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Highlights

• The Asia-Pacific region is a major contributor of PTAs, accounting for about half of PTAs worldwide. As of November 2021, there are 195 PTAs in force, 19 signed and pending ratification, and 97 under negotiation, that have at least one Party from the Asia-Pacific region.

• Negotiations on many ongoing PTAs were suspended or delayed because of the COVID-19 pandemic, as countries shifted their attention to health emergencies and economic contractions. Notably, fewer PTAs have been signed since the outbreak of COVID-19. Only four new agreements were signed in 2021 (as of November), a decline from 13 in 2019 and 11 in 2020.

• In 2021, however, there have been important developments with regard to mega-trade agreements. The Regional Comprehensive Economic Partnership (RCEP) has been ratified by six ASEAN countries – Brunei Darussalam, Cambodia, the Lao People’s Democratic Republic, Singapore, Thailand and Viet Nam – and four non-ASEAN members – Australia, China, Japan and New Zealand. With ratification by 10 out of 15 member States, the RCEP will take effect on 1 January 2022. For the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), China’s application to join sends a good signal regarding the future expansion of this golden-standard mega trade agreement.

• More noteworthy than the number of new PTAs is the growing array of domestic policy domains that PTAs have come to regulate. Most agreements that have been signed since 2020 onward go beyond trade in goods to cover additional areas such as services, e-commerce, and climate action which lie at the top of the new agenda items for PTA negotiations.

• Recently, liberalization of the digital trade environment and digital trade-related regulations have been embraced by trade negotiations. Following the growing intertwining of digital technology and trade, Digital Trade Agreements (DTAs) have increasingly become a part of new generation trade agreements since 2019. As of 2021, there are five DTAs, all of which involve Asia-Pacific countries, particularly Singapore. In recognition of the centrality of digital trade integration for developing countries, bilateral discussions for potential North-South DTAs have begun, particularly in ASEAN. However, there is a risk that such bilateral discussions could lead to divergent rules, resulting in a ‘digital noodle-bowl’.
• On average, about half of trade in the region is with PTA partners. However, the shares vary greatly at the country level, reflecting diverse policy interest and negotiating capacity across countries. In general, reciprocal trade negotiations rarely involve least developed countries (LDCs) and Pacific developing economies (PIDEs). Selected graduating LDCs could face important challenges to maintaining competitiveness in major export markets after graduation. For example, Bangladesh and the Solomon Islands as well as Kiribati and Tuvalu may face significant challenges to competing in major export destinations after graduation and may lose trade preference. These countries currently have not had PTAs with major trade partners. Their exports to current PTA partners are negligible, ranging between 3% and 11%.

• Looking ahead, the downside economic pressures and the temptation to build back better could raise public expectations for trade agreements. As a result, social and environmental provisions in PTAs may emerge among the top items on the negotiation agenda, to ensure public support for a new PTA. Also, lessons learnt from supply-chain disruptions during the COVID-19 pandemic may call for deeper and more tailored trade agreements that could help to enhance supply-chain and trade resilience on many aspects during crises. To name a few, PTA provisions regarding NTMs, trade facilitation and intellectual properties rights (IPRs) could play a particularly important role in ensuring essential supplies.
1. Trends of PTAs in Asia and the Pacific in 2021

This brief provides an overview of the initiatives and approaches of the Asia-Pacific economies towards PTAs, including recent trends and developments. More specifically, it provides an analysis based on data contained in ESCAP’s Asia-Pacific Trade and Investment Agreement Database (APTIAD) to highlight developments of Asia-Pacific involvement in trade agreements in 2021 compared with the previous year.

As of November 2021, 350 ‘physical’ PTAs in force worldwide were notified to the World Trade Organization (WTO), which is almost a seven-fold increase since 2000 (when there were just 55 such agreements). The Asia-Pacific region continues to be an important contributor to the worldwide build-up of PTAs, with nearly half of them currently in force involving at least one Asia-Pacific economy.

Fewer PTAs have been signed since the outbreak of COVID-19, but the next generation trade agreements are emerging with the focus on digital trade

The emergence of COVID-19 has hindered the progress of trade negotiations around the world. Negotiations on many ongoing PTAs have been suspended or delayed, as countries shifted their attention to health emergencies and economic contractions. As a result, the number of new PTAs signed globally reduced significantly during the COVID-19 pandemic. The number of new agreements signed annually decreased from 13 and 11 agreements in 2019 and 2020, respectively, to only four new agreements in 2021 (as of November 2021).¹

The 15 PTAs signed during 2020-2021 include next generation trade agreements that focus on promoting interoperability in cross-border digital trade² (figure 1), i.e., the Digital Economy Partnership Agreement (DEPA) and the Australia-Singapore Digital Economy Agreement (DEA). The period was also marked by the signing of other modern and comprehensive agreements – the Regional Comprehensive

¹ A recent example is the postponement of the formal signing of the Cambodia and Republic of Korea from the proposed period in mid-2021 because of the disruptions caused by the COVID-19 outbreak. Details are available at https://www.phnompenhpost.com/business/signing-korea-trade-deal-postponed.

² There is no single recognised and accepted definition of digital trade. According to OECD, there is a growing consensus that it encompasses digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms and Governments. (See https://www.oecd.org/trade/topics/digital-trade/.)
Economic Partnership (RCEP) and the Phase-I Agreement of China-United States. The latter, signed and enforced in February 2020, stalled the increases of unilateral tariffs since February 2020, but the existing tariffs remain high (Anukoonwattaka and others, 2021). The Phase-I agreement will expire by 31 December 2021 with great uncertainty regarding Phase-II negotiations as the United States is not satisfied with the enforcement of the Phase-I agreement by China.

During the same period, several other bilateral trade agreements have been signed, including:

(a) Azerbaijan-Turkey; Cambodia-China; Cambodia-Republic of Korea; India-Mauritius; Indonesia-Republic of Korea, the Philippines-Republic of Korea and Republic of Korea-Israel, and

(b) The set of post-Brexit agreements between the United Kingdom and Asia-Pacific economies: Japan-United Kingdom; Singapore-United Kingdom; Turkey-United Kingdom and Viet Nam-United Kingdom (figure 1).

It must be noted that although 10 of the 15 agreements have been signed or come into force they have not been notified to the WTO (and therefore are not observing the Transparency Mechanism agreed on by the WTO members).

As of November 2021, seven of the new 15 agreements signed during 2020-2021 have been ratified and put into force. The seven agreements include: Australia-Singapore DEA; DEPA; India-Mauritius; Japan-United Kingdom; Singapore-United

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3 The RCEP was signed in November 2020 after it had been negotiated for eight years since 2012 by 16 countries, but India withdrew in November 2019. For more details about RCEP, see ESCAP (2020).

4 Under the Phase-I agreement, China has committed to increasing imports of certain United States goods and services by US$ 200 billion above the 2017 baseline levels by the end of 2021. As of September 2021, China's purchases of all covered products reached 62 per cent (Chinese imports) or 60 per cent (United States exports) of the Phase I target (Bown, 2021). The gap between the proposed and actual purchase might pose a challenge to the Phase II negotiations.

5 The Japan-United Kingdom, Singapore-United Kingdom, Turkey-United Kingdom and Viet Nam-United Kingdom PTAs were signed in 2020 to ensure continuity of trade and have reached agreements covering 63 per cent of the United Kingdom trade. These agreements will come into force on 1 January, 2021, except the Singapore-United Kingdom which was subsequently enforced on 11 February 2021. These five agreements are based on the existing agreements that the European Union has with the selected Asia-Pacific economies, the preferential arrangements for which the United Kingdom lost access to after the Brexit transition period ended on 31 December 2020. The United Kingdom is also negotiating comprehensive trade agreements with Australia and New Zealand, which currently negotiate trade agreements with the European Union. These efforts to secure PTAs led by the United Kingdom may raise the absolute number of CEPAs in the region during the next few years.

6 DEPA was enforced between New Zealand and Singapore in January 2021.
Kingdom; Turkey-United Kingdom, and Viet Nam-United Kingdom. In addition, 12 agreements that were signed before 2020 entered into force during 2020-2021. Eight of them entered into force in 2020: the Pacific Agreement on Closer Economic Relation (signed in 2017); Australia-Peru (signed in 2018); Turkey-Venezuela (signed in 2018); Australia-Hong Kong, China (signed in 2019); Australia-Indonesia (signed in 2019); Japan-United States (signed in 2019); Japan-United States Digital Trade Agreements (signed in 2019) and Viet Nam-European Union (EU) (signed in 2019). Four more agreements were signed prior to 2020 and entered into force in 2021: China-Mauritius (signed 2019); Georgia-United Kingdom (signed 2019) and the Republic of Korea-United Kingdom (signed 2019) and the United Kingdom-Pacific States Interim

Figure 1. PTAs signed after January 2020

Source: The authors, based on PTA information from the Asia-Pacific Trade and Investment Agreement Database (APTIAD) (accessed November 2021).

Note: Australia-Singapore DEA was signed and enforced in 2020. The Australia-Singapore PTA has been signed and enforced since 2003.

7 The seven enforced agreements do not include the China-United States Phase-I Agreement because it remains an interim agreement.

8 However, PACER Plus is different from other trade agreements. It is a duty-free, quota-free agreement that replaces the previous one-way agreement known as the South Pacific Area Regional Trade and Economic Cooperation Agreement (SPARTECA). It differs from SPARTECA, as it obliges Pacific Island members to reduce import tariffs over time and liberalize incoming services trade and investment. Eight countries have now signed and ratified SPARTECA – Australia, Cook Islands, Kiribati, New Zealand, Niue, Samoa, Solomon Islands and Tonga.

9 The China-Mauritius PTA has broadened the agreement scope, capturing e-commerce, investment, etc., and extends to medicine and medical services, encouraging training and capacity-building on pharmaceuticals and clinical pharmacy practice. One of the outcomes was the establishment of the China-Mauritius Center for Traditional Chinese Medicine (TCM) at Port Louis, in December 2020. Available at http://fta.mofcom.gov.cn/enarticle/chinamauritiussen/enmauritius/202101/44182_1.html.
Economic Partnership Agreement (signed 2019). In particular, the Republic of Korea-Republics of Central America PTA, was signed in 2018, and entered into force for Panama in 2021.\(^{10}\) In conclusion, 11 agreements were ratified during 2020-2021.

**RCEP is set to take effect from January 1, 2022 onward**

Regarding RCEP, the world’s largest trade deal will take effect on 1 January 2022. By November 2021, six ASEAN countries (Brunei Darussalam, Cambodia, the Lao People’s Democratic Republic, Singapore, Thailand and Viet Nam) and four non-ASEAN members (Australia, China, Japan and New Zealand) had already ratified RCEP. These ratifications are sufficient to move RCEP into action at the start of 2022, as previously aimed.\(^{11}\) There is also a potential for expansion of RCEP membership. As per the agreement text, after 18 months of entering into force, other States or separate customs territories are allowed to accede to the agreement. With an original negotiating State exception, India is allowed to rejoin RCEP without waiting for 18 months. Hong Kong, China has proposed joining and has received optimistic feedback from the RCEP members, including China.\(^{12,13}\)

In addition to RCEP, an important development in 2021 is the potential joining of new Parties, particularly China, to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (box 1) (Elms, 2021). The joining of China will make the economic size of CPTPP close to that of RCEP because of overlapping memberships covering about 30% of world GDP and population. Currently, seven out of 15 RCEP members are Parties to CPTPP, and three of them – Australia, New Zealand and Singapore – also have bilateral agreements with China.\(^{14}\) The joining of China into the more ambitious framework could increasingly pressurize the other members of RCEP to participate in CPTPP to avoid being left out, despite the demand for domestic regulatory reform.

\(^{10}\) The PTA between the Republic of Korea and six countries of the Republics of Central America – Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama – was signed in 2018 and is effective among all Central American countries except Guatemala. The PTA has been enforced for Honduras, Nicaragua and Costa Rica since 2019, for El Salvador since 2020 and Panama in 2021.

\(^{11}\) RCEP will enter into force 60 days after least six ASEAN countries and three non-ASEAN RCEP members have completed the ratification process.

\(^{12}\) Hong Kong, China has free trade agreements with 13 of the 15 RCEP economies, i.e., Japan and the Republic of Korea.

\(^{13}\) Bangladesh is another economy discussing the feasibility of joining RCEP. The Ministry of Commerce of Bangladesh has conducted an in-dept feasibility study on its accession to RCEP. Available at [https://www.tbsnews.net/economy/commerce-ministys-clarification-299995](https://www.tbsnews.net/economy/commerce-ministys-clarification-299995).

\(^{14}\) China has five bilateral PTAs signed and enforced with Australia, Chile, New Zealand, Peru and Singapore. China also has one trilateral PTA under negotiation with Japan and the Republic of Korea. Moreover, under RCEP, China connects with seven CPTPP members – Australia, Brunei Darussalam, Japan, Malaysia, New Zealand, Singapore, and Viet Nam.
The Comprehensive and Progressive Agreement for Trans-Pacific (CPTPP) was signed in 2018 by the 11 founding members, i.e., Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam. Given the depth and level of ambition of CPTPP, it is called the ‘gold standard’ of PTAs (Suominen, 2021). Since its signing in 2018, many economies have expressed interest in participating in CPTPP. Substantial progress in 2021 should be noted. First, the United Kingdom became the first potential new member after the CPTPP members decided by consensus to begin its accession process in June 2021. Second, China, the largest developing economy, officially submitted its accession proposal in September 2021. Soon after, Taiwan Province of China also submitted a proposal. The existing members of CPTPP are currently have three proposals waiting for acceptance, considering these two together with the proposal submitted by Colombia in 2018.

PTAs signed between CPTPP members and aspirant economies in 2021

Note: The line refers to the bilateral links and the dash line refers to plurilateral links. (An overlap between bilateral and plurilateral is represented in the non-dash line.)

CPTPP entered into force for Australia, Canada, Japan, Mexico, New Zealand and Singapore on 30 December 2018, and for Viet Nam and Peru in 2019 and 2021, respectively. Brunei Darussalam, Chile and Malaysia will be enforced 60 days after completing the ratification process.

The agreement opens for new trade partnerships that can comply with CPTPP benchmarks. A new member must be capable of fulfilling the existing rules and must undertake to deliver the highest standard of market access. For the CPTPP accession process, see Ministry of Trade and Industry of Singapore, 2019.
Eight new initiatives commenced negotiations despite the pandemic

Negotiations for new PTAs have been revived after being stalled for a certain period before the pandemic. As of November 2021, four PTA negotiations started in 2020 and four more in 2021 (figure 2). These eight newly initiated initiatives add to the region’s sizable amount of ongoing PTA negotiations, having now reached 97 agreements. Following the ongoing trend of diversifying trade partners to reduce trade-related risks as well as seek new market opportunities, these newly commenced negotiations include more cross-regional initiatives (six) than intraregional initiatives (two). This trend began even before the COVID-19 pandemic and has been accentuated by new or previously existing trade and investment issues, especially those related to global value chains, as revealed by the pandemic.

Source: Based on information from APTIAD (accessed November 2021).
Note: All agreements in this figure, except the Cambodia-Republic of Korea PTA that was signed in October 2021, are still under negotiation. The Republic of Korea-Singapore Digital Partnership Agreement and Singapore-United Kingdom Digital Economy Agreement are separated from their conventional PTAs which have been enforced since 2006 and 2021, respectively.
2. Patterns of PTAs in Asia and the Pacific

As of November 2021, there were 195 ‘physical’ trade agreements in force, 19 signed and pending ratification, and 97 under negotiation, involving at least one Asia-Pacific region member. Figure 3 presents a breakdown of all PTAs in force in Asia and the Pacific. The majority of PTAs in the region cover more than liberalization of trade in goods. Agreements that cover only goods trade liberalization (FTAs) currently account for 35.5% of all agreements in force, while agreements covering both goods and services trade (FTAs and EIAs) account for 51%. Partial Scope Agreements (PSAs), referred to as ‘Others’ in figure 3, account for 11% of regional agreements in force. The customs unions and digital agreements account for a minimal share of 1% and 1.5%, respectively, of regional agreements in force.

Source: ESCAP calculation, based on data obtained from APTIAD (accessed November 2021).

17 Data from APTIAD, accessed November 2021, available at https://www.unescap.org/content/aptiad/
A big noodle-bowl of trade agreements – 78% of trade agreements in force are bilateral in nature with diverse rules and standards

Most agreements signed by Asia-Pacific economies are bilateral, accounting for 78% of all Asia-Pacific PTAs, while plurilateral agreements account for just 10% of PTAs in force in the region. Country-Bloc agreements constitute the remaining 12%. However, many of these bilateral and plurilateral agreements are among common member countries. For example, some CPTPP members are also RCEP members, in addition to having bilateral agreements with each other. This situation, known as the “noodle-bowl phenomenon”, potentially increases international trade costs arising from differences in rules of origin and technical standards, and other non-tariff measures (NTMs) in the agreements.

Traditionally, agreements tend to be formed between countries in the same subregion. From the 1970s until the early 2000s, most PTAs signed were intra-subregional agreements (figure 4). Associated with the increased interest in participating in global and regional value chains as well as seeking new market

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18 In the Asia-Pacific region, the following subregions overlap with plurilateral trade negotiations efforts: North and Central Asia (EAEU); South Asia (SAFTA); South-East Asia (ASEAN); and Pacific (PACER Plus). East and North-East Asia is the only subregion without a comprehensive subregion-wide deal. There are only two regional plurilateral agreements that connect countries from different subregions. One is the Asia-Pacific Trade Agreement (APTA) connecting members from East and North-East Asia (China, Mongolia and the Republic of Korea), ASEAN (the Lao People’s Democratic Republic) and SAFTA (Bangladesh, India and Sri Lanka). Another agreement is RCEP, connecting members from East and North Asia, ASEAN and the Pacific.
opportunities, since the early 2000s Asia-Pacific economies have started to actively sign and enforce agreements with partners outside their own subregion. By 2021, Asia-Pacific agreements that cover at least one non-Asia-Pacific partner account for 53% of total Asia-Pacific PTAs in force.

More remarkable than the number of PTAs is the growing array of domestic policy domains that PTAs have come to regulate. Although comprehensive trade agreements are still more prevalent among advanced economies, especially the European Union, recent developments mark increasing participation of developing Asia-Pacific economies, and ASEAN economies in particular, in deep trade agreements. All trade agreements signed between 2020 to 2021 – except for the Azerbaijan-Turkey, Cambodia-Republic of Korea and Republic of Korea-Israel PTAs – go beyond trade in goods and tariffs reduction. 19 Among them are the Comprehensive Economic Partnership Agreements between Indonesia and the Republic of Korea, and between the United Kingdom and selected Asia-Pacific economies.

Several existing agreements have also been upgraded to become more comprehensive.20 The upgraded protocols amend or add new key areas, adapting to trends in recent domestic regulations and international developments. As of 2021, eight PTAs within and across the Asia-Pacific region have initiated an upgrade after being active for 10 years or more (figure 5). In the region, upgrading an agreement often concerns enhancing market access for trade in services, followed by the inclusion of emerging trade issues such as ‘e-commerce’.21 For example, after upgrading, the e-commerce chapter in the Australia-Singapore PTA added the provision on cross-border data flows. The next section of this report explores digital trade negotiations in details.

In addition, since the pre-pandemic period, there has been an increase in PTAs which include environmental provisions, broadening their scope and deepening

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19 A total of 13 PTAs and 2 DTAs have been signed during 2020-2021. Except the two PTAs mentioned, all PTAs go beyond liberalization of trade in goods while the two DTAs focus specifically on liberalization of digital trade environment.

20 For example, ASEAN-China PTA upgrading was signed in 2015 after officially launched the negotiations in 2014 to enhance the cooperative level between the parties and accelerate East Asian regional economic integration. The existing PTA was signed and enforced for 10 years, in 2004 and 2005, respectively. Available at http://fta.mofcom.gov.cn/topic/enaseanupgrade.shtml.

21 The four PTAs of China-Chile, China-New Zealand, China-Peru and China-Singapore have incorporated an e-commerce agreement for the first time since upgrading.
their stringency. According to ESCAP (2021), 85% of the PTAs signed in the region after 2005 contain at least one climate-related provision. The agreements with the most climate-related articles, and which include an Asia-Pacific economy, most often involve advanced countries, particularly the European Union, the Republic of Korea and Japan. The two new mega-regional trade agreements, RCEP and CPTPP, are among them. The level of ambition in this area, however, varies. For example, RCEP hardly deals with the environment or climate change. In contrast, CPTPP contains provisions requiring Parties to effectively enforce domestic environmental laws and prohibiting the loosening of environmental laws to encourage trade and investment.

All in all, the developments show deepening economic integration. An important implication is that the interfaces between PTA commitments and domestic regulations are getting significantly enlarged.

Figure 5. Upgraded agreements in the Asia-Pacific region (as of November 2021)

Source: Based on information from APTIAD (accessed November 2021).
Note: Blue lines refer to the enforced agreements, orange lines refer to the signed and pending ratification agreements and green dash lines refer to the negotiated agreements.
With the expansion in the number and membership of PTAs, the share of Asia-Pacific trade accounted for between PTA members has increased. According to ESCAP (2016) only 35% of exports and 45% of imports were transacted among the PTA partners, on average, during 2011-2013. By 2020, the export and import shares had increased to 45% and 51%, respectively. However, trade covered by PTA partners varies considerably across the region, reflecting diverse policy interest and negotiation capacity across countries (figure 6). Indeed, advanced economies in the region tend to actively participate in comprehensive trade agreements with major trade partners. Land-locked LDCs, such as Bhutan, the Lao People’s Democratic Republic and Nepal, often have preferential arrangements with neighbouring countries that are their few, if not sole, export destinations.

PTAs rarely involved small developing economies, particularly PIDEs and LDCs

In general, trade negotiations, on a reciprocal basis, rarely involve LDCs and PIDEs. Except for the land-locked cases as mentioned, Asia-Pacific graduating LDCs could face important challenges to maintaining competitiveness in major export markets after graduation. As LDCs, in general, they are receiving International Support Measures (ISMs), including Duty-Free Quota-Free (DFQF) market access to advanced and larger developing countries. Concerns exist in particular for Bangladesh and the Solomon Islands, countries which will soon graduate from LDC status. They may face great challenges after graduation to competing in the same export markets with countries that have reciprocal preferential arrangements. Based on existing PTAs they have, the exports of only 9% and 3% to Bangladesh and the Solomon Islands, respectively, were destined to countries with which they have a PTA. Similarly, Kiribati and Tuvalu, whose graduations have been deferred, have negligible trade shares (3% and 11%, respectively) with current PTA partners, based on export values in 2020.
Figure 6. Shares of trade with partners of enforced PTAs (2020)

Note: Only reciprocal PTAs in force are included; * refers to LDCs; ** refers to graduating LDCs.
3. Digital trade in PTAs

Digital trade elements are significantly embraced into trade negotiations domains

Reflecting the impetus to digital-economy integration following the Covid-19 pandemic, digital trade elements are significantly being embraced by trade negotiations. Often, digital trade elements in PTAs emphasize e-commerce, i.e., “production, distribution, marketing, sale or delivery of goods and services by electronic means”. The first trade agreement in the region, and among the very first in the world, with a substantive provision on e-commerce was the New Zealand-Singapore Closer Economic Partnership Agreement (CEPA) signed in November 2000. The Australia-Singapore PTA signed in February 2003 comprises a dedicated e-commerce chapter. The trend has particularly accelerated since 2013. As of November 2021, 76 agreements include e-commerce-related provisions in PTAs, most of which are structured in exclusive chapters (figure 7). Moreover, 68 of 76 are in force, four have been signed and are pending ratification, and four agreements are still under negotiation. In 2020-2021, six of the 15 signed trade agreements, and one upgraded agreement have included specific e-commerce provisions.

Conventionally, negotiations on e-commerce in PTAs focus on online consumer protection and, personal data protection (box 2). More recently, data flow provisions have become one of the most important and sensitive issues in PTA negotiations. As of November 2021, of the total 76 agreements with e-commerce elements, 52 agreements address online consumer protection, 56 agreements address data privacy, while data flows have caught up very quickly since 2018, and are addressed in 20 agreements (figure 8).

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22 There is no single recognised and accepted definition of digital trade. Following the definition of OECD, digital trade encompasses digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and governments. Available at https://www.oecd.org/trade/topics/digital-trade/

23 The definition of ‘e-commerce’ from the eleventh WTO Ministerial Conference (WTO, 2015).

24 The New Zealand-Singapore CEPA incorporated the first e-commerce provision in this region and later added an explicit e-commerce chapter (Chapter 9) after being upgraded in 2019.

25 These include four agreements signed in 2020 (Australia-Singapore, DTA; China-United States; DEPA; Japan-United Kingdom; RCEP; and Viet Nam-United Kingdom) and another one upgraded agreement of China-New Zealand signed in 2021.
Driven by advanced countries, bilateral negotiations on broader digital-trade issues have flourished

Reflecting the expanding scope and complexity of digital trade negotiation, dedicated Digital Trade Agreements (DTAs) have rapidly come into the focus of negotiators, especially in advanced countries. The first DTA in the world was signed in 2019, between the United States and Japan. By 2021, the number of DTAs had grown to five, of which three have entered into force and two are still under negotiation.²⁶ All of them involve at least one Asia-Pacific partner. Singapore, in particular, has been at the centre of DTA negotiations with participation in most DTAs (four out of the five DTAs include Singapore). The scope of DTAs is beyond rules found in e-commerce agreements further to regulatory environment related to emerging issues, such as Artificial Intelligence, FinTech (financial technology) and open government data, while also addressing broader issues in digital trade and cooperation.

²⁶ Of these five agreements, three are being enforced – the Australia-Singapore Digital Economy Agreement (signed and enforced in 2020), the Digital Economy Partnership Agreement (signed in 2020 and enforced in 2021) and the Japan-United States Digital Trade Agreement (signed in 2019 and enforced in 2020) – while two other agreements – the Republic of Korea-Singapore Digital Partnership Agreement and the Singapore-United Kingdom Digital Economy Agreement – were still being negotiated as of November 2021.
Figure 8. Breakdown of PTAs (all statuses) with e-commerce elements by key provisions

Source: ESCAP calculation, based on data obtained from APTIAD and TAPED (accessed November 2021).

Box 2. Unpacking the E-Commerce Chapter

The protection of online consumer rights is crucial to the development of a secure e-commerce environment. The provision mainly focuses on protection against fraudulent and deceptive commercial activities that can cause actual or potential harm to online consumers from misrepresentation of product information, failure to deliver products or charging a consumer without authorization. Most agreements follow a non-binding approach and the implemented measures recognize the exchange of information or experiences, and are maintained as per the respective laws or adopt international standards with regard to online consumer protection.

Data protection and cross-border data flows are relatively cutting edge and sensitive issues. Data have been regarded as the ‘new oil’, and its free flow is proposed to be the ‘fifth freedom’ after the previous four – the movement of goods, services, persons and capital (Burri, 2019). In Asia-Pacific, most of the personal data protection or data

22 Article 9.9 Singapore-EAEU PTA, Article 14.7 CPTPP, etc.
28 Article 13.6 Republic of Korea-Canada PTA, Article 15.7 Australia-Malaysia PTA, Article 80 Japan-Switzerland PTA, etc.
privacy provisions found in the e-commerce chapter comprise both binding and non-binding rules. Multiple approaches are being taken to protect personal information. These include, for example, the best endeavour to adopt non-discriminatory practices against violations within its jurisdiction,\textsuperscript{29} publishing information about how to pursue remedies and comply with legal requirements,\textsuperscript{30} ensuring the existence of a domestic regulatory framework that provides protection of personal data for e-commerce users.\textsuperscript{31} The mixed approaches reflect the diverse socio-cultural perspectives towards the value of data privacy in each country (Kuner, 2013). However, at least half of the agreements have stated that the legal framework for personal information will be compatible with international standards\textsuperscript{32} or the principles of relevant international bodies.\textsuperscript{33}

Among the three elements, cross-border data flows seem to be the most sensitive area because countries have diverse views and value judgement on data protection and privacy. The first data flow provision in this region emerged in 2007 with the trade agreement between the Republic of Korea and the United States.\textsuperscript{34} The data flow provision covers the free movement of data and overcoming barriers to information transferred, including prohibiting and the imposition of data localization measures, which requires the data to be used or located within the Parties’ jurisdiction. Tensions between protecting personal data and the idea that data need to flow freely to realize the benefits of the digital economy has become contentious issues of digital trade negotiations. Indeed, only 12 out of 76 agreements covering e-commerce issues include the obligations to limit data localization. Although most of them are binding, the data localization provisions frequently attach exceptions allowing the imposition of measures with public policy objectives.

**Bilateral approach could lead to divergent rules, which will become a ‘digital noodle-bowl’**

Increasingly, divergent rules across agreements are creating concerns about a ‘digital noodle-bowl’. Scope and ambition levels of digital trade elements in PTAs are varied.

\textsuperscript{29} Article 13.8.3 Australia-Peru PTA, Article 13.7.3 Australia-Indonesia CEPA, etc.
\textsuperscript{30} Article 13.8.4 Australia-Peru PTA, Article 15.2 Japan-United States DTA, etc.
\textsuperscript{31} Article 9.7.2 Singapore-Turkey PTA, Article 11.6.1 China-EAEU PTA, etc.
\textsuperscript{32} Article 8.57 Singapore-European Union PTA, Article 193.2 Armenia-European Union CEPA, Article 8.3 upgraded China-Singapore PTA, etc.
\textsuperscript{33} Article 9.7 upgraded New Zealand-Singapore CEPA, Article 11.9 Australia-Hong Kong, China PTA, Article 8.80 Japan-United Kingdom CEPA, etc.
\textsuperscript{34} Article 15.8 Republic of Korea-United States PTA
The bilateral nature of most DTA negotiations could potentially lead to divergent standards. However, based on the overlapping of DTAs that countries have signed, Singapore is in a strategic position to be a focal point for DTA rules. Most notably, the country is a founding member, together with Chile and New Zealand, of the Digital Economy Partnership Agreement (DEPA). Due to its ‘open plurilateralism’ principle and modular approach, DEPA is a unique DTA and has the potential to expand its membership further (box 3).

**Box 3. Digital Economy Partnership Agreement**

The Digital Economy Partnership Agreement (DEPA) is a new generation DTA as it is the first stand-alone plurilateral agreement dedicated to digital trade. The agreement was founded by Chile, New Zealand, and Singapore in 2020. It has officially entered into force between New Zealand and Singapore in 2021. Constructed as a ‘living agreement’, the DEPA potentially expands in terms of its context as well as its membership. Its substance can be updated in accordance with the evolving technologies and the emerging challenges. Regarding its membership, the agreement is open to any eligible economy, including WTO members on terms to be agreed among the Parties. Canada has expressed its interest in participating and began exploratory discussions with the members in 2021. The Republic of Korea also formally notified New Zealand, the depository of this agreement, about its willingness to participate after completing domestic procedures in September 2021. More recently, on 1 November 2021, China officially applied to join the DEPA.

The DEPA consists of 12 modules, covering various aspects of digital economy issues: data, emerging trends and technologies, innovation and digital economy, etc. The context of these modules is developed from the electronic commerce chapter of the CPTPP. In addition to conventional issues such as non-discriminatory treatment of digital products, paperless trade and source code, the DEPA covers broader digital trade environment, i.e., Digital Inclusion, Artificial Intelligence and Fintech. A unique factor of the DEPA is that it does not attach to any background of the PTA framework. This implies memberships are not limited to any specific set of countries. Moreover, the DEPA incorporates more flexibilities. Notably, the DEPA uses a modular approach, where each module is separable. This approach gives options to member States to entirely or partly take up certain modules. Owing to its flexibility, it has been seen as a potential building block for further cooperation and harmonization of digital trade rules (Honey, 2021).

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4. Going forward: Improving PTAs for trade in times of crisis and pandemics

The downside economic pressures and expectation of building back better could support more sustainable development provisions in trade agreements

Looking ahead, the downside economic pressures and expectations of building back better after the pandemic may lead to more sustainable development provisions in trade agreements. PTAs with provisions requiring signatories to uphold the core labour and environmental standards could become a strategy for Governments to gain public support for their new initiatives. As a result, social and environmental provisions might become among the top items on the negotiation agenda. As discussed in ESCAP (2021), countries could use regional trade agreements to realize climate goals by including provisions covering climate-friendly public procurement, carbon markets and border carbon adjustment taxes, and the limiting of fossil fuels. To be effective, climate-related provisions should specify more precise, measurable and binding commitments. Regional trade agreements should also incorporate credible mechanisms for the enforcement of these provisions.

In addition, lessons learnt from supply-chain disruptions during the COVID-19 pandemic may call for deeper and more tailored trade agreements that could help to enhance supply-chain and trade resilience on many aspects during crises. To name a few, PTA provisions regarding NTMs, trade facilitation and intellectual properties rights (IPRs) could play a particularly important role in ensuring essential supplies (United Nations, 2021).36

PTA provisions on NTMs with elements of mutual recognition, equivalence and harmonization would be instrumental in coordinating policy responses to crises

As the United Nations (2021) has highlighted, PTA provisions on NTMs with elements of mutual recognition, equivalence and harmonization would be instrumental in coordinating policy responses to crises. During the COVID-19 pandemic, in order to address critical shortages of essential medical goods, many Governments have either treated the standards of other countries as equivalent or have waived compliance requirements. Hence, it can be expected that earlier arrangements in PTAs regarding harmonizing or recognizing SPS and TBT measures will be more welcome in the

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36 ESCAP, in partnership with UNCTAD, WTO and other United Nations regional commissions launched a global initiative on developing PTA provisions for trade in times of crisis, resulting in a practical handbook and an e-learning course for trade negotiators.
post-COVID19 world. In the Asia-Pacific region, there are positive steps in this regard. For example, the ASEAN Memorandum of Understanding (MoU) on the Implementation of Non-Tariff Measures on Essential Goods, covering 152 essential goods based on the WTO and WHO lists, came into effect at the end of 2020. The MoU, while non-binding in nature, urges ASEAN members to refrain from “introducing or maintaining trade restrictive measures on essential goods”, including distortionary NTMs, on essential goods except for public health emergencies.

**Provisions on paperless trade and customs cooperation to keep trade flowing seamlessly**

PTA provisions on trade facilitation such as paperless trade and customs cooperation could help to keep trade flowing in times of crisis. During the COVID-19 pandemic, the automation and digitalization of customs procedures proved pivotal when physical contact had to be avoided as much as possible. As a result, the implementation of paperless trade such as accepting electronic documents and electronic payments has been accelerated in many countries. In addition, paperless trade is not only critical to trade in emergency circumstances but can also significantly reduce transaction costs and save resources.

PTAs have been increasingly incorporating paperless trade provisions. Notably, in the Asia-Pacific region, a United Nations treaty specializing in paperless trade entered into force on 20 February 2021 – the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific (CPTA) provides a window of opportunity to countries at all levels of development to improve their capacity to engage in cross-border paperless trade. The CPTA prescribes comprehensive action plans for the implementation of digital trade facilitation measures for trade and development, including the development of electronic Single Window systems, the exchange and mutual recognition of trade-related data and electronic documents, and technical support and assistance.

**Balancing the legitimate interest of IPR holders with the interests of users and the community**

Provisions on IPRs have been one of the top negotiation agendas of modern PTAs. In the Asia-Pacific region, 118 of the total 214 signed and enforced agreements are inclusive of IPR provisions, commonly covering copyright, trademarks and patents. Some of these are called TRIP-Plus provisions as they oblige PTA Parties to comply

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38 Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific. Available at [https://www.unescap.org/kp/cpta](https://www.unescap.org/kp/cpta)
with a higher standard of IP protection and enforcement beyond the minimum standard of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The TRIP-Plus provisions are often found in PTAs that involve advanced economies (Wu, 2020).

Developing countries have been quite skeptical about the TRIPS-plus elements in PTAs. In general, they are concerned that TRIPS-plus rules may diminish TRIPS flexibilities (Callo-Müller and Upreti, 2021). Less bargaining power of small developing countries in trade negotiations on a bilateral or plurilateral basis may leave a smaller PTA Party with no choice but to agree to TRIPS-plus protections in order to secure preferential market access for their significant exports to the large PTA partner country’s domestic market.

In the pre-pandemic period, the TRIPS-plus provisions caused great concern among public health groups over their potential adverse impact on access to affordable medicines. During the COVID-19 pandemic, criticism has increased even further. There was a call for a TRIPS-waiver to allow COVID-19 vaccine manufacturing without patent licensing in developing countries. For developing countries having PTAs with European countries and the United States, vaccine manufacturing without patent licensing could still bring trade retaliation even if the global proposal on IPR waiver reaches consensus at the WTO, as these countries have committed to TRIPS-Plus obligations with the COVID-19 vaccine technology owner (Prabhakar, 2021) as part of their PTAs.39

In this regard, the RCEP’s moderate approach on IP protection might become a show case for new PTAs in the post-pandemic period. The RCEP’s Chapter on IP aims to provide IPR protection with flexibilities. It highlights differences in Parties’ levels of economic development and capacity, and provides space for domestic policymaking.40 Rather than forcing other members to accept strict and high standard IPR protection provisions, RCEP has adopted a more moderate approach to increasing the use of IP and IP protection through cooperation (ASL Law Firm, 2021).

39 The proposal to waive IP rights under the TRIPS Agreement in response to the COVID-19 pandemic, presented by India and South Africa in October 2020 and revised in May 2021, was supported by a number of WTO members in Africa, Asia and Latin America. The waiver would enable WTO members to not grant or enforce patents, or other IP obligations on copyright on industrial designs, and the protection of undisclosed information related to health products and technologies. These include diagnostics, therapeutics, vaccines, medical devices and personal protective equipment to tackle COVID-19. The waiver would be in force for a minimum of three years, and reviewed annually. LDC members are exempt from applying most of the TRIPS Agreement until July 2034 or until their graduation from the LDC category (European Parliament Research Services, 2021).

40 See, for example, Article 11.8, RCEP Agreement.
References


**Online databases**

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The Asia-Pacific Trade and Investment Trends are prepared by the Trade, Investment and Innovation Division, United Nations Economic and Social Commission for Asia and the Pacific. They provide annual updates and forecasts of trends and developments in: (a) intra- and inter-regional trade in goods and services; (b) foreign direct investment; (c) regional trade integration; as means of implementation of Sustainable Development Goals. It is freely available on the ESCAP website: https://www.unescap.org/our-work/trade-investment-innovation