

CHAPTER 7

Electronic Commerce

1. OVERVIEW OF THE RULES

Since the Declaration on Global Electronic Commerce was adopted at the second WTO Ministerial Conference in May 1998, discussions have been held as to which legal regulatory framework electronic commerce within the WTO, OECD, UNCITRAL and APEC applies to e-commerce. Although discussions about these international frameworks have not reached conclusions, establishment of effective legal control within EPAs/FTAs has progressed since the chapter on electronic commerce was included in the Australia-Singapore FTA (signed in February 2003).

Regarding the legal control on electronic commerce, the "concept of electronic commerce", "classification of digital contents", and "custom duties" have been discussed (Figure III-7-1).

(1) THE DEFINITIONS AND OUTLINE OF ELECTRONIC COMMERCE

The concept of electronic commerce is either not defined or used in individual terms and definitions in existing international agreements (refer to Figure III-7-2). In the "chapter on electronic commerce" in EPAs/FTAs, "electronic commerce" is not defined, but characteristics that constitute electronic commerce are set out as follows.

(a) TECHNOLOGICAL NEUTRALITY

Although electronic commerce and traditional commerce have differences in methods and technology, other elements are neutral.

We can see this concept applied to, for example, the method to declare the commercial intention (paper-based document or E-mail), the method to supply services across the border (postal mail, fax, telephone or E-mail) and the method to deliver the intangible products including software (trade in tangible medium like CD/DVD or communication with electromagnetic wave for broadcasting or Internet).

(b) ECONOMIC GROWTH AND OPPORTUNITY

This is a concept that seeks to grasp the true nature of electronic commerce, based on the principle that there should be a proper awareness of the advantages of multiple international transactions specific to electronic commerce and that internationally consistent initiatives aimed at the maintenance and further development of these advantages should be promoted in order to maintain this trend and aim for further growth.

(c) ENVIRONMENT OF TRUST AND CONFIDENCE

This is a concept that seeks to grasp the essence of electronic commerce, focusing on the risks, such as increased opportunities for fraud or the leakage of information, based on the principle that there should be a proper awareness of the nature of such risks and that internationally consistent initiatives should be promoted in order to avoid or reduce such risks.

(2) THE CLASSIFICATION OF DIGITAL CONTENTS

When the digital contents are purchased, the applicable WTO rules are found in either GATT, GATS or TRIPS depending on whether the issue that arises out of marketing digital contents is the purchase price of goods, payment for a service, or royalty for intellectual property rights, respectively. Among countries that have concluded EPAs/FTAs including “chapters on electronic commerce”, the United States, Australia and Japan have continued to take neutral positions with regard to classification trends. These countries maintain their neutral stance in discussions within the WTO and this is frequently cited in the chapters on electronic commerce in the form of an annotation.

(3) NOT IMPOSING CUSTOMS DUTIES

Custom Duties are not imposed on software that is downloaded from another country from websites through the Internet. One of the reasons is that electronic transmissions cannot be captured by modern technology and so imposition of customs duties is not possible; it is also internationally agreed at present that customs duties should not be imposed on electronic transmissