



**Asia-Pacific
Economic Cooperation**

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Policies and Its Experience on e-Commerce in Previous FTAs

Submitted by: Korea



**Workshop on Building and Enhancing FTA
Negotiation Skills on e-Commerce
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Policies and its Experience on E-Commerce in previous FTAs



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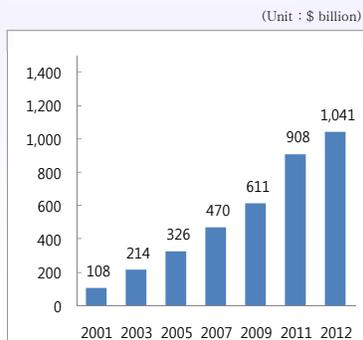


I	Current Condition
II	Policies & Regulations
III	Main Elements
IV	Experience on E-Commerce in previous FTAs
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1. Growth of Electronic Commerce

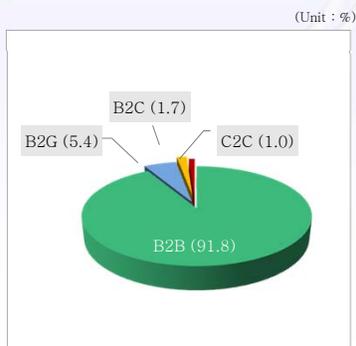
Size of e-Commerce : \$1,041 Billion

- Grown 10 times in 10years



B2B : more than 90%

B2C, C2C : less than 3%

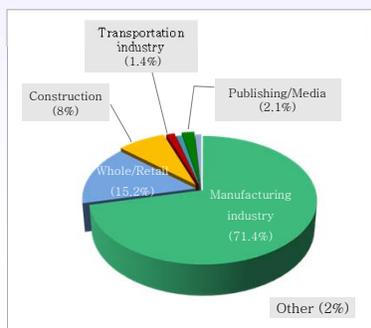


Article XX.XX(customs duties, National Treatment and MFN Treatment) applies to digital products (less than 0.2% Size of e-Commerce : \$1.1 Billion)

2. Business to Business (B2B)

Size : \$ 955 billion

- Manufacturing industry : 71.4%



Purchaser-Oriented : 51.1%,

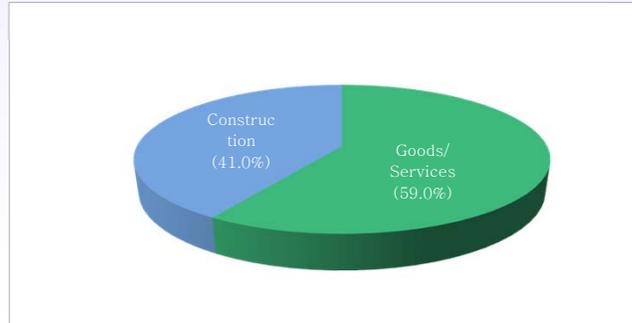
Seller-Oriented : 44.2%



Purchaser-oriented:
 - Announce purchasing plan ⇒ Bid ⇒ Contract
Seller-oriented:
 - Register item/price ⇒ Bid ⇒ Contract

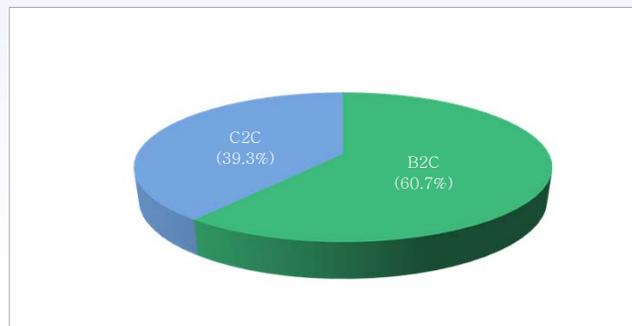
3. Business to Government (B2G)

- Size : \$ 57 billion
- Goods/Services 59%
- Construction 41%



4. Cyber-Shopping (B2C, C2C)

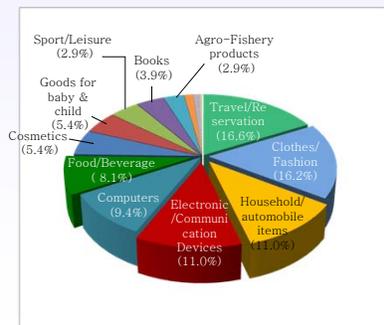
- Size : \$ 29.4 billion
- B2C 60.7%, C2C 39.3%



4. Cyber-Shopping (B2C, C2C) – Cont.

✔ Travel/Reservation (16.6%),
 Clothes/Fashion(16.2%),
 Household/Automobile items(11.0%)

