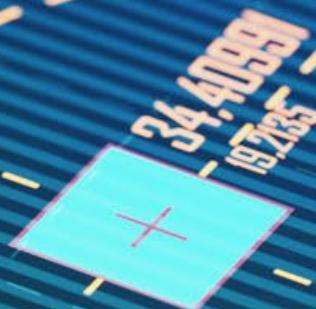


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Contents

3	1. Executive summary
4	2. The rise of digital trade
6	3. Trends in digital trade
8	4. Tackling digital trade in Asian agreements
13	5. Challenge areas for digital trade policy
14	5.1 Data transfer policies
14	5.2 Consumer challenges
14	5.3 Digital trade facilitation measures
15	5.4 Innovative technologies
15	5.5 Digital taxation policies
17	6. Conclusion
18	Contributors
19	Endnotes

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1

Executive summary

With its striking digital trade growth and innovative trade agreements, Asia has lessons to share, but also new challenges.

Digital trade in Asia had been booming even in advance of the COVID-19 pandemic, which drove increasingly large numbers of firms and consumers online. Annual estimates of the size of the digital “pie” were being continuously updated, as new statistics overshoot past projections of the size of the digital market for Asia.¹

While the early days of the internet were largely unregulated, the situation has undergone significant shifts. By 2020, governments in Asia were negotiating and signing off on “digital only” trade agreements and rapidly increasing the size, depth and complexity of e-commerce chapters in broader free-trade agreements.

This report highlights seven trends of note in the region, including the rise of digital ecosystems, linkages by regional platforms, the importance of technologies at the edge of digital/physical connectivity powered by 5G, the rising role of

Asia as a hub for cloud services, innovative use of subscription services including livestreaming, growing numbers of applications that solve digital financial services and payments gaps and the potential for growing misuse or harm that could flow from such digitally connected devices and users.

Many, but not all of these key trends are being picked up in trade arrangements. Three are especially worth noting: the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), the Digital Economy Partnership Agreement (DEPA) and the Digital Economy Agreement (DEA).

Finally, while these three trade arrangements tackle many critical issues in the digital economy, they also show how governments are still grappling with some important trends, including inconsistent data policies, coordinating consumer policies, effectively managing digital trade facilitation, overseeing innovative technologies and sorting out inconsistent digital taxes.

2

The rise of digital trade

The importance of the digital economy has been reinforced by COVID-19 and associated lockdowns.



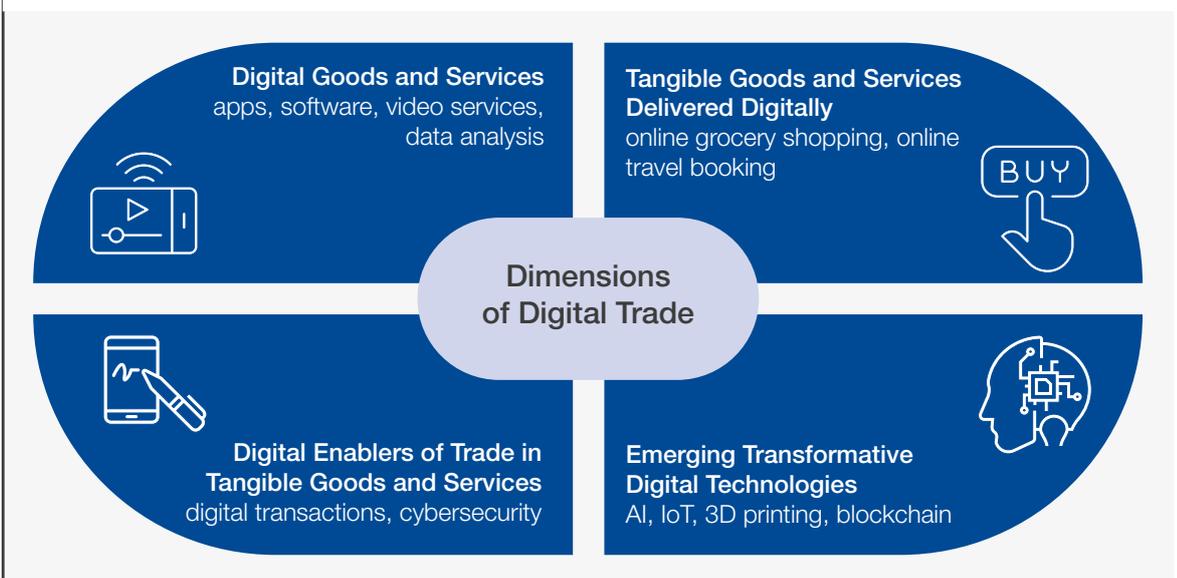
Digital trade is not new. The World Trade Organization (WTO) began formally grappling with the implications of digital trade and e-commerce more than 20 years ago with the creation of a work programme in 1998 to consider rules for electronic commerce. By that time, online communications of all types were becoming increasingly important.

