agreement (Article 28 Rights Conferrred)
- These rights include:
  - Right to prevent others from making, using, offering for sale, selling, or importing a patented product or process without consent.
  - For process patents, the right to prevent unauthorized use of the process and sale of products directly obtained from it.

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Explanation: Which RCEP chapters are relevant to digital trade?

Findings based on the number of articles related to digital trade.



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Exercise 3

Map existing domestic regulations to RCEP provisions and WTO Joint Statement Initiative (JSI) on E-commerce

Objective

Understand how to align domestic regulations and policies with obligations under trade agreements.

Why does it matter?

Assessing the alignments is important for:

- Identify regulatory gaps to inform domestic reforms.
- Increase compliance with international and regional frameworks.
- Support digital trade readiness.
- Enhance regulatory transparency and legal certainty.

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Tasks

- Select one of the following policy areas under RCEP E-Commerce Chapter (Chapter 12):

Data privacy protection	Cross-border data flows
Cybersecurity	Online consumer protection

Discussion time: 20 minutes Presentation time: 7 minutes

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Discussion points to present

1. **Compare article(s) under RCEP E-Commerce Chapter and the WTO JSI on E-commerce.** Which article is more comprehensive in terms of context and level of commitment (i.e., binding, non-binding, or mixed)?

2. **(Optional) Compare RCEP with the relevant domestic laws.**
   - → Identify key alignments or gaps in terms of context.
   - → Discuss the implications of these alignments or gaps.

Discussion time: 20 minutes Presentation time: 7 minutes

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Example. Data privacy protection

RCEP E-Commerce Chapter Article 12.8 Online Personal Information Protection	WTO JSI on E-commerce Article 16 Personal Data Protection
1. Each Party shall **adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce.** Footnote: 6 Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. Footnote 7: Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. 2. In the development of its legal framework for the protection of personal information, each Party shall take into account **international** standards, principles, guidelines, and criteria of relevant international organizations or bodies. 3. Each Party shall publish information on the personal information protection it provides to users of electronic commerce, including how: (a) individuals can pursue remedies; and (b) business can comply with any legal requirements. 4. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information. 5.The Parties shall **cooperate**, to the extent possible, for the protection of personal information transferred from a Party. **(RCEP Article 12.1 (Definitions) does not provide a definition for "personal data.")**	16.1 For the purposes of this Article, "personal data" means any information relating to an identified or identifiable natural person. 16.2 The Parties recognize that strong and effective protection of personal data and related individual rights contribute to enhancing consumer confidence and trust in the digital economy. 16.3 Each Party shall **adopt or maintain a legal framework that provides for the protection of the personal data of users of electronic commerce.** 16.4 In developing its legal framework for the protection of personal data, each Party should take into account principles and guidelines developed by relevant international bodies or organizations. 16.5 Each Party shall endeavor to ensure that its legal framework adopted or maintained under paragraph 3 provides for the **non-discriminatory protection** of the personal data of natural persons. 16.6 Each Party shall publish information on the personal data protections it provides to users of electronic commerce, including guidance on how: (a) a natural person can pursue remedies; and (b) enterprises can comply with legal requirements. 16.7 Recognizing that the Parties may take different legal approaches to protecting personal data, each Party **should encourage the development of mechanisms to promote compatibility between these different regimes.** 16.8 The mechanisms referred to in paragraph 7 may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. 16.9 The Parties shall endeavor to exchange information on the mechanisms referred to in paragraph 7 that are applied in their respective jurisdictions.

Example. Data privacy protection

Mongolia Law on Personal Data Protection

For example:

Article 8. Obtaining consent from the data owner

Print

8.1. The data controller shall obtain permission from the data owner when processing, collecting, or using data, except as otherwise provided by law.

8.2. The data controller shall present the following conditions to the data owner and obtain consent:

8.2.1. The basis and purpose of collecting, processing, and using information must be clear and unambiguous;

8.2.2. the name of the data controller, and if it is a legal entity, its assigned name and contact information;

8.2.3. list of information to be collected, processed and used;

8.2.4. period for processing and using information;

8.2.5. Whether the information will be made public;

8.2.6. Whether the information will be transferred to others, and if so, the person to whom the information will be transferred, and a list of the information to be transferred;

8.2.7. Form of cancellation of consent.

8.3. The data subject shall provide written consent to the data controller, and this consent may be in paper or electronic form.

Article 2. Legislation on the protection of personal data

Print

2.1. Legislation on the protection of personal data is the Constitution of Mongolia and the Civil Code., On the transparency of public information consists of laws, this law and other legislative acts issued in accordance with these laws.