✔ Increase : Travel/Reservation,
 Food/Beverage
✔ Decrease : Computer/Books



Item	'11	'12
Travel/Reservation	14.0%	16.6%
Computers	9.7%	9.4%
Food/Beverage	7.4%	8.1%
Books	4.4%	3.9%

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1. Regulations

Framework Act On Electronic Transactions

- **General rules for electronic commerce (1999)**
 - Basic rules ('99), Conflict adjustment committee('02)
 - Certification of outstanding cyber shopping malls ('02), Electronic Data Storage Center ('05)

Act On Consumer Protection In Electronic Commerce

- **Regulations for consumer protection (2002)**
 - Registration of cyber shopping malls('02), ESCROW services('05),
 - Mandatory insurance for compensating losses of consumers ('05)

Digital Signature Act

- **E-sign and E-Certification for electronic commerce (1999)**
 - E-sign('99), Official E-Certification Issuer ('99)
 - Mandatory Identity Certification for purchases more than \$300 ('05)

Electronic Financial Transactions Act

- **Regulates electronic financial transactions (2007)**
 - Basic rules for e-banking transaction
 - Responsibility of financial institutions in case of e-banking incidents

2. Policies for Cyber-Shopping (B2C & C2C)

Permission systems

- Report : Cyber-Shopping Malls and Cyber-Shopping intermediators
- Mandatory declaration : contact information of Cyber-Shopping Malls

* Info.: Permissions by business types

Business type	Off-line Biz	On-line Biz	Cyber Shopping Biz	Foreign Cyber Shopping biz
Report/Registrar	Biz registration	Value-added telecommunication biz report	Cyber shopping mall report	Foreign investment report

Pre - Consumer Protect

- ESCROW (Deposit payment to 3rd parties) : hold payment until delivery⇒protect pre-paid purchases
- Mandatory Identity Certification for purchases more than \$300
- Certification of outstanding cyber shopping malls (150 certificates issued in '11)

Post - Consumer protect

- e-Commerce Mediation Committee, free mediation of cyber-shopping disputes.
- Mandatory insurance for buyers purchasing goods worth of W100,000 or more



Main Elements

	Main Elements	Scope
a	Duty-free treatment for digital products	Digital Products
b	Electronic authentication and electronic signature	General E/C
c	Online consumer protection	General E/C
d	Personal data protection	General E/C
e	Paperless trading	General E/C
f	Principles of non-discrimination (national treatment and MFN treatment) for digital products	Digital Products

Main Elements

Duty-free treatment for digital products

Korea – USA Free Trade Agreement

ARTICLE 15.3: DIGITAL PRODUCTS

1. Neither Party may impose customs duties, fees, or other charges on or in

connection with the importation or exportation of:

- (a) if it is an originating good, a digital product fixed on a carrier medium; or
- (b) a digital product transmitted electronically.

Main Elements

Electronic authentication and electronic signature

Korea – USA Free Trade Agreement

ARTICLE 15.4: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Neither Party may adopt or maintain legislation for electronic authentication that would:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;
- (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or
- (c) deny a signature legal validity solely on the basis that the signature is in electronic form.

2. Notwithstanding paragraph 1, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law, provided the requirement:

- (a) serves a legitimate governmental objective; and
- (b) is substantially related to achieving that objective.

Main Elements

Online consumer protection

Korea – USA Free Trade Agreement

ARTICLE 15.5: ONLINE CONSUMER PROTECTION

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.
2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.
3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of laws against fraudulent and deceptive commercial practices in electronic commerce.

Main Elements

Personal data protection

Korea – USA Free Trade Agreement

ARTICLE 15.8: CROSS-BORDER INFORMATION FLOWS

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal information, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.

Paperless trading

Korea – USA Free Trade Agreement

Article 15.6: PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Main Elements



Principles of non-discrimination (national treatment and MFN treatment) for digital products

Korea – USA Free Trade Agreement

ARTICLE 15.3: DIGITAL PRODUCTS

2. Neither Party may accord less favorable treatment to some digital products³ than it accords to other like digital products
- (a) on the basis that:
- (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or
 - (ii) the author, performer, producer, developer, distributor, or owner of such digital products is a person of the other Party; or
- (b) so as otherwise to afford protection to other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.
3. Neither Party may accord less favorable treatment to digital products:
- (a) created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
 - (b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.

Main Elements



Principles of non-discrimination (national treatment and MFN treatment) for digital products

Korea – USA Free Trade Agreement

ARTICLE 15.3: DIGITAL PRODUCTS

4. Paragraphs 2 and 3 do not apply to measures adopted or maintained in accordance with Article 11.12 (Non-Conforming Measures), 12.6 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).
5. Paragraph 2 does not apply to:
- (a) subsidies or grants that a Party provides to a service or service supplier, including government-supported loans, guarantees, and insurance; or
 - (b) services supplied in the exercise of governmental authority, as defined in Article 12.1.6 (Scope and Coverage).
6. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.