Over the past decades, the internet has become the linchpin to a much wider array of commerce. The importance of the digital economy has been reinforced by COVID-19 and associated lockdowns across wide swathes of the globe. Firms that have no online presence and limited means to communicate, provide services to customers, suppliers and vendors and deliver goods purchased online have struggled to survive.

Digital trade now involves at least four dimensions:²

1. Digital goods and services, like apps, software and video services
2. Tangible goods and services delivered digitally, like buying books or socks, online grocery shopping, booking travel or online banking
3. Digital enablers of trade in tangible goods and services, like digital transactions such as digital logistics tracking, payments or insurance products and cybersecurity
4. Emerging transformative digital technologies, like artificial intelligence (AI), internet of things (IoT), 3D printing, big data and blockchain

FIGURE 1 Dimensions of digital trade



Source: Adapted from data provided by TRPC, *Australia – Singapore Digital Trade Standards*, March 2020, <https://www.dfat.gov.au/sites/default/files/australia-singapore-digital-trade-standards-presentation.pdf>

This paper considers how trade and government officials across Asia have been responding to the explosive growth of digital trade in the region. Changing definitions of digital trade do not always line up neatly against existing trade arrangements. Traditional trade agreements split out goods from services. Most trade agreements tend to lump digital trade under the heading of “e-commerce”, yet many have chapters that are now relevant to other aspects of digital trade or, conversely, miss these aspects altogether.

To manage complexity, the latest generation of trade arrangements that are “digital only” include a variety of innovative responses. This paper examines new trends and considers how digital trade deals and other regulatory responses, like the application of digital taxation policies, may affect the growth of digital trade in Asia.

3

Trends in digital trade

Digital ecosystems, regional unicorns, physical/digital interfaces, cloud services, subscription services, payment solutions and cybersecurity threats are worth watching.



Digital trade does not stand still, making it challenging to understand the current state of play. Nevertheless, there are at least seven important trends worth noting, drawing from the experiences in Asia.

1. **The region is increasingly connected by digital ecosystems.**³ These are networks of interconnected elements of digital trade, rather than simply stand-alone services. WeChat may be the clearest example, as it allows firms and users to conduct a wide array of business transactions in one place with one payment system. WeChat allows messages, photo sharing, news consumption from a wide range of sources including social media, purchasing, gaming, health management and payments without ever leaving the app. It also allows users to use their WeChat account to log into other apps without having to register from scratch. Other platforms that have created full ecosystems include Gojek, which allows users in Indonesia to buy everything from local transport on motorbikes or vehicles, as well as delivery of food and shopping. Users can even order service providers to their doorstep for massage or hair services. Alibaba, Grab and the Google-Jio platforms provide similar types of integrated services.
2. **Asia is increasingly linked by regional unicorns,** which may be less familiar outside the region. These firms are developing a wide array of new innovations and driving trade patterns inside and between the countries in the region.⁴ The largest firm by market capitalization in Singapore, as an example, is Sea, which bills itself as a “global consumer internet company”.⁵ Sea provides three key platforms, including Garena for online gaming and publishing, the online shopping site Shopee and a payments and financial services arm called SeaMoney. Other prominent regional unicorns include Lazada, Tokopedia, Line and Kakao.⁶
3. **Asian firms are at the leading edge of providing physical/digital interfaces.** This includes the increasing use of 5G technology to power a growing array of activities, IoT implementation, immersive technology applications and augmented reality platforms of various types.⁷
4. **Asia is increasingly the hub for cloud services,** including the associated roles of data collection and data analytics.⁸ By 2020, Asia had become home to more data centres than in the United States.⁹
5. Like many other regions, **Asian consumers are increasingly seeking out subscription services** of all types.¹⁰ This includes the explosion in usage of over-the-top (OTT) internet services,¹¹ as well as streaming and livestreaming.¹² Companies in the region have been switching to livestreaming as a means of selling goods as varied as fish¹³ and agricultural products to items in “virtual” tradeshows.¹⁴ Companies, organizations and platforms have been stampeding towards online delivery of previously offline content through webinars and other virtual conferences.¹⁵ To see the power of streaming services in Asia, the Louis Vuitton fashion show in August 2020 had 84,000 views on the company website, but was watched live by 68 million viewers on Weibo, 18 million on Douyin, 8 million on Tencent and millions more on other platforms.¹⁶
6. **Getting firms online does not work if companies cannot be paid; hence, a large and growing number of firms are offering solutions to manage this problem,** including the creation of digital wallets and other payment solutions embedded in platforms like Grab or WeChat. Firms are also recognizing the opportunity to provide a growing array of financial solutions online, including insurance, lending and so forth.¹⁷ In some cases, these solutions can offer new pathways for smaller firms or individuals to access services based on diverse data collection that assesses risk in different ways compared to traditional banking services.
7. **As more firms and consumers move online, the opportunity for misbehaviour is also growing.** This includes familiar cybersecurity threats like phishing, ransomware attacks and malicious bots on e-commerce websites, as well as new issues like IoT hacking or crypto-jacking.¹⁸