2.2. If an international treaty of Mongolia provides otherwise than this law, the provisions of the international treaty shall apply.

Cross-border data flows

RCEP E-Commerce Chapter Article 12.15 Cross-border Transfer of Information by Electronic Means	WTO JSI on E-commerce (No explicit provision)
1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means. 2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person. Footnote: Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. 3. Nothing in this Article shall prevent a Party from adopting or maintaining: (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties. Footnote: For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.)	Article 25. Personal data protection exception: Nothing in this Agreement shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of that Party provides for instruments enabling transfers under conditions of general application for the protection of the data transferred. Footnote: For greater certainty, "conditions of general application" refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

Explanation: Cross-border data flows

RCEP E-Commerce Chapter Article 12.15 Cross-border Transfer of Information by Electronic Means	WTO JSI on E-commerce (No explicit provision)
1. The Parties **recognize that each Party may have its own regulatory requirements** concerning the transfer of information by electronic means. 2. A Party **shall not prevent cross-border transfer of information** by electronic means where such activity is for the conduct of the business of a covered person. Footnote: Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. 3. Nothing in this Article shall prevent a Party from adopting or maintaining: (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties. Footnote: For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.)	Article 25. Personal data protection exception: Nothing in this Agreement shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy, including with respect to cross-border data transfers, provided that the law of that Party provides for instruments enabling transfers under conditions of general application for the protection of the data transferred. → This Agreement does not prevent any Party from having laws to protect personal data and privacy, including rules for cross-border data transfers, as long as those laws allow data to be transferred under generally applied conditions. Footnote: For greater certainty, "conditions of general application" refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

Explanation: Cross-border data flows – relevant provision: data localization

RCEP E-Commerce Chapter Article 12.14 Location of Computing Facilities	WTO JSI on E-commerce
1. The Parties **recognize that each Party may have its own measures** regarding the use or location of computing facilities, including requirements that seek to ensure the security and confidentiality of communications. 2. No Party shall require a covered person to **use or locate computing facilities in that Party's territory as a condition for conducting business** in that Party's territory. 3. Nothing in this Article shall prevent a Party from adopting or maintaining: (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties. (Footnote: For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.)	No provision concerning data localization.

Explanation: Cross-border data flows

Mongolia Law on Personal Data Protection

Article 14. Transfer of information to persons, legal entities and international organizations in foreign countries

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14.1. Except as provided for by law or international treaties of Mongolia, or with the consent of the owner of the information, it is prohibited to transfer information to persons, legal entities, or international organizations in foreign countries.

Cybersecurity

RCEP E-Commerce Chapter Article 12.13 Cybersecurity	WTO JSI on E-commerce Article 17 Cybersecurity
The Parties recognize the importance of: (a) building the capabilities of their respective competent authorities responsible for computer security incident responses including through the exchange of best practices; and (b) using existing collaboration mechanisms to cooperate on matters related to cyber security.	17.1 The Parties recognize that threats to cybersecurity undermine confidence in electronic commerce. 17.2 The Parties further recognize the evolving nature of cyber threats. In order to identify and mitigate cyber threats and thereby facilitate electronic commerce, the Parties shall endeavor to: (a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and (b) collaborate to identify and mitigate malicious intrusions or dissemination of malicious code that affect a Party's electronic networks, to address cybersecurity incidents in a timely manner, and to share information for awareness and best practices. 17.3 Noting the evolving nature of cyber threats and their negative impact on electronic commerce, the Parties recognize the importance of risk-based approaches in addressing such threats while minimizing trade barriers. Accordingly, to identify and protect against cybersecurity risks, detect cybersecurity events, and respond to and recover from cybersecurity incidents, each Party shall endeavor to use, and encourage enterprises within its jurisdiction to use, risk-based approaches that rely on risk management best practices and on standards developed in a consensus-based, transparent, and open manner.