1. FTA Status of KOREA

4 FTAs(Singapore, EU, Peru, U.S.) have E-Commerce chapter among 8 FTAs in effect

countries	Entered into force	Electronic Commerce Chapter
Chile	Apr. 1, 2004	X
Singapore	Mar. 2, 2006	○
EFTA (4countries)	Sep. 1, 2006	X
ASEAN (10countries)	Jun. 1, 2007(Goods) May. 1, 2009(Services) Sep. 1, 2009(Investment)	X
India	Jan. 1, 2010	X
EU	Jul. 1, 2011(provisionally applied)	○
Peru	Aug. 1, 2011	○
U.S	Mar.15, 2012	○

2. Analysis of electronic commerce rules (1)

	Korea-Singapore FTA	Korea-EU FTA	Korea-Peru FTA	Korea-U.S. FTA
section	Chapter 14 Electronic Commerce	Chapter Seven Trade in Services, Establishment and Electronic Commerce	Chapter Fourteen Electronic Commerce	Chapter Fifteen Electronic Commerce
Defi- nition	digital products means computer programmes, text, video, images, sound recordings and other product that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically	Definition X - deliveries by electronic means	digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded	digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically
Tax Exemption	not apply customs duties or other duties, fees, or charges on digital products	not to impose customs duties on deliveries by electronic means	not apply customs duties, fees, or charges on digital products	not to impose customs duties, fees, or other charges on digital products
Non- discrimination	not accord less favorable treatment to a digital product	-	-	not accord less favorable treatment than digital products of the other Party / a non-Party

2. Analysis of electronic commerce rules (2)

section	Korea-Singapore FTA	Korea-EU FTA	Korea-Peru FTA	Korea-U.S. FTA
Consumer Protection	-	Cooperation on Regulatory Issues	exchange information	consumer protection enforcement agencies cooperate
Paperless Trading	-		Endeavor to facilitate paperless trading	Endeavor to facilitate paperless trading
Cooperation	-		- working together to facilitate the use of electronic commerce of small and medium-sized enterprises - sharing information and experiences - working to maintain cross-border flows of information	endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders
Access to and Use of the Internet	-	-	-	do not harm the network and are not prohibited by the Party's law

[Ref.1] Korea – Singapore Free Trade Agreement

CHAPTER 14 : ELECTRONIC COMMERCE

ARTICLE 14.1: DEFINITIONS

For the purposes of this: **digital products** means computer programmes, text, video, images, sound recordings and other product that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically; [skip]

ARTICLE 14.2: SCOPE [skip]

ARTICLE 14.3: ELECTRONIC SUPPLY OF SERVICES

For greater certainty, the Parties affirm that measures related to the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters 9(Cross-Border Trade in Services), 10 (Investment) and 12(Financial Services), and, subject to any exceptions applicable to such obligations and except where an obligation does not apply to any such measure pursuant to Articles 9.6 and 10.9.

ARTICLE 14.4: DIGITAL PRODUCTS

1. **Each Party shall not apply customs duties or other duties, fees, or charges** on or in connection with the importation or exportation of a digital product of the other Party by electronic transmission.
2. Each Party shall determine the customs value of an imported carrier medium bearing digital product in accordance with the Customs Valuation Agreement.
3. A Party shall not accord less favourable treatment to a digital product than it accords to other like digital products:
 - (a) on the basis that:
 - (i) the digital product receiving less favourable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party; or
 - (ii) the author, performer, producer, developer, or distributor of such digital product is a person of the other party, or
 - (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in its territory.
4. Paragraph 3 does not apply to any non-conforming measure described in Articles 9.6 and 10.9.

[Ref.2] Korea –EU Free Trade Agreement

CHAPTER SEVEN : TRADE IN SERVICES, ESTABLISHMENT AND ELECTRONIC COMMERCE

SECTION F ELECTRONIC COMMERCE

ARTICLE 7.48: OBJECTIVE AND PRINCIPLES

1. The Parties, recognising the economic growth and trade opportunities that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under this Chapter.
2. The Parties agree that the development of electronic commerce must be fully compatible with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.
3. **The Parties agree not to impose customs duties on deliveries by electronic means.**

ARTICLE 7.49: COOPERATION ON REGULATORY ISSUES

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, inter alia, address the following issues:
 - (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
 - (b) the liability of intermediary service providers with respect to the transmission or storage of information;
 - (c) the treatment of unsolicited electronic commercial communications;
 - (d) the protection of consumers in the ambit of electronic commerce;
 - (e) the development of paperless trading; and
 - (f) any other issues relevant for the development of electronic commerce.
2. The dialogue can include exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

