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# Overview of Digital Trade Provisions in Asian Agreements

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Pilot Course on Negotiating Trade Agreements in Times of Crisis

August 6, 2021

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# Impact of COVID on Digital Trade

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- Firms that are online in whole or part have outperformed companies that remain entirely offline
- Does *not* mean that the future eliminates offline engagements, shops, offices...
- But encouraging more online trade requires supportive policy infrastructure to avoid strangling firms in complexity and costs
- Important to reflect on digital trade rules that support the smallest firms as these are backbone of most economies
- Government need not do it all: focus on policy settings that encourage and foster digital trade
- Newer trade agreements increasingly focusing on key topics
  - Including latest generation of “digital only” deals

# Anchor Digital in Trade Agreements

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- Digital trade and e-commerce flourished without many rules or regulations
- No rules, however, often problematic for firms
- Growing potential for regulatory fragmentation in digital space
- Incoherence favors larger firms with capacity to manage overlapping, conflicting, time consuming rules and regulations
- Firms of all sizes prefer consistency in policy landscape
  - Best outcome—similar rules in largest set of economies
- Some Asian economies increasingly anchoring digital rules into trade agreements
  - Either digital or e-commerce elements of existing free trade agreement
  - Or, increasingly, stand-alone trade arrangements for digital



# Lots of Ways to Manage Digital Trade

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- ASEAN/Australia/New Zealand FTA (AANZFTA) had extensive e-commerce chapter from 2010
- Lot of similar types of initiatives embedded in bilateral agreements
- ASEAN and RCEP economies working on range of digital rules
- WTO's Joint Sector Initiative (JSI) on E-Commerce ongoing with 86 members
- TPP had many deep commitments among 12 participants, maintained in CPTPP
- Latest innovation: digital-only agreements
  - DEA designed to expand existing FTA
  - DEPA created as independent agreement
- Many economies working on deals that can have accession or expansion in the future



# Digital Trade Rules Vary in Each

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- 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
- Intellectual property rights adjustments for digital environment



# E-Commerce and Digital Trade

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- Typically, digital trade and the digital economy means goods and services as well as data and supporting policies
  - In trade agreements, e-commerce remains the “umbrella” term
- When working on e-commerce trade, important to remember not just about goods
  - Can also include broad range of services (plus telecoms and financial services), investment, data rules and regulations, intellectual property rights adjustments for digital, standards related to digital, online consumer protection, MSMEs, development, capacity building, and so forth
- Digital trade is a cross-cutting or horizontal topic and needs to be effectively managed
- Key goal: to allow the “micromultinational” to continue to find markets, materials, suppliers and customers anywhere



# Key Issues in Trade Deals Include

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- Paperless trading whenever possible
- Electronic signatures and electronic authorization
- Renewed commitments to lower logistics costs
  - Focus on small size, small value shipments
- Sorting out consistency in electronic payments and settlement
- Online consumer protection
- Minimizing barriers to cross-border flows of data
- Adequately protect personal information
- Location of computing service facilities language to allow cloud-services delivery and future applications like Internet of Things (IoT), AI, and Big Data
- Requires regular engagement with stakeholders



# Three Specific Agreements to Watch

- Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)
  - In force in late 2018 for Australia, Canada, Japan, Mexico, New Zealand, Singapore and (in early 2019) for Vietnam
- Digital Economy Partnership Agreement (DEPA)
  - Chile, New Zealand and Singapore
  - “Modular” approach to a digital-only deal
- Digital Economy Agreement (DEA)
  - Australia and Singapore
  - 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 | ✓<br>Article 5      | ✓<br>Article 3.2     | ✓<br>Article 14.3     |
| 3   | Non-discrimination of digital products        | ✓<br>Article 6      | ✓<br>Article 3.3     | ✓<br>Article 14.4     |
| 4   | Domestic electronic transactions framework    | ✓<br>Article 8      | ✓<br>Article 2.3     | ✓<br>Article 14.5     |
| 5   | Electronic authentication and signatures      | ✓ (+)<br>Article 9  | ✗                    | ✓ (-)<br>Article 14.6 |
| 6   | Paperless trading                             | ✓ (+)<br>Article 12 | ✓ (+)<br>Article 2.2 | ✓ (-)<br>Article 14.9 |
| 7   | Electronic invoicing                          | ✓ (+)<br>Article 10 | ✓ (-)<br>Article 2.5 | ✗                     |
| 8   | Electronic payments                           | ✓<br>Article 11     | ✓<br>Article 2.7     | ✗                     |
| 9   | Express shipments                             | ✓<br>Article 13     | ✓<br>Article 2.6     | ✓<br>Article 5.7      |
| 10  | Online consumer protection                    | ✓<br>Article 15     | ✓<br>Article 6.3     | ✓<br>Article 14.7     |
| 11  | Cooperation on competition policy             | ✓<br>Article 16     | ✓<br>Article 8.4     | ✗                     |
| 12  | Personal information protection               | ✓ (-)<br>Article 17 | ✓ (+)<br>Article 4.2 | ✓ (-)<br>Article 14.8 |

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

# What Explains Specific Variations?

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- 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



# Emerging Digital Issues

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- Widening inequality in digital abilities, technologies, etc
- Cross-border electronic payments
- Nexus between tax and digital trade
- Digital or data “sovereignty” concerns
- Competition policy responses to managing digital trade
- Connections between digital trade and development
- Challenges posed by new technologies: IoT, AI, Big Data, etc
- Evolving digital landscape driven by distributed ledger technologies
- Speed of evolution of digital trade versus ability of governments and regulators to keep up



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