4

Tackling digital trade in Asian agreements

Agreements from the region have been at the forefront of rule-making on digital trade issues.



Trade officials in Asia have been trying to tackle digital trade for some time. As an example, the ASEAN/Australia/New Zealand FTA (AANZFTA), first signed in 2010, has a lengthy chapter on e-commerce.¹⁹ It included important elements such as requiring parties to adopt measures on electronic authentication and accept digital certificates based on international norms, providing online consumer and data protection and moving towards paperless trade.

The 10 member countries of ASEAN (Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam) have also been engaged in a series of exercises to improve digital trade in the region.²⁰

But the most important advances to try to lock in digital trade rules can be found in a group of regional trade agreements, starting with the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) that includes Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Viet Nam.²¹ The CPTPP provided a range of commitments in an e-commerce chapter and elsewhere that tackled issues related to digital trade. Building on the CPTPP,²² Chile, New Zealand and Singapore went on to sign the Digital Economy Partnership Agreement (DEPA)²³ in early 2020, and Australia and Singapore signed and approved the Digital Economy Agreement (DEA) in August 2020.²⁴

While the exact content for these three agreements varies, they all have a similar set of overall objectives, including the need to:

- Reduce trade barriers to the digital economy
- Build compatible standards and create greater regulatory harmonization to facilitate interoperability and trust
- Include cooperation and capacity-building mechanisms, especially for smaller firms in the digital space
- Agree to transparency and public-private consultation
- Encourage online cross-border consumer trust
- Consider innovative regulatory areas for future cooperation

The DEPA, in particular, was designed to provide modular solutions for governments anywhere.²⁵ The various modules contained in DEPA are meant to be “picked up” and inserted into ongoing trade agreement negotiations, to become the basis of additional “digital only” trade arrangements or to be inserted into other regional or global digital initiatives. The main point is to foster the spread of similar types of approaches in settings that can better match the comfort level of participants. Table 1 highlights similarities and differences between these three agreements.

TABLE 1 Comparison of digital trade provisions in CPTPP, DEA and DEPA

Key		No.	Digital trade provisions	DEA	DEPA	CPTPP
	Provision is identical (or very close to identical)	1	Commitments to facilitate digital trade			
	Provision article is more comprehensive	2	No customs duties on electronic transmissions	Article 5	Article 3.2	Article 14.3
	Provision article is less comprehensive	3	Non-discrimination of digital products	Article 6	Article 3.3	Article 14.4
	No similar provision articles	4	Domestic electronic transactions framework	Article 8	Article 2.3	Article 14.5
		5	Electronic authentication and signatures			
				Article 9		Article 14.6
		6	Paperless trading			
				Article 12	Article 2.2	Article 14.9
		7	Electronic invoicing			
				Article 10	Article 2.5	
		8	Electronic payments			
				Article 11	Article 2.7	
		9	Express shipments			
				Article 13	Article 2.6	Article 5.7
		10	Online consumer protection			
				Article 15	Article 6.3	Article 14.7