Explanation: Cybersecurity

RCEP E-Commerce Chapter Article 12.13 Cybersecurity	WTO JSI on E-commerce Article 17 Cybersecurity
The Parties recognize the importance of: (a) building the capabilities of their respective competent authorities responsible for computer security incident responses including through the exchange of best practices; and -> enhance the skills of authorities to be able to manage and response to cybersecurity issues/ incidents. (b) using **existing collaboration mechanisms** to cooperate on matters related to cyber security.	17.1 The Parties recognize that threats to cybersecurity undermine confidence in electronic commerce. 17.2 The Parties further recognize the evolving nature of cyber threats. In order to identify and mitigate cyber threats and thereby facilitate electronic commerce, the Parties shall endeavor to: (a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and (b) collaborate to identify and mitigate malicious intrusions or dissemination of malicious code that affect a Party's electronic networks, to address cybersecurity incidents in a timely manner, and to share information for awareness and best practices. 17.3 Noting the evolving nature of cyber threats and their negative impact on electronic commerce, the Parties recognize the importance of risk-based approaches in addressing such threats while minimizing trade barriers. Accordingly, to identify and protect against cybersecurity risks, detect cybersecurity events, and respond to and recover from cybersecurity incidents, each Party shall endeavor to use, and encourage enterprises within its jurisdiction to use, risk-based approaches **that rely on risk management best practices and on standards developed in a consensus-based, transparent, and open manner.**

Online consumer protection

RCEP E-Commerce Chapter Article 12.7 Online Consumer Protection	WTO JSI on E-commerce Article 14 Online Consumer Protection
1. The Parties recognize the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence. 2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers. 3. The Parties recognize the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection. 4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how: (a) consumers can pursue remedies; and (b) business can comply with any legal requirements. (Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement).	14.1 For the purposes of this Article, "misleading, fraudulent, and deceptive commercial activities" include: (a) making material misrepresentations, including implied factual misrepresentations, or false claims as to matters, such as the qualities, price, suitability for purpose, quantity, or origin of goods or services; (b) advertising goods or services for supply without intention or reasonable capability to supply; (c) failing to deliver goods or provide services to a consumer after the consumer is charged unless justified on reasonable grounds; and (d) charging a consumer for goods or services not requested." 14.2 The Parties recognize the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. To this end, each Party shall adopt or maintain measures to proscribe misleading, fraudulent, and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce. 14.3 To protect consumers engaged in electronic commerce, each Party shall endeavour to adopt or maintain measures that aim to ensure: (a) that suppliers of goods or services deal fairly and honestly with consumers; (b) that suppliers of goods or services provide complete, accurate, and transparent information on those goods or services, including any terms and conditions of purchase; and (c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use. 14.4 The Parties recognize the importance of affording to consumers engaged in electronic commerce consumer protection at a level not less than that afforded to consumers engaged in other forms of commerce. 14.5 The Parties recognize the importance of cooperation between their respective consumer protection agencies or other relevant bodies, including the exchange of information and experience, as well as cooperation in appropriate cases of mutual concern regarding the violation of consumer rights in relation to electronic commerce in order to enhance online consumer protection, where mutually decided. 14.6 Each Party shall promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.

Explanation: Online consumer protection

RCEP E-Commerce Chapter Article 12.7 Online Consumer Protection	WTO JSI on E-commerce Article 14 Online Consumer Protection
1. The Parties recognize the importance of adopting and maintaining **transparent and effective consumer protection** measures for electronic commerce as well as other measures conducive to the development of consumer confidence. 2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers. 3. The Parties recognize the importance of **cooperation between their respective competent authorities in charge of consumer protection o**n activities related to electronic commerce in order to enhance consumer protection. "4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how: **(a) consumers can pursue remedies; and** **(b) business can comply with any legal requirements.** (Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement).	14.1 For the purposes of this Article, "misleading, fraudulent, and deceptive commercial activities" include: (a) making material misrepresentations, including implied factual misrepresentations, or false claims as to matters, such as the qualities, price, suitability for purpose, quantity, or origin of goods or services; (b) advertising goods or services for supply without intention or reasonable capability to supply; (c) failing to deliver goods or provide services to a consumer after the consumer is charged unless justified on reasonable grounds; and (d) charging a consumer for goods or services not requested." 14.2 The Parties recognize the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. To this end, each Party shall adopt or maintain measures to proscribe misleading, fraudulent, and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce. 14.3 To protect consumers engaged in electronic commerce, each Party shall endeavour to adopt or maintain measures that aim to ensure: (a) that suppliers of goods or services deal fairly and honestly with consumers; (b) that suppliers of goods or services provide complete, accurate, and transparent information on those goods or services, including any terms and conditions of purchase; and (c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use. 14.4 The Parties recognize the importance of affording to consumers engaged in electronic commerce consumer protection at a level not less than that afforded to consumers engaged in other forms of commerce. 14.5 The Parties recognize **the importance of cooperation between their respective consumer protection agencies or other relevant bodies,** including the exchange of information and experience, as well as cooperation in appropriate cases of mutual concern regarding the violation of consumer rights in relation to electronic commerce in order to enhance online consumer protection, where mutually decided. 14.6 Each Party shall promote access to, and awareness of, consumer **redress or recourse mechanisms**, including for consumers transacting cross-border.

Explanation: (4) Online consumer protection – relevant provision: spam

RCEP E-Commerce Chapter Article 12.9 Unsolicited Commercial Electronic Messages	WTO JSI on E-commerce Article 15 Unsolicited Commercial Electronic Messages
1. Each Party shall **adopt or maintain** measures regarding unsolicited commercial electronic messages that: (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages; (b) require the consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages; or (c) otherwise provide for the minimization of unsolicited commercial electronic messages. 2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1. Unless, businesses shall provide ways for individual to take action against businesses that do not comply with these rules (compensation). (Footnote: Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. Brunei Darussalam shall not be obliged to apply this paragraph for a period of three years after the date of entry into force of this Agreement.) 3. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.	15.1 For the purposes of this Article: (a) "commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person13 through a telecommunications service, comprising at least electronic mail and, to the extent provided for under a Party's laws or regulations, other types of electronic messages; and (b) "unsolicited commercial electronic message" means a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient. 15.2 The Parties recognize the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. To this end, each Party shall adopt or maintain measures that: (a) require suppliers of commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; (b) require the consent, as specified in its laws or regulations, of recipients to receive commercial electronic messages; or (c) otherwise provide for the minimization of unsolicited commercial electronic messages. 15.3 Each Party shall endeavor to ensure that commercial electronic **messages are clearly identifiable** as such, clearly disclose on whose behalf they are sent, and contain the necessary information to enable recipients to request cessation of those messages free of charge and at any time. --> Each Party will try to make sure marketing emails are clearly marked as such, show who is sending them, and provide an easy, free way for people to unsubscribe at any time. 15.4 Each Party shall provide access to redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 15.5 Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Suggested official sources

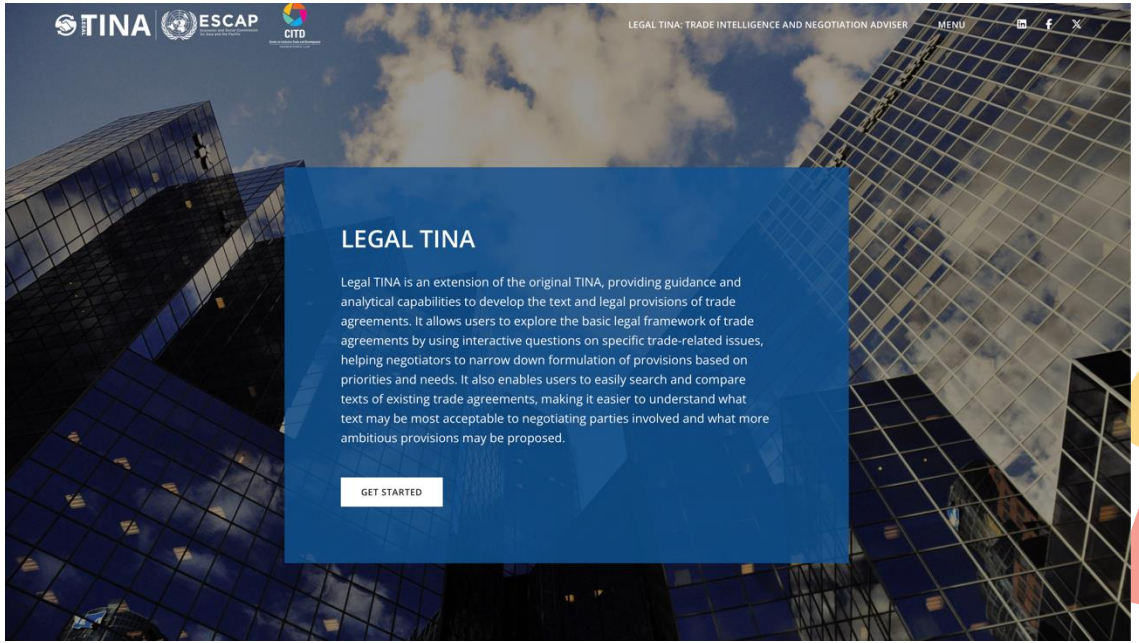
1. **Law on Personal Data Protection**, Since December 2021
   Available at: https://legalinfo.mn/mn/detail?lawId=16390288615991

2. **Law on Cybersecurity**, Since December 2021
   Available at: https://legalinfo.mn/en/edtl/16531350476261

3. **Law of Mongolia on Consumer Protection**, Since December 2003, last amended in January 2024.
   Available at: https://legalinfo.mn/mn/detail/551

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