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Economic Cooperation**

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Session 1

Opportunities and Challenges of the E-Commerce Sector in Free Trade Agreement and Regional Trade Agreement Negotiations

Submitted by: Korea



**Free Trade Area of Asia-Pacific Capacity
Building Workshop on E-Commerce
Elements in Free Trade Agreements and
Regional Trade Agreements
8-9 September 2021**

OPPORTUNITIES AND CHALLENGES OF THE E-COMMERCE SECTOR IN FTA/RTA NEGOTIATIONS

8 September, 2021

FTAAP Capacity Building Workshop
on E-Commerce Elements in FTAs/RTAs

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Evolution of FTA/RTAs with E-Commerce Provisions

❖ FTA/RTAs with E-Commerce Provisions (2000-2019)

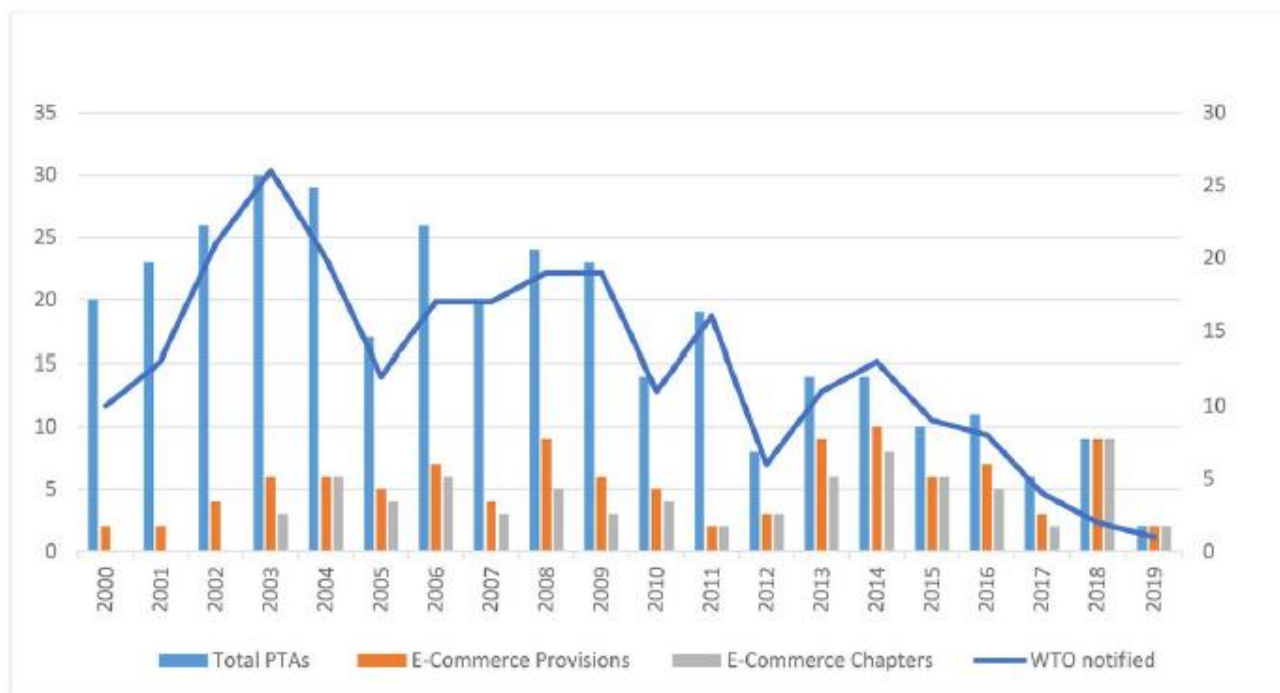


Figure 1. Evolution of PTAs with digital trade provisions.