No.	Digital trade provisions	DEA	DEPA	CPTPP
11	Cooperation on competition policy	✓ Article 16	✓ Article 8.4	✗
12	Personal information protection	✓ (-) Article 17	✓ (+) Article 4.2	✓ (-) Article 14.8
13	Unsolicited commercial electronic messages	✓ (+) Article 19	✓ (-) Article 6.2	✓ (-) Article 14.14
14	Submarine telecommunications cable systems	✓ Article 22	✗	✗
15	Location of computing facilities for financial services	✓ Article 25	✗	✗
16	Data innovation	✓ (-) Article 26	✓ (+) Article 9.4	✗
17	Open government data	✓ Article 27	✓ Article 9.5	✗
18	Source code	✓ (+) Article 28	✗	✓ (-) Article 14.17
19	Digital identities	✓ Article 29	✓ Article 7.1	✗
20	Standards and conformity assessment for digital trade	✓ Article 30	✗	✗
21	Artificial intelligence	✓ (+) Article 31	✓ (-) Article 8.2	✗
22	Fintech and regtech cooperation	✓ (+) Article 32	✓ (-) Article 8.1	✗
23	Dispute settlement	✓ (+) Article 21	✓ (+) Article 14	✓ (-) Article 14.18

Source: Adapted from data provided by Deborah Elms (2020), based on agreement texts

Key elements and definitions

1. Commitments to facilitate digital trade

All three of the agreements have commitments to facilitate trade, making it possible for the parties involved to engage in more extensive promises in a digital-only set of talks.

2. No customs duties on electronic transmissions

Neither party shall impose customs duties on electronic transmissions, including content transmitted electronically. However, it does not preclude members from imposing internal taxes, fees or other charges on content transmitted electronically.

3. Non-discrimination of digital products

Non-discriminatory treatment of imported digital products is another fundamental measure to support an open digital economy between the FTA members. Equal treatment of digital products ensures healthy market competition and provides better quality and more affordable choices for consumers.

4. Domestic electronic transactions framework

This refers to the domestic legal frameworks governing electronic transactions adopted by FTA members. These frameworks should be consistent with the principles of the UNCITRAL Model Law on Electronic Commerce adopted in 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts (2005). Individual parties are encouraged to avoid unnecessary regulatory burdens on electronic transactions and facilitate the participation of interested stakeholders in the development of the domestic legal framework. These agreements facilitate enforcement of the FTA rules governing electronic transactions between the FTA parties, and provide clear regulations for conducting cross-border business in those countries.

5. Electronic authentication and signatures

The provision refers to a mutual recognition of electronic processes of identity verification and validity of electronic signatures. Unless they do not meet certain performance standards or are not certified by an accredited authority, the FTA parties should not prohibit electronic authentication methods or deny the legal validity of e-signatures. This provides flexibility for users of authentication technologies and e-signatures, facilitates trade processes and eases the efficiency of transactions.

6. Paperless trading

The FTA parties should ensure there is a transparent platform that provides access to all measures related to electronic commerce and make trade administration documents available to the public in electronic form. Unless there is a legal requirement for the printed version, each party should accept trade administration documents submitted electronically as the legal equivalents. This increases the effectiveness of trade administration document processing.

7. Electronic invoicing

The importance of electronic invoicing is recognized for its increased efficiency, accuracy and reliability of commercial transactions. Each party should ensure that the implementation of measures related to e-invoicing in its jurisdiction are designed to support cross-border interoperability.

8. Electronic payments

Parties shall support the development of efficient, safe and secure cross-border payments, in particular those provided by non-bank, non-financial institutions and fintech enterprises. Specific regulations on electronic payments must be adopted by the parties to enable greater interoperability between electronic payments systems while providing safe and secure products available to third parties.

9. Express shipments

To increase trade and facilitate air express shipments, each party shall ensure its customs procedures are predictable, consistent and transparent. Expedited customs procedures will be in place for air express shipments while maintaining appropriate customs control and selection. As the COVID-19 crisis has made clear, air cargo is a critical component of overall trade patterns, especially for urgently needed goods, equipment and supplies.

10. Online consumer protection

Parties must protect consumers from misleading and deceptive commercial activities, unfair contract terms and unconscionable conduct when they engage in electronic commerce. Misleading, fraudulent or deceptive actions may include misrepresentation of material fact, failure to deliver products or services to a consumer after the consumer is charged or charging the consumer's financial, internet, or other accounts without authorization.

11. Cooperation on competition policy

Sharing of experiences in enforcing competition law and in developing and implementing competition policies to address the challenges that arise from the digital economy is to be promoted among the parties.

12. Personal information protection

Parties should proactively protect personal information by designing a legal privacy framework to prevent a misuse of individual information of consumers engaged in electronic commerce. Parties shall take into account the principles and guidelines of relevant international bodies, such as the APEC Cross-Border Privacy Rules (CBPR) System and the OECD Guidelines Governing Protection of Privacy and Trans-Border Flows of Personal Data.

13. Unsolicited commercial electronic messages

FTA parties must endeavour to adopt or maintain measures that enable consumers to reduce or prevent unsolicited commercial electronic messages. Suppliers of unsolicited commercial electronic messages may be subject to legal action.

14. Submarine telecommunications cable systems

The parties recognize the importance of submarine telecommunications cable systems, and the expeditious and efficient installation, maintenance and repair of these systems, to national, regional and global telecommunications connectivity. Parties will engage in activities to promote awareness of submarine telecommunications cable systems and make information available on the location of submarine telecommunications cable systems to inform mapping and charting.

15. Localization of computing facilities for financial services

Parties are not allowed to require the use or location of computing facilities in their respective territories as a condition for conducting business in that territory. However, financial regulatory authorities must have access to information processed or stored on computing facilities that are used or located outside of the party's territory by financial institutions or financial service suppliers operating in that territory.

16. Data innovation

The importance of digitalization and the use of data in the digital economy will be promoted and supported by means of collaborating on data-sharing projects using regulatory sandboxes where applicable. Research and industry practices related to data innovation will be shared among FTA parties.

17. Open government data

Government information will be made available to the public in a machine-readable and open format that allows it to be searched, retrieved, used, reused and redistributed. Parties recognize the economic and social benefits of government information. Public access to government data will be viewed as enhancing research opportunities and to generating business.

18. Source code

Access to or transfer of source code of software owned by a person of the other party will not be required as a condition for import, distribution, sale or use of such software, or of products containing such software, in its territory. However, a government agency, regulatory body or judicial authority may request available source code of software for investigation, inspection, examination, enforcement action, judicial or administrative proceeding purposes, subject to safeguards against unauthorized disclosure.

19. Digital identities

To promote regional and global connectivity, FTA parties shall pursue to develop compatible digital identity regimes. Common standards and frameworks are to be developed to foster technical interoperability and in developing comparable protection of digital identities in legal frameworks.

20. Standards and conformity assessment for digital trade

Trade barriers can be reduced and a well-functioning digital economy fostered by developing and adopting common standards that support digital trade, including technology standards. Industry participants will be involved in the process to identify, develop and test cross-border projects that demonstrate such standards.

21. Artificial intelligence (AI)

Industry practices and research related to AI technologies will be shared. Responsible use of AI technology by businesses and across the community will be promoted. AI governance frameworks will consider principles or guidelines that are internationally recognized.

22. Fintech and regtech cooperation

Collaboration among parties will be encouraged on fintech and regtech through FTA parties' respective policy and trade promotion agencies and regulators. Fintech and regtech enterprises are encouraged to explore new business opportunities in the other party's territory. The FTA parties will cooperate on the development of standards for open banking.

23. Dispute settlement

Dispute settlement varies depending on the agreement. Since the CPTPP and DEA are part of a larger, comprehensive FTA, the dispute settlement mechanisms for digital trade are, in part, incorporated elsewhere. The DEPA has a separate dispute settlement mechanism for embedded modules in the arrangement. The DEA explicitly addresses disputes related to financial services that will be resolved based on the respective article violations and shall seek the views of financial services experts as necessary. Parties may at any time agree to voluntarily undertake any alternative methods of dispute resolution, such as good offices, conciliation and mediation.

5

Challenge areas for digital trade policy

Data transfer mechanisms, consumer protection, digital trade facilitation, emerging technologies and digital taxes are key areas of debate.



Despite grappling with digital trade for decades, officials are still struggling to reach an agreement

on a range of relevant issue areas. Some of the key areas of continued debate include:

5.1 Data transfer policies

One of the most challenging areas for governments is determining the scope and rules governing the movement of data across borders. Clearly, every other aspect of digital trade relies on information and data flows, so getting the rules and regulatory settings together at this basic level is critically important.

Yet, harmonizing policy approaches even across a limited number of countries has proven challenging, in part because transfer requirements are usually linked to domestic privacy laws, which have evolved differently across the region.²⁶ There are now emerging debates about whether data should flow, which types of data can/cannot flow and whether localization would bring greater economic benefit, despite mounting evidence to the contrary.²⁷

Despite years of effort, the 16 member countries²⁸ in the Regional Comprehensive Economic Partnership (RCEP) were unable to come to an agreement on allowing the free flow of data across

borders in a similar fashion to the CPTPP, DEPA and DEA. Officials were equally unable to agree on whether there should be limitations on the hosting and processing locations for information. Hence, free flow of data and data localization rules have not been included in RCEP.

ASEAN officials have also been working for a couple of years on a Digital Data Governance Framework. The framework will cover different elements, including provisions related to privacy protection rules, data classification rules and two clear mechanisms that entities can use when transferring data between member countries while remaining compliant with individual laws. Getting agreement on the details has been tricky; the 10 countries in ASEAN have widely varying domestic approaches to data policies and capacity to effectively implement different policies. Nonetheless, good efforts are underway on cross-border data transfer mechanisms.

5.2 Consumer challenges

Asian consumers have tended to allow digital trade to grow without complaint. However, there are a couple of areas of increasing concern that will need to be tackled in the future.

For instance, domestic regulatory frameworks to handle personal data protection vary significantly across the region. The ability of governments to manage consumer protection in an online environment also differs. In both instances, the situation ranges from having no policies at all in place to extensive experience over time.

As consumers increasingly order goods and services from overseas, they grapple with a range of consumer protection challenges, such as fraudulent, adulterated or counterfeit goods; deceptive practices; inaccurate marketing; payments challenges, including payment without receipt of goods or services; and an inability to manage cross-border returns. Some governments are adapting off-line rules and regulations surrounding consumer protection for the digital space while others have yet to address these issues at all. Failure to do so will break down trust in the digital space compromising the ability of entrepreneurs to use it successfully.

5.3 Digital trade facilitation measures

There are a number of elements that fit within digital trade facilitation, including basic digital infrastructure and efforts to reduce the size of the overall digital divide. Managing infrastructure issues can be a challenge in a diverse Asia. Key to most economies is the rise of mobile technology and mobile-ready applications and solutions, rather than a strong focus on broadband connectivity. Nevertheless, internet connections,

capacity and skills remain unevenly distributed across the region.

For e-commerce goods, trade facilitation includes a range of efforts to move smaller-sized, smaller-value packages more quickly and easily across borders. Since e-commerce tends to come with lower margins, transaction and logistics costs must be kept to a minimum. Otherwise, the benefits of

trading abroad are quickly squandered. Asia has inconsistent policies in place to manage issues related to these goods, including widely diverse *de minimis* thresholds that can seriously affect the ability of smaller firms to ship small consumer items across borders.²⁹

Asian economies are slowly moving towards paperless trade, after years of repeated commitments in different settings to do so. The UN Economic and Social Commission for Asia and the Pacific (UNESCAP) has a treaty in place to encourage governments to move to paperless trade frameworks.³⁰ ASEAN has been working for years on the creation of National Single Windows (NSW) and the unification of such systems into an ASEAN Single Window (ASW).³¹

Moving from commitment to policy reality has not yet materialized, leaving firms grappling with a wide range of paperwork requirements for the

movement of goods across the region. Meanwhile, customs officials are under increasing pressure to more effectively and efficiently manage the growing avalanche of packages at the border. The volume of such trade makes it easier for firms to engage in fraudulent activities, including improperly declared content and undervaluation.

Some customs offices in the region may be grappling with the application of customs duties to digitally delivered services, such as the downloading of books, music, software and other digital products. At the moment, such activity is limited by the existence of the WTO's moratorium on customs duties on electronic transmissions but, if this moratorium is not extended, some governments in Asia are preparing to start collecting digital duties.³² While the moratorium has been permanently extended in some trade agreements, including CPTPP, DEPA and DEA, a similar provision was not inserted into RCEP.

5.4 Innovative technologies

Digital trade moves extremely quickly. Regulatory and legal changes operate at a different speed. The mismatch between the two can be quite stark, particularly for innovative technologies. Governments have not yet sorted out governance approaches for a wide range of potential blockbuster technologies, like AI, IoT and blockchain. Existing trade deals tend to group such ideas into areas for future collaboration and development.

For the moment, such an approach may be quite sensible. But, at a certain point, governments will need to figure out how to implement collaboration, develop and approve international standards and start designing consistent policies and regulatory frameworks to more effectively tackle a wide range of issues in cross-border digital trade.

5.5 Digital taxation policies

Traditionally, trade officials have argued that taxation policy is outside their purview. However, the spread of the digital economy has made a “hands-off” strategy harder to justify. Increasingly, digital taxation can be as significant in facilitating or disrupting trade as tariffs, customs and other border procedures, or licensing and qualification issues that typically are attached to cross-border trade in services.

Tax policy changes and discussions have been taking place in a variety of areas, such as corporate income tax reform in the context of digitalization³³ and updates to value-added tax/goods-and-services tax to allow countries to effectively collect them on goods and services purchased online from foreign suppliers.³⁴ However, of primary importance to digital trade has been the spread of digital goods-and-services taxes.³⁵ Several countries are introducing taxes on revenues earned from online sale of goods and services by tech businesses located outside these countries. Beginning from initial impositions

on advertisement revenues, the taxes are gradually extending to a large variety of e-commerce sales.

Taxing digital services and the digital delivery of goods can be challenging. Firms do not always (or even ever) have a physical presence in many markets. Effectively collecting taxes, particularly on services delivery, can be hard to manage. Countries are using expansive concepts, such as considering revenue created by online sales made to or advertisements targeting all consumers within their jurisdictions and those facilitated through local IP addresses, such as through smartphones used by residents, to qualify as taxable revenues. The ambit is expected to broaden further by including as much of digital content as possible, including software, music and videos, flowing into online transactions among businesses and consumers across various digital platforms.

While not currently on the table, digital services taxes could be extended to include a wide range

of future activities, including IoT transactions. Given the general stampede into the digital economy pushed by COVID-19 and the subsequent collapse or reduction of the traditional tax base that surrounds brick-and-mortar shops, governments will be more eagerly seeking to manage revenue shortfalls by collecting from the digital economy.

Although digital tax designs vary, most are attached to sales above certain thresholds. When administered as withholding taxes, smaller e-commerce businesses can face particular challenges. Firms may be required to withhold taxes out of their advertisement or sales payments to

overseas e-commerce firms, which affects profits and working capital.

The digital economy has long been seen as fostering the rise of the “micromultinational” with the promise that any firm, located anywhere, could find customers globally. Inconsistent application of digital taxation regimes, particularly those which are cumbersome and costly to comply with, can rapidly undermine this aspiration. A variety of unilateral taxes, imposed across different jurisdictions, is inimical to the greater interest of growth in global digital trade and e-commerce. Better coordination will be needed to avoid this outcome.



6

Conclusion

This paper describes trends, policy innovations and challenges for digital trade in Asia to help inform future discussions.

Digital trade, even in the pre-COVID-19 world, had been exploding across Asia with larger and larger numbers of firms and consumers involved in buying and selling digitally. By 2019, the size of the internet economy in South-East Asia had hit \$100 billion, tripling in size in just four years.³⁶ Much of this activity took place across borders. The pandemic has simply accelerated these trends.

Continuing the growth trajectory, however, will require sustained attention by officials to effectively and efficiently manage a series of challenges posed

by the rise of cross-border digital trade. While some Asian governments have begun a process of thinking carefully and locking in similar policies through a series of trade arrangements, these provisions have not yet spread everywhere. Even in the latest generation of “digital only” deals, there are some elements that remain undeveloped. Grappling with issues like data transfer policies, digital trade facilitation, consumer policies, innovative technologies and digital tax will likely prove complex and challenging.

Contributors

Lead author

Deborah Elms

Founder and Executive Director, Asian Trade Centre, Singapore

Members of the Global Future Council on International Trade and Investment, 2019-2020

Chair:

Penelope Naas

President, International Public Affairs and Sustainability, UPS, USA

Fellow:

Yeling Tan

Assistant Professor of Political Science, University of Oregon, USA

Members:

Abdulla Ahmed Al Saleh

Undersecretary for Foreign Trade and Industry of the United Arab Emirates

Deborah Elms

Founder and Executive Director, Asian Trade Centre, Singapore

Rana Foroohar, Global Business Columnist and Associate Editor, The Financial Times, USA

Anabel González

Non-Resident Senior Fellow, Peterson Institute for International Economics, USA

Joy Kategekwa

Regional Strategic Adviser to the Assistant Administrator and Director, Regional Bureau for Africa, United Nations Development Programme (UNDP), New York

Barbara Kotschwar

Senior Director, Global Government Engagement, Visa, USA

Jane McCormick

Partner; Global Head, Tax, KPMG, United Kingdom

Luz Maria de la Mora Sanchez

Undersecretary of Foreign Trade of Mexico

Ana Novik

Head of Investment, Organisation for Economic Co-operation and Development (OECD), Paris

