Asia-Pacific Digital Trade Regulatory Review 2022

ESCAP-OECD Initiative on Digital Trade Regulatory Analysis
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ESCAP-OECD Initiative on Digital Trade Regulatory Analysis
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Executive summary

As a preliminary step towards a greater understanding of the digital trade policy environment in the Asia-Pacific region, the report utilizes two tools to inform policymakers and analysts in the region on existing opportunities and challenges for regional collaboration and harmonization of digital trade-related regulatory frameworks. These tools are a new Regional Digital Trade Integration Index (RDTII) developed by ESCAP in cooperation with other United Nations regional commissions, and the Digital Services Trade Restrictiveness Index (DSTRI) and Computer Services STRI developed by the OECD. Based on the RDTII, ESCAP gives a comprehensive view of the state of play of various regulatory measures affecting digital trade integration beyond those that might be considered trade barriers. It follows by OECD discussions based on findings from the STRI tools on trade barriers affecting digitally enabled services that can be compared with countries outside the region.

An overview of digital trade policy environment in the Asia-Pacific region

Enhancing regional integration through more digital trade between Asia-Pacific economies requires finding common ground on digital trade regulatory approaches as well as reducing policy ambiguity and restrictions that affect intraregional trade in goods and services that are important to the development of the digital economy, such as ICT goods and ICT services.

Based on data collected from 21 sample economies, it is found that the Asia-Pacific region tends to have relatively liberal traditional trade policy measures, compensating for the more restrictive behind-the-border measures. Economies tend to have less regulatory integration with respect to internet intermediary liability, telecom regulations, data protection, and online sales than that related to traditional measures such as tariffs, quota, licensing, standards and procedures.

Advanced and small emerging economies generally have a less complex digital trade regulatory environment than the rest of the group. Such an environment can facilitate the participation of smaller firms in the region in digital trade with these economies. However, in small emerging economies, including LDCs, their less complex regulatory environment may also be due to a lack of sufficient regulatory oversights (i.e., absence of regulation), which may affect the overall development of digital trade and associated benefits.
Figure 1 RDTII score of sample Asia-Pacific economies (2021)

(Higher score indicates more complex policies)

<table>
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Note: East and North-East Asia (ENEA), South-East Asia (SEA), South and South-West Asia (SSWA), North and Central Asia (NCA), and the Pacific.
Source: ESCAP calculation

Promoting policy and regulatory convergence across economies can help reduce trade and business costs increasingly dependent on digital technologies, digital services, and data flows. International regulatory cooperation can also enhance digital trust and the security of digital trade transactions. Given the diverse policy stances from different cultures, norms, and priorities in the region, a practical approach is to engage in cooperative dialogues and share good practices, starting with areas where some consensus exists.

Based on the commonality of policy approaches in the region and the level of existing restrictions in the Asia-Pacific region, cooperation on addressing non-tariff trade restrictions and the harmonization of technical standards may be particularly fruitful. The greatest challenges for regional cooperation appear to be in new “digital governance” areas of domestic regulations as well as investment and telecom regulations. The diverse policies in these areas may reflect both cross-economy differences in ideologies and economic-size advantages.
Looking closer into barriers on trade in digital services

Based on the data of 22 selected economies, key regulatory barriers for cross-border digital trade in the Asia-Pacific region are mostly related to infrastructure and connectivity policy more than in other areas as measured by the OECD DSTRI. There is a widely diverse regulatory environment for digital trade across economies in the Asia-Pacific region. In most economies, these regulatory barriers increase over time.

Within the infrastructure and connectivity policy area, limitations related to cross-border data flows and requirements to store certain types of data locally are recorded in most economies assessed. Other measures such as the restriction to the use of communication services, relating to specific requirements to operate VPN services or the obligation to install specific software to filter content also contribute to the index in some economies. With respect to barriers to electronic transactions, most economies in the region have not made formal commitments to align domestic rules on electronic contracts with existing international standards. It is, however, interesting to note that all economies in the sample have enacted laws or regulations recognizing equivalent legal validity for electronic signatures and handwritten signatures (provided that certain conditions apply). This convergence is welcome as it is a necessary step to facilitate cross-border electronic transactions.
With respect to computer services, barriers to foreign entry that cover mostly barriers related to foreign investment, as well as barriers related to the movement of individual services providers, are substantial contributors to the STRI scores across most economies. The computer services STRI also points to a general tendency for increased stringency in the digital trade regulatory environment in 2021 compared to the 2014 benchmark.

Under the policy area on foreign entry restrictions, screening foreign investments in computer services is relatively common, particularly related to considerations of national security or other public interests. Local presence requirements, typically in the form of a local representative, are also present in a large share of economies, as well as other conditions related to setting up an office to provide computer services. With respect to restrictions on the movement of people, labour market tests or quantitative restrictions (quotas) are found in nearly all economies. Since computer services is a knowledge-intensive sector, the widespread application of such barriers could impose significant obstacles to the transfer of critical knowledge and skills needed to reap the benefits of digital trade.
Figure 4 Computer services STRI in the Asia-Pacific region, 2021

Note: ESCAP average includes the average of the 22 economies in the Asia-Pacific region. Scores range between 0 and 1, where 1 represents the most restrictive regulatory environment for trade. Pink dots identify the computer services STRI for 2014. Data for Brunei; Cambodia; Hong Kong, China; Lao PDR; Pakistan and Vanuatu corresponds to 2020 data.

Source: OECD Computer services STRI (2020)

Economies in the Asia-Pacific region may have common approaches to several disciplines and measures relevant to digital trade. Indeed, data based on DSTRI suggests that most commonalities exist in measures that affect electronic transactions (for instance, most economies recognize the legal validity of e-signatures). Nonetheless, differences remain regarding regulations affecting communications infrastructures (and notably interconnections) as well as approaches regulating cross-border data flows. However, the heterogeneity is higher for regulations affecting computer services. Differences relate mostly to regulatory measures on foreign direct investment-related to computer services and regulations affecting the movement of computer professionals.
Way forward

While a global approach for digital trade rules is currently under discussion at the WTO in the context of the Joint Statement Initiative on Electronic Commerce, increasingly, economies turn to regional trade agreements or other types of agreements to develop new rules on digital trade. Boosting the negotiating and policymaking capacity of smaller countries vis-à-vis larger ones is necessary to create a level playing field. At the same time, open dialogues for sharing experiences can help regional economies better understand and promote the alignment of their general objective where possible in the long run.

This report provides some considerations to enhance common policy responses in the region. The list is not exhaustive, but each of these recommendations is important for creating a collaborative environment in the Asia-Pacific region.

Lowering barriers to trade in goods and services supporting digital trade development

More open markets for ICT goods and ICT services could yield substantial benefits in reducing trade costs for firms that provide services across borders. Multilateral trade rules and open commitments on goods and services can lock in these benefits and provide certainty to firms seeking to access foreign markets.

Identifying possible avenues for regulatory cooperation based on commonalities

Regional bodies, such as ESCAP, can play a role in creating greater understanding and find regional common ground in the long run. In turn, regional efforts can inform ongoing multilateral discussions, including at the WTO Joint Statement Initiative (JSI) on E-commerce. Strengthening regional cooperation may focus on addressing the regional divergence in interpretation and enforcement of the rules, including through mutual recognition.

Promoting open dialogues among different economies and stakeholders

Formal as well as informal exchanges and dialogues to share experiences from economies holding different approaches would allow greater understanding, discussion and agreement on policy instruments affecting digital trade. Bringing a wide range of governmental and non-governmental actors into the policy process is critical to ensuring policy coherence.

Supporting LDCs to navigate the continued digitalization of trade

In addition to investment in ICT infrastructure and digital skills, LDCs need support to develop coherent and interoperable regulatory frameworks, as well as to craft coherent policies and effective negotiations and modern agreements.

Collective evidence-based exercises

Partnerships between governments, regional and international bodies to build platforms and tools to inform policy discussions based on evidence can help enhance the capacity of policymakers to make informed policy decisions. Such collaboration can clarify the trade-offs at stake and the possible policy responses to offset negative impacts. Differences between economies or groups of economies should also be thoroughly explored and recognized.
Figure 5 Toward regional integration through digital trade in Asia and the Pacific
Chapter 1
Introduction
1. Introduction

The digital transformation is opening up new opportunities for companies to do business worldwide and for governments to leverage digitalization for economic and societal objectives. For international trade, digitalization entails several benefits, including facilitating access to new markets and new customers, lowering the cost of engaging in cross-border transactions, and enhancing the ability to coordinate global value chains (OECD, 2020). The COVID-19 pandemic has accelerated the digital transformation, demonstrating the importance of supportive digital trade policies to mitigate the global economic slowdown, sustain well-being, and speed up recovery. At the same time, the rapid pace of digitalization also raises challenges for policymakers worldwide, fostering regulatory fragmentation and increasing global barriers to digital trade (OECD, 2022).

Countries in Asia and the Pacific have worked progressively over the past years to enhance regional integration and unlock the benefits of shared prosperity, stability and sustainability (ESCAP, 2020). Better regional integration helps countries overcome differences that impede the cross-border flow of goods, services, capital, data and people, while regulatory differences can result in higher trade costs for businesses and higher prices for consumers.

Fostering integration through digital trade is seen as a key priority by many developing countries towards fostering sustainable growth in the 21st century. Removing regulatory bottlenecks and ensuring interoperability with regional regulatory frameworks will be essential for regional integration. Moreover, many of the LDCs in the region suffer from a high trade cost and will soon graduate, thus making their exports more costly as the preferential tariffs on their exports will be withdrawn. Bringing in enabling digital trade policies will allow them to reduce their costs and lead to sustainable graduation.

The ESCAP Committee on Trade and Investment, at its seventh session in January 2021, has requested the ESCAP Secretariat to deepen its analysis of existing conventional and digital trade rules and regulations, as well as to provide support to smaller economies and least developed countries (LDCs), including the development of pragmatic policy recommendations and capacity-building, technology transfer and the initiation of a study on the impact of the harmonization of digital trade rules and regulations on the effective participation of those countries in e-commerce and digital trade.

In this context, ESCAP, in collaboration with OECD, undertook to strengthen the existing evidence base by developing new indicators on digital trade regulations for Asia and the Pacific, which policymakers and analysts in the region could use.¹ These indicators allow to compare, benchmark, and formulate evidence-based policy strategies and foster collaboration and harmonization of digital trade-related regulatory frameworks for the region's more inclusive and sustainable development.

Two indicators are covered by this project spanning 21 pilot economies² in the region:

¹ ESCAP-OECD Initiative on Digital Trade Regulatory Analysis. Available at https://www.unescap.org/projects/dtra.
² In this pilot study, the sample includes Australia, Brunei Darussalam, Cambodia, India, Indonesia, Japan, Kazakhstan, Lao PDR, Malaysia, Nepal, New Zealand, Pakistan, the Philippines, Republic of Korea, the Russian
A new Regional Digital Trade Integration Index (RDTII) developed by ESCAP in cooperation with other United Nations regional commissions (United Nations, 2022) and

- The Digital Services Trade Restrictiveness Index (DSTRI) and Computer Services STRI were developed by the OECD (Ferencz, 2019).

These tools provide complementary policy insights whereas the RDTII provides a comprehensive view of the state of play of various regulatory measures affecting digital trade integration, beyond those that might be considered trade barriers, the STRI tools provide a more focused analysis of trade barriers affecting digitally enabled services that can be compared with countries outside the region. Although the exercises differ in methodology and scope, they deliver valuable and complementary insights for policymakers.

This report is a preliminary step towards a greater understanding of the digital trade policy environment in the Asia-Pacific region and aims to strengthen the existing evidence and available tools for enabling greater regional cooperation towards a more inclusive and integrated digital trade environment. It is important to emphasize that the different regulatory approaches of each economy reflect different priorities and objectives in their policy agenda and that the index scores presented do not necessarily reflect the superiority of one approach over another.

The report is structured as follows: Section 2 introduces the RDTII and presents the key findings of this new indicator. Section 3 is a contribution by the OECD that presents the OECD DSTRI and computer services STRI with related findings. Section 4 provides concluding remarks and recommendations. The Annex of this report provides the digital trade policy profile of sample economies based on the RDTII.

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3 See also “Digital Services Trade Restrictiveness Index Simulator”. Available at https://sim.oecd.org/Default.ashx?lang=En&ds=DGSTRI.
Chapter 2
Findings from the Regional Digital Trade Integration Index (RDTII)
2. Findings from the Regional Digital Trade Integration Index (RDTII)

2.1 The RDTII framework

The United Nations Regional Digital Trade Integration Index (RDTII) framework provides an overview of the digital trade policy environment. It identifies 11 policy areas, or “pillars”, in the digital-trade ecosystem (Figure 6 and Box 1). Each pillar includes indicators that capture different elements and major policy measures under the pillar.

The index and indicator scores give a sense of the policy ecosystem facing digital trade businesses in an economy. The index scores, ranging from zero to one, imply how significant the regulatory environment adds to ‘the cost of doing digital-trade related business’.

It is important to emphasize that the added costs are not necessarily trade impediments. Businesses can struggle with the high compliance costs associated with some forms of regulation while nevertheless fully recognizing the value and importance of regulations, such as privacy protection, to foster digital trust. However, a complex, ambiguous and heterogeneous regulatory environment can hamper trade. The index seeks to address the issues by considering both indicators for the lack of important legal frameworks and indicators for the risks of lacking interoperability. International treaties or model laws are used as benchmarks to assess regulatory interoperability.

The RDTII pillars cover both traditional trade-policy measures, such as tariffs which affect trade in ICT goods, and new types of policies that potentially affect digital trade and related business. The 11 pillars can be grouped into three broad clusters:

- **Traditional trade policy cluster** covers such regulations as tariff and non-tariff measures (NTMs) on information communication technology goods and services. The cluster includes pillar 1 (tariffs and trade defence), pillar 9 (non-technical NTMs), and pillar 10 (technical measures).
- **Other domestic regulations cluster** includes regulations in broader policy areas that can affect the development of a more inclusive and integrated digital trade environment. The cluster covers policies under pillar 2 (public procurement), pillar 3 (FDI restrictions), pillar 4 (IPRs), and pillar 5 (telecom regulations and competition).
- **Digital governance cluster** encompasses modern domestic regulations that focus on data, Internet platforms, and platform-generated transactions. The cluster includes pillar 6 (cross-border data), pillar 7 (domestic data), pillar 8 (intermediary liability and content access), and pillar 11 (online sale and transaction).

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4 For more details about RDTII framework, please refer to the RDTII guide.

5 Results by Asia-Pacific economy whose data are available in RDTII are available later in this report.
### Figure 6 Regional Digital Trade Integration Index (RDTII) - Pillars and Indicators

**Pillars**
- Traditional trade policies
- Digital governance
- Other domestic policies

**Indicators**

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<td>Not in Government Procurement Agreement (GPA)</td>
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<td>3. Foreign investment restrictions</td>
<td>Foreign equity limit</td>
<td>Joint venture requirement</td>
<td>Residency requirement</td>
<td>Investment screenings</td>
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<td>4. IPRs</td>
<td>Patent issues</td>
<td>Lack of clear copyright exceptions</td>
<td>Copyright enforcement issues</td>
<td>Mandatory disclosure of trade secrets</td>
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<td>5. Telecom regulations &amp; competition</td>
<td>Lack of deregulation</td>
<td>Anti-competitive practices</td>
<td>Strict licensing issues</td>
<td>Overall IP protection</td>
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<td>6. Cross-border data conditions</td>
<td>Requirements on data transfer, storage, processing</td>
<td>Requirements on consent, evaluation, approval</td>
<td>Data Impact Assessment (DPA) or Data Protection Officer (DPO)</td>
<td>Government access to personal data</td>
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<td>7. Domestic data protection data privacy</td>
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<td>Blocking / filtering</td>
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<td>8. Internet intermediary liability &amp; content access</td>
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<td>Monitoring requirement</td>
<td>Export restrictions</td>
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<td>9. Non-technical NTMs</td>
<td>Import bans</td>
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<td>Local content requirement</td>
<td>Encryption standard issues</td>
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<td>10. Standards and procedures</td>
<td>Lack of transparency</td>
<td>Lack of self-certification</td>
<td>Product testing and screening issues</td>
<td>Restrictions on domain names</td>
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<tr>
<td>11. Online sales and transactions</td>
<td>Sales, delivery, advertising restrictions</td>
<td>E-payment limitations</td>
<td>De Minimis Limits</td>
<td>Lack of legal framework</td>
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Source: ESCAP
Box 1 The RDTII Framework in brief*

The overall RDTII is a composite index integrating the scores of 11 pillars using a simple average method. Each RDTII pillar score is the weighted average of scores at the indicator level. Indicator scores range from ‘0’ to ‘1’ and are based on a review of existing policies and regulations. A score greater than ‘0’ indicates that at least one of the following conditions occurs:

- **Differential treatment** between domestic and foreign providers.
- **Additional regulatory compliance costs to services provided online**, relative to those provided offline.
- **Absence of certain international norms**, e.g., international agreement, legislation, or legal mechanism considered of significant importance for interoperability across jurisdictions.

The RDTII framework considers that enhancing regional integration through more digital trade between the Asia-Pacific economies requires promoting the interoperability of digital-trade regulatory approaches, reducing the costs of regulatory compliance, and promoting intraregional trade in goods and services that are important to the development of the digital economy, such as ICT goods and ICT services. Based on this principle, selected indicators address intraregional perspectives, such as those related to tariff and non-tariff measures imposed on intra-regional imports.

**Pillar 1** covers **tariffs and trade defence** measures that limit trade in ICT goods with the Asia-Pacific partners.

**Pillar 2** covers **restrictions on foreign participation in public procurement** of ICT goods and services.

**Pillar 3** covers **restrictions on foreign investment** in sectors related to digital trade. Such restrictions may be in place for national security and other legitimate reasons but reduce competition.

**Pillar 4** looks at **Intellectual Property Rights (IPRs) policy** and the balance between protecting individual rights to intellectual property and fostering innovation.

**Pillar 5** covers policies and regulations regarding **telecommunications infrastructure and competition**.

**Pillar 6** considers policies on **cross-border data policies** which may address data privacy, data protection, data flows and other concerns but also increase the costs of digital trade.

**Pillar 7** covers **domestic data policies** governing the use of data in the regulating economy, such as regulations related to domestic data privacy, protection, retention and cybersecurity that may enhance trust in digital transactions.

**Pillar 8** deals with **measures governing internet intermediary liability and restrictions on content access**, balancing the need for holding intermediaries responsible for illegal content over the internet and not discouraging their participation in digital trade with onerous liability or obligations.

**Pillar 9** captures **non-technical NTMs**, including trade restrictions that are non-tariff measures (e.g., quotas) that limit the importation and exportation of ICT goods and online services from the economy in the Asia-Pacific region.

**Pillar 10** focuses on **standard and related procedures**. This pillar considers the procedural delays and complexity, which deviate from internationally recognized best practices, as a potential trade restriction for ICT goods and online services in the telecommunication sector.

**Pillar 11** captures a broad spectrum of policies that affect **online sales and transactions**, including regulations on delivery, advertising, online payment, and domain names, as well as legal recognition for electronic signatures and the existence of relevant consumer protection laws.

* For details, please see United Nations ESCAP-ECA-ECLAC (2022)
Overall, the RDTII framework and scores summarize increasingly complex digital trade policy and regulations from a trade and business perspective. It allows policymakers to understand where their economies stand in comparison to other economies. The framework does not attempt to capture the full range of social, economic, security and environmental concerns that may need to be considered when engaging in regulatory reform.

2.2 Overview of Digital Trade Policy Environment in the Asia-Pacific region: Findings from the RDTII

Based on data collected from 21 sample Asia-Pacific economies, the RDTII score of the group stands at 0.41 on average, noting that a low score indicates a less complicated regulatory environment in general and a higher potential for digital trade integration among economies. As shown in Figure 7, this result is driven by relatively liberal traditional trade policy measures (pillars 1, 9, and 10), compensating for the more complex behind-the-border measures. Regulations related to internet intermediary liability (pillar 8), telecom regulations (pillar 5), data protection (pillar 7) and online sales (pillar 11) are found to be more challenging for digital trade integration than those under other pillars. Although regional averages are generally low, overall and pillar-level RDTII scores vary significantly across economies, suggesting more regional cooperation is needed in digital policies and regulations.

The overall RDTII score of Asia-Pacific sample economies ranges from 0.17 to 0.66 (Figure 8). India, Indonesia, Russian Federation, and Viet Nam have significantly higher RDTII scores than other economies, indicating the existence of a significantly more complex regulatory environment for regional businesses to engage in digital trade. New Zealand and Singapore have RDTII scores well below the sample average. Nepal and Vanuatu also have low scores relative to other developing economies. Overall, advanced and small emerging economies generally have lower RDTII scores, indicating a low compliance-cost digital trade environment. Such an environment can facilitate the participation of smaller firms in the region in digital trade with these economies. However, such an open environment in emerging economies may also be due to a lack of sufficient regulatory oversights (i.e., absence of regulation), affecting the overall development of digital trade and associated benefits.
Figure 8 RDTII score of sample Asia-Pacific economies (2021)

(Higher score indicates more restrictive policies)

<table>
<thead>
<tr>
<th>Economy</th>
<th>pillar 1</th>
<th>pillar 2</th>
<th>pillar 3</th>
<th>pillar 4</th>
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Note: East and North-East Asia (ENEA), South-East Asia (SEA), South and South-West Asia (SSWA), North and Central Asia (NCA), and the Pacific.
Source: ESCAP calculation, data as of March 2021.

Except for traditional trade policy pillars (1, 6, 9), a significant number of sample economies have RDTII scores greater than 0.5 at the pillar level, suggesting the possible need for these economies to review their regulations to make them more conducive for businesses in the region to engage in digital trade (Figure 9). Twelve economies in the sample have relatively high RDTII scores in the areas of Domestic data protection (pillar 7) and Intermediary liability and content access (pillar 8). Ten economies have significant restrictions on FDI related to digital trade (pillar 3) and on online sales (pillar 11). Only New Zealand and Vanuatu do not score greater than 0.5 in any policy areas.
Figure 9 Asia-Pacific economies with high RDTII scores, by pillar (2021)

Note: The figures show only economies with RDTII pillar scores greater than 0.5. Economies are ordered in alphabetical order. Economies with higher scores have larger rectangles. A higher score suggests a less developed and more restrictive regulatory environment that may affect regional digital trade integration.

Source: ESCAP compilation, data as of March 2021.
A. Traditional trade policies

Pillar 1 focuses on tariffs and trade defence measures imposed on imports of ICT goods imported from Asia-Pacific partners (Figure 10). The average score of 0.18 suggests a generally open environment as far as these traditional trade measures are concerned. However, many of the sample economies have not participated in the WTO’s Information Technology Agreement (ITA), a proxy of their commitment to liberalizing trade in ICT goods, their effective tariff rates (i.e., MFN applied rates and preferential tariff rates) on ICT goods are low on average. Several regional economies have reduced tariffs on ICT goods through regional trade agreements. Most of the sample economies also have substantial coverage of zero duty in the tariff lines of ICT goods. However, Cambodia, Pakistan, India, Nepal and Vanuatu may need further tariff reductions to align with other regional economies. These economies still have relatively high effective tariffs on ICT goods imported from Asia-Pacific partners and fewer zero-tariff lines on ICT goods. Only a few cases of trade-defence measures against the Asia-Pacific partners appear, such as the anti-dumping measures imposed by India on Recordable Digital Versatile Disc from selected Asia-Pacific economies. Notably, having a sensitive list, not participating in a greater number of products listed in ITA II, and the MFN duties of trade defence measures caused high tariffs in economies that are the signatory of ITA.

Figure 10 Pillar 1 (tariffs and trade defence) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
Pillar 9 focuses on non-technical trade measures, including licensing, ban, quota, and local content requirements (Figure 11). On average, the pillar score is 0.33, which is not high compared to other pillars. Import regulations such as licensing requirements on ICT goods and services exist in most sample economies. In addition, nine economies impose export restrictions. These include the ban, licensing, and pre-approval requirement on the export items considered dual-use, such as electronic components that potentially fit military use.

Figure 11 Pillar 9 (Non-technical NTMs) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
Pillar 10 considers technical non-tariff measures, including standards and procedures, affecting trade in ICT goods and services (Figure 12). The group’s score (0.29) is below the average score in most other pillars. Specifically, most sample economies allow foreign businesses to participate in standard-setting bodies. The encryption standards applied in the sample economies generally align with the internationally recognized encryption standards.

However, there is room for improvement to reduce the cost of compliance for businesses. Only a few economies accept self-certification of product safety by suppliers through Supplier Declaration of Conformity (SDoC). Most sample economies accept either the third-party certification from Conformity Assessment Bodies (CABs) or the more restrictive approach that requires products from a foreign supplier to undergo testing in a local laboratory. The process of testing and screening can add costs and delays.

Figure 12 Pillar 10 (Standards and procedures) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
B. Domestic regulations

Policy measures under pillars 2, 3, 4, and 5 are domestic regulations affecting foreign investment and trade. Domestic regulatory pillars tend to have significantly higher scores than trade-policy pillars.

**Pillar 2 considers public procurement in digital trade-related sectors**, such as ICT networks, equipment, and digitally-enabled service. The regional average score of this pillar is 0.42 (Figure 13). Examples of sample economies with extensive measures are Indonesia, the Republic of Korea, the Russian Federation, and the Philippines. Most economies in the sample do not participate in the WTO Government Procurement Agreement (GPA). The index captures many requirements to protect the national interest in digital trade-related projects. Examples are the requirements to use local software or local data storage for the project, the requirements for digital service providers to have a local office, and joint venture requirements.

![Figure 13 Pillar 2 (Public procurement) scores in Asia-Pacific (2021)](image)

Economies, ordered by real GDP per capita

2.1 Foreign exclusion  
2.2 Specific requirements  
2.3 Other limitations  
2.4 Not participating in GPA  

Pillar score (number)

Source: ESCAP calculation, data as of March 2021.
Pillar 3 considers regulations on foreign investment in the sectors at the core of digital-trade activities. The regional average score, 0.49, suggests relatively extensive regulatory measures in the region. Foreign equity cap and investment screening in broadcasting, telecommunication, and digital services appear in most economies, followed by residency requirements for board members (Figure 14). In contrast except Indonesia, Lao PDR and Vanuatu, none of the sample economies impose joint-venture requirements for foreign investment.

Figure 14 Pillar 3 (Foreign investment restrictions) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
Pillar 4 considers Intellectual Property Right (IPR) conditions. The group’s average score is 0.38 (Figure 15), which is below the average scores of seven other pillars. Most sample economies have participated in the Patent Cooperation Treaty (PCT). Domestic restrictions related to patents, such as the requirement to appoint a local representative to file a patent application are quite common in the selected economies, while the requirement to file a patent locally before filing aboard appears in a few sample economies. All economies have already put in place copyright laws, which allow exceptions for the use of copyrighted works. However, copyright exceptions based on fair use appear less than fair dealing in the sample economies.

None of the sample economies imposes a multi-sector requirement for mandatory disclosure of business secrets except three. Examples are the request for encryption keys, source code, password, and configuration information from software providers, internet, and telecommunication services. The requests are often grounded on cybersecurity concerns. For overall intellectual property rights enforcement, the indicator, based on World Economic Forum (WEF) data, suggests room for improvement in most sample economies except the five highest income economies in the group (Figure 15).

Figure 15 Pillar 4 (IPR issues) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
Pillar 5 provides an overview of the policy and regulations in the telecommunication sector. The regional average pillar score, 0.52 (Figure 16), suggests that the telecom regulatory environment adds costs to firms and consumers. For example, there is a requirement to connect to networks operated by state-owned enterprises, spectrum allocation that is not market-based, discretion in interconnection and access to the last mile, and the dominant position of state-owned enterprises in sample economies.

Figure 16 Pillar 5 (Telecommunication policy and competition) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
C. Digital governance policies

Pillars 6, 7, 8, and 10 include domestic regulations in new areas. Strict regulatory approaches appear more often in this cluster than in the other two.

**Pillars 6 and 7 together relate to data governance.** Pillar 6 captures requirements applied to cross-border data transfer, while pillar 7 considers the policies related to data privacy and protection.

Based on 21 sample economies, the average score of pillar 6 is 0.42, with a large diversity across sample economies (Figure 17). The conditional requirements on data transfer tend to be relatively demanding in India, Indonesia, Kazakhstan, and the Russian Federation. Most sample economies have either consent requirement, local storage, or local processing of personal data. However, the scope of sectors affected by such regulations is varied widely across economies. Exceptions are Cambodia, Nepal, and Vanuatu, which do not seem to impose those conditions on cross-border transfers.

**Figure 17 Pillar 6 (Cross-border data flow conditions) scores in Asia-Pacific (2021)**

![Image](image)

Economies, ordered by real GDP per capita

Source: ESCAP calculation, data as of March 2021.

Data protection (pillar 7) has an average score of 0.5 (Figure 18). It is encouraging that most sample economies have already put legal frameworks for data privacy and protection in place, although the scope tends to be specific in several cases. There seem to be some commonalities in the strict approaches in the region. Specifically, most sample economies impose a minimum period required for data retention. Many of them also have requirements for firms processing personal data to appoint an officer to ensure compliance with the data protection Act. In addition, the law in most of the sample economies allows governments to access personal data.
Figure 18 Pillar 7 (Domestic data protection) scores in Asia-Pacific (2021)

Source: ESCAP calculation, data as of March 2021.
Pillar 8 Internet intermediary liability and content access get the highest average score (0.55) of all pillars (Figure 19). Many heavy measures are applied in the sample economies. Governments in most sample economies have blocked or filtered some foreign commercial websites although the content was not an internationally agreed illegal content. More than half of the samples require Internet platform operators to monitor users and record user identity.

Some economies have a safe harbour provision to protect the Internet intermediaries from legal liability for copyright-infringing materials and other illegal activities on their platforms. However, the scope of intermediary protection tends to be either ambiguous or limited. Moreover, many economies in the sample have requirements for local presence and licensing for internet intermediaries, including social media platforms, news providers, Virtual Private Networks (VPNs), and cloud services. Exceptions in the sample are New Zealand and Vanuatu, which appear to have no restrictions based on the indicators considered.

Source: ESCAP calculation, data as of March 2021.
Pillar 11 considers policy on online sales and transactions. This pillar has a direct implication for cross-border E-commerce. The average group score (0.5) is contributed by low De Minimis, restrictions on domain names, and restrictions on the online advertisement (Figure 20). Many economies in the sample lack comprehensive domestic laws that align with international legal frameworks to protect online consumers.⁶

Figure 20 Pillar 11 (Online sales and transactions) scores in Asia-Pacific (2021)

2.3 Towards regional interoperability of digital trade

Digital trade integration for sustainable development requires a balance of policies and regulations that help safeguard and protect people and information and create a level-playing field enabling SMEs to engage in digital trade and e-commerce across borders. While regulation is necessary to build trust and ensure all market players benefit from a level playing field, fragmented digital-trade regulatory practices across economies can become a major constraint for connecting markets, businesses, and populations to the global and regional economies. Studies of the relationship between regulatory heterogeneity and trade show that a reduction in regulatory heterogeneity across economies is associated with higher exports (Nordås, 2016). Promoting policy and regulatory convergence across economies help bring down costs of trade and businesses, which are increasingly dependent on digital technologies, digital services, and data flows. International regulatory cooperation can also enhance digital trust and the security of digital trade transactions.

However, finding common ground on the regulatory framework for digital trade is a daunting task given the diverse policy approaches from different cultures, norms, and priorities – as illustrated in the RDTII results. A practical approach is to engage in cooperative dialogues and share good practices. It should start with areas where some consensus exists to build momentum toward harmonization in more challenging domains.

In this context, this section attempts to identify potential areas for promoting digital-trade regulatory cooperation among the sample economies. Figure 21 maps out policy areas for the group based on average RDTII pillar-level scores and the level of policy similarity among economy pairs. Policy similarity within the group is calculated as the average of bilateral differences of each indicator score within each pillar.

Based on the group average, traditional trade policy areas (pillars 1, 9, 10) have high similarities and fewer policy-induced costs to businesses. Indeed, as noted earlier, most sample economies have low tariffs on ICT goods and have room to make more commitments in multilateral trading agreements related to digital trade, such as ITA. Regional cooperation focused on addressing gaps in trade policy may be a good starting point. While further lowering tariffs may be considered, cooperation on addressing non-tariff trade measures and collaboration on technical standards may be particularly fruitful.

IP policies (pillar 4) are least dissimilar with the regional group of economies after tariffs (pillar 1), providing another potential starting point for deepening digital trade integration among Asia-Pacific economies. Sample economies typically follow the rules on IP formulated by the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO). However, enforcement and divergent interpretation of the terms of protection and exception, as well as cross border IPR re-registration, may need to be addressed at the national and regional levels. For example, mutual recognition of intellectual property registrations in the region and a harmonized framework for IP rules based on the minimum standards commonly adopted in the region may be usefully considered.

Public procurement policies (pillar 2) of the sample economies are also relatively similar compared to many other digital trade-related policy areas. However, they remain quite restrictive, making regional cooperation in this area worthwhile but difficult. Most sample economies have not made formal commitments to GPA. Requirements to safeguard national interest or to achieve social objectives appear in a significant number of sample economies. Regional trade agreements can provide a platform to enhance transparency and promote a competitive environment in the public procurement of digital trade-related goods and services. In this regard, a significant number of regional trade agreements signed after 2014 in the Asia-Pacific region increasingly cover public procurement, but the disciplines have remained modest (Trivedi and others, 2019).

The greatest challenges for regional cooperation appear to be in new “digital governance” areas of domestic regulations as well as investment and telecom regulations. Digital governance policies (pillars 6, 7, 8, and 11), investment (pillar 3), and telecom regulations (pillar 5) tend to have substantial diversity with a highly regulated environment on average. The diverse policies may reflect both cross-economy differences in ideologies and economic-size advantages. While a large economy may be able to maintain high operating regulations and still enjoy foreign investor interest given their market-seeking motive, a small economy may find heavy-handed regulations dampen investor interest. A global approach for finding common ground on digital governance rules would be the best solution. However, it tends to
be difficult to achieve given current institutional arrangements and differences in views and priorities across economies among others. Increasingly, economies turn to regional trade agreements to negotiate contentious issues, such as data flows, data localization, and data privacy. Boosting the negotiating and policymaking capacity of smaller countries vis-à-vis larger ones is necessary to create a level playing field. At the same time, open dialogues for sharing experiences can help regional economies better understand and promote the alignment of their general objective where possible in the long run.

Nonetheless, promoting digital trade in the region also requires digitalising of trade contracts, orders, procedures and transactions through e-signatures, e-contracts, and e-payments (see Box 2). ESCAP (2021) indicates that digital trade facilitation implementation beyond the WTO Trade Facilitation Agreement (TFA) could cut the average trade cost in the region by more than 13%, seven percentage points more than could be expected from the implementation of the WTO TFA measures (ESCAP, 2021). The digitalization of trade procedures helps foster continuity in business operations while also meeting necessary safety requirements and physical distancing during the COVID-19 pandemic.
Box 2 Digital trade restrictiveness and digital trade facilitation implementation

Based on 21 economies in the sample, the table below shows the correlation between the implementation of digital trade facilitation and digital trade policy barriers, based on data from the UN Global Survey on Digital and Sustainable Trade Facilitation 2021 and RDTII scores. The analysis suggests that economies with better digital trade facilitation implementation rates tend also to have lower trade barriers on ICT goods (pillar 1 indicators, in particular). Besides, negative correlations are found between digital trade facilitation implementation and several policy measures under pillar 2 (public procurement), 4 (IPRs), 9 (non-technical trade measures), and 11 (online sales and transactions). These suggest that enabling trade digitalization and accelerating paperless trade may have an important role to play in reducing policy barriers in these areas. For example, paperless applications can reduce costs faced by firms in complying and dealing with government rules.

### Correlation between RDTII and DTF

<table>
<thead>
<tr>
<th>Policy measures</th>
<th>Correlation coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Tariff level</td>
<td>-0.342</td>
</tr>
<tr>
<td>1.2 Low coverage of zero tariff</td>
<td>-0.451</td>
</tr>
<tr>
<td>1.3 Not participating in ITA</td>
<td>-0.855</td>
</tr>
<tr>
<td>2.3 Other limitations</td>
<td>-0.229</td>
</tr>
<tr>
<td>2.4 Not participating in GPA</td>
<td>-0.434</td>
</tr>
<tr>
<td>3.2 Joint venture requirement</td>
<td>-0.177</td>
</tr>
<tr>
<td>4.1 Patent application and enforcement issues</td>
<td>-0.274</td>
</tr>
<tr>
<td>4.3 Digital copyrights enforcement issues</td>
<td>-0.430</td>
</tr>
<tr>
<td>4.5 Overall IPR protection</td>
<td>-0.664</td>
</tr>
<tr>
<td>5.1 Lack of competition rules</td>
<td>-0.145</td>
</tr>
<tr>
<td>5.3 Strict licensing</td>
<td>-0.186</td>
</tr>
<tr>
<td>7.1 Lack of comprehensive data-protection framework</td>
<td>-0.470</td>
</tr>
<tr>
<td>8.1 Lack of safe harbour</td>
<td>-0.243</td>
</tr>
<tr>
<td>8.4 Licensing, local-presence requirement</td>
<td>-0.129</td>
</tr>
<tr>
<td>9.1 Import bans</td>
<td>-0.254</td>
</tr>
<tr>
<td>9.2 Other import restrictions</td>
<td>-0.405</td>
</tr>
<tr>
<td>10.2 Not allowing self-certification</td>
<td>-0.251</td>
</tr>
<tr>
<td>11.3 De Minimis restrictions</td>
<td>-0.499</td>
</tr>
<tr>
<td>11.5 Lack of legal frameworks</td>
<td>-0.344</td>
</tr>
</tbody>
</table>

Note: Negative correlation is expected. Only policy measures having negative correlation are shown in this table.
Chapter 3
Findings from the OECD Digital Services Trade Restrictiveness Index (DSTRI) and the Services Trade Restrictiveness Index (STRI) for computer services
3. Findings from the OECD Digital Services Trade Restrictiveness Index (DSTRI) and the Services Trade Restrictiveness Index (STRI) for computer services

3.1 The DSTRI and STRI frameworks

The OECD Services Trade Restrictiveness Index (STRI)\(^7\) for computer services and the Digital Services Trade Restrictiveness Index (DSTRI)\(^8\) are evidence-based tools that catalogue and quantify regulatory barriers affecting trade in services, including digitally-enabled services, and present these transparently and comparably across economies. The DSTRI covers cross-cutting measures that affect mostly the cross-border supply of any digital services (mode 1), while STRI for computer services measures sector-specific barriers across different modes of supplies, including services supplied through commercial presence (mode 3) and the movement of people (mode 4). More specifically, the STRI in computer services covers barriers related to foreign investment, movement of ICT professionals, public procurement, and behind the border regulations on competition and regulatory transparency. Together, the DSTRI and the STRI for computer service provide a comprehensive overview of the key regulations that affect digital trade in a given economy, help policymakers to identify regulatory bottlenecks and design policies that foster more competitive and diversified markets for digital trade.

Collaboration between ESCAP and the OECD contributed to expanding the economy coverage for the DSTRI and STRI for computer services to seven other economies in the Asia-Pacific region.\(^9\) ESCAP collected the regulatory data following the STRI methodology and with support from the OECD. The databases were also shared with the relevant economies to verify the factual accuracy of the information included. Information was collected for 2014-2020, with annual data points, to allow an analysis of the regulatory developments over time.

The DSTRI and the STRI for computer services offer composite indices ranging between 0 (most open) and 1 (most restrictive) derived from the regulatory information per economy.

Under the DSTRI, barriers to trade in digitally-enabled services are categorized under five policy areas: infrastructure and connectivity, electronic transactions, payment systems, intellectual property rights, and other barriers affecting trade in digitally-enabled services (see Box 3).

\(^7\) See [http://oe.cd/stri](http://oe.cd/stri).
\(^9\) These are Brunei Darussalam; Cambodia; Lao PDR; Hong Kong, China; Nepal; Pakistan; and Vanuatu.
Box 3 The Digital Services Trade Restrictiveness Index (DSTRI) framework

- **Infrastructure and connectivity:** This policy area maps the extent to which best practice regulations on interconnection among network operators are applied to ensure seamless communication. It also captures measures limiting or blocking the use of communications services, including Virtual Private Networks or leased lines. Lastly, this area covers policies that affect connectivity, such as cross-border data flows and data localization measures.

- **Electronic transactions:** This area covers issues such as discriminatory conditions for issuing licenses for e-commerce activities, the possibility for online tax registration and declaration for non-resident firms, deviation from internationally accepted rules on electronic contracts, measures inhibiting the use of electronic authentication (such as an electronic signature), and the lack of effective dispute settlement mechanisms.

- **Payment systems:** This area captures measures that affect payments made through electronic means. It includes measures related to access to certain payment methods and assesses whether domestic security standards for payment transactions are adopted in line with international standards. Lastly, it also covers restrictions related to Internet banking not covered in other areas.

- **Intellectual property rights:** This area covers domestic policies related to copyright and trademark protection that do not afford foreigners equal treatment. It also maps the existence of appropriate enforcement mechanisms to address infringements related to copyrights and trademarks, including those occurring online.

- **Other barriers affecting trade in digitally enabled services:** This area covers various other barriers to digital trade, including, among others, performance requirements affecting cross-border digital trade (e.g. mandatory use of local software and encryption or mandatory technology transfers); limitations on downloading and streaming; restrictions on online advertising; commercial or local presence requirements; and lack of effective redress mechanisms against anti-competitive practices online.
The policy areas covered by the STRI for computer services include: restrictions on foreign entry, restrictions on the movement of people, other discriminatory measures, barriers to competition, and barriers to regulatory transparency (see Box 4).

**Box 4 The Services Trade Restrictiveness Index (STRI) framework for computer services**

- **Restrictions on foreign entry**: This policy area includes foreign equity restrictions, limits to the proportion of shares that foreign investors can acquire in publicly controlled firms, restrictions on legal form and other corporate requirements that limit the possibilities for foreign companies to invest in the economy. This policy area also looks at screening requirements, limitations to the acquisition and use of land, conditions on subsequent transfer of shares, performance requirements and commercial and local presence requirements. Under this policy area, restrictions on the international transfer of personal data are also scored.

- **Restrictions to the movement of people**: This area includes quotas and labour market tests to hire foreign nationals, license requirements to provide a service as well as the existence of a process to recognize qualifications gained abroad.

- **Other discriminatory measures**: This area includes discriminatory treatment regarding tax or access to public tenders. Other restrictions affecting foreign companies regarding public procurement are also scored here.

- **Barriers to competition**: This area includes measures relating to the competition framework in the economy, including the possibility for firms to have redress when business practices restrict competition in a given market, the existence of an appeal procedure against decisions from the regulatory body, as well as the existence of state owned enterprises in the sector and whether these are exempted from the general laws on competition. Other measures such as the regulation or fees or prices or restrictions on advertising are also scored here.

- **Regulatory transparency**: This area includes diverse regulations, from transparency in the legislative process to transparency in granting business visas.
3.2 Overview of Digital Trade Policy Environment in the Asia-Pacific region: Findings from the DSTRI and STRI

The DSTRI shows a diverse regulatory environment for digital trade across economies in the Asia-Pacific region (Figure 22). While no country has a score of one (i.e., a completely closed regime for digital trade), those with the most restrictive environment have a four to nine times higher score than the best performing economies.

Key regulatory barriers for cross-border digital trade identified in the DSTRI are mostly related to infrastructure and connectivity policy area (55% of all barriers), other barriers affecting trade in digitally enabled services (22%) and electronic transactions (12%). Moreover, regulatory barriers seem to increase over time. Compared to the benchmark index levels in 2014 (denoted by red dots in Figure 22), the 2021 indices show a tightening regulatory environment in several economies, and only a few have lower indices indicating fewer barriers to digital trade.

Figure 22 Digital STRI results in the Asia-Pacific region, 2021

![Digital STRI results in the Asia-Pacific region, 2021](image)

Note: ESCAP average includes the average of the 22 economies in Asia. Scores range between 0 and 1, where 1 represents the most restrictive regulatory environment for trade. Pink dots identify the DSTRI for 2014. Data for Brunei Darussalam; Cambodia; Hong Kong, China; Lao PDR; Pakistan and Vanuatu corresponds to 2020 data. Source: OECD Digital STRI (2021)

Within the infrastructure and connectivity policy area, limitations related to cross-border data flows and requirements to store certain types of data locally are recorded in a majority of economies assessed (Figure 23). Other measures such as the restriction to the use of communication services, relating to specific requirements to operate VPN services or the obligation to install specific software to filter content also contribute to the index in some economies.10

With respect to barriers on electronic transactions, most economies in the region have not

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10 For example, Brunei Darussalam, China, Kazakhstan, Cambodia, Russian Federation, and Turkey.
made formal commitments to align domestic rules on electronic contracts with existing international standards. It is, however, interesting to note that all economies in the sample have enacted laws or regulations recognizing equivalent legal validity for electronic signatures and hand-written signatures (provided that certain conditions apply). This convergence is welcome as it is a necessary step to facilitate cross-border electronic transactions.

Under the policy area on “other barriers affecting trade in digitally enabled services”, five economies mandate some sort of performance requirement (usually in the form of mandatory hiring of local workforce), and 12 economies impose limitations on downloading and streaming. Also significant in the region are the commercial and local presence requirements. In this regard, 12 economies require commercial presence to provide cross-border services (that usually includes the requirement to set up a branch locally) and also 12 economies require some sort of local presence (e.g., a local representative). China and Indonesia require specific licenses to engage in e-commerce activities, and the conditions to access these licenses tend to be more cumbersome for foreign providers.

Figure 23 Examples of common barriers to digitally enabled services in the region

Share of measures with restrictive answers in the DSTRI across the 21 Asia-Pacific economies, 2021.

Note: This is a non-exhaustive list of restrictive measures included in the DSTRI.
Source: Digital STRI (2021)

11 For example, China, Kazakhstan, Cambodia, Malaysia and Viet Nam.
12 For example, Brunei Darussalam, China, Indonesia, India, Kazakhstan, Cambodia, Lao PDR, Pakistan, Russian Federation, Singapore, Turkey and Viet Nam.
13 For example, Brunei Darussalam; China; Hong Kong, China; Indonesia; Kazakhstan; Cambodia; Malaysia; Pakistan; Philippines, Russian Federation, Turkey and Viet Nam.
14 For example, Brunei Darussalam; Hong Kong, China; Indonesia; Kazakhstan, Cambodia, Republic of Korea, Nepal, Pakistan, Philippines, Russian Federation, Singapore and Thailand.
In addition, the computer services STRI provides insights on a broader range of trade barriers that affect, among others, foreign investment, entry conditions for people and competition-related barriers (Figure 24). In terms of main contributors, barriers to foreign entry that cover mostly barriers related to foreign investment, as well as barriers related to the movement of individual services providers, are substantial contributors to the index level across most economies. Specifically, restrictions to foreign entry (43%), restrictions to the movement of people (33%), and barriers related to regulatory transparency have a considerable share (9%), representing the most significant share of barriers in the Asia-Pacific region.

Similarly, to the DSTRI, the computer services STRI points to a general tendency for increasing stringency in the digital-trade regulatory environment in 2021 compared to the 2014 benchmark.

Figure 24 Computer services STRI in the Asia-Pacific region, 2021

Note: ESCAP average includes the average of the 22 economies in the Asia-Pacific region. Scores range between 0 and 1, where 1 represents the most restrictive regulatory environment for trade. Pink dots identify the computer services STRI for 2014. Data for Brunei; Cambodia; Hong Kong, China; Lao PDR; Pakistan and Vanuatu corresponds to 2020 data.
Source: OECD Computer services STRI (2020)

Figure 25 provides a closer assessment of the measures under these policy areas. Under the policy area on foreign entry restrictions, screening foreign investments in computer services is relatively common, particularly related to considerations of national security or other public interests. Local presence requirements, typically in the form of a local representative, are also present in a large share of economies, as well as other conditions related to setting up an office to provide computer services (for instance, restrictions applicable to the acquisition and use of real estate is limited for foreign entities in 18 out of the 22 economies).  

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15 For example, Australia, Brunei Darussalam, Cambodia, India, Indonesia, Kazakhstan, Korea, Lao PDR, Malaysia, New Zealand, Nepal, Philippines, Russian Federation, Singapore, Thailand, Turkey, Viet Nam and Vanuatu.
With respect to restrictions on the movement of people, labour market tests or quantitative restrictions (quotas) are found in nearly all economies, and eight economies subject the provision of work permits to specific labour performances in the economy. Since computer services is a knowledge-intensive sector, the widespread application of such barriers could impose significant obstacles to the transfer of critical knowledge and skills needed to reap the benefits of digital trade. For instance, computers and other technological equipment must be installed, explained and maintained, which could be difficult due to cumbersome visa or work permit related conditions for foreign services providers.

Figure 25 Examples of common barriers affecting computer services in the region

Share of measures with restrictive answers in the computer services STRI across the 22 Asia-Pacific economies, 2021.

<table>
<thead>
<tr>
<th>Barriers to competition</th>
<th>Other discriminatory measures</th>
<th>Regulatory transparency</th>
<th>Restrictions on foreign entry</th>
<th>Restrictions to movement of people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation on duration of stay for intra-corporate transferees (months)</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Labour market tests: independent services suppliers</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Limitation on duration of stay for contractual services suppliers (months)</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Labour market tests: contractual services suppliers</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Limitation on duration of stay for independent services suppliers (months)</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Labour market tests: intra-corporate transferees</td>
<td>15</td>
<td>16</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Commercial presence is required in order to provide cross-border services</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Performance requirements</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Board of directors: at least one must be resident</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Cross-border data flows: certain data must be stored locally</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Screening exists without exclusion of economic interests</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Local presence is required for cross-border supply</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Acquisition and use of land and real estate by foreigners is restricted</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Public procurement: explicit preferences for local suppliers</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Public procurement: The procurement process affects the conditions of competition in favour of local firms</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
</tbody>
</table>

Note: This is a non-exhaustive list of restrictive measures in the STRI framework for computer services. Source: OECD Computer services STRI (2021)

3.3 Regulatory heterogeneity in the region

While digitalization enables easier cross-border trade, rules and regulations remain fragmented by borders. Regulatory heterogeneity is increasingly seen as a major source of trade limitations and costs. Studies of the relationship between regulatory heterogeneity and trade show that a reduction in regulatory heterogeneity across economies is associated with higher services exports (Nordás, 2016). The architecture of the STRI facilitates the assessment of regulatory heterogeneity by comparing divergences measure by measure in country pairs. Using the STRI methodology, separate indices can be developed to reflect regulatory heterogeneity for a given country pair.

16 For example, Cambodia, Indonesia, Kazakhstan, Lao PDR, Malaysia, Philippines, Thailand and Turkey.
Heterogeneity indices have been developed for the DSTRI and the computer services STRI for the Asia-Pacific economies covered in this study. Figure 26 shows the average of the country-pair heterogeneity indices for each economy covered. Overall, the outcomes suggest that the level of regulatory similarity is higher for cross-cutting measures as covered in the DSTRI. This suggests that economies in the region may have common approaches to several disciplines and measures relevant to digital trade. Indeed, the regulatory data suggests that most commonalities exist in measures that affect electronic transactions (for instance, most economies recognize the legal validity of e-signatures). Nonetheless, differences remain regarding regulations affecting communications infrastructures (and notably interconnections) as well as approaches on the regulation of cross-border data flows. In contrast to the DSTRI, the average level of heterogeneity is higher for regulations affecting computer services in almost all economies covered (the only exception being Kazakhstan). Differences relate mostly to regulatory measures on foreign direct investment-related to computer services and regulations affecting the movement of computer professionals.

Figure 26 Regulatory heterogeneity in the Asia-Pacific region

This graph presents regulatory heterogeneity indices derived from the DSTRI and computer services STRI, 2021.

![Graph showing regulatory heterogeneity in the Asia-Pacific region](image)

Source: OECD STRI and DSTRI regulatory heterogeneity index, 2021
Chapter 4
Way Forward
4. Way forward

The report aimed to identify common elements that may facilitate regulatory cooperation on digital trade in the Asia-Pacific region, using new indicators to map regulatory frameworks across the region. Based on the findings of the report and the significant differences in digital trade regulations identified across economies, the six recommendations below aim to foster the emergence of national, regional and global policy responses that will support shared prosperity, stability and sustainability.

Recommendation 1. Lowering barriers to goods and services supporting digital trade development

Further regional integration in the Asia-Pacific could be promoted through more open markets for ICT goods, ICT services, and other digitally-enabled services. More ambitious efforts to ease services trade barriers could yield substantial benefits in reducing trade costs for firms that provide services across borders. Multilateral trade rules and regional commitments on goods and services can lock in these benefits by providing certainty to firms seeking to access foreign markets. Consideration may also be given to enabling foreign direct investment in ICT infrastructure, ICT goods manufacturing and services to build a more conducive and resilient domestic environment for digital trade development.

Recommendation 2. Promoting digitalizing trade procedures

While digital trade needs to be regulated, compliance with regulations should always be made as seamless as possible. To do so, countries to work together to develop and implement the legal and technical protocols needed to exchange regulatory and commercial data and documents. The implementation of the WTO Trade Facilitation Agreement and the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific17, which entered into force on 20 February 2021, should be expedited to support digital trade and e-commerce. The Framework supports countries in gradually moving to “less-paper” and then to paperless and cross-border paperless trade by providing a dedicated, inclusive and capacity-building intergovernmental platform.

Recommendation 3. Identifying possible avenues for regulatory cooperation based on commonalities

Regional mechanisms may need to be created to ensure collaboration between governments to manage the regulatory heterogeneity of national digital trade policies. Strengthening regional cooperation may focus on addressing the divergence in interpretation and enforcement of the rules, including through mutual recognition and closing the policy gaps in small emerging economies. Existing regional bodies, such as ESCAP, can play a role in creating greater understanding and finding regional common ground, including by supporting the development of these mechanisms. These can serve as building blocks to promote

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17 More information on the CPTA, a United Nations treaty aimed at accelerating inclusive trade digitalization. Available at https://www.unescap.org/kp/cpta
interoperability and enhance overall confidence and trust in the regimes that underpin the flows of goods, services and data in the region. In turn, regional efforts can inform ongoing multilateral discussions, including at the WTO Joint Statement Initiative on E-commerce.

**Recommendation 4. Promoting open dialogues among different economies and stakeholders**

The current patchwork of rules and regulations on digital trade in the region can make it difficult for firms to operate across markets, affecting their ability to internationalize and benefit from the potential of digital trade and technology. Therefore, formal as well as informal exchanges and dialogues to share experiences and lessons learnt from economies holding different approaches to digital trade governance would allow greater understanding, discussion and agreement on policy instruments affecting digital trade. Bringing a wide range of governmental and non-governmental actors into the policy process is critical to ensuring policy coherence. This is an effective way to ensure that divergent views and interests are included in an explicit and transparent manner.

**Recommendation 5. Supporting LDCs to navigate the continued digitalization of trade**

LDCs and other countries with special needs may be given special considerations to ensure they are not left behind. Closing gaps in digital trade opportunities between LDCs and other Asia-Pacific economies requires both soft and hard infrastructure development. In addition to investment in ICT infrastructure and digital skills, LDCs may need support to develop coherent and interoperable regulatory frameworks and to build the capacity of policymakers, negotiators and analysts to craft coherent policies and effective negotiations and modern agreements.

**Recommendation 6. Collective evidence-based exercises**

Designing digital trade policies and integration strategies leaving no one behind requires access to data on digital trade flows and related regulations and the capacity to analyze them. A regional mechanism for addressing specific questions or concerns in a timely fashion is part of regional cooperation. Partnerships between governments, regional and international bodies to build platforms and tools to inform policy discussions based on evidence, including the RDTII, the DSTRI and the Computer Services STRI, are needed to enhance the capacity of policymakers in evidence-based policymaking. Collaboration on fact-finding exercises can help clarify the trade-offs at stake and provide the evidence base needed by national governments to design digital trade policies that better meet their sustainable development priorities and those of the Asia-Pacific region.
Figure 27 Regional integration through digital trade in Asia and the Pacific: Policy recommendations

Reducing tariffs and non-tariff barriers on ICT goods and services.
Strengthening commitments to multilateralism and open regionalism
Regulatory cooperation and mutual recognition
Regionally coordinated actions in WTO JSI
Legal and infrastructure development
Building capacity of policymakers and analysts

Regional Integration through Digital Trade

1. Digitalization of trade procedures
   1. Framework agreement on facilitation of cross-border paperless trade in Asia and the Pacific
   2. Experience sharing on different approaches of digital trade governance
2. Bringing in stakeholders to conversations
   1. Governments-IOs collaboration on fact finding exercises
   2. Identifying trade-offs and policy responses based on evidence
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ESCAP (2020). “Regional Integration for Sustainable Development in Asia and the Pacific: ESCAP Digital and Sustainable Regional Integration Index and Indicator Framework” DigiSRII 1.0, 16 April. Available at https://www.unescap.org/resources/DigiSRII.


Annex: National Regulatory Profiles
National Regulatory Profiles

Australia

Australia is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII scores, the economy tends to have less regulatory complexity than the group average. The scores are significantly lower than the group on average in non-technical NTMs, intellectual property rights, telecom infrastructure and competition. However, relatively complex rules are related to foreign investment regulations, data protection, and online platforms.

Table 1: Australia’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Australia</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.294</td>
<td>-28%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.076</td>
<td>-58%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.250</td>
<td>-42%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.600</td>
<td>28%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.137</td>
<td>-64%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.175</td>
<td>-66%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.140</td>
<td>-61%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.550</td>
<td>10%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.500</td>
<td>-12%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.550</td>
<td>15%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Australia’s RDTII scores and regional average
Examples of policies supporting Australia’s digital trade integration in the Asia-Pacific region

IPRs issues

Australia has enabling environment when it comes to intellectual property rights (IPRs). For foreign applicants for patents, the World Intellectual Property Organization (WIPO) reports that, over the period 2010-2019, the number of foreign patent applicants and grants has been far greater than the domestic counterpart.\(^\text{18}\) For copyright, the Copyright Act 1968 enumerates “fair dealing” exceptions where third parties may use or build on existing works without violating their copyright. Furthermore, it is reported that Australia generally provides strong intellectual property protection and enforcement through legislation that criminalizes copyright piracy and trademark counterfeiting.

Telecommunication policy and competition

Australia has a relatively pro-competitive policy in the telecom sector. National Broadband Network Co. (NBN CO.) is the sole incumbent in the telecom sector after Telstra underwent structural separation. Thus, it no longer controls the fixed-line telecommunications network.

The Commonwealth has also reined in potential anti-competitive practices by private telecom providers mainly by amending the National Broadband Network Companies Act 2011 to incorporate network providers’ obligations to operate on open access, wholesale-only, and non-discriminatory basis and offer a basic connectivity service on a wholesale basis.

Non-technical NTMs

The economy does not impose any import ban on ICT goods or digital services. There are no reported import restrictions applied to ICT goods, including quotas or non-transparent and discriminatory import procedures. Nor does the economy impose local content requirements. Although the Defence Trade Controls Act 2012 creates an export control regime even for intangible technologies, the regime is limited to dual-use goods.

Examples of policies issues concerning Australia’s digital trade integration

Foreign investment restrictions

Australia’s regulatory environment for foreign direct investment in the digital economy is somewhat complex. The Corporations Act 2001 imposes a residency requirement: a company must have at least one director with resident status in Australia, and a public company must have at least two directors who are ordinarily residents in Australia.

In addition, the economy has in place a foreign investment screening mechanism under the Foreign Acquisitions and Takeovers Act 1975. Last amended in January 2021, the Act now authorizes a review of a proposed foreign investment under (i) the national interest test,\(^\text{19}\) (ii)

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\(^\text{19}\) The Treasurer may screen out significant investment actions that would be contrary to the national interest. For example, for online media services, an acquisition of a 5% interest in an Australian media business by a foreign person constitutes a significant action. The Foreign Investment Policy, updated in 2020 pursuant to the Act, sets out different considerations for the national interest test, including national security, competition, other Australian Government policies (including tax), impact on the economy and the community, and the character of the investor. The Policy notes that media, telecommunication, and other critical infrastructure are among sensitive businesses.
national security test,\(^{20}\) and (iii) a “call-in” power to screen out an investment that would not otherwise require notification on national security grounds. Furthermore, the Treasurer may re-assess previously approved investments where national security risks emerge after approval.

Lastly, although the incumbent Telstra has been privatized, underwent structural separation and no longer controls the fixed-line telecommunications network, the Telstra Corporations Act 1991 sets a foreign ownership limitation of up to 35% in aggregate and 5% by an individual.

**Domestic data protection**

Domestic data policies in Australia are somewhat complex. The economy imposes a data retention scheme that applies to internet and mobile service providers under the Telecommunications (Interception and Access) Act 1979. The dataset to be kept includes the subscriber and the accounts of telecommunications devices, the source of communication, the destination of a communication, the date, time and duration of a communication, the type of communication, and the location of equipment or a line used. These data should be retained for at least two years.

In addition, law enforcement agencies also have the power to intercept communications under the Telecommunications (Interception and Access) Act and request or compel assistance to law enforcement under the Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018.

Under this regime, certain security and law enforcement agencies may issue to communications providers three types of requests or notices: (i) technical assistance requests, (ii) technical assistance notices, and (iii) technical capability notices. While the first is on a voluntary basis, the other two allow the agencies to compel tech companies to assist or comply with requests to build capabilities into products to facilitate access. While the law prohibits assistance that would undermine encryption or security for users at large, according to the Freedom House, “critics have noted that, in practice, it is difficult (and in some cases impossible) to enable authorities’ access to one user’s data without creating exploitable vulnerabilities that could affect others”.\(^{21}\)

**Internet intermediary liability and content access**

The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, which was enacted in the wake of the Christchurch attack in 2019, subjects internet service providers and content providers to criminal penalties for the failure to report or remove “abhorrent violent material”.\(^{22}\) It was reported that the Act, because of its vague standards and high penalties, could incentivize rational service providers to err on the side of taking down more material.

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\(^{20}\) The Treasury may screen out investment actions that are notifiable national security actions if they would be contrary to national security. Notifiable national security actions include investment actions where “national security business” is involved. National security business includes critical infrastructure, telecommunications, and sensitive information businesses.


\(^{22}\) The Criminal Code Amendment (Sharing of Abhorrent Violent Conduct) Act 2019 provides that “[a] person commits an offence if: (i) the person provides a hosting service; and (ii) material is hosted on the hosting service; and (iii) the material is abhorrent violent material; and (iv) the person does not expeditiously cease hosting the material” (Section 474.34(5)). Although the Act does not impose a duty to monitor content, as for “abhorrent violent conduct,” Internet hosts need to put reasonable efforts to monitor and disable such materials.
than necessary. It was also reported that tech companies could be hesitant to create jobs within Australia’s jurisdiction because of the ambiguity around who would be prosecuted under the law.

**Online sales and transactions**

Regarding measures affecting online sales and transactions, first, certain social media platforms and search engines bear a novel obligation to pay for the content shared or posted on their platforms. The Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021, which was passed in both Houses in February 2021, imposes bargaining obligations upon digital platform corporations, such as social media platforms, designated by the Australian Communications Media Authority to bargain with and pay local news businesses for content posted by users of those platforms.

Second, foreign payment service providers are subject to differentiated regulatory treatment than domestic providers. If classified as a banking business under the Banking Act 1959, the foreign payment service providers must be authorized as deposit-taking institutions (ADIs) unless exempted from the requirement. The license prevents them from accepting retail deposits by their Australian branches.


**Recent policy changes and policy proposals**

Aside from the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021 and the amendment to the foreign investment screening scheme, two areas are undergoing recent policy changes. First, as the economy is expanding its high-speed national broadband networks across the nation, the 2020 Telecommunications Reform Package obligates statutory infrastructure providers like NBN Co. to bear universal service obligations to provide a download speed of at least 25 Mbps and an upload speed of at least 5Mbps during peak times to all premises, following a reasonable request from a retail service provider.

Second, internet intermediaries not only have the duty to remove “abhorrent violent material” but also potentially face content blocking orders from eSafety Commissioner under the Online Safety (Transitional Provisions and Consequential Amendments) Bill 2021. The Bill is expansive in that it enables eSafety to order the removal of material from further online services such as games, websites, messaging, and hosting services, let alone social media platforms. Further, the Bill would allow eSafety to issue app removal notices to app stores that require them to remove apps that facilitate the posting of class material one in one day.

**Australia’s participation in trade negotiations involving digital trade**

Australia is among the most active economies in facilitating digital trade arrangements internationally and regionally. Along with Japan and Singapore, Australia is one of the co-conveners of the WTO Joint Statement Initiative on Electronic Commerce at the multilateral

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level. Australia is also a party to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). The economy has also designed the innovative Australia-Singapore Digital Economy Agreement (DEA), which came into force in December 2020. The DEA reinforces the digital trade agreements between Australia and Singapore under the CPTPP and the Singapore-Australia Free Trade Agreement. Moreover, the economy also maintains an e-commerce chapter in the free trade agreements with ASEAN/New Zealand, Chile, China, Hong Kong, China, Indonesia, Japan, Korea, Malaysia, Peru, Singapore, Thailand, and United States.
Brunei Darussalam

Brunei Darussalam is a small high-income economy. The economy aspires to drive and enhance its socio-economic growth through digital transformation. Based on the overall RDTII score, the economy tends to be less prone to the issues of regulatory compliance costs compared to the group average. Regulations related to online sales and transactions are particularly enabling digital trade integration. However, the economy appears to strictly regulate internet intermediary liability and content access compared to the group on average.

Table 1: Brunei Darussalam’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Brunei Darussalam</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.391</td>
<td>-4%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.150</td>
<td>-17%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.500</td>
<td>6%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.277</td>
<td>-28%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.650</td>
<td>26%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.300</td>
<td>-17%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.325</td>
<td>-35%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>1.000</td>
<td>77%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.200</td>
<td>-58%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Brunei Darussalam’s RDTII scores and regional average
Examples of policies supporting Brunei Darussalam’s digital trade integration with the Asia-Pacific region

**Domestic data protection**

The economy does not have specific legislation for data protection that applies to private entities except for some regulations scattered over different sectors, such as finance and banking. The Data Protection Policy deals with data protection but applies only to government agencies. It protects any data processed or controlled by government agencies, regardless of whether the data is processed within or outside Brunei Darussalam.

**Online sales and transactions**

Brunei Darussalam has relatively open online sales and transaction policies. The economy adopted the Electronic Transactions Act in 2004 (revised and updated in 2008) to facilitate e-commerce by eliminating legal uncertainties. The restrictions found under this pillar relate to domain name registration, the lack of ratification of the UN Convention on Electronic Communications and the lack of adoption of the UNCITRAL Model Law on Electronic Signatures. Foreign companies or businesses may register for “.bn” and “.com.bn” domains only if they have a registered trademark with the Registrar of Trademarks. Foreigners are allowed to register a trademark but are required to provide an address for service in Brunei Darussalam.24

**Examples of policies issues concerning Brunei Darussalam’s digital trade integration**

**Internet intermediary liability and content access**

Brunei Darussalam is among the economies that heavily regulate content access on the Internet. There is no legal framework stipulating exemption from liability for Internet intermediaries, creating uncertainty for intermediaries. In addition, content is heavily regulated in the economy. The Broadcasting (Class License) Notification 2001 and the Internet Code of Practice from 2005 are the basis for online content regulation. They impose licensing and monitoring requirements on internet service providers (ISPs) and internet content providers (ICPs) while blocking and filtering commercial web content under certain circumstances.

The Code of Practice requires all ISPs, and ICPs licensed under the Broadcasting (Class Licence) Notification 2001 to use their best efforts to ensure that nothing is made available on the Internet, which is against the public interest or national harmony, or which offends good taste or decency. When a material is contrary to the Code of Practice, the Broadcasting Authority can require ISPs and ICPs to remove it or prohibit its broadcasting. It was also reported that various laws could be used to restrict online content access.25

**Telecommunication policy and competition**

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Companies with foreign majority ownership cannot apply for a license to provide telecom services in Brunei Darussalam. The Unified National Networks (UNN) Sdn Bhd, a company 100% wholly owned by His Majesty's Government of Brunei Darussalam and recognized as a Government-Linked company under Darussalam Assets Sdn Bhd, remains the sole provider for the telecom infrastructure, vested with the Infrastructure Provider for the Telecommunication Industry (InTi) License.

Moreover, Brunei Darussalam has strict licensing requirements, which are required to provide not only telecom but also Internet Access Services, Private Network Services, and online computer services.

**Recent policy changes and policy proposals**

The law and policy on digital trade in Brunei Darussalam are at their initial stages. The government has made efforts to draft relevant legislation and bring necessary changes. The Ministry of Development in Brunei Darussalam launched the 11th National Development Plan (NDP) (2018 – 2023) in 2018 to diversify the economy beyond the oil and gas sector. The theme of the plan is “Increase Non-Oil and Gas Sector Output as Catalyst for Economic Growth”.26

The government established a Digital Economy Council in 2019 to explore the potential of the digital economy industry. The Digital Economy Masterplan 2025 was launched by the Digital Economy Council with the vision of a “Smart Nation through Digital Transformation”.27

The Authority for Info-communications Technology Industry of Brunei Darussalam (“AiTi”) has been designated as the interim Data Office by the Minister of Transport and Infocommunications and tasked with developing a new personal data protection legislation for the private sector covering both commercial and non-commercial organizations. A public consultation paper on personal data protection for the private sector was published on 20 May 2021.28

**Brunei Darussalam's participation in trade negotiations involving digital trade**

Brunei Darussalam has demonstrated strong support for the multilateral trading system and has been active in the regional and bilateral trade agreements. It is one of the negotiating members of the WTO Joint Statement Initiative on Electronic Commerce. Brunei Darussalam is also a party to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). Further, being a party to the ASEAN, Brunei Darussalam is also a part of the ASEAN-Australia-New Zealand Free Trade Agreement and Economic Integration Agreement, which has an e-commerce chapter.

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Cambodia

Cambodia is among the economies prone to the risks of high regulatory compliance costs. Cambodia's overall RDTII score is moderately higher than the group average. Tariffs on imported ICT goods and technical standards on ICT goods and services are areas where the economy has significant bottlenecks compared to the group average. In addition, the absence of regulatory mechanisms to protect data privacy contributes to the significantly high score when domestic data protection is concerned.

Table 1: Cambodia’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Cambodia</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.461</td>
<td>13%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.850</td>
<td>369%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.275</td>
<td>-36%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.450</td>
<td>-4%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.500</td>
<td>31%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.325</td>
<td>-37%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.725</td>
<td>45%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.625</td>
<td>11%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.325</td>
<td>2%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.500</td>
<td>71%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.500</td>
<td>4%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Cambodia’s RDTII scores and regional average
Examples of policies supporting Cambodia’s digital trade integration in the Asia-Pacific region

Cambodia shows no restrictions on cross-border data flows. In addition, both the pillar relating to telecom infrastructure and competition and non-technical NTMs show low level of restrictiveness. Cambodia’s telecommunications market is deregulated. Cambodia has permitted 100% foreign ownership in the telecommunication sector since 2005. With no record of export restrictions on digital products and no local content requirement, Cambodia shows a low restrictiveness on non-technical NTMs. In addition, Cambodia’s E-commerce Law creates a safe harbour rule for e-commerce service providers and intermediaries whereby they are not liable for unlawful third-party content on their online platforms.

Examples of policies issues concerning Cambodia’s digital trade integration

Tariffs and trade defence measures

Cambodia has relatively high tariffs applied on ICT imports from other ESCAP economies. The coverage of zero-tariff lines for ICT goods imported from ESCAP economies is also small. In addition, the economy did not sign the WTO Information Technology Agreement (ITA) of 1996 nor the ITA expansion of 2015, which eliminated duties on an MFN basis for a list of ICT goods.

Domestic data protection

Cambodia has only sectoral data protection in e-commerce, and it lacks a comprehensive data protection law. The E-commerce Law contains provisions for the protection of consumer data that has been gathered for electronic communication. Cambodia also imposes data retention requirements in financial services and trade in goods. Banks and financial institutions should keep all records, documents, and copies of documents involved in all transactions for at least five years after the transaction date. In trade in goods, traders and government agencies must keep accurate documents, records, and other information in electronic format pertaining to the import and export of goods for ten years.

Cambodia also allows the government to access personal data without a warrant or court order. The Law on Telecommunications requires that all telecommunications operators and persons involved with the telecommunications sector shall provide the telecommunications information and communication technology service data to the Ministry of Post and Telecommunications. This requirement gives the Ministry unfettered rights to demand that all telecommunications service providers provide data on their service users. Therefore, this could operate as an obligation for companies to surrender data without requiring a judicial warrant or other safeguards protecting the right to privacy.

Internet intermediary liability and content access

Despite the E-commerce Law creating a safe harbour rule for e-commerce service providers, Cambodia is highly regulated the internet intermediary liability and access to the Internet and its content. Mobile operators are required to register the identities of consumers in Cambodia. Consumers should provide copies of national identity cards, passports, or any other valid
identity document to SIM card dealers before activating the SIM card. The Internet and its contents are also regulated. All internet service providers must install software programs and equip themselves with internet surveillance tools to easily filter and block any social media accounts or pages that run their business activities and/or publicize illegally. In July 2018, several independent news websites, including Radio Free Asia (RFA) and Voice of America (VOA), were blocked two days before the general elections. The Ministry of Post and Telecommunications also has the power to order private telecommunications operators to take necessary measures in the event of force majeure. The lack of clarity of the force majeure leaves this provision vulnerable to abuses, including shutting down social networks and other internet-based services.

Recent policy changes and policy proposals

Cambodia recently introduced the value-added tax (VAT) on e-commerce transactions made by non-resident entities without a permanent establishment in the economy by adopting Sub-decree 65 on 8 April 2021.\(^\text{29}\) These non-resident entities must register for VAT with the Cambodian tax authority, file a monthly VAT return, and pay the 10% VAT rate on the value of their online transactions if they provide digital goods and services to end-user consumers. Cambodia is also currently drafting a draft Law on Trade Secrets and Undisclosed Information.\(^\text{30}\) Until the adoption of this Law, trade secrets may be protected under other laws. For instance, a non-disclosure agreement may be used and enforced under the Contract Law of 1998 to maintain information in employment or other contractual relationships. Another regulation being drafted is the Cybercrime Law aiming to prevent and combat all kinds of cyber-related crimes. However, some uncertainties surround the draft Cybercrime Law such as whether only the author of the content found to be in violation will be held liable or whether liability will also extend to platform providers.\(^\text{31}\) Another regulation currently being drafted is the Amendment of Sub-Decree on the Management and Use of National Domain Names on the Internet, aiming to simplify the process for institutions and individuals both in Cambodia and overseas to register for the “.kh” domain.

Cambodia’s participation in trade agreements involving digital trade

Cambodia has joined several trade agreements covering commitments on digital trade. The economy participates in the consensus on strategic directions to develop e-commerce and digital integration in ASEAN through the ASEAN Work Programme on Electronic Commerce 2017-2025 and ASEAN Digital Integration Framework Action Plan 2019-2025. Cambodia is also part of the Regional Comprehensive Economic Partnership (RCEP), which has a wide e-commerce chapter.


India

India is a significant exporter of digital services in the Asia-Pacific region. In recent years, it has seen new policies introduced on digital trade and services as part of the Government of India (GOI) push to improve the digital infrastructure in the economy. The RDTII scores show that India is among the economies that heavily impose regulations related to digital trade. Except for the areas of telecom regulations and intermediary liability, the economy’s regulatory environment tends to be more complex than the group average in all policy areas.

Table 1: India’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Pillar Description</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.639</td>
<td>57%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.455</td>
<td>151%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.650</td>
<td>51%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.850</td>
<td>81%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.574</td>
<td>50%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.475</td>
<td>-8%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.650</td>
<td>79%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.775</td>
<td>55%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.500</td>
<td>-12%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.750</td>
<td>136%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.750</td>
<td>157%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.700</td>
<td>46%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between India’s RDTII scores and regional average
Examples of policies supporting India’s digital trade integration with the Asia-Pacific region

Internet Intermediary liability and content access

The Information Technology Rules 2021 require intermediaries to remove any information after receiving ‘actual knowledge’ through court order or a government agency. Moreover, the Information Technology Rules 2018 require intermediaries to deploy technology-based automated tools or appropriate mechanisms with appropriate controls for proactively identifying and removing or disabling public access to unlawful information or content. In addition, the Indian Information Technology Act (IITA) requires intermediaries to extend all facilities and technical assistance to intercept, monitor or decrypt information as well as to provide information stored in a computer or provide access to a computer resource when called upon to do so by certain agencies. This extends to online intermediaries, which are required to designate an officer to facilitate the execution of such orders. Intermediaries that fail to meet these obligations may be punished with imprisonment of up to seven years. Finally, it is also reported that Indian authorities often mandate complete internet and mobile network shutdowns in different parts of India.32

Telecommunication policy and competition

The telecommunication policy and competition pillar for India also show relatively low restrictions. India is a signatory to the WTO Reference Paper on Basic Telecommunications, albeit with exemptions on competitive safeguards. While India allows for 100% foreign direct investment (FDI) in telecommunications (with government approval required for FDI higher than 49%), any such investment is subject to observance of licensing and security conditions by licensees and investors.

Examples of policies issues concerning India’s digital trade integration

The policy areas for which measures restrict India’s digital trade integration with the Asia-Pacific region include foreign investment restrictions, domestic data protection, standards and procedures, and tariffs and trade defence measures.

Foreign investment restrictions

On foreign investment in sectors relevant to digital trade, India tends to have high restrictions in this pillar. As per India’s Foreign Direct Investment Policy, while 100% FDI is allowed in B2B e-commerce, only 51% FDI (with government approval) is permitted for multi-brand retail trading. In March 2016, the Indian government clarified that B2B e-commerce must not have more than one vendor accounting for more than 25% of sales. This has a negative impact on e-commerce giants such as Amazon, who source a significant amount of their goods from one vendor in India. In 2020, the Government of India introduced a requirement that investments from entities situated in an economy that shares a border with India can only be undertaken pursuant to government approval. Other regulatory rigidities in this pillar include a requirement

that a majority of directors of broadcasting companies be Indian citizens and government approval for foreign investment above a certain percentage in sectors such as FM broadcasting, up-linking of news through digital media, and telecom sector.

**Domestic data protection**

In respect of domestic data protection, India shows high regulatory complexity. The license entered into by internet service providers (ISP) to provide services in the economy sets out certain requirements relating to the retention of information. Such information includes a complete audit trail of the remote access activities pertaining to the network, a log of users connected and the service they are using, a log of every outward login or telnet through an ISP computer, a complete list of subscribers and geographical location of any subscriber. ISPs are also subject to the licensing requirements under the Telegraph act, 1885, which allows interception of messages pursuant to an order of the government. Any such order must be necessary in the light of the security interests of the economy. Telecom service providers (TSP) are also required to provide certain categories of records under the Cellular Mobile Telephone Service License Agreement and the License Agreement for the Provision of Basic Telephone Services (BTS). Under the BTS License, the central or state government has the right to monitor the telecommunication traffic at every switch and any other point of the network set up the TSP. Further, TSPs are required to make arrangements for monitoring calls by government security agencies at the location desired by the Central/State government. Along with monitored calls, the following records should be made available: (i) called/calling party numbers; (ii) time/date and duration of interception; (iii) precise location of target subscribers; (iv) subscriber numbers, if the target subscriber has invoked any call-forwarding feature; (v) data records for even failed call attempt.

Section 69 of the Information Technology Act, 2000 (as amended by the Information Technology (Amendment) Act, 2008) gives the central and state governments the power to direct any agency to intercept, monitor or decrypt any information transmitted, received or stored through any computer resource. Such an interception can be undertaken if the government is satisfied that it is necessary to do it in the interest of the security and sovereignty of the economy, to maintain friendly relations with foreign states, to maintain public order or to prevent incitement to the commission of any cognizable offence relating to the interests of the economy.

**Standards and procedures**

India tends to have high regulatory complexity related to the standards and procedures that apply to ICT goods and online services. Since 2012, India has imposed a compulsory registration scheme that mandates that certain ICT products undergo registration and labelling prior to launch in the market. The list of these products now has been expanded to include 76 ICT products. The Amendment to the ‘Unified Access Service License Agreement for Security related concerns for expansion of Telecom Services in various zones of the economy’ No. 10-15/2011 (License Amendment) requires telecom services providers to use network equipment authorized and certified by laboratories in India. Such a requirement has also been imposed by the Indian Telegraph Amendment Rules, 2018. This mandatory testing and certification by Indian laboratories trigger additional costs and delays for companies. The License Amendment also allows the Indian government to undertake extensive security inspections of the hardware, software, design, manufacturing facilities and supply chains at any time during the supply of equipment. Other screenings and blocking measures include blocking purchases
of telecom equipment from Chinese vendors by the Indian government on national security grounds.

**Tariffs and trade defence measures**

India is a signatory to the 1996 WTO Information Technology Agreement (ITA), which provides for the complete elimination of tariffs on IT products covered by the Agreement. India, however, has not signed the WTO ITA II Agreement, which was concluded in 2015 and expanded the product coverage of the ITA. Therefore, it is not surprising that the economy shows an average effective tariff rate applied to imports. India also maintains anti-dumping duties on several IT products, including DVDs, synchronous digital hierarchy transmission equipment, digital offset printing plates, cable ties and electronic calculators.

**Recent policy changes and policy proposals**

Many of the recent changes in India’s digital landscape have been reactions to the border dispute. From June 2020, the Government of India has banned almost 267 apps under Section 69A of the Information Technology Act, read with the relevant provisions of the Information Technology Rules 2009. These apps have been banned because of the security threats posed to the sovereignty of India. While the notification does not refer directly to China, most of these apps have connections to China – for example, TikTok. In April 2020, the foreign direct investment rules were changed, and government approval was required for investments from companies where the company or the beneficial owner of such a company is situated in an economy that shares a border with India. Since the introduction of this measure, as many as 150 private equity/venture capital investment approvals from China and Hong Kong, China are said to be pending with the government.

With respect to future policy proposals, the Personal Data Protection Bill (PDP Bill) is one of the most important policy measures in the field of digital governance in India. The PDP Bill, which is still pending in Parliament, seeks to provide a regulatory regime governing the personal data of individuals. The PDP Bill introduces requirements relating to the local storage of ‘sensitive personal data’ and prohibits the cross-border transfer of ‘critical personal data’. The PDP Bill also requires companies and institutions processing personal data to appoint data protection officers. With respect to individual rights, the PDP Bill provides the individual or the ‘data principal’ with a right to seek information on how their personal data has been processed or transferred, seek correction of inaccurate or incomplete data as well as restrict continuing disclosure of their personal data.

**India’s participation in trade negotiations involving digital trade**

India has not been proactive in participating in digital trade agreements internationally and regionally. India is not participating in the discussions under the WTO Joint Statement Initiative on Electronic Commerce, a multilateral initiative at the WTO aiming to frame rules governing e-commerce. Moreover, India has been reluctant to agree to free trade agreements (FTA) with

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extensive digital trade provisions. The India–Singapore Comprehensive Economic Cooperation Agreement is the only FTA in which India has agreed to extensive provisions in digital trade, including non-discrimination, non-application of customs duties or other duties, fees or charges in connection with the importation or exportation of digital products by electronic transmission as well as requirements relating to transparency. Other FTAs entered into by India do not contain any e-commerce and digital trade provisions.

Indonesia

Indonesia is a high potential digital trade market with its sizeable domestic economy. The RDTII scores show that the economy is among the economies that heavily impose regulations related to digital trade. Except for the perspectives of tariffs and technical standards-related measures, Indonesia seems to have a more complex regulatory environment concerning digital trade-related businesses than the group average in all policy areas.

Table 1: Indonesia’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Indonesia</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.583</td>
<td>43%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.079</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>1.000</td>
<td>132%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.500</td>
<td>6%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.569</td>
<td>48%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.650</td>
<td>26%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.720</td>
<td>98%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.725</td>
<td>45%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.750</td>
<td>33%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.500</td>
<td>57%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.125</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.800</td>
<td>67%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Indonesia’s RDTII scores and regional average
Examples of policies supporting Indonesia’s digital trade integration in the Asia-Pacific region

Tariffs and trade defence measures

Indonesia shows a low average effective tariff rate applied to ICT goods imported from sample ESCAP economies. The coverage of zero-tariff lines out of the total tariff lines for digital goods imported from sample ESCAP economies is also high, reaching 82.4%. This aligns with the participation of Indonesia as a signatory of the 1996 WTO Information Technology Agreement (ITA), in which participants committed to eliminate duties on IT products covered by the Agreement. However, Indonesia has not yet signed the ITA expansion concluded in 2015 to expand the product coverage of the ITA.

Standards and procedures

Law No. 20/2014 allows the Indonesian national standards to be developed following the international standards by considering national interests and global competition. Indonesia has a transparent approach to the formulation of standards and technical regulations by allowing the public to participate. Although it mandates local testing requirements for ICT products, it recognizes 150 international test labs to carry out the testing.

Examples of policies issues concerning Indonesia’s digital trade integration

Public procurement

Indonesia restricts the participation of foreign suppliers in public procurement requiring foreign companies to form a joint venture with a national company. In addition, foreign companies can only participate in public procurement bids that exceed the minimum thresholds of IDR 1 trillion (approximately USD 71.3 million) for construction services, IDR 25 billion (approximately USD 2.25 million) for consulting services, and IDR 50 billion (approximately USD 4.5 million) for other goods and services.

Requirements on the domestic component level (TKDN) also appear. The economy explicitly includes the price preferences for bidders with more than 25% of TKDN. The price preferences can be up to 15% for the procurement of goods and 7.5% for services. Indonesia also requires the transmission towers and steel-reinforced conductors used in public procurement to have a minimum local content of 40%.

At the international fora, Indonesia has not yet become a member of the WTO Agreement on Government Procurement to ensure open, fair, and transparent conditions of competition in the government procurement markets for digital goods and services.

Online sales and transactions

Foreign private electronic system operators must register their businesses to the relevant Ministry and appoint liaison officers, who must be domiciled in Indonesia. Moreover, certain foreign e-commerce operators must establish a representative trade office in Indonesia. This is the case for operators: (i) annually transacted with more than 1,000 consumers in Indonesia and (ii) annually delivered more than 1,000 packages to consumers in Indonesia.
Indonesia also requires the certification of websites before registering for a domain. Websites must provide the identity of the parties providing an electronic system and information on the object of any transaction. In addition, the threshold for de minimis is 3 USD per package or equivalent to 2 SDRs, which is considered low and, therefore, can increase the costs of online sales.

**Internet intermediary liability and content access**

Indonesia requires identity requirements for the telecommunication service. To get a prepaid phone SIM card in Indonesia, customers must register their phone prepaid SIM card with their valid national ID and family register card or a passport for foreigners. The registered information includes at least name, passport number, citizenship, and place and date of birth.

Moreover, Indonesia blocked several websites such as Reddit, Imgur, and Vimeo. Academic and civil society researchers have found that numerous blogs, online news outlets and websites have been blocked in recent years based on political, cultural, and security concerns. In July 2020, the Ministry of Communication and Information Technology stated that it planned to purchase sophisticated technology to block negative content and websites.

Indonesia has introduced several regulations requiring the commercial presence requirements for digital services providers. The E-commerce Law mandates that subject to certain thresholds, foreign business actors that actively conduct e-commerce activities with consumers in Indonesia must appoint an Indonesian representative who can act on its behalf. These thresholds are related to (i) number of transactions, (ii) transaction value, (iii) number of shipped packages, and (iv) volume of traffic or number of users. The Minister of Communication and Informatics Regulation No. 5 of 2020 on Private Electronic System Operators mandates foreign Private Electronic System Operators (ESOs) to appoint liaison officers who have domicile in Indonesia. The duty of the liaison officer was to facilitate any access requests by government authorities and takedown requests.

**Recent policy changes and policy proposals**

Indonesia restricted foreign ownership in e-commerce, express delivery services, and telecommunications services in the past. However, the economy has recently fully liberalised foreign investment in these sectors following the issuance of Omnibus Law 2020 and its implementing regulations. This development aims to increase foreign investment in these sectors, allowing more employment opportunities and better competition to improve the quality of goods and services. However, there is still a limit of 49% on the shares acquired by foreign investors in government-controlled firms. This includes foreign participation in SOEs in the telecommunication and delivery service sectors.

In 2020, Indonesia announced its plan to form an integrated data centre by 2023 called the national government data centre. The establishment of a data centre will require the

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37 Tech in Asia (2014), “Amid online porn crackdown, Vimeo, Reddit and Imgur are blocked in Indonesia”. Available at https://www.techinasia.com/online-porn-crackdown-vimeo-reddit-imgur-blocked-indonesia
completion of legal umbrellas such as the Electronic Information and Transactions Law and around 23 articles of technical rules under several regulations. Specific data related to data owners, financial data, and health data will be covered in the upcoming regulations for the national government data centre. Indonesia also proposes a legal framework to coerce social media platforms, apps, and other online service providers to accept local jurisdiction over their content and users’ data policies and practices.40

Indonesia’s participation in trade agreements involving digital trade

Indonesia participates in the consensus on strategic directions to develop e-commerce and digital integration in ASEAN through the ASEAN Work Programme on Electronic Commerce 2017 - 2025 and ASEAN Digital Integration Framework Action Plan 2019 – 2025.41 In addition, the economy is also part of the Regional Comprehensive Economic Partnership (RCEP), which covers commitments under the e-commerce chapter.

Indonesia also joined the APEC Digital Economy Steering Group negotiations, aiming to facilitate the development of the internet and digital trade, including e-commerce.42 The economy also participates in the WTO Joint Statement Initiative on Electronic Commerce, negotiating a plurilateral agreement on trade-related aspects of electronic commerce.

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40 EFF (2021), “Indonesia’s Proposed Online Intermediary Regulation May be the Most Repressive Yet”. Available at https://www.eff.org/deeplinks/2021/02/indonesias-proposed-online-intermediary-regulation-may-be-most-repressive-yet
Japan

Japan is an advanced economy and a prominent exporter of digitally enabled goods and services. There seems to be a dichotomy in the digital trade-related policy areas. The economy has a relatively business-friendly regulatory environment concerning tariffs on ICT goods, non-tariff measures, technical standards, and procedures. In addition, Japan has significantly less regulatory complexity concerning Internet intermediary liability and content access compared to the group average. However, the economy seems to have considerably more regulatory complexity when it comes to regulations and competition in the telecommunication sector and online sales and transactions.

Table 1: Japan’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Japan</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.421</td>
<td>3%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.038</td>
<td>-79%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.475</td>
<td>1%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.429</td>
<td>12%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.825</td>
<td>60%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.440</td>
<td>21%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.550</td>
<td>10%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.375</td>
<td>-34%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.700</td>
<td>46%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Japan’s RDTII scores and regional average
Examples of policies supporting Japan’s digital trade integration in the Asia-Pacific region

**Tariffs and trade defence measures**

Japan imposes effective tariffs on imported ICT goods from sample ESCAP economies at 0.01% and maintains 99.84% of zero-tariff coverage on such goods. Japan barely imposes trade defence measures on ICT goods except for antidumping duties on electrolytic manganese dioxide (a component of batteries) from China and South Africa.

**Non-technical NTMs**

Japan does not impose any import ban on ICT goods or digital services. However, there is an import procedure that does not allow for the importation of any devices for testing or demonstration that do not already hold regulatory authorizations. It is reported that this incidentally gives Japanese companies an advantage in the market over foreign companies. Specifically, the foreign companies face delays in testing devices on local carrier networks before product launch and experience difficulty in collaborating with engineers in their economies on design, development, accessories, and compatibility with other devices and obtaining local customer feedback during the development process.

Examples of policies issues concerning Japan’s digital trade integration

**Telecommunication policy and competition**

There seem to be regulatory issues related to the privatization of telecommunications service providers and regulating anti-competitive practices by the major service providers. Nippon Telegraph and Telephone Corporation Group (NTT), the incumbent in the telecom industry, is partly owned by the Japanese government. The NTT Group has been accused of anti-competitive practices, including alleged refusal to deal for its fibre optic network on a bulk basis and offering more favourable deals for its fibre optic wholesale services to the affiliates NTT DOCOMO and NTT Communications at lower prices than to unaffiliated companies. Despite the government's responses to complaints about NTT’s allegedly anti-competitive practice through publishing new guidelines, promulgating regulations, and amending the Telecommunications Business Act (Act No. 86 of 1984), the incumbent status of the NTT group has become a concern in the eyes of its competitors and service providers seeking interconnection to its network. Furthermore, under the Telecommunications Business Act, “telecommunications services”, which includes not only facilities operators but also businesses that do now own facilities but facilitate telecommunications between users such as personal matching services, SNS providers and other businesses, are required to file with the Ministry of Internal Affairs and Communications before commencing business.

**Domestic data protection**

Japan has a comprehensive data protection regulation, which is important to support digital trade. However, the economy also imposes certain domestic data policies, which are expected to create costs for companies engaging in digital trade. The major contributors to this complexity are (i) data retention requirements that apply to various sectors and (ii) the government access to personal data held by business enterprises.

Specifically for the latter, law enforcement agencies may request for, or order, decryption of encrypted electronic records held by business enterprises, not necessarily with a warrant in accordance with the Criminal Procedure Code and the Act on the Interception of Communications for Criminal Investigations (Act No. 137 of 1999) for the assistance of ongoing investigations. Furthermore, the government may also access servers for IoT devices to ensure that the devices are adequately protected from cyberattacks and infected networks under the Act on National Institute of Information and Communications Technology (NICT) (Act No. 144 of 2000), as amended in 2019. It is reported that these regulations can result in the revealing of trade secrets as well as the compliance burden itself.44

Online sales and transactions

Regarding the pillar of online sales and transactions, Japan has relatively more regulatory complexity than the group average. This partly results from the enactment of the Act on Improvement of Transparency and Fairness in Trading on Specified Digital Platforms (the Act on Digital Platforms), which was recently passed in February 2021. Designed to prevent the anti-competitive practice of online platform companies with huge market impact by requiring (i) disclosure of terms and conditions for the use of their platforms, (ii) certain measures that promote mutual understanding of digital transactions, and (iii) filing of an annual report among others, this Act has raised concern among major companies such as U.S. online platforms over lack of transparency.

Another major contributor to the regulatory complexity in this area is the economy’s lack of participation in the harmonization of law regarding e-commerce. Japan did not adopt UNCITRAL Model Law on Electronic Signatures and Model Law on Electronic Commerce. Japan is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts.

Recent policy changes and policy proposals

Recent policy changes in Japan saw augmentation of digital business regulation in the interest of consumer protection, combatting copyright infringement, and protecting privacy. Aside from the new Act on Digital Platforms and the amendment to the Act on NICT, the recent amendment to the Telecommunications Business Act (Act No. 86 of 1984) in May 2020 has extended extraterritorial enforcement to foreign companies providing telecom services to Japanese customers to be equivalent to those provided by domestic companies regulated under the Act. These foreign companies must register with the Ministry of Internal Affairs and

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Communications, designate a local representative in Japan, and protect the consumer’s right to secrecy of communication.

Furthermore, in accordance with the recent amendment to the Copyright Act (Act No. 48 of 1970) in 2020, “index sites” that contain links leading to infringing content as well as internet service providers are required to block copyright-infringing contents or sites. The amendment was approved for the specific purpose of augmenting copyright protection in the economy’s manga industry.

**Japan’s participation in trade negotiations involving digital trade**

Japan has been one of the most active economies in taking the lead in facilitating digital trade internationally and regionally. In 2019, Japan issued the Osaka Declaration on Digital Economy at the G20 Osaka Summit Meeting and launched the “Osaka Track,” where the economy demonstrated its commitment to “promote international policy discussions, inter alia, international rule-making on trade-related aspects of electronic commerce at the WTO.”

Following the Osaka Declaration, Japan, along with Australia and Singapore as co-conveners of the WTO Joint Statement Initiative on Electronic Commerce, has continued the negotiations in virtual meeting format since March 2020 and developed a consolidated negotiating text at the end of 2020. Japan is a signatory to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). Furthermore, Japan entered into the U.S.-Japan Trade Agreement, which contains a comprehensive set of provisions addressing priority areas of digital trade. The two economies have also launched a Global Digital Connectivity Partnership to promote a vibrant digital economy of various partners while reinforcing cybersecurity.

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Kazakhstan

Kazakhstan is among the economies prone to the risks of high regulatory compliance costs. Kazakhstan's overall RDTII score is moderately higher than the group average. Regulations in the telecommunication sector, internet intermediary liability and content access, IPR issues, and conditions for cross-border data flows contribute significantly to the complex regulatory environment. In contrast, Kazakhstan's policies related to tariffs, non-technical NTMs, standards and procedures appear to create an enabling environment for digital trade.

Table 1: Kazakhstan’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Kazakhstan</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.473</td>
<td>16%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.089</td>
<td>-51%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.525</td>
<td>12%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.483</td>
<td>26%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>1.000</td>
<td>94%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.580</td>
<td>60%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.550</td>
<td>10%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.750</td>
<td>33%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.215</td>
<td>-29%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.450</td>
<td>-6%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Kazakhstan’s RDTII scores and regional average
Examples of policies supporting Kazakhstan’s digital trade integration with the Asia-Pacific region

Tariffs and trade defence measures

The tariffs of Kazakhstan vis-à-vis ICT goods are relatively low, with the effective tariff rate applied by Kazakhstan to ICT goods imported from sample ESCAP economies being equal to 0.4% and the zero-tariff coverage being more than 70% as of 2019. Kazakhstan is also a party to WTO Information Technology Agreement (ITA I) and has eliminated tariffs on digital goods covered by WTO ITA I as per its schedules of commitments, but it has not yet joined the expanded ITA (ITA II). Kazakhstan does not impose any trade defence measure targeting ICT products.

Non-technical NTMs

No import ban is applied to ICT goods and online services, but some restrictions exist. In particular, licensing procedures on importing certain digital goods and export restrictions on special hardware meant for secret information acquisition and encryption devices remain in place.

Standards and procedures

The right to participate in public consultations required for the standard-setting procedure is ensured for foreign interested parties and domestic parties in Kazakhstan as part of the Eurasian Economic Union (EAEU). With no report of limitations on the use of internationally recognized encryption standards or discrimination regarding product screening and certifications for ICT goods and network equipment, Kazakhstan provides a level playing field with regard to standards and conformity assessment procedures.

Examples of policies issues concerning Kazakhstan’s digital trade integration

Telecommunication policy and competition

The incumbent operator in Kazakhstan is a state-owned company – Kazakhtelecom, which owns as much as two-thirds of the telecommunication market and is set to be privatized in 2024. There is also a licensing requirement for companies that want to provide telecommunications services, which are also required to connect their channels to a public network controlled by Kazakhtelecom as part of the licensing requirement. At the same time, the telecommunication companies are required to purchase and install equipment related to the economy’s System for Operational Investigative Measures (SORM) and cover costs related to the database of International Mobile Equipment Identity (IMEI) codes, creating additional costs for the companies.

Internet intermediary liability and content access

Kazakhstan implements user identity requirements and practices of website blocking by the government. The legislative changes in force since 2018 require users to identify themselves through government-issued digital signature technology or SMS verification to comment on domestic websites. The government also has extensive authority to block online content and
disrupt the internet network. While the National Security Committee of Kazakhstan can pursue these activities for investigative purposes and prevention of crimes without a court order (notifying other state bodies within 24 hours), the other relevant agencies, such as the Ministry of Information and Communication, can block websites following court proceedings.

Cross border data flow conditions

Kazakhstan’s cross border data policies include local storage requirements, infrastructure requirements and a complex conditional flow regime. The Law on Personal Data and Protection stipulates that databases containing personal data must be stored in Kazakhstan and imposes that cross-border transfer of personal data can take place only under certain conditions. The Law on Communications requires that operators of communication networks create a centralised management system for their networks to be located in Kazakhstan. While the Law on Informatization sets out that Internet resources with “.kz” and “.қаз” domains must be hosted on hardware and software complexes located in Kazakhstan. In addition, Kazakhstan has not joined the European Council’s Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Recent policy changes and policy proposals

The more recent regulation changes have aimed at the extension of data protection obligations and local storage requirements. The Law on Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Regulation of Digital Technologies adopted in July 2020 introduced further requirements for data collection and processing, as well as new obligations for data operators. In addition, the amendments to the Law on Informatization in February 2021 set out a requirement for internet resources with “.kz” and “.қаз” domains to be hosted on hardware and software complexes located in Kazakhstan.

Kazakhstan’s participation in trade negotiations involving digital trade

Although Kazakhstan pushes forward its domestic agenda on digital trade and e-commerce, the economy does not engage in negotiations of bilateral agreements to foster digital trade integration with other economies. Kazakhstan’s existing FTAs do not contain provisions for digital trade or e-commerce. However, Kazakhstan is one of the WTO Members that joined the Joint Statement Initiative to commence WTO negotiations on trade-related aspects of electronic commerce and continues to participate in the plurilateral negotiations, which produced a consolidated text already in December 2020.
Republic of Korea

Republic of Korea is an advanced economy and a prominent exporter of digitally enabled goods and services. The economy has a relatively business-friendly regulatory environment concerning measures related to tariffs on ICT goods, non-technical NTMs affecting ICT goods and ICT services, intellectual property rights, and the telecommunication sector. However, the regulatory environment tends to be complex when it comes to public procurement, foreign investment, cross-border data flow conditions, internet intermediary liability and content access, technical standards, and online sales and transactions.

Table 1: Republic of Korea’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Republic of Korea</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overall score</strong></td>
<td>0.472</td>
<td>16%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.071</td>
<td>-61%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>1.000</td>
<td>132%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.750</td>
<td>59%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.169</td>
<td>-56%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.175</td>
<td>-66%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.580</td>
<td>60%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.400</td>
<td>-20%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.875</td>
<td>55%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.100</td>
<td>-69%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.625</td>
<td>114%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.550</td>
<td>15%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Republic of Korea’s RDTII scores and regional average
Examples of policies supporting Republic of Korea’s digital trade integration with the Asia-Pacific region

Telecommunication policy and competition

Republic of Korea tends to have a relatively open environment in this pillar. The telecommunications market was liberalized in 1997. Three major companies, SK Telecom, KT, and LG U+, own telecom network equipment. The Telecommunication Business Act was amended in June 2020 to require value-added telecom business operators to take measures necessary to “supply convenient and stable” services (Article 21-7). Those measures include non-discrimination against use environments for terminals or internet service providers, prevention of technical errors and traffic from flooding, and securing data transmission to users upon request (Article 30-8). This amendment stemmed from a highly noticeable slowdown of the Facebook network and unfairly low network costs to Google (YouTube) for vast traffic volumes.

Non-technical NTMs

The economy does not impose local content requirements on imported goods, nor does it impose import or export bans on ICT goods, except for national security reasons related to strategic items under the Foreign Trade Act.

IPR issues

Republic of Korea is a party to the Patent Cooperation Treaty, and the Copyright Act provides for both fair use and fair dealing exceptions. In addition to litigation, the Korean Copyright Commission conducts alternative dispute resolution proceedings for infringement cases for civil matters. For law enforcement against copyright piracy, the Copyright Protection Agency was established in 2016 to conduct hearings and issue corrective orders, including offline crackdowns of physical facilities that host pirated materials. Individuals who commit copyright piracy are subject to imprisonment or fines.

Examples of policies issues concerning Republic of Korea’s digital trade integration

Public Procurement

Regulations related to public procurement in ICT-related sectors are quite complex. The complexity primarily stems from (i) discrimination against foreign bidders and (ii) the requirement for source code transfer.

While limited opportunities for international bidding in public procurement are implemented for to protect SMEs, the issues of transparency and objective standards are reported by firms to yield unintended harm against foreign enterprises.

Another measure is related to the public procurement of software, network equipment, and other hardware equipment. In these cases, the National Intelligence Service (NIS) conducts a cryptographic validation test that requires encryption standards in Cryptographic Module Validation Standards such as ARIA that are not aligned with internationally recognized ones.
It also requires the surrender of source codes in the digital devices under its Cryptographic Module Testing and Validation Guidelines.

**Cross-border data flow conditions**

The complexity of cross-border data flow conditions primarily results from several conditional flow regimes that apply to different sectors, such as financial services, cloud services, location-based services, and the Personal Information Protection Act (PIPA), which applies to all personal data. Furthermore, the economy imposes a local processing requirement upon financial service providers which utilize cloud services for users’ financial data under the Regulations on Electronic Financial Supervisory Regulations.

**Internet intermediary liability and content access**

Although Internet service providers and website hosts are generally exempt from liability or penalties for copyright-infringing or illegal content, online hosts must implement technical measures to prevent obscene materials. Certain online hosts are required to verify users’ information under the Game Industry Promotion Act.

Furthermore, different agencies are authorized to block certain content. For example, the Ministry of Culture, Sports and Tourism, Korea Copyright Protection Agency, and Korea Communications Standards Commissions are authorized under relevant statutes to block copyright-infringement content from online hosts. The Korea Communications Commission is authorized to order not only online hosts but also Internet service providers and telecommunication service providers to block obscene, defamatory, criminal, or other illegal materials.

**Online sales and transactions**

The intertwined regulations of clouding services and financial data result in a complex and convoluted regulatory regime. For example, although under the Credit Information Use and Protection Act (CIPA), financial institutions may outsource the processing of users’ personal information to cloud service providers, there are still many regulatory rubrics to navigate through and comply with to minimize the risk of violations. Such regulatory frameworks include the Electronic Finance Transactions Act, Electronic Financial Supervisory Regulations, Regulation on Financial Institutions’ Outsourcing of Data Processing Business and IT Facilities, and Regulation on Financial Companies’ Outsourcing of Data Processing Business and IT Facilities.

**Standards and procedures**

The certification schemes for certain imported electronic devices and radio equipment require local testing under the Electrical Appliances Safety Control Act and the Radio Wave Act. The government requires encryption standards for network equipment that deviate from internationally recognized ones. Furthermore, network equipment certified at a Common Criteria Recognition Arrangement accredit lab may not pass the security verification scheme conducted by the National Intelligence Service.
Recent policy changes and policy proposals

Republic of Korea has reinforced its anti-competitive policies in the telecommunications sector, including Internet service providers and online platforms. This is well demonstrated by the recent amendment to the Enforcement Decree of the Telecommunications Business Act, or the so-called “Netflix Act,” which ensures non-discrimination against use environments for terminals or Internet service providers, prevents technical errors and secures data transmission, among others.

Recent policy changes also include increased data protection coverage through amendments to the PIPA and the CIPA. Under the latest amended version of PIPA, companies are allowed to transfer data across borders only to jurisdictions with comparable data protection policies. The amendment in 2020 to the CIPA reduced some burden on the cross-border data transfer of financial and personal information by exempting the transfer from a conditional flow regime if it utilizes data outsourcing.

Republic of Korea’s participation in trade negotiations involving digital trade

Republic of Korea has accelerated its efforts to participate in international and regional discussions on digital trade. Republic of Korea has been participating in the discussion for the WTO Joint Statement Initiative on Electronic Commerce, for which a consolidated negotiating text based on some WTO members’ proposals was circulated in December 2020. At the regional level, Republic of Korea is a signatory to the Regional Comprehensive Economic Partnership (RCEP) and has recently expressed interest in joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Furthermore, the Ministry of Trade, Industry and Energy has garnered public comments from stakeholders and trade experts on joining the Digital Economy Partnership Agreement (DEPA) among Singapore, Chile, and New Zealand. Lastly, the negotiation with Singapore is ongoing for a new Republic of Korea–Singapore Digital Partnership Agreement.
Lao PDR

Lao PDR is among the economies with low complexity in the regulatory environment for digital trade. The economy’s overall RDTII score is moderately below the group average. Regulatory bottlenecks and compliance costs may come from foreign investment restrictions, IPR, regulation and competition in the telecommunication sector, and Internet intermediary liability and content access.

**Table 1: Lao PDR’s RDTII overall score and pillars’ score**

<table>
<thead>
<tr>
<th>Lao PDR</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.365</td>
<td>-10%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.157</td>
<td>-13%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.525</td>
<td>12%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.486</td>
<td>27%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.850</td>
<td>65%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.275</td>
<td>-45%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.750</td>
<td>33%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.125</td>
<td>-61%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.450</td>
<td>-6%</td>
</tr>
</tbody>
</table>

**Figure 1: Comparison between Lao PDR’s RDTII scores and regional average**
Examples of policies supporting Lao PDR’s digital trade integration with the Asia-Pacific region

Lao PDR shows a conducive regulatory environment for digital trade integration, especially in three pillars: cross-border data flow conditions, standards and procedures, and non-technical NTMs. The economy does not impose any restrictions on data flows. It is open to cooperation on standards with foreign economies and regional and international organizations by mobilizing scientific research, technical collaboration, sharing experiences, and capacity building of human resources. In 2012, Lao PDR set out a Decree to cancel the local content requirements as regulated in the previous legislation. This, along with the absent record of the government’s import ban on ICT-related products, makes Lao PDR a relatively less restrictive economy on non-technical NTM.

Examples of policies issues concerning Lao PDR’s digital trade integration

Telecommunication policy and competition

Lao PDR’s telecommunications market is regulated as the government establishes price controls for telecommunication services. The Telecommunication Law prohibits telecommunication service providers from increasing the price without the Ministry of Post and Telecommunications (MPT) authorization. Other activities such as adjusting the radio frequency spectrum and telecommunication networks, using telecommunication resources, and importing telecommunication equipment should also receive authorization from MPT. The government of Lao PDR maintains ownership stakes in the telecommunication sector. Four authorized telecommunication enterprises providing fixed and mobile telecommunications services in Lao PDR have some share of government ownership. Two of these enterprises, namely Unitel and LTC, have more than 70% of the market shares for fixed lines. Since 2013, Lao PDR has developed infrastructures to route all internet traffic through a single gateway, enabling them to monitor and restrict content. The internet service providers should also submit quarterly reports to the National Internet Committee under the Prime Minister’s Office to facilitate the monitoring. However, the government’s enforcement capability on the internet continued to appear limited.

Internet intermediary liability and content access

Following the adoption of the Law on Electronic Transaction in 2014, internet service providers can face penalties for permitting internet users to publish information meant to discredit the government. The website owners or website managers are responsible for checking content and information thoroughly before allowing others to disseminate it through their website. Although Lao PDR’s Law on Electronic Transactions provides that intermediaries are not required to monitor any information contained in a data message or electronic record that it handles for a user, Lao PDR also requires individuals to register on social media sites with their full names and current address, which can limit the freedom of expression.

Foreign investment restrictions

Although full foreign ownership is permitted in most cases in Lao PDR, many companies have reported that they find it easier to seek local partners to navigate non-transparent official and
unofficial processes. The Law on Investment Promotion introduces a national security screening for foreign investment in Lao PDR. Foreign investors may invest in any sector except those the government deems detrimental to national security, health, traditions, or the natural environment. Lao PDR also establishes a general mergers and acquisitions review regime by adopting the Law on Business Competition. However, both screening processes have never been used to block foreign investment in sectors relevant to the digital trade until now.

Recent policy changes and policy proposals

On 12 April 2021, Lao PDR adopted the Decree on E-Commerce No. 296/GOV to provide a regulatory framework for businesses engaged in e-commerce operations. The regulation entered into force on 14 June 2021. Under the new Decree, e-commerce businesses that trade through their platforms or electronic marketplaces must notify and submit documents to the Ministry of Industry and Commerce to receive an acknowledgement certificate. Moreover, foreign investment in e-commerce is subject to a limit of 90% of the entity’s shares, and a minimum registered capital of LAK 10 billion (approximately USD 1 million). Traders using e-commerce platforms are required to provide information on goods and services, including their business operator’s information such as name, address, contact information, company registration certificate, and business operation license.

Lao PDR’s participation in trade negotiations involving digital trade

Lao PDR is currently in the final stage of acceding to the WTO Information Technology Agreement (ITA) and ITA Expansion. On 25 June 2021, Lao PDR submitted draft schedules for removing tariffs on the high-tech products covered by the two agreements. The proposed schedules include the elimination of tariffs from the date of accession on most ICT goods covered by the agreements while removing tariffs on a small number of goods over a transition period.

Malaysia

Malaysia is a significant exporter of digitally enabled goods and services in South-East Asia. The economy has actively taken part in major economic integration initiatives. The overall RDTII score suggests that Malaysia’s regulatory environment tends to be friendly for businesses involved in cross-border digital trade. However, high compliance costs may occur from regulations related to foreign investment restrictions, intellectual property rights, telecommunication policy and competition, as well as internet intermediary liability and content access.

Table 1: Malaysia’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Malaysia</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.370</td>
<td>-9%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.028</td>
<td>-84%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.525</td>
<td>12%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.446</td>
<td>16%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.825</td>
<td>60%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.300</td>
<td>-17%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.150</td>
<td>-70%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.625</td>
<td>11%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.125</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.400</td>
<td>-16%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Malaysia’s RDTII scores and regional average
Examples of policies supporting Malaysia's digital trade integration in the Asia-Pacific region

Malaysia has low tariffs on ICT goods. The economy also has a comprehensive data protection law. It does not impose any burdensome requirements on businesses concerning domestic data processing. The only restriction recorded concerns the lack of self-certification for certain electronic products for standards and procedures. Regulations related to cross-border data flow conditions, non-technical NTMs, and online sales and transactions are also relatively nurturing digital trade.

Examples of policies issues concerning Malaysia's digital trade integration

Malaysia gets a score higher than the regional average in four of the pillars: foreign investment restrictions, intellectual property rights, telecommunication policy and competition, as well as internet intermediary liability and content access.

Foreign investment restrictions

Several measures have been found in relation to foreign investment. Malaysia allows 100% foreign equity participation in Applications Service Providers (suppliers which do not own underlying transmission facilities). However, liberalization of telecommunications services for Network Facilities Providers and Network Service Provider licenses has yet to be implemented. Only 70% foreign participation is permitted, although, in certain instances, Malaysia has allowed greater equity participation.

Other measures are mostly horizontal; they apply to all sectors, including those relevant to digital trade. One of the measures is the requirement to have a resident director for all companies. Another restriction is screening investment and acquisitions in sectors relevant to digital trade. The Ministerial Functions Act grants relevant ministries the power to approve investment projects. It is reported that foreign investments in services are subject to extensive review and approval by ministries and agencies.47

Telecommunication policy and competition

The Government of Malaysia has a substantial degree of ownership of the incumbent telecommunications operator and license requirements. According to the Malaysian Communications and Multimedia Commission (MCM) guidelines, there is a license requirement for Network Facilities Provider (NFP), Network Service Provider (NSP), Content Applications Service Provider (CASP), Content Applications Service Provider (CASP), Network Facilities Provider (NFP), Network Service Provider (NSP), Content Applications Service Provider (CASP) and Applications Service Provider (ASP). These licenses appear to restrict foreign participation. As mentioned in the previous section, only 70% of foreign participation is permitted for Network Facilities Providers and Network Service Provider licenses.

Internet intermediary liability and content access

The Copyright Amendments Act (2012) provides a safe harbour provision for intermediaries, but there is an exemption on the scope. According to the Act, internet services providers (ISPs)

and content aggregators must protect the copyright owners by removing or disabling access to the contents that breach the copyright; otherwise, they are subject to liability.

According to the Malaysian Communications and Multimedia Commission guidelines, there is a license requirement for several categories of digital services providers, such as ISPs. Additionally, it is reported that amendments made to the Sedition Act in 2015 have created worries as they could make sharing allegedly seditious material on social media a crime.48

Recent policy changes and policy proposals

Unlike most of the sample economies covered by the study, there are no recent policy changes or proposals that would affect digital trade integration. This may be because of the frequent changes in the government within the past three years. Since 2018, the economy has been ruled by four prime ministers, while the ministers supervising the areas relevant to digital trade have also been frequently changed.

Malaysia's participation in trade negotiations involving digital trade

Malaysia is one of the most active economies parting in regional trade agreements. The economy is part of the major free trade agreements, which are the Association of South-east Asia Nations (ASEAN), Asia-Pacific Economic Cooperation (APEC), Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and Regional Comprehensive Economic Partnership (RCEP). Malaysia also maintains chapters or provisions related to e-commerce in its free trade agreements with Australia and Turkey.49

Nepal

Nepal is an LDC that is also land-locked. Promoting digital trade will be instrumental in reducing the economy’s trade costs. On the one hand, Nepal has not imposed complex regulations in the digital-governance domains. On the other hand, Nepal still has significant barriers to trade and investment in traditional forms of tariffs and foreign investment restrictions.

Table 1: Nepal’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Nepal</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.320</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.371</td>
<td>105%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.725</td>
<td>54%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.403</td>
<td>5%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.475</td>
<td>-8%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.125</td>
<td>-78%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.125</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.550</td>
<td>15%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Nepal’s RDTII scores and regional average
Examples of policies supporting Nepal’s digital trade integration in the Asia-Pacific region

Both cross-border data flow conditions and domestic data protection stand out as having a low degree of complexity. The economy does not impose any restrictions on cross-border data transfers, making it one of the most open regimes in the region in terms of cross-border data flow conditions. Regarding domestic data protection, Nepal currently has an open regime among the other economies in the region as it does not impose any burdensome restrictions. The economy also protects personal data through its Privacy Act of 2018.

The other policy areas where Nepal exhibits an open environment for digital trade integration include internet intermediary liability and content access, as well as standards and procedures. The economy has implemented a safe harbour for internet intermediaries, and it does not impose any user identity and monitoring requirements. Likewise, no cases of blocking commercial web content have been found. International standards are prescribed for services relevant to information technology, and no significant deviation from international standards is observed.

Likewise, Nepal also exhibits a relatively lenient regime regarding its non-technical NTMs affecting ICT products. Nepal does not impose any import ban on digital goods, there are no local content requirements (LCRs) applicable to ICT goods, and it does not have any export restrictions on ICT goods and digital services. The only restriction under Nepal's non-technical NTMs pillar is a licensing requirement for radio machines, including digital equipment (such as communication systems, cordless telephones, and other similar equipment).

Examples of policies issues concerning Nepal’s digital trade integration with the Asia-Pacific region

Foreign investment restrictions

Restrictions found under the pillar of foreign investment restrictions include the prohibition of foreign investment in computer training (which has been in force since 2019), a maximum foreign equity limit of 80% in the telecommunication sector, and a maximum foreign equity ceiling of 51% in consultancy services. Another foreign investment restriction which applies in Nepal is the reported difficulty in hiring foreign workers, including in managerial positions, as foreign employees could be employed only through performing labour market tests that entail demonstrating unavailability of domestic employees with the required skill.50 Likewise, the foreign investment in digital sectors is also constrained by the requirement to get approval from the foreign investment approving body, which applies foreign investment in all the sectors allowed.

Telecommunication policy and competition

Although Nepal’s telecommunication sector is deregulated, the presence of several measures poses challenges for digital trade integration. Nepal Telecom (NTC), the incumbent

50 ‘Labour Rules’, which came into effect in 2018, slightly relaxed this provision by allowing a company with foreign investment to have up to three foreign workers without performing the labour market test. The Rules can be retrieved from https://moless.gov.np/?page_id=1339
telecommunications operator, is a state-owned company, which may affect competition in the sector. Furthermore, Nepal also has a strict licensing requirement when it comes to telecommunications infrastructure development—only two licenses are to be issued for the first five years of commencement of the regulation.

**Online sales and transactions**

Nepal does not impose ‘de minimis’ for customs, which can result in high costs for online sales across borders and imposes local presence for the registration of domain names. Moreover, Nepal is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts (2005), UNCITRAL Model Law on Electronic Commerce (1996), and UNCITRAL Model Law on Electronic Signatures (2001). Thereby, a lack of international legal frameworks can cause additional burdens for companies, also considering that there is no domestic regulatory framework for online consumer protection.

**Other measures**

Public procurement and the IPR issues also show some major restrictions in Nepal. Explicit preference is given to domestic firms in the public procurement process, including digital products and services, and Nepal is not a signatory of the WTO Agreement on Government Procurement (GPA). On the other hand, protection of IPR rights, including copyrights of digital products, remains grossly inadequate, thus creating an unfavourable environment for digital trade integration. In addition, while Nepal has not applied any trade defence measures, the analysis shows that there is moderately low coverage of zero tariffs on ICT imports from other ESCAP economies and that Nepal has not yet joined the WTO Information Technology Agreement (ITA) of 1996 nor the expansion of 2015.

**Recent policy changes and policy proposals**

While there has not been a recent policy change that would fundamentally alter the digital trade policy regime of the economy, there are two proposed regulations—the Information Technology Bill and E-Commerce Bill—that are of fundamental importance to Nepal’s digital policy environment. The ‘E-Commerce Bill’ does not have any noticeable measures that would restrict the digital trade environment. However, it would bring predictability to e-commerce transactions, which is currently lacking given the absence of regulations that govern e-commerce. The Bill includes provisions related to online consumer protection conducive to digital trade integration.

Likewise, the Information Technology Bill (IT Bill) is expected to provide a predictable environment in relation to data policies. However, its current form contains rigid measures, including a ban on cross-border data transfers for data related to government agencies, public enterprises, financial institutes, and health information.

**Nepal’s participation in trade negotiations involving digital trade**

Nepal does not proactively facilitate digital trade agreements regionally or internationally, and the economy has not participated in trade negotiations involving digital trade. Its major trade agreements—Nepal-India Trade Treaty and South Asian Free Trade Area (SAFTA)—do not have provisions to facilitate digital trade. Furthermore, there are no immediate trade
agreements in the pipeline which will have digital trade/e-commerce chapters. Finally, Nepal is also not a party to the WTO Joint Statement Initiative on Electronic Commerce, a multilateral initiative to frame global rules on issues pertinent to e-commerce. The only possibility for Nepal to join an agreement covering digital trade is the ongoing discussion at the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), a regional organization of seven member states from the South and Southeast Asia. However, the negotiations for BIMSTEC FTA have been ongoing since 2004, and there have not been tangible results.
New Zealand

New Zealand is among the economies with the lowest potential issues of regulatory compliance costs. The RDTII does not capture any restriction for New Zealand under the pillars covering policies on public procurement, intellectual property rights, internet intermediary liability and content access, and online sale and transactions. However, complex regulations are related to conditions for cross-border transfer of data.

Table 1: New Zealand’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>New Zealand</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.182</td>
<td>-55%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.001</td>
<td>-99%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.350</td>
<td>-26%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.134</td>
<td>-65%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.325</td>
<td>-37%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.440</td>
<td>21%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.400</td>
<td>-20%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.100</td>
<td>-79%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between New Zealand’s RDTII scores and regional average
Examples of policies supporting New Zealand’s digital trade integration with the Asia-Pacific region

*Tariffs and trade defence measures*

The economy has a low effective tariff rate applicable to digital goods imported from other sample Asia-Pacific economies at 0.03%. No tariff is imposed on 92.64% of the digital goods imported to New Zealand. New Zealand is a signatory of the 1996 WTO Information Technology Agreement and its expanded version. As of January 2021, the economy does not impose any anti-dumping or countervailing duty on digital products.

*Public Procurement*

The Government Procurement Principles, Charters, and Rules ensure the principles of non-discrimination based on the nationality of suppliers (Rule 3) and protection of trade secrets for the suppliers (Rule 4). The government indicates preferences for certain New Zealand businesses, such as indigenous businesses and social enterprises. However, it does not preclude suppliers from being successful bidders if they provide the best value (Rule 17).

*IPR issues*

New Zealand is a party to the Patent Cooperation Treaty, and its governing copyright statute – the Copyright Act 1994 – provides for fair dealing exceptions. The Act also authorizes the Ministry of Business, Innovation and Employment to initiate criminal prosecution against copyright piracy. Furthermore, the Act prohibits the manufacture, importation, sale, distribution, or advertisement of devices capable of circumventing encryption or other similar protective measures.

*Internet intermediary liability and content access*

New Zealand shows no restrictions in the pillar on intermediary liability and content access. As amended in 2008, the Copyright Act has a safe-harbour provision for ISPs from the liability of copyright infringement by their users. Unless they have specific knowledge or notice of infringement in their platforms, ISPs are immune from potential liability if the content is deleted or its access is disabled. As for illegal content on their platforms, an ISP is not liable per se for such content if they take appropriate remedial actions under the Harmful Digital Communication Act 2015. The economy also does not block nor filter any commercial web content.

*Non-technical NTMs*

New Zealand has no restrictive non-technical NTMs that apply to digital products. Although the economy makes it illegal to import electrical and radio products (e.g., unrestricted two-way radio, some short-range vehicular radar, animal tracking and training devices, etc.) that could cause interference to radio reception, no complaint has been reported against these measures. There is no local content requirement for imports.

*Online sales and transactions*

No restrictions are found on online sales, delivery services or electronic payments. However, many banks require merchants to comply with the Payment Card Industry Data Security Standard, a global payment card industry standard. Furthermore, as of December 2019, overseas businesses selling low-value goods (equal to or less than NZ$1,000) do not need to
pay customs duties other than goods and services tax (GST) they should collect from customers as part of pricing.

**Examples of policies issues concerning New Zealand’s digital trade integration**

*Foreign investment restrictions*

New Zealand implements a residency requirement for companies incorporated in New Zealand under the Companies Act 1993. These companies must have at least one director living in New Zealand or Australia, although the requirement does not apply to a branch of an overseas company registered in New Zealand that merely “carries on business” in New Zealand, as defined by the Act. A similar residency requirement is found in the equity listing requirements in New Zealand’s Exchange (NZX), the only registered securities exchange in New Zealand. A company must have at least two directors who are ordinarily resident in New Zealand to be registered.

Another complexity is an investment screening mechanism. As of June 2020, a foreign investment in a significant business asset is potentially subject to a three-stage investment screening process: (i) the investor test under the Overseas Investment Act 2005, which requires investors to have the necessary business experience and financial acumen to manage the investment, (ii) the national interest test under the Urgent Measures Act of 2020 for telecommunications infrastructure and media entities, and (iii) “call in transactions” under which the government may block, impose conditions on, or order disposal of the activities if they pose a threat to national security or public order under the Urgent Measures Act.

*Telecommunication policy and competition*

New Zealand implements only limited restrictions in this policy area. The Telecommunications (Interception Capability and Security) Act 2013 imposes upon a network operator (i) a duty to implement full interception capability and (ii) a duty to assist a surveillance agency upon an inception warrant or any other lawful interception authority. A network operator must decrypt telecommunication on that operator’s public telecommunications network or telecommunications service in certain situations. Combining these duties practically means that network operators cannot design and implement end-to-end encryption. In a joint communique called International Statement – End-to-End Encryption and Public Safety, the government stated that they are committed to collaborating with the industry to develop “reasonable proposals” on this issue.

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51 Generally, a significant business asset is an investment activity that results in a 25% or greater ownership or whose value exceeds NZD 100 million (USD 71 million).

52 For the assistance of law enforcement purposes, decryption is required “if (i) the content of that telecommunication has been encrypted; and (ii) the network operator intercepting the telecommunication has provided that encryption.” However, this does not require a network operator to “(i) decrypt any telecommunication on that operator’s public telecommunications network or telecommunications service if the encryption has been provided by means of a product that is (i.i) supplied by a person other than the operator and is available to the public or (i.ii) supplied by the operator as an agent for that product; and (ii) ensure that a surveillance agency has the ability to decrypt any telecommunication.

**Cross-border data flow conditions**

Although New Zealand does not impose any local processing requirements nor bans to data transfers, the economy implements local storage requirements, which can create costs for digital trade integration. Local storage requirements apply to (i) tax records under the Tax Administration Act 1994 and Goods and Services Tax Act 1985, (ii) information of financial products for financial issuers under the Financial Markets Conduct Act 2013, and (iii) corporate records under the Companies Act 1993.

In addition, under the New Privacy Act 2020, which entered into force in December 2020, cross-border transfers of personal data are only allowed if the receiving business is under the jurisdiction of the Act or a comparable law in a foreign economy. If none of these conditions is met, personal data can be transferred only upon the data subjects’ consent. Furthermore, under the Customs and Excise Act 2018, businesses that engage in international trade are required to keep specific records in New Zealand unless authorized otherwise by the government.

**Recent policy changes and policy proposals**

Aside from the new rubric added to foreign investment screening by enacting the Urgent Measures Act, some recent policy changes are worth noting in three areas. First, the new Privacy Act reinforced the protection of users’ data privacy, but at the same time, it created some costs for businesses. Businesses handling personal data are subject to not only the conditional flow regime for cross-border data transfer but also a maximum data retention limit and must appoint at least one privacy officer.

Second, as a result of a decision by the Supreme Court of New Zealand in Ortmann, van der Kolk, Batato, Dotcom v. USA and Anor, internet intermediaries such as internet service providers and website hosts now face a certain degree of uncertainty for copyright infringement liability despite the general safe harbour provision in the Copyright Act 1994. The case extended civil liability for online dissemination of digital copies in violation of copyrights to criminal penalty. Furthermore, the Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Bill, if enacted, will expand the enforcement power of Inspectors against “objectionable” materials under the Films, Videos, and Publications Classification Act 1993 into the internet space. Then, an Inspector would be able to issue a take-down notice to an online content host, and the host must comply with it to avoid possible liability.

Third, as New Zealand is accelerating its effort to shift from copper-line to fibre-line networks, the economy is set to introduce a new regulatory framework for fibre broadband networks. The new regulatory regime, which will come into force at the beginning of 2021, will ensure consumers’ access to ultra-fast fibre broadband (UFB). As such, for Chorus, a major telecom company in New Zealand, the regulation will impose a revenue, which will limit the prices consumers pay for broadband as minimum standards for service availability and network performance. Chorus and the other local fibre companies (Northpower Fibre, Ultrafast Fibre, and Enable Networks) will also be required to publish performance measures, such as profits, quality of service, and expenditure.
New Zealand's participation in trade negotiations involving digital trade

Aside from the economy’s participation in the discussion for the WTO Joint Statement Initiative on Electronic Commerce at the multilateral level, New Zealand has formed economic pacts with regional partners to facilitate cross-border digital trade. For instance, New Zealand signed the Digital Economy Partnership Agreement (DEPA) with Chile and Singapore, which entered into force in January 2021. DEPA comprehensively covers various aspects of the digital economy that support trade in the digital era and, as a “living agreement,” is open to new members. New Zealand is also a party to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP).
Pakistan

Pakistan is among the economies that are prone to high digital-trade regulatory costs. The economy still has high tariffs on ICT goods imported from the Asia-Pacific region and many non-technical NTMs affecting ICT goods and services. In addition, heavy regulatory complexity also arises concerning policies affecting online sales and transactions and domestic data protection. However, Pakistan has a business-friendly regulatory environment on foreign investment policies, technical standards and procedures and has limited conditions for cross-border data flows.

Table 1: Pakistan’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Pakistan</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.482</td>
<td>18%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.802</td>
<td>343%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.486</td>
<td>27%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.350</td>
<td>-32%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.290</td>
<td>-20%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.725</td>
<td>45%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.625</td>
<td>11%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.750</td>
<td>136%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.125</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.800</td>
<td>67%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Pakistan’s RDTII scores and regional average
Examples of policies supporting Pakistan’s digital trade integration with the Asia-Pacific region

Foreign investment restrictions

There is no ownership restriction for telecommunications, manufacturing of information and communication technology goods and products, computer and related services, and online broadcasting. Most sectors and activities are open for foreign investment. Since 1997, Pakistan has had an open-admission system that does not require pre-screening and approval for entrants. Foreign companies that comply with the Companies Ordinance 1984 and Competition Act 2010 do not require separate approvals for their investments.

Standards and procedures

Pakistan is among the open economies when it comes to the policies related to standards and procedures for ICT goods and online services. The Pakistan Telecommunications Authority accepts foreign standard test reports as the basis for approval of most radio and telecommunications equipment connected directly or indirectly to the PSTN (Public Switched Telephone Network). It is reported that type approval for a local manufacturer is twice cheaper (5000 PKR, approximately 48 USD) than for a foreign one (100 USD).

Examples of policies issues concerning Pakistan’s digital trade integration

Tariffs and trade defence measures

Compared to other economies in the sample, Pakistan has relatively high tariffs, and trade defence applied to ICT imports from other sample ESCAP economies. Pakistan has not joined the 1996 WTO Information Technology Agreement (ITA) nor its expansion. Therefore, it is not surprising that the economy shows a high level of tariffs (7.6%) and low coverage of zero-tariffs (9.4%) applied to ICT goods imported from sample ESCAP economies. In January 2020, Pakistan initiated an anti-dumping investigation on importing certain electrical capacitors from China, which is still in progress.

IPR issues

Pakistan is not a member of the Patent Cooperation Treaty (PCT), but it has been part of the Paris Convention for the Protection of Industrial Property since July 2004. Further, Pakistan's Overseas Investors Chamber of Commerce and Industry (OICCI) has expressed concerns about counterfeiting, smuggling, and violating intellectual property rights, including copyrights, patents, and trademarks. It is reported that foreign companies in Pakistan lose 757 billion rupees (approximately 4.4 billion USD) every year due to IPR violations.

56 “IPR Violation Costs Foreign Firms Rs757b Annually”. Available at https://tribune.com.pk/story/2025454/2-ipr-violation-costs-foreign-firms-rs757b-annually
It is also reported that sales of counterfeit and pirated goods remain widespread, including with respect to digital content and software in Pakistan.\textsuperscript{57} The rate of pirated software in Pakistan is reported at 85\%.\textsuperscript{58} Moreover, numerous cable operators providing pirated content in Pakistan have been reported. Litigants with experience in the tribunals of Lahore, Islamabad, and Karachi have raised concerns over the lack of capacity, inconsistency of rulings, nominal fines, and a general lack of expertise among tribunal judges.

**Domestic data protection**

There is no comprehensive data protection law in the economy, which will likely reduce consumers' trust in digital services. However, the Prevention of Electronic Crimes Act 2016 contains some provisions for data protection. It prevents unauthorized acts concerning information systems and provides related offences and mechanisms for their investigation, prosecution, and trial.

In addition, there is some sectoral regulation on data in the banking and telecom sector. For instance, data collected by banks, insurance firms, hospitals, defence establishments and other ‘sensitive’ institutions may not be transferred to any individual or body without authorization from the relevant regulator on a confidential basis. Data transfer requires approval from the data subject in some instances.

Authorized agents can require a person to hand over data without producing a court warrant for a criminal investigation. The lack of clarity on the criteria for the request can create risks of using discretionary power.

**Non-technical NTMs**

All products of Indian or Israeli origin or imported from India or Israel are banned from entering Pakistan. Similarly, no goods shall be exported to India except therapeutic products regulated by the Drug Regulatory Authority of Pakistan. Pakistan has also banned the import of Digital Enhanced Cordless Telecommunication (DECT) 6.0 phones and discs, and tapes from all economies, while BlackBerry Enterprise Server has been banned since 2015 due to security concerns and lack of Pakistan's capabilities for decryption. Another import restriction applies to 3D printers, which can be imported only with prior permission from the Ministry of Interior.

**Online sales and transactions**

Pakistan is neither a party to the United Nations Convention on the Use of Electronic Communications nor the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures. Pakistan does not have a consumer protection law that applies to electronic transactions, but several consumer protection laws apply to all transactions.

Some limitations apply to online advertising. The Pakistan Electronic Media Regulatory Authority (PEMRA) has prohibited broadcasting advertisements produced in India or featuring Indian actors and characters. In addition, no advertising shall be permitted that is repugnant to the ideology of Pakistan or Islamic values. Since November 2020, the Pakistan government has banned online payments from India for the subscription of electronic media content.


\textsuperscript{58}“Economies”, Global Information Technology Report 2016 (blog). Available at http://wef.ch/29hnz0u
Recent policy changes and policy proposals

Under the Citizen Protection Against Online Harm Rules 2020, social media companies were obligated to remove, suspend or disable access to any online content after being informed by the Authority that any particular online content is in contravention of any provision of the Act. Specifically, certain online content must be removed within twenty-four hours and, in emergencies, within six hours. This law has been replaced by the new Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020 after backlash and criticism from the public.  

Regarding access to web content, it is reported that from June 2019 to May 2020, the government authorities continued shutting off internet connectivity in major cities and other areas. Around 900,000 websites have been blocked, including those hosting political, religious, and social content. In April 2021, Pakistan blocked access to popular social media such as Twitter and Facebook.

Pakistan’s participation in trade negotiations involving digital trade

Pakistan is not a participating member in the ongoing Joint Statement Initiative on Electronic Commerce negotiations at the WTO. The economy has trade agreements with Sri Lanka (2005), Iran (2004), Mauritius (2007), Early Harvest Schemes with China (2005) and Malaysia (2007). It is part of the Economic Cooperation Organisation Trade Agreement (ECOTA) and the South Asian Free Trade Area (SAFTA). However, there are no e-commerce chapters in any of the FTAs.


60 GRAIN, “Pakistan | Bilaterals.Org”. Available at https://www.bilaterals.org/?-pakistan
Philippines

The Philippines is a prominent Asia-Pacific exporter of digital services. Its export specialisation implies the economy will benefit most from the simplifying and interoperable regulatory environment. The RDTII scores show that the Philippines have less regulatory complexity than the group average. Tariffs on ICT goods imported from Asia-Pacific economies are already low. Regulations related to digital governance seem to be relatively facilitating businesses. However, rules pertaining to public procurement and foreign investment and regulations in the telecommunication sector may form significant bottlenecks.

Table 1: The Philippines’ RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Philippines</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.364</td>
<td>-11%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.003</td>
<td>-98%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.825</td>
<td>91%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.725</td>
<td>54%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.271</td>
<td>-29%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.650</td>
<td>26%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.150</td>
<td>-59%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.400</td>
<td>-20%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.125</td>
<td>-78%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.350</td>
<td>10%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.300</td>
<td>-37%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between the Philippines’ RDTII scores and regional average
Examples of policies supporting the Philippines’ digital trade integration with the Asia-Pacific

**Tariffs and trade defence measures**

Effectively applied tariff rates on digital goods imported from the Asia-Pacific region at just 0.09% in 2019, and the coverage rate of duty-free tariff lines among ICT goods reached a high of 92.3% during the same year. Complementing these are the Philippines’ participation in the WTO Information Technology Agreement (ITA) of 1996 and the ITA II of 2015.

**Cross-border data flow conditions**

Philippine regulations allow cross-border data transfers, regulated as data sharing under Section 20 of the Data Privacy Act of 2012 (RA 10173). The foreign private sector perceives the Philippines’ policy environment for data to be one of the best in ASEAN.61

**Internet intermediary liability and content access**

Consumers can access online content and license schemes are non-discriminatory. However, the Philippines lacks a comprehensive safe harbour provision for intermediaries. As of September 2021, the Philippines observes content-specific safe harbour clauses in the Electronic Commerce Act of 2000 (RA 8792) and the Cybercrime Prevention Act of 2012 (RA 10175).

Examples of policies issues concerning the Philippines’ digital trade integration

**Public procurement**

While foreign bidders are permitted to participate in public procurement, foreign equity restrictions and rigid requirements may discourage foreign participation and competition. For instance, foreign consultants are required to transfer their technology and knowledge to be hired under public procurement.

**Foreign investment restrictions**

Foreign equity limitations possibly banning foreign equity on some electronic commerce and electronic retailing is a major challenge to the Philippines’ digital trade integration with the Asia-Pacific region. The strongest restriction is felt by retail trade enterprises with paid-up capital of less than USD 2.5 million since this sector is prohibited from having any foreign equity. In certain circumstances, foreign equity in electronic commerce can also be prohibited. For example, leasing and subleasing advertising space or operating an online voucher platform intended to increase the sales of a particular product or service can be considered mass media activities, thereby prohibiting foreign equity for these business activities. Electronic commerce represents an important part of digital trade, which means that bans on foreign investment can impede the digital economy’s growth, making digital trade integration difficult.

**Telecommunication policy and competition**

Public utilities are highly regulated in the Philippines, including the telecommunications sector. This sector serves as the bedrock of the digital economy, so the sector’s performance affects multiple industries. The telecommunication sector was already deregulated in 1995; however, the barriers to entry form an ill-conducive environment for the sector’s growth. For instance, Public Telecommunications Entities need to secure a legislative franchise from Congress and a Certificate of Public Convenience and Necessity from the National Telecommunications Commission before they are allowed to operate. In addition, the lack of loop unbundling poses high infrastructure costs for new entrants.

**Recent policy changes and policy proposals**

As of June 2021, three proposed measures have been certified as urgent by Philippine President Rodrigo Duterte. These measures are related to lifting the restrictions on foreign equity, namely: the amendments to the Retail Trade Liberalization Act (RA 8762); Amendments to the Foreign Investments Act (RA 7042), and amendments to the Public Service Act (Commonwealth Act 146). In addition, the Lower House of Congress has proposed amending the economic provisions of the 1987 Philippine Constitution by amending Section 11 on mass media and advertising by inserting the line “unless otherwise provided by law.” Other similarly important developments include the signing of Executive Order 127 that expanded the provision of internet services through inclusive access to satellite service; a draft Department Administrative Order for product registration and self-certification scheme; and the Lower House of Congress’s approval of the Internet Transactions Act (House Bill No. 6121).

**The Philippines’ participation in trade negotiations involving digital trade**

The Philippines actively seeks to enhance its access to the international market and acquire foreign technology by engaging in the WTO, which it considers the best option for international

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62 Public Telecommunications Entities is a legal term used in the Philippines that refers to “any person, firm, partnership or corporation, government or private, engaged in the provision of telecommunications services to the public for compensation (RA 7925).”


Meanwhile, the Upper House of Congress’ version of the Internet Transactions Act (Senate Bill No. 1591) remains pending at the committee level as of September 2021.
trade relations. The Philippines is an observer in 10 free trade agreements (FTAs), although most of these are multilateral agreements with the Association of Southeast Asian Nations (ASEAN). In November 2020, the Philippines joined the Regional Comprehensive Economic Partnership (RCEP) Agreement.
Russian Federation

The Russian Federation is a high potential digital trade market with its sizeable domestic and economic linkages with other economies in North and Central Asia. The RDTII scores show that the economy is among the economies that heavily impose regulations related to digital trade. The economy has higher RDTI scores than the group average in most policy areas. Exceptions are regulations related to tariffs on ICT goods and rules on online transactions.

Table 1: The Russian Federation’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Russian Federation</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.636</td>
<td>56%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.105</td>
<td>-42%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.750</td>
<td>74%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.750</td>
<td>59%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.691</td>
<td>81%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.475</td>
<td>-8%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>1.000</td>
<td>176%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.650</td>
<td>30%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.875</td>
<td>55%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.600</td>
<td>89%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.750</td>
<td>157%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.350</td>
<td>-27%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between the Russian Federation’s RDTII scores and regional average
Examples of policies supporting the Russian Federation’s digital trade integration with the Asia-Pacific region

Tariffs and trade defence measures

The Russian Federation’s existing tariffs vis-à-vis digital products are rather liberal. According to trade statistics from 2019, the average effective tariff rate applied to ICT products imported from the ESCAP region is around 0.8%. The coverage of tariff-free treatment for such products is close to 70%. Russian Federation is a party to WTO Information Technology Agreement (ITA I) and has eliminated tariffs on ICT goods covered by WTO ITA I, but the economy has not joined the ITA expansion in 2015 (ITA II). The Russian Federation also does not maintain trade defence measures targeting ICT products.

Online sales and transactions

The Russian Federation has been a party to the United Nations Convention on the Use of Electronic Communications in International Contracts since January 2014, and the protection of consumer rights is ensured in the relevant legislation. Moreover, Federal Law No. 63-FZ “On Electronic Signature” recognizes the same legal effect of electronic signatures as handwritten signatures. Additionally, no restrictions were found on online payments, online advertising, registration, and Russian Federation-specific domain names.

Examples of policies issues concerning the Russian Federation’s digital trade integration

Public procurement

Since August 2020, the Government has banned the procurement of 13 foreign-made radio-electronic products and components for state and municipal needs when at least two bids for similar items manufactured in the Russian Federation or Eurasian Economic Union Member States. At the same time, since January 2020, there has been a two-year prohibition on the procurement of almost all types of memory storage devices from foreign states for governmental and municipal needs, except for data storage systems included in the unified state register of the Russian Federation radio-electronic devices. Moreover, Government Decree No. 1236 provides that foreign software will not be admitted to state and municipal orders starting from January 2016 unless Russian Federation software does not exist or fit the established criteria.

Other major limitations on foreign participation in public procurement are price preferences found in two regulatory texts. The Government Decree No. 925 of 16 September 2016 grants a 15% price preference for domestically produced products, while the Decision No. 126 of the Ministry of Finance of 4 June 2018 grants a 15% preference (30% in the case of radio-electronic equipment) in relation to the contract price in public procurement auctions and tenders to participants who propose to supply goods originating from the Eurasian Economic Union economies. In addition, the Russian Federation has not joined the WTO Government Procurement Agreement.
Cross-border data flow conditions

Extensive local processing requirements in force include: (i) the provisions introduced by the Federal Law No. 242-FZ of July 2014 which require data operators to ensure that the recording, systematisation, accumulation, storage, update/amendment and retrieval of personal data of Russian Federation citizens is made using databases located in the Russian Federation; (ii) the amendments to the National Payment System Law in October 2014 which require international payment cards to be processed locally and international payment systems operators to transfer their processing capabilities with respect to Russian Federation domestic operations to the local state-owned operator (National Payment Card System) by 31 March 2015; (iii) the requirement of six month local storage of the information acquired through public Wi-Fi user identification by the ISPs since July 2016; (iv) the requirement in the Federal Law No. 374-FZ of July 2016 of local storage of information confirming the receipt, transmission, delivery and/or processing of voice data, text messages, pictures, sounds, video or other communications (i.e., metadata reflecting these communications).

Moreover, the conditional flow regime in place in the Russian Federation, according to the Federal Law No. 152-FZ “On Personal Data”, sets out that the transfer of personal data outside the Russian Federation does not require additional consent from the data subject only if the jurisdiction that the personal data is transferred to ensures adequate protection of such data. It is worth noting that the Russian Federation is a member of the Council of Europe and joined the 2013 Council’s Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Internet intermediary liability and content access

There are quite many user identity and monitoring requirements, including (i) the requirement in the Federal Law No. 97-FZ on public Wi-Fi user identification by Internet Service Providers (ISPs); (ii) the prohibition in the Federal Law No. 241-FZ of the anonymous use of instant message services and obligation on message services providers to identify users; (iii) the liability of intermediaries according to the Federal Law No. 364-FZ (the so-called “Anti-Piracy Law”) for third-party content if the intermediaries “knew or ought to have known” that infringing material was being used illegally on their service; (iv) the requirement in Federal Law No. 276-FZ for internet intermediaries to block access to certain websites and information resources.

The Government has extensive authority to block web content and websites on political or social grounds. Law No. 241-FZ provided the authorities with the power to require ISPs to restrict the ability of users to send instant messaging if the messages contain information whose dissemination is prohibited in the Russian Federation.

Recent policy changes and policy proposals

Among the more recent policy changes in the economy, certain measures in relation to internet intermediary liability and content access, as well as online sales and transactions, can be pointed out. Regarding content access, starting from January 2021, the Russian Federation Federal Service for Supervision of Telecom, Information Technologies, and Mass Media can block the digital platforms if they restrict the content distribution from Russian Federation state media outlets in accordance with the Federal Law No. 482-FZ. In relation to online payments,
from January 2021, Russian Federation companies, branches of foreign companies and tax residents cannot accept digital currency as a payment for their goods, work, or services according to the Federal Law No. 259-FZ of 31 July 2020.

There have also been recent proposals to extend the local content requirements in the digital sector further. For instance, the Russian Federation Ministry of Digital Development, Communications and Mass Media has reportedly proposed to include a requirement on the owners of elements included in the critical information infrastructure to primarily use Russian Federation software and hardware. In December 2019, a new law was adopted requiring the pre-installation of Russian Federation software on certain consumer electronic products (e.g., smartphones, computers, tablets, and smart TVs) sold in Russian Federation. In late December 2020, the Russian Federation Government finalized the list of 16 categories of software requiring pre-installation, leaving technology companies a short time to undertake the necessary compatibility tests before the April 2021 implementation date. Also, in December 2020, the Russian Federation Parliament added a further requirement that pre-installed browsers must provide the ability to use “by default” a Russian Federation (or other EAEU member state) search engine, further eliminating consumer choice.

The Russian Federation’s participation in trade negotiations involving digital trade

The Russian Federation has not been active in negotiating bilateral agreements to foster digital trade integration with the Asia-Pacific region. The economy’s existing free trade agreements do not contain provisions for digital trade or e-commerce. However, Russian Federation is one of the WTO Members who joined the Joint Statement Initiative to commence WTO negotiations on trade-related aspects of electronic commerce and continues to participate in the plurilateral negotiations, which produced a consolidated text already in December 2020.

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Singapore

Singapore is the most dynamic economy participating in many digital economy initiatives. The economy is famous for its very open trade and investment policies. Singapore’s digital trade policies consistently follow its open trade and investment environment. Significant requirements appear for a business to comply with data protection rules.

Table 1: Singapore’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Singapore</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.215</td>
<td>-47%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.150</td>
<td>-65%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.100</td>
<td>-79%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.117</td>
<td>-69%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.475</td>
<td>-8%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.300</td>
<td>-17%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.650</td>
<td>30%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.500</td>
<td>-12%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.125</td>
<td>-57%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.050</td>
<td>-90%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Singapore’s RDTII scores and regional average
Examples of policies supporting Singapore’s digital trade integration with the Asia-Pacific region

**Tariffs and trade defence measures**

Singapore’s tariffs applied to ICT imports from other sample ESCAP economies are very low. The economy does not show any restriction in this area, applying no tariffs on ICT imports and having joined the WTO Information Technology Agreement (ITA) and its 2015 expansion. There are no trade defence measures on ICT goods imported from other ESCAP economies.

**Public procurement**

Under the Government Procurement Act (Chapter 120, Section 4) and the Government Procurement (Application) Order, there are no limitations on foreign participation or domestic preferences in public procurement. Singapore is also a signatory to the WTO Government Procurement Agreement (GPA), although its schedule does not include telecommunications-related services (CPC 754) and does not fully cover computer-related services (CPC 84).

**IPR issues**

Singapore does not impose any restrictions in the application process for local patents or enforcement of foreign patents. Between 2019-2020, the World Intellectual Property Organization (WIPO) reports that the number of foreign patent applicants and grants has been far greater than the domestic counterpart.69

Singapore ratified the Patent Cooperation Treaty on 23 February 1995, and the Paris Convention for the Protection of Industrial Property entered into force in February 1995. Under the Copyright Act (Chapter 63), confidential information that comprises copyrighted material (e.g., instruction manuals, computer software, databases) is protected by the Law of Protection of Confidential Information. The Law of Protection of Confidential Information protects ideas and information not in the public domain, including trade secrets. This law is not codified in Singapore and is generally contractually controlled.

The Copyright Act recognises the fair dealing of copyright material for research and study, for criticism or review, and for reporting current events in relation to works and other subject matters.

**Online sales and transactions**

The Advertising Standards Authority of Singapore sets out how marketers should conduct online marketing on digital platforms. No undue restrictions are reported on delivery, advertising online and electronic payments. Singapore has a well-developed regulatory framework for online purchases and recognises e-signature. In addition, there are a number of consumer laws (including the Consumer Protection (Fair Trading) Act 2003), which are generally applicable to all transactions, including electronic transactions.

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Examples of policies issues concerning Singapore’s digital trade integration

Telecommunication policy and competition

Singapore Telecommunications (SingTel), the incumbent telecommunication operator, is currently 52% government owned. Singapore has adopted a three-level ownership split and functional separation at the wholesale services level of fibre infrastructure.

According to the Broadcasting Act (Cap. 28) and the Internet Code of Practice, internet content providers (ICPs) and internet service providers (ISPs) require a license and must comply with the Act’s Class License Conditions and the Internet Code of Practice. Under this regime, ISPs are required to take all reasonable steps to filter any content that the regulator deems undesirable, harmful, or obscene.

The Broadcasting Act makes it the duty of the Info Communications Media Development Authority (IMDA) to ensure that nothing is included in any broadcasting service which is against public interest order, national harmony or which offends good taste or decency. IMDA can impose sanctions, including fines, on licensees who contravene the Internet Code of Practice. ISPs retain the flexibility to customize internet content and meet market demands. In this sense, it is reported that various ISPs practice data throttling to manage their networks, which could affect competition.70

Domestic data protection

Singapore appears to have complex regulations on the use and processing of data. IMDA reserves the right to require its licensees to retain records which are, on average, 12 months. Under Section 40 of the Singapore Criminal Procedure Code, police officers have the power to conduct surveillance interception and to access computers and decryption information without any prior judicial authorisation.

Internet intermediary liability and content access

Singapore appears to impose several policy instruments with regard to internet intermediary liability and content access. It is reported that Internet content is highly regulated in Singapore. Under the Protection from Online Falsehoods and Manipulation Act 2019, IMDA has the right to block websites that the government considers obscene, excessively violent, or likely to incite racial or religious conflict. In addition to content publishers, internet intermediaries can be held liable if they do not comply with orders to issue corrections or remove content.71

Moreover, since 2013, IMDA has guidelines for those online news websites with a significant reach that provide regular reports on Singapore. Such news websites must acquire an individual license. Moreover, any news website that covers at least one article per week on Singapore over two months with a reach of a minimum of 50,000 unique IP addresses in Singapore also requires this individual license. The licensed websites are required to remove content that breaches content standards within 24 hours of being notified to ensure that the

websites are accountable for their content to the public. Personal blogs are not affected if they do not morph into news sites.

Recent policy changes and policy proposals

Internet surfing separation was launched in 2016 and rolled out fully across the public service in 2017. In the same year, Singapore cut off all government computers from the global Internet so that they could only communicate with each other. This requirement was done to plug potential leaks from work e-mails and shared documents amid heightened security threats and to guard against cyber-attacks. In 2020, this policy was replaced by Secure Internet Surfing (SIS), which allows public servants to use their work laptops when surfing the Internet for information. The officials can now make text-based posts, log in to social media sites, and open links directly from e-mails and documents.

Singapore’s participation in trade negotiations involving digital trade

Singapore paves its way to a digital future for trade by forging new trading relationships — known as digital economy agreements (DEAs) — with Australia, New Zealand and Chile. These agreements aim to streamline digital rules and standards while supporting cross-border data flows and encouraging innovation. Along with Japan and Australia, Singapore is one of the co-conveners of the WTO Joint Statement Initiative on Electronic Commerce at the multilateral level. Singapore is also a party to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). Singapore has also launched negotiations with the Republic of Korea on a Korea-Singapore Digital Partnership Agreement (KSDPA) and the United Kingdom on a UK-Singapore Digital Economy Agreement (UKSDEA).

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74 A Digital Economy Agreement (DEA) is a treaty that establishes digital trade rules and digital economy collaborations between two or more economies. Through DEAs with key partners, Singapore hopes to develop international frameworks to foster standards and systems interoperability and support our businesses, especially SMEs, engaging in digital trade and electronic commerce. For more information. Available at [https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements](https://www.mti.gov.sg/Improving-Trade/Digital-Economy-Agreements)
Thailand

Thailand is among the economies prone to risks of high regulatory compliance costs. In most policy areas, Thailand has RDTII scores higher than the group average. The economy has low tariffs on imported ICT goods from Asia-Pacific partners and technical standards that tend to align with international practices. Significant regulatory bottlenecks may come from foreign investment restrictions, regulations in the telecommunication sector, heavy regulations related to Internet content access, and transactions on online platforms.

Table 1: Thailand’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Thailand</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.505</td>
<td>24%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.012</td>
<td>-93%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.750</td>
<td>59%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.394</td>
<td>3%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.825</td>
<td>60%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.37</td>
<td>1%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.650</td>
<td>30%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.875</td>
<td>55%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.350</td>
<td>10%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.750</td>
<td>57%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Thailand’s RDTII scores and regional average
Examples of policies supporting Thailand’s digital trade integration with the Asia-Pacific region

*Tariffs and trade defence measures*

Thailand’s tariffs applied to ICT goods imported from other sample ESCAP economies are low. The economy does not impose any trade defence measures on ICT goods. As the signatory of the WTO Information Technology Agreement (ITA I) and its expansion (ITA II), the economy has eliminated duties on most ICT goods.

*Standards and procedures*

Thai Industrial Standards Institutes, a national standard body, has established technical standards for electronic appliances and accessories in line with the international standards, including the ISO, IEC, and ITU-T Recommendations. As an ASEAN member, Thailand accepts test reports and certifications issued by the conformity assessment body under the ASEAN Framework Agreement on Mutual Recognition Arrangements. The self-declaration of conformity is also allowed to both Thais and foreigners. Still, the listed telecom and radiocommunication equipment are subjected to screening requirements to ensure compliance and safety.

*IPR issues*

Despite the existing cases of copyright infringements, Thailand has taken a series of measures to reduce unfair commercial use. The economy has ratified both the Berne Convention and TRIPS Agreement, and it adopted the key provisions of the WIPO Copyright Treaty in its domestic regulation. The concepts of the three-step test and fair use doctrines can be found in Section 32 of the Copyright Act. Thailand also acceded to the Patent Cooperation Treaty (PCT) in 2009. However, to file a PCT application, the patent applicants who do not reside in Thailand need to authorize an agent to act on their behalf. For copyright enforcement, Thailand still encounters high levels of online piracy.

Examples of policies issues concerning Thailand’s digital trade integration

*Foreign investment restrictions*

Foreign investment is regulated by Foreign Business Act (FBA), which categorises the controlled business activities into three lists. Each list applies different foreign equity limits and approval procedures. Foreign investors also require satisfying the required qualifications to acquire a foreign business license. Aside from the FBA requirements, the investors must comply with sector-specific laws in certain business sectors, including telecommunications. In this sector, the operators must obtain a telecommunications business license, and there are different caps on foreign equity depending on the type of license. For Type 2 and Type 3 telecommunication licenses, FDI is capped at 49%, while no foreign restriction is applied for Type 1 license.

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Internet intermediary liability and content access

The Commission of Computer-Related Offences Act (CCA) supervises online activities and includes provisions to censor prohibited content on online platforms. It is reported that, in the past years, the government has systematically censored international and domestic news media. In August 2020, the Minister of Digital Economy and Society (MDES) prosecuted the major social media providers: Facebook, YouTube, Google, and Twitter, for failing to remove all illegal posts which they were warned of.\textsuperscript{76} In addition, the analysis shows that there are licensing requirements for television broadcasting, digital TV and cloud computing, all of which can limit content access in the economy. In Thailand, there are also user identity requirements. Under the CCA, the coffee shop owners are required to retain a ‘Log file’ of their customers’ computer traffic data and their IP address. To connect to the coffee shop Free-WIFI, the customers are required to fill in their identification, including their full name, ID card number, or passport, as required.

Telecommunication policy and competition

All activities related to telecommunications and broadcasting services are regulated by a sectoral regulator—the National Broadcasting and Telecommunications Commission (NBTC). Although Thailand’s telecommunication market is partially deregulated and liberalized, several restrictions apply to the operation of telecommunication and frequency spectrum businesses. For example, telecommunication companies which own their network cannot be acquired by foreigners. Other restrictions vary depending on the type of licence needed to operate.

Recent policy changes and policy proposals

In response to the growth of electronic commerce, the Electronic Transactions Act was amended in 2019 to improve the efficiency of online transactions. Meanwhile, the Cyber Security Maintenance Act was promulgated to secure national security in cyberspace. Notably, the Personal Data Protection Act, which was enacted in 2019 and will be fully implemented in 2022, is the first personal data protection regime in the economy.\textsuperscript{77} The law provides a comprehensive framework for data processing, collection, usage, and transfer, which will be crucial to supporting digital trade. However, the new data protection regime also envisions some restrictions on the cross-border transfer of data.

Thailand’s participation in trade negotiations involving digital trade

Thailand has engaged actively in trade negotiations involving digital trade, and the economy is part of the WTO Joint Statement Initiative on Electronic Commerce from 2019. At the regional level, Thailand is part of several ASEAN digital-related initiatives, including the ASEAN Digital Integration Framework Action Plan 2019-2025, to strengthen digital integration within the region. Another significant development is the economy’s participation in the Regional Comprehensive Economic Partnership (RCEP) agreement, signed in 2020. Overall, eight of the 15 preferential trade agreements to which Thailand is currently a party cover a


\textsuperscript{77} Previously, the data protection rules existed at a sectoral level, including health, credit bureaus and financial institutions. The full enforcement of the Personal Data Protection Act has been postponed to 1 June 2022.
dedicated chapter or provision on electronic commerce. These include four plurilateral agreements (ASEAN Agreement on Electronic Commerce, ASEAN-China, ASEAN-Australia-New Zealand, ASEAN-India) and four bilateral agreements between Thailand and Australia, New Zealand, Japan, and Chile.

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78 All agreements include a dedicated e-commerce chapter, except ASEAN-China, ASEAN-India, Thailand-Chile, and Thailand-Japan PTAs that show e-commerce provisions.
Turkey

Situated on the Asian and European continents, Turkey pursues a more active economic integration policy toward Europe than Asia. It is a member of the European Council and has a customs union with the European Union. In most areas, Turkey seems to have a more simplified regulatory environment than the Asia-Pacific group average. However, conditions for cross-border data transfer and data protection are relatively significant.

<table>
<thead>
<tr>
<th>Turkey</th>
<th>Index score (0-1)</th>
<th>Differences from the average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.312</td>
<td>-23%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.111</td>
<td>-39%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.289</td>
<td>-25%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.350</td>
<td>-32%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data conditions</td>
<td>0.580</td>
<td>58%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.650</td>
<td>30%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.500</td>
<td>-12%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.400</td>
<td>-16%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Turkey’s RDTII scores and regional average
Examples of policies supporting Turkey’s digital trade integration with the Asia-Pacific region

Foreign investment restrictions & standards and procedures

There is no restriction found in both pillars of these areas. On the one hand, foreign investors are free to make investments and shall be treated equally to domestic investors. Specifically, based on Turkey’s Foreign Direct Investment Law, there is no maximum foreign equity share requirement for investment in sectors relevant to digital trade and no other restriction is found in relation to investment in sectors relevant for digital trade. On the other hand, foreign businesses are allowed to participate in standard-setting bodies in relation to standards. No complaints are found concerning the transparency of standard requirements and the processing of applications for foreign businesses. Self-certification of the exported products is allowed in the economy, and there are also no mandatory encryption standards that deviate from international standards.

IPR issues & Telecommunication policy and competition

Policies related to IPR issues, and telecommunication policy and competition are also considerably more open in Turkey than the regional average. For IPRs, Turkey’s relatively low score can be attributed to the absence of restrictions on patent applications and enforcement of patents and the presence of doctrines about “fair use” in Turkish regulations. The openness in the pillar of telecommunication policy and competition can be mostly attributed to the fact that the Turkish telecom market is liberalised and has no strict licensing requirements.

Examples of policies issues concerning Turkey’s digital trade integration

Cross-border data flow conditions & Domestic data protection

These two pillars are the only pillars for which Turkey gets a higher value than the regional average.

The Law on Payment Services and Electronic Money Institutions requires that the system operator for payment services, payment institutions and electronic money institutions keep all the documents and records related to their services for at least ten years within the economy. Moreover, following the amendment of the Law on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting in July 2020, domestic or foreign social network providers with more than one million daily access to their services from Turkey are required to store the user data within Turkey.

In addition, the Electronic Communications Law requires that the logs regarding the access to personal data should be retained for two years, and the logs that prove the consent of users for processing personal data should be retained throughout the subscription period. In addition, the Regulation on the Registry of Data Controllers stipulates that if the data controller is a legal entity located in Turkey, a contact person must be appointed. On the other hand, if the data controller is not located in Turkey, it must appoint a representative.

Internet intermediary liability and content access

Turkey also shows strict policies in the pillar covering internet intermediary liability and content access. According to a Media and Law Studies Association report, about 2000 URLs have been blocked in Turkey between November 2019 and October 2020, 870 of which contained
news.\footnote{Media and Law Studies Association (2021), “End of news: Internet censorship in Turkey”. Available at \url{https://www.freewebturkey.com/wp-content/uploads/2021/01/end-of-news.pdf}} During this period, about two-dozen news websites were banned, some of which were banned more than once. The Freedom House reports that most of Turkey's newly blocked websites and social media accounts are either related to the Kurdish movement (which is illegal in Turkey) or were critical of the government.\footnote{Freedom House (2020), “Freedom on the Net”. Available at \url{https://freedomhouse.org/economy/turkey/freedom-net/2020}}

Another measure found in the analysis is the requirement to obtain a license from the government-controlled state television and radio regulator, the Radio and Television Supreme Council (RTÜK). According to the Regulation on the Presentation of Radio, Television and On-Demand Broadcasts on the Internet (2019), all online radio, television, on-demand streaming services (such as YouTube and Netflix) and online news sites are required to obtain a license from the RTÜK. Moreover, e-money and e-payment services providers must also be licensed by the Central Bank of Turkey to operate and are required to establish a Turkish entity.

**Other measures**

The analysis found that Turkey applies several restrictions on ICT goods in the form of licenses and quotas. Other restrictions that negatively affect Turkey’s digital trade integration with the Asia-Pacific region include restrictions on e-payment, credit cards and other forms of online payment services (pillar 11); Turkey’s not being a signatory of the WTO Government Procurement Agreement (pillar 2); and complains about the inadequate enforcement of copyright online (pillar 4).

**Recent policy changes and policy proposals**

Turkey has been carrying out several significant policy changes affecting digital trade in recent years. The most prominent examples include: (i) the requirement for foreign social network providers that have more than one million daily access to appoint a representative in Turkey; (ii) the requirement for online radio, television and on-demand streaming services (e.g. YouTube and Netflix), and online news sites to obtain a license; (iii) the prohibition of direct or indirect payment for goods and services with cryptocurrencies and other digital assets; and (iv) an amendment to the Electronic Communications Law that sets both minimum and maximum data retention period for a certain type of data.

**Turkey’s participation in trade negotiations involving digital trade**

Turkey maintains an e-commerce chapter in the free trade agreements with Malaysia and Singapore,\footnote{Ministry of Trade of Turkey, “Free Trade Agreements”. Available at \url{https://www.trade.gov.tr/free-trade-agreements}} and it is a signatory of the 1996 WTO Information Technology Agreement. However, due to the geographic apartness of Turkey from many Asia-Pacific economies, it cannot join their relevant initiatives. Nevertheless, as a member of the European Council, in 2016, Turkey joined the Council’s Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
Vanuatu

Vanuatu is a recently graduated LDCs. Its digital economy development is in a nascent stage. The economy has not imposed complex rules that significantly affect digital trade-related activities. However, there are high tariffs and license requirements for importing ICT products. Legal mechanisms to protect data and consumers are also absent.

Table 1: Vanuatu’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Vanuatu</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.218</td>
<td>-44%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.318</td>
<td>76%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.150</td>
<td>-65%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.275</td>
<td>-42%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.269</td>
<td>-30%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.300</td>
<td>-42%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.400</td>
<td>-20%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.250</td>
<td>-21%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.300</td>
<td>-37%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Vanuatu’s RDTII scores and regional average
Examples of policies supporting Vanuatu's digital trade integration with the Asia-Pacific region

Public procurement

While Vanuatu is not a party to the WTO Agreement on Government Procurement (GPA), the economy has an open public procurement framework for foreign suppliers. In fact, according to the WTO, 60% of government procurement is provided by foreign suppliers.\textsuperscript{82} Foreign firms do not face regulation that excludes foreign firms from government procurement or imposes on foreign suppliers the obligation to surrender patents, source codes or trade secrets to win tenders.

Cross-border data flow conditions

There is no regulation in this area, cross-border data transfers are allowed unconditionally. There are no local processing requirements or local storage or infrastructure obligations for businesses.

Internet intermediary liability and content access

With the Electronic Transactions Act (Act 24 of 2000), Vanuatu introduced a legal framework that limits the liability of intermediaries. Moreover, there are no user identity requirements or other monitoring requirements. The economy also does not block nor filter any commercial content.

Examples of policies issues concerning Vanuatu's digital trade integration

Tariffs and trade defence measures

Due to the deregulation of the telecommunications sector, the deployment of submarine fibre optics, and a universal access policy, the coverage and access to broadband have increased greatly over the recent years. However, while mobile penetration has increased from 12% in 2007 to 85% in 2017, there is still a gap in mobile phone access between rural and urban households.\textsuperscript{83} As mobile phones are the entry point for the digital economy, high tariffs and burdensome requirements for importing ICT devices could increase the costs of importing goods and hinder the expansion of the digital economy. For this reason, tariffs on digital goods, the lack of a de minimis rule and the Decision 01 of 2020 that implemented import permits for ICT devices could represent a barrier to Vanuatuan access to the digital economy.

Domestic data protection

The E-Business Act and the Electronic Transactions Act have not been substantially updated to respond to the rapid evolution and adoption of ICT. As an example, despite the obligation of e-businesses to have a data protection officer, there are no applicable data protection rules which need to be complied with. The absence of regulation can potentially affect the willingness of other economies to send data to Vanuatu. This may constitute risks as


businesses do not have clarity and consistency regarding the data rules, making it costly for companies to conduct e-business in Vanuatu.

**Online sales and transactions**

A regulatory framework on consumer protection could provide consumers with increased trust to conduct transactions online, as many consumers are worried about the potential risk of misleading or fraudulent business practices. For this reason, the absence of sound payment system regulations, consumer protection with clear rights and obligations, dispute resolution mechanisms, and enforcement could limit online transactions between consumers and businesses.

**Recent policy changes and policy proposals**

There have been no significant developments in Vanuatu regarding the digital economy regulation. As stated on the webpage of the Office of the Government Chief Information Officer: “The legislation regarding ICT, including The Digital Data Protection and Privacy Bill, is still an ongoing process.”\(^{84}\) Currently, Vanuatu's draft Cybercrime Bill, which is being debated in Parliament, creates regulations and procedures related to disclosing information. Nonetheless, Vanuatu has shifted to rigid policies in other areas not covered by the RDTII, which could hinder the digital economy. For instance, Vanuatu limits visas to four years, including visas for IT professions in Ni-Vanuatu’s reserved occupations. This policy may not help address the problem of skill shortage in the digital sector, as just 5% of Vanuatu's population has secondary education.\(^{85}\)

**Vanuatu’s participation in trade negotiations involving digital trade**

Vanuatu has been conspicuously absent from recent regional and international digital trade arrangements and discussions. While in recent years, Vanuatu has signed the Pacer Plus – a free trade agreement between the Forum Island economies, Australia, and New Zealand – this agreement does not cover digital trade provisions. The most recent Vanuatu's digital trade arrangement participation can be tracked to 2000 when Vanuatu became part of the UNCITRAL Model Law on Electronic Commerce.

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Viet Nam

Viet Nam is a high potential digital trade market with dynamic economic and trade growth. The RDTII scores show that the economy is among the economies that heavily impose regulations related to digital trade. Except for the perspectives of tariffs and public procurement rules measures, Viet Nam seems to have a complex regulatory environment. Significant complexity to digital-trade related businesses is significantly related to intermediary liability and content access, online sales and transactions, and data policies.

Table 1: Viet Nam’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Viet Nam</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.621</td>
<td>53%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.086</td>
<td>-52%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.400</td>
<td>-7%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.500</td>
<td>6%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.494</td>
<td>29%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.650</td>
<td>26%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data conditions</td>
<td>0.700</td>
<td>91%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.725</td>
<td>45%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>1.000</td>
<td>77%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.650</td>
<td>104%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.625</td>
<td>114%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.900</td>
<td>88%</td>
</tr>
</tbody>
</table>

Figure 1: Comparison between Viet Nam’s RDTII scores and regional average
Examples of policies supporting Viet Nam’s digital trade integration in the Asia-Pacific region

Tariffs and trade defence measures

Since it acceded to the World Trade Organization (WTO), Viet Nam has liberalized part of its market by lowering the economy’s tariffs on goods, including ICT goods. Viet Nam is among the signatory members of the 1996 WTO Information Technology Agreement, although it did not sign the 2015 expansion of the agreement. More than 86% of ICT imports from sample ESCAP economies enjoy zero tariffs.

Foreign investment restrictions

As Viet Nam aims to attract foreign direct investment, investment rules in sectors relevant to digital trade appear friendly to foreign investors. However, there are some restrictions in the telecommunication sector and Internet services. Article 17 of Law No. 41/2009/QH12 on Telecommunications regulates that the State holds dominant shares (51%) in telecommunication services.

Examples of policies issues concerning Viet Nam’s digital trade integration

Digital policies are covered in different laws and acts, including the Law on Cybersecurity (2018), the Law on Commerce, the Law on Consumers’ Rights, and the Law on Information and Technology. Policy-making and regulation enforcement are scattered across different governmental bodies. Viet Nam’s policies on data, both domestic and cross-border, and regulations on online sales and transactions are among the policies forming a complex regulatory environment for digital trade.

Cross-border data flow conditions

Cross-border data flow conditions in Viet Nam appear to be rigid. Decree No. 72 requires providers of websites, social networks, and information on mobile networks and online games, respectively, to have at least one server inside the economy “serving the inspection, storage, and provision of information at competent state management agencies”. In addition, the Decree requires providers of websites, social networks, mobile networks and online game services to have at least one server inside the economy “serving the inspection, storage, and provision of information at the request of competent state management agencies”. The Cybersecurity Law of Viet Nam requires that personal information must be stored domestically.

Domestic data protection

Although consumers’ data protection rights are recognised as inviolable in the 2013 Constitution and the 2015 Civil Code, there is not any comprehensive data protection law in Viet Nam. The most comprehensive legal framework on data protection is Law No. 86/2015/QH13 on Network Information Security, which only applies to the information provided, transferred, collected and processed over telecommunications and computer networks.
In Viet Nam, there are also certain data retention requirements. According to Decree No. 72/2013/ND-CP, aggregated information websites are required to store the information for at least 90 days from the date it is posted on the website. Moreover, the regulation requires that social networks store data on account users, log-in and log-off time, user IP address, and data processing log for at least two years.

**Online sales and transactions**

With significant growth in the domestic e-commerce market, Viet Nam experienced the booming of many popular e-commerce platforms such as Shopee and Lazada to domestic e-commerce marketplaces such as Tiki, Sendo and KiotViet. The World Bank has recognised that e-commerce is essential to improve turnover amongst Vietnamese SMEs. However, Viet Nam imposes several restrictions on online sales and transactions. Decree No. 52/2013/ND-CP regulates different activities, including e-retailing, online marketplace, online sale/promotion, online auction, and monitoring and assessment activities of e-commerce. The Decree imposes different requirements, including (i) online auction service providers are requested to apply for business registration; (ii) online retailing service providers are requested to apply for business registration and are provided with a tax identification number in Viet Nam; (iii) online monitor and assessment service providers are requested to establish entities under Vietnamese Law. In 2018, Decree No 52/2013 was amended and extended by Decree No.08/2018/ND-CP, and such requirements remain in force.

In addition, Decree No.72/2013/ND-CP, together with its amendment of Decree No.27/2018/ND-CP, requires aggregated Internet information network (or website as defined in Article 3.21) established in Viet Nam to have at least one person of Vietnamese citizenship, or foreigner who resides in Viet Nam to manage the operation of the website.

Moreover, Viet Nam implements strict regulations on the “.vn” domain. In order to provide “.vn” domain registration services, foreign companies must establish businesses in Viet Nam (Decree No 72/2013/ND-CP) or have a contract with Viet Nam Internet Network Information Center. The Vietnamese government regulates in Article 44.1. (d) of the Decree No 15/2020/ND-CP on penalties for the activities not using Vietnamese national domain name “.vn” or not storing information at the server system with IP address in Viet Nam. Article 45.3. (d) of the Decree says that a company will be fined if it does not use primary domain name servers (Primary DNS) using the Vietnamese national domain name “.vn” when providing DNS services. Article 95.3 regulates penalties for advertising email and internet message services using servers not located in Viet Nam.

**Recent policy changes and policy proposals**

The Government of Viet Nam has recently issued Resolution No. 44/NQ-CP 2019 to approve the Ministry of Industry and Trade (MOIT)’s proposal on drafting a Decree on Electronic Identification and Authentication. The Decree aims to guarantee information security in electronic transactions, improve the operation of public service portals and administrative one-

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stop-shop mechanisms, and promote the development of e-Government. Moreover, in February 2021, the Ministry of Public Security issued a draft version of a Decree on Personal Data Protection for public comments. The Decree’s draft contains an Article on the Cross-border transfers of data (Article 21). The article sets four conditions that need to be met to transfer Vietnamese personal data outside the economy. This conditional data flow regime is being commented on and discussed on different platforms. The Decree is expected to be published in early 2021.

**Viet Nam’s participation in trade negotiations involving digital trade**

Viet Nam has committed to liberalizing digital trade by joining two mega-international agreements, namely the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). As for the CPTPP, the economy has two years after the CPTPP comes into effect (since January 2019) before being subject to dispute settlement as part of the e-commerce chapter, including cross-border data provisions. Recently, Viet Nam also concluded a trade agreement with the European Union, the European Union – Viet Nam Free Trade Agreement (EVFTA), with a comprehensive chapter on e-commerce.

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87 Resolution No 44/2019/NQ-CP on the Approval of the Proposal for establishment of Decree Regulations on Electronic Identification and Authorization.
Hong Kong, China

As a global financial hub, Hong Kong, China, has embraced digitalisation with a relatively open policy environment. However, issues related to non-technical NTMs in selected products and enforcement of copyrights form some bottlenecks.

### Table 1: Hong Kong, China’s RDTII overall score and pillars’ score

<table>
<thead>
<tr>
<th>Hong Kong, China</th>
<th>Index score (0-1)</th>
<th>Differences from average (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall score</td>
<td>0.211</td>
<td>-48%</td>
</tr>
<tr>
<td>Pillar 1: Tariffs and trade defence measures</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 2: Public procurement</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 3: Foreign investment restrictions</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 4: IPR issues</td>
<td>0.426</td>
<td>11%</td>
</tr>
<tr>
<td>Pillar 5: Telecommunication policy and competition</td>
<td>0.000</td>
<td>-100%</td>
</tr>
<tr>
<td>Pillar 6: Cross-border data flow conditions</td>
<td>0.150</td>
<td>-59%</td>
</tr>
<tr>
<td>Pillar 7: Domestic data protection</td>
<td>0.250</td>
<td>-50%</td>
</tr>
<tr>
<td>Pillar 8: Internet intermediary liability and content access</td>
<td>0.500</td>
<td>-12%</td>
</tr>
<tr>
<td>Pillar 9: Non-technical NTMs</td>
<td>0.450</td>
<td>42%</td>
</tr>
<tr>
<td>Pillar 10: Standards and procedures</td>
<td>0.250</td>
<td>-14%</td>
</tr>
<tr>
<td>Pillar 11: Online sales and transactions</td>
<td>0.250</td>
<td>-48%</td>
</tr>
</tbody>
</table>

### Figure 1: Comparison between Hong Kong, China’s RDTII scores and regional average
Examples of policies supporting Hong Kong, China’s digital trade integration with the Asia-Pacific region

Public procurement

Hong Kong, China, is a signatory to the WTO Government Procurement Agreement (GPA), and there are no limitations on foreign participation in public procurement. In addition, the economy does not apply any price preferences for local companies or local content requirements, nor does the government request to surrender source code or patents in order to participate in public tenders.

Foreign investment restrictions

No foreign ownership restrictions have been found in any sector related to digital trade. In addition, there are no residency or nationality requirements or investment screenings.

Telecommunication policy and competition

Hong Kong, China is a signatory of the WTO Reference Paper on Basic Telecommunications and has liberalized the telecom sector. PCCW-HKT Telephone Limited is the incumbent operator in Hong Kong, China. PCCW-HKT Telephone Limited is a privately owned company, and it is currently a subsidiary of Pacific Century CyberWorks (PCCW).

Examples of policies issues concerning Hong Kong, China’s digital trade integration

IPR issues

Hong Kong, China, is not a member of the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty. According to the WEF Global Information Technology Report, the rate of pirated software in Hong Kong, China was 43% in 2016. According to the 2021 USTR Special 301 Report, piracy through illicit streaming devices (ISDs) is on the rise, potentially posing a threat to content creators and media service providers.

Non-technical NTMs

Hong Kong, China has banned the Personal Handy Phone System (PHS) radio communications apparatus operating within 1895–1906.1 MHz, except for re-export. However, imports and exports of other radio-transmitting apparatus are not affected. In September 2016, Hong Kong, China began requiring licensing to import and export optical disc mastering and replication equipment. Also, since 2018, a permit by the Environmental Protection Department has been required to import and export waste-regulated electrical equipment (i.e., air conditioners, refrigerators, washing machines, televisions, computers, printers, scanners, and monitors).

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Standards and procedures

Hong Kong, China’s declaration of conformity is not accepted for certification of certain electrical products, such as plugs, adaptors and extension units. Therefore, the importer has to provide additional certification. In addition, anyone wishing to import to or export from Hong Kong, China, any radio transmitting apparatus needs to obtain a permit granted by the Communications Authority, unless they hold an Unrestricted Radio Dealer Licence.

Recent policy changes and policy proposals

In 2020, China introduced a Security Law in Hong Kong, China: the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong, China Special Administrative Region 2020. This new law allows Hong Kong, China authorities to demand sensitive user data from companies if it threatens national security. Substantive criticism has pointed out that the offences are vaguely defined and could be used for politically motivated criminal prosecution. Article 9 of the Law states that the Government shall take the necessary measures to strengthen regulations over matters concerning national security, including those related to media and the internet. In January 2021, pursuant to the Security Law, Hong Kong, China Broadband Network disabled access to HKChronicles. The website was disabled in compliance with the requirement issued under the Security Law.

Hong Kong, China’s participation in trade negotiations involving digital trade

Hong Kong, China, is part of several agreements covering digital trade. Hong Kong, China has signed FTAs with Australia, New Zealand, China and Georgia, having separate chapters on e-commerce. Hong Kong, China, is also participating in the ongoing Joint Statement on Electronic Commerce negotiations. Further, Hong Kong, China, plans to join the Regional Comprehensive Economic Partnership (RCEP) to strengthen the trade relationship between China and RCEP economies.