Source: Burri and Polanco (2020)

Evolution of FTA/RTAs with E-Commerce Provisions

❖ FTA/RTAs with E-Commerce Provisions (2000-2018)

Table 1. PTAs concluded with digital trade provisions per year

Year	Total PTAs	WTO notified	Digital trade provisions	E-commerce chapters	% PTAs with digital trade provisions
2000	20	8	2	0	10.00%
2001	23	12	2	0	8.70%
2002	25	8	4	0	16.00%
2003	29	10	6	3	20.69%
2004	28	14	6	6	21.43%
2005	15	10	5	4	33.33%
2006	22	13	7	6	31.82%
2007	17	13	5	4	29.41%
2008	22	27	9	6	40.91%
2009	21	21	4	3	19.05%
2010	10	18	5	3	50.00%
2011	16	15	3	2	18.75%
2012	9	20	3	3	33.33%
2013	14	22	9	6	64.29%
2014	9	12	8	7	88.89%
2015	10	10	5	5	50.00%
2016	7	14	5	5	71.43%
2017	6	18	2	2	33.33%
2018	10	7	10	10	100.00%
Total	316	272	100	75	

Source: Burri (2019)

Evolution of FTA/RTAs with E-Commerce Provisions

❖ FTA/RTAs with E-Commerce Provisions per Type of PTA

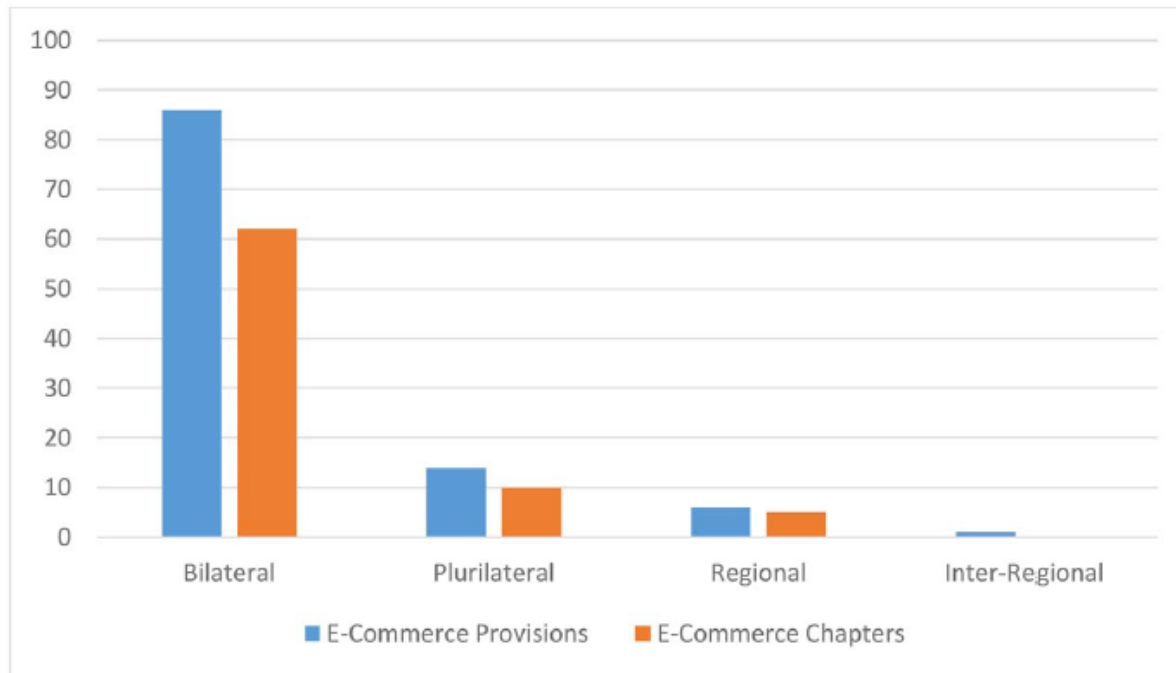


Figure 2. Type of PTA with digital trade provisions.

Source: Burri and Polanco (2020)

Evolution of FTA/RTAs with E-Commerce Provisions

❖ FTA/RTAs with E-Commerce Provisions per Region/Group

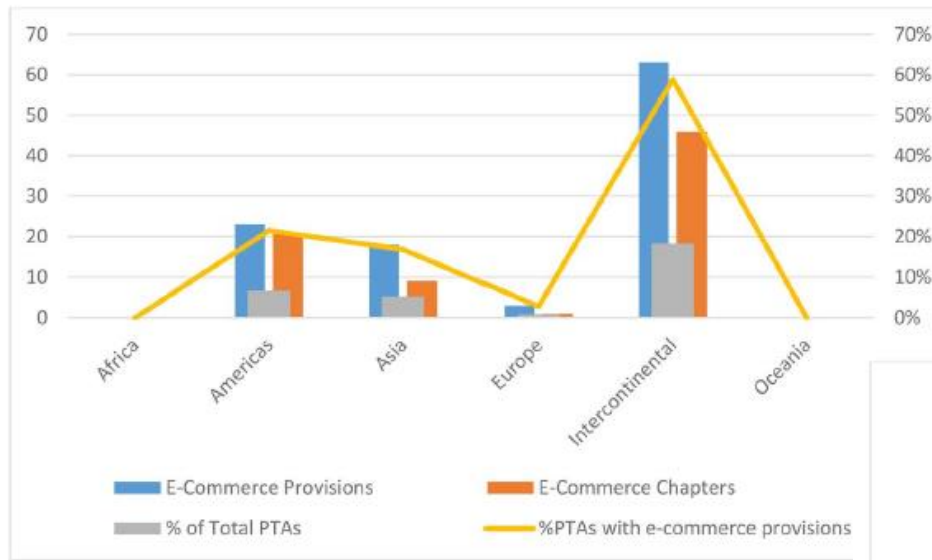


Figure 3. PTAs with digital trade provisions per region.