[Ref.3] Korea –Peru Free Trade Agreement

CHAPTER FOURTEEN : ELECTRONIC COMMERCE

ARTICLE 14.1: GENERAL PROVISIONS

1. The Parties recognize the economic growth and opportunity that electronic commerce provides and the applicability of the WTO Agreement to measures affecting electronic commerce.
2. Each Party shall endeavor to adopt measures to facilitate trade conducted by electronic means by addressing issues related to the digital environment.
3. The Parties recognize the importance of avoiding unnecessary barriers to trade conducted by electronic means. Having regard to its policy objectives, each Party shall endeavor to prevent measures that:
 - (a) unduly hinder trade conducted by electronic means; or
 - (b) have the effect of treating trade conducted by electronic means more restrictively than trade conducted by other means.

ARTICLE 14.2: RELATION TO OTHER CHAPTERS

In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

ARTICLE 14.3: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations in the relevant provisions of Chapters Nine (Investment), Ten (Cross-Border Trade in Services), and Twelve (Financial Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 14.3: CUSTOMS DUTIES

1. **Neither Party shall apply customs duties, fees, or charges** on, or in connection with, the importation or exportation of digital products by electronic means.
2. For greater certainty, this Chapter does not preclude a Party from imposing internal taxes or other internal charges on digital products delivered electronically, provided that such taxes or charges are imposed in a manner consistent with this Agreement.

[Ref.4] Korea – USA Free Trade Agreement

CHAPTER FIFTEEN : ELECTRONIC COMMERCE

ARTICLE 15.1: GENERAL

The Parties recognize the economic growth and opportunity that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce.

ARTICLE 15.2: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters Eleven through Thirteen (Investment, Cross-Border Trade in Services, and Financial Services), which are subject to any exceptions or non-conforming measures set out in this Agreement that are applicable to such obligations.

ARTICLE 15.3: DIGITAL PRODUCTS

1. **Neither Party may impose customs duties, fees, or other charges** on or in connection with the importation or exportation of:
 - (a) if it is an originating good, a digital product fixed on a carrier medium; or
 - (b) a digital product transmitted electronically.
2. Neither Party may accord less favorable treatment to some digital products than it accords to other like digital products
3. Neither Party may accord less favorable treatment to digital products:
 - (a) created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
 - (b) whose author, performer, producer, developer, distributor, or owner is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, distributor, or owner is a person of a non-Party.
4. Paragraphs 2 and 3 do not apply to measures adopted or maintained in accordance with Article 11.12 (Non-Conforming Measures), 12.6 (Non-Conforming Measures), or 13.9 (Non-Conforming Measures).

[Ref.4] Korea – USA Free Trade Agreement

CHAPTER FIFTEEN : ELECTRONIC COMMERCE

ARTICLE 15.7: PRINCIPLES ON ACCESS TO AND USE OF THE INTERNET FOR ELECTRONIC COMMERCE

To support the development and growth of electronic commerce, each Party recognizes that consumers in its territory should be able to:

- (a) access and use services and digital products of their choice, unless prohibited by the Party's law;
- (b) run applications and services of their choice, subject to the needs of law enforcement;
- (c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not prohibited by the Party's law; and
- (d) have the benefit of competition among network providers, application and service providers, and content providers.

ARTICLE 15.9: DEFINITIONS

For purposes of this Chapter:

carrier medium means any physical object designed principally for use in storing a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but is not limited to, an optical medium, a floppy disk, or a magnetic tape;

digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically;

electronic authentication means the process or act of establishing the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

electronic signature means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means; and

trade administration documents means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

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Questions

- Is there any ①customs duties, ②internal taxes or ③other internal charges(examination fee, certification fee, fund, etc.) imposed on imported digital products(video, sound recordings, game, software, and etc.), which are fixed on CDs or DVDs?
- ① Is there any differences in subsidies, quotas, government procurements or government-supported loans/guarantees/insurances between domestic digital products and foreign digital products?
 (* domestic digital products are made by either Chinese or foreigner in China)
 (* foreign digital products are imported product from outside of China)
- ② Is there any differences in subsidies, quotas, government procurement, government-supported loans/guarantees/insurances between products made by Indonesian and products made by foreigner in Indonesia?
- Is there any additional regulation on a foreigner or a foreign company of establishing a electronic commerce company in Indonesia?
 (*electronic commerce company sells goods, games, musics, or software on the Internet)
- Is there any institution to protect electronic commerce consumer?
 (* consumer protection institution : laws, agencies, or dispute mediators)

Questions

- Is there any government institution of electronic commerce?
 (*institution of electronic commerce : ministry, agencies and their contact point)
- Current Condition of E-Commerce(Size of e-Commerce, Policies, Regulations)
- The LIST of Internet company in Indonesia(Tencent - China, MNC GS Homeshopping - korea, etc.)