Amitendu Palit

Senior Research Fellow and Research Lead, Trade and Economic Policy, National University of Singapore, Singapore

Lisa Pearlman

Head, Global Trade and International Policy, Apple, USA

Victor do Prado

Director, Council and Trade Negotiations Committee, World Trade Organization (WTO), Geneva

Sarah Thorn

Senior Director, Global Government Affairs, Walmart, USA

Marcos Troyjo

Deputy Minister of Trade and International Affairs of Brazil

Ghislaine Weder

Head, Economics and International Relations, Nestlé, Switzerland

Janet Whittaker

Senior Counsel, Clifford Chance, United Kingdom

Mark Wu

Stimson Professor of Law, Harvard Law School, USA

Zhang Shige

Acting Head of Global Government Affairs Division, Huawei, People's Republic of China

Zhang Yuyan

Director, Institute of World Economics and Politics, Chinese Academy of Social Sciences (CASS), People's Republic of China

Endnotes

1. The four-year series by Google and Temasek, for instance, repeatedly underestimated the size of the potential market. The latest document, released in 2019 by Google, Temasek and Bain, revised the figures upwards again. The first publication expected the market in South-East Asia to reach \$200 billion by 2025. The 2019 report noted that the region had already crossed \$100 billion. See Google, Temasek and Bain & Company, e-Conomy SEA 2019, 2019, https://www.bain.com/globalassets/noindex/2019/google_temasek_bain_e_conomy_sea_2019_report.pdf
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22. The CPTPP negotiations also heavily influenced the development of the US-Mexico-Canada FTA, which extends digital economy provisions. Agreement between the United States of America, the United Mexican States, and Canada, 2019, Chapter 19: Digital Trade, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>
23. Digital Economy Partnership Agreement (DEPA), 2020, <https://www.mfat.govt.nz/assets/Uploads/DEPA-Signing-Text-11-June-2020-GMT.PDF>
24. The DEA will come into force when both sides have completed domestic-level ratification procedures. Australia-Singapore Digital Economy Agreement, 2020, <https://www.dfat.gov.au/sites/default/files/australia-singapore-digital-economy-agreement.pdf>
25. The DEPA also challenges conventional trade arrangements in another way: by focusing only on digital trade provisions, it appears to fall short of the WTO requirement that free trade agreements cover “substantially all the trade” between the parties (GATT Article XXIV 8(b) and GATS Article V). While this global norm has never been clearly defined, digital-only agreements are an unlikely fit with existing rules. The CPTPP and DEA, by contrast, have digital rules that are embedded in a broader, more comprehensive agreement, which does not present the same sets of challenges to WTO coverage.
26. Clarisse Girot, Regulation of Cross-Border Transfers of Personal Data in Asia, 28 May 2018, https://abli.asia/PUBLICATIONS/Regulation_of_Cross-border_Transfers_of_Personal_Data_in_Asia.
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30. UNESCAP, Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, 28 June 2016, <https://www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific>
31. ASEAN, ASEAN Single Window, <https://asw.asean.org>
32. See, for instance, Indonesia, which has opened a customs chapter 99 for digital books, music, software and “other”. For details, see Deloitte, Indonesia Tax Info, 30 April 2018, <https://www2.deloitte.com/content/dam/Deloitte/id/Documents/tax/id-tax-info-apr2018.pdf>
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34. See, for instance, Australian Tax Office, “GST 20 years on – Australia leading the way on eCommerce”, 27 March 2019, <https://www.ato.gov.au/Media-centre/Media-releases/GST-20-years-on---Australia-leading-the-way-on-eCommerce/>
35. More than 20 countries have legislated taxes or are preparing to do so, including from Asia (India; Indonesia; Malaysia; Pakistan; Taiwan, China; and Viet Nam), Africa (Kenya; Nigeria; Tunisia; and Zimbabwe), South and Central America (Mexico; Paraguay; Uruguay; and Costa Rica) and Europe (Austria; France; Greece; Hungary; Italy; Poland; Turkey; and the United Kingdom).
36. See Google, Temasek and Bain & Company, e-Conomy SEA 2019, 2019, https://www.bain.com/globalassets/noindex/2019/google_temasek_bain_e_conomy_sea_2019_report.pdf



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World Economic Forum
91–93 route de la Capite
CH-1223 Cologny/Geneva
Switzerland

Tel.: +41 (0) 22 869 1212
Fax: +41 (0) 22 786 2744
contact@weforum.org
www.weforum.org