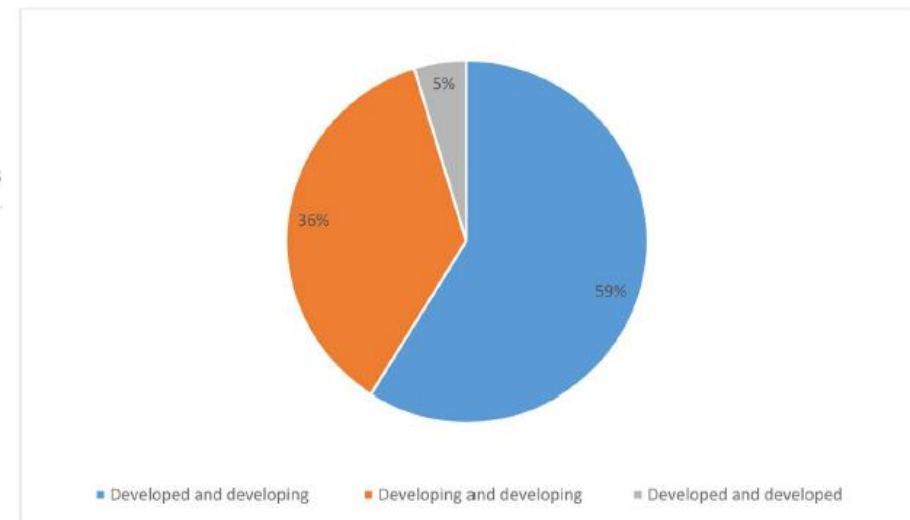
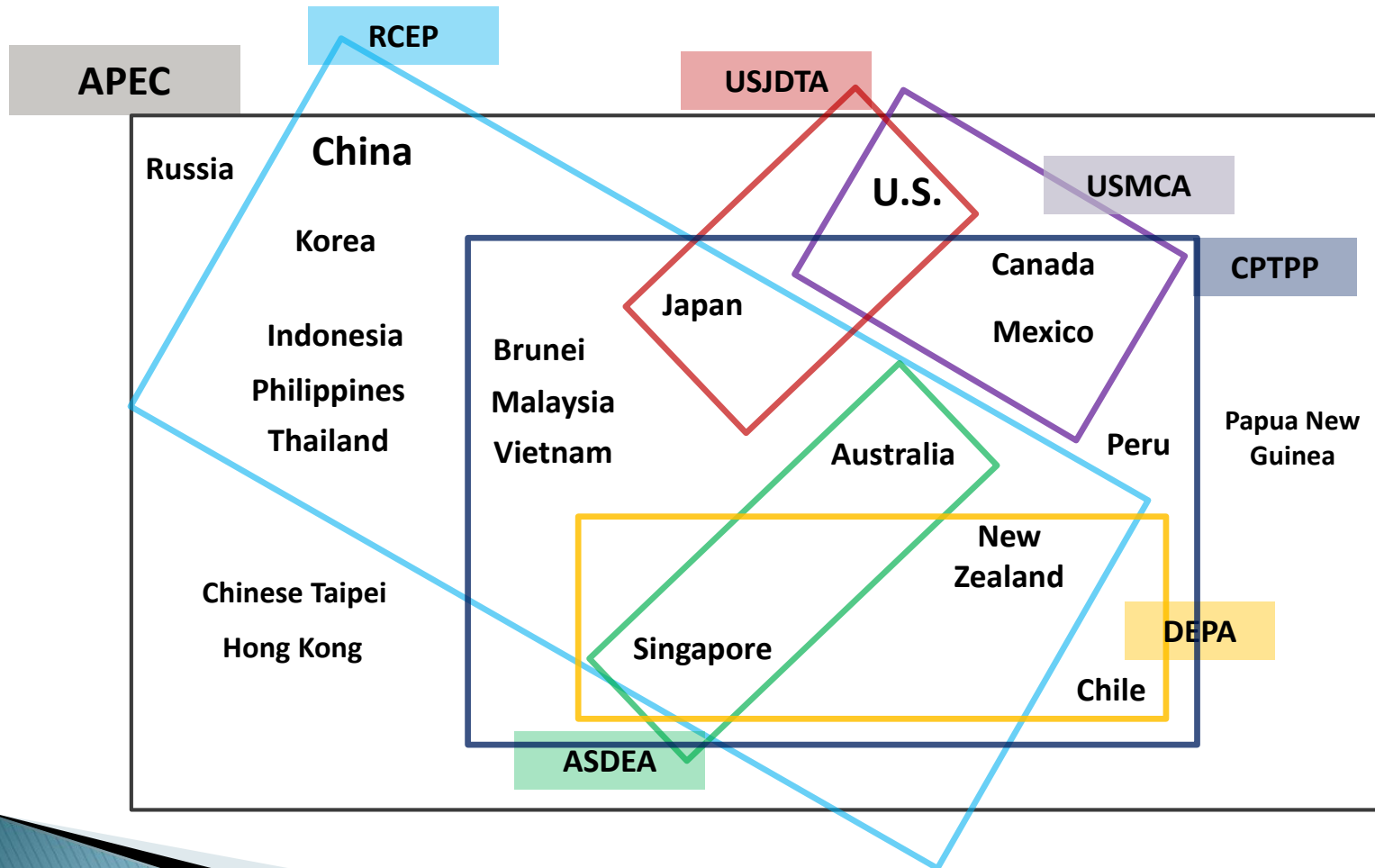


Figure 4. Parties to PTAs with digital trade provisions.

Source: Burri and Polanco (2020)

E-Commerce/Digital Trade Rules in the Asia-Pacific Region



Digital Trade Agreements in Asia-Pacific Region

❖ CPTPP (signed March 2018)

- ✓ First mandatory provisions on cross-border data transfer, localization requirement of computing facilities (with LPPO (legitimate public policy objective) exceptions)
- ✓ Mandatory provision on prohibition of source code transfer requirement
- ✓ Provision on free access & use of Internet for e-commerce

❖ USMCA (signed November 2018)

- ✓ First chapter on 'digital trade'
- ✓ Mandatory provisions on cross-border data transfer, localization requirement of computing facilities (No LPPO exception for data localization req't)
- ✓ Prohibition of data localization requirement for financial data
- ✓ Liability exception for Internet Service Providers (ISP)

Digital Trade Agreements in Asia-Pacific Region

❖ **US-Japan DTA (signed January 2019)**

- ✓ First stand-alone digital trade agreement
- ✓ Mandatory provision on source code & algorithm transfer requirement
- ✓ Mandatory provision on ICT goods that use cryptography
- ✓ Incorporation of all exception clauses (general exceptions, security exceptions, prudential exceptions, taxation)

❖ **Singapore-Chile-New Zealand DEPA (signed June 2020)**

- ✓ First Singapore-led template on digital trade rules (“modules” instead of chapters)
- ✓ Mandatory provisions on cross-border data transfer, localization requirement of computing facilities (non-binding obligation)
- ✓ Cooperation on various digital economy areas (AI, fintech, data innovation, digital identity etc.)

Digital Trade Agreements in Asia-Pacific Region

❖ **Australia-Singapore DEA (signed August 2020)**

- ✓ Similar digital trade rules with CPTPP, USMCA, USJDTA
- ✓ Similar digital economy cooperation provisions with DEPA
- ✓ Least inclusion of exception clauses (only general exceptions clause) related to key obligations on data free flow

❖ **RCEP (signed November 2020)**

- ✓ Chapter on 'Electronic Commerce'
- ✓ Mandatory provisions on cross-border data transfer, localization requirement of computing facilities (with LPPO exception, security exception)
- ✓ Non-application of dispute settlement procedures (non-binding provisions)

Digital Trade Rules in FTA/RTAs

❖ Categorization of Digital Trade Rules in FTA/RTAs

	Provisions
Facilitation of Electronic Commerce	Custom Duties
	Non-Discriminatory Treatment of Digital Products
	Electronic Authentication and Electronic Signatures
	Paperless Trading
Promoting Trust in Digital Trade	Online Consumer Protection
	Personal Information Protection
	Unsolicited Commercial Electronic Messages
	Cybersecurity
Liberalizing Cross-Border Digital Trade and Investment	Cross-Border Transfer of Information by Electronic Means
	Location of Computing Facilities
	Source Code
	Access to and Use of the Internet for Electronic Commerce
	Interactive Computer Services

Digital Trade Rules in FTA/RTAs

❖ Comparison of Key Provisions in Digital Trade Agreements

Major Provisions		CPTPP	USMCA	USJDTA	DEPA	DEA
Facilitation of Digital Trade	Custom Duties	M	M	M	M	M
	Non-Discriminatory Treatment of Digital Products	M	M	M	(M)	M
	Electronic Authentication and Electronic Signatures	M	M	M	-	M
	Paperless Trading	E	E	-	M/E	M/E
Promoting Trust in Digital Commerce	Online Consumer Protection	M	M	M	M	M
	Personal Information Protection	M	M	M	M	M
	Unsolicited Commercial Electronic Messages	M	M	M	M	M/E
	Cybersecurity	E	E	E	E	E

※ M: Mandatory provision / E: Endeavor provision / (M): Mandatory in text, but applied with carve-outs

Digital Trade Rules in FTA/RTAs

❖ Comparison of Key Provisions in Digital Trade Agreements

Major Provisions		CPTPP	USMCA	USJDTA	DEPA	DEA
Liberalizing Cross-Border Digital Trade and Investment	Cross-Border Transfer of Information by Electronic Means	M	M	M	(M)	M
	Location of Computing Facilities	M	M	M	(M)	M
	Source Code	M	M	M	-	M
	Access to and Use of the Internet for Electronic Commerce	E	E	-	E	E
	Interactive Computer Services	-	M	M	-	-
	Open Government Data	-	E	E	E	E
	ICT Goods that Use Cryptography	-	-	M	(M)	M
Exceptions	General Exceptions	M	M	M	M	M
	Security Exceptions	M	M	M	M	-
	Taxation	M	M	M	M	-
	Prudential Exception and Monetary/Exchange Rate Policy Exception	-	-	M	M	-

Digital Trade Rules in FTA/RTAs

❖ Coverage of Digital Trade Rules in DTAs

	CPTPP	USMCA	USJDTA	DEPA	DEA
Definitions	○	○	○	○	○
Scope	○	○	○	○	○
General Exceptions	○	○	○	○	○
Security Exceptions	○	○	○	○	-
Taxation	○	○	○	○	-
Prudential Exception	-	-	○	○	-
Customs Duties	○	○	○	○	○
Non-Discriminatory Treatment	○	○	○	○	○
Electronic Authentication/Signature	○	○	○	-	○
Paperless Trading	○	○	-	○	○
Electronic Invoicing	-	-	-	○	○
Electronic Payment	-	-	-	○	○
Express Shipment	-	-	-	○	○
Transparency	-	-	-	○	○

Digital Trade Rules in FTA/RTAs

❖ Coverage of Digital Trade Rules in DTAs

	CPTPP	USMCA	USJDTA	DEPA	DEA
Online Consumer Protection	○	○	○	○	○
Personal Information Protection	○	○	○	○	○
Access to/Use of Internet	○	○	-	○	○
Internet Interconnection Charge	○	-	-	-	○
Cross-Border Transfer of Information by Electronic Means	○	○	○	○	○
Location of Computing Facilities	○	○	○	○	○
Location of Financial Services Computing Facilities	-	○	○	-	○
Unsolicited Commercial Electronic Messages	○	○	○	○	○
Cybersecurity	○	○	○	○	○
Cooperation	○	○	-	-	○
Source Code	○	○	○	-	○
Interactive Computer Services	-	○	○	-	-
Open Government Data	-	○	○	○	○
ICT Goods that use Cryptography	-	-	○	○	○

Digital Trade Rules in FTA/RTAs

❖ Coverage of Digital Trade Rules in DTAs

	CPTPP	USMCA	USJDTA	DEPA	DEA
Data Innovation	-	-	-	○	○
Digital Identity	-	-	-	○	○
AI Cooperation	-	-	-	○	○
Fintech Cooperation	-	-	-	○	○
SME Cooperation	-	-	-	○	○
Cooperation on Competition Policy	-	-	-	○	○
Government Procurement	-	-	-	○	-
Information Sharing	-	-	-	○	-
Digital Inclusion	-	-	-	○	-
Standards and Conformity Assessment	-	-	-	-	○

Opportunities & Challenges for Digital Trade Rules in FTA/RTAs

❖ Data Liberalization Principles and Exceptions

- General convergence in DTAs on principle of digital trade facilitation
 - ✓ Liberalization of cross-border data transfer
 - ✓ Mandated prohibition of data localization requirements
- Various exception clauses on cross-border data transfer
 - ✓ LPPO exception
 - ✓ General exceptions
 - ✓ Security exceptions
 - ✓ Prudential & monetary policy exception
- Effort to achieve 'balance' between need for digital trade rules and preservation of policy space, different philosophies on data privacy

Opportunities & Challenges for Digital Trade Rules in FTA/RTAs

❖ Fragmentation of Rules on Personal Data Protection

- Digital trade rules on data governance
 - ✓ Personal data protection
 - ✓ Cross-border data transfer
 - ✓ Data localization requirement
- Different policies on personal data protection in major economies
 - ✓ Principles of 'necessity' and 'proportionality' in national rules regulating data protection
 - ✓ Data privacy rights equivalent to human rights
 - ✓ 'Internet sovereignty'
- Lack of convergence on data governance related digital trade rules leading to different positions in WTO negotiations

Opportunities & Challenges for Digital Trade Rules in FTA/RTAs

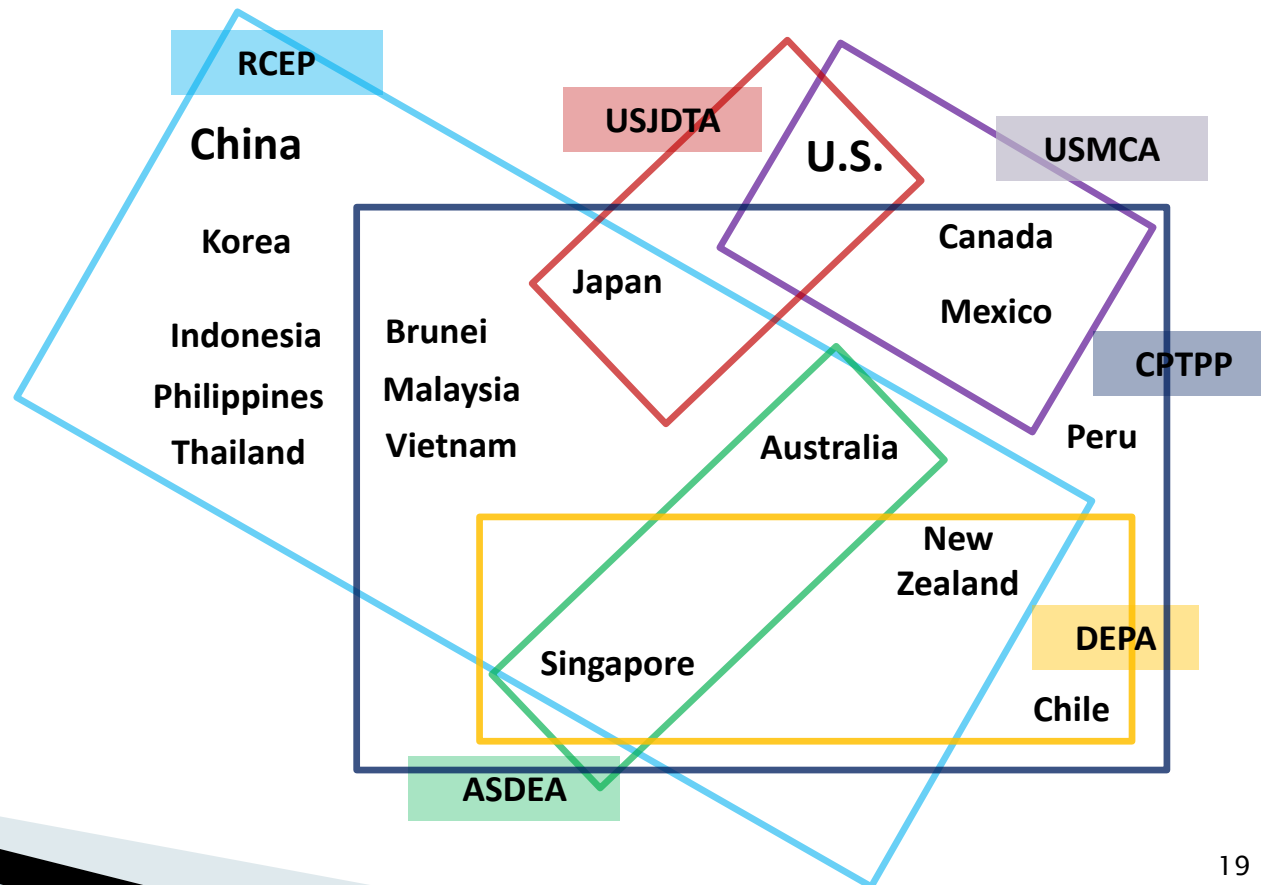
❖ Monopoly and Competition Principles in the Global Digital Market

- Competition issues in global online platform market
 - ✓ 'Network' and 'lock-in' effects of digital technologies
 - ✓ Prevalence of U.S. big tech companies in global digital market
- Digital Services Tax (DST)
 - ✓ Non-application of national taxation due to lack of physical permanent establishment
 - ✓ Application of DST based on annual sales (over 750 million Euro) in EU
 - ✓ Section 301 retaliatory tariffs by U.S.
- USJDTA and DEPA provisions on taxation
- DEPA and DEA provisions on cooperation on competition policies
- Agreement on global minimum corporate tax rate and global digital tax on all global companies

Opportunities & Challenges for Digital Trade Rules in FTA/RTAs

❖ Concentration of Evolving Digital Trade Rules in Asia-Pacific Region

- U.S.-led template vs. Singapore-led template of digital trade rules
- “U.S. - Indo-Pacific Digital Trade Agreement”



Q&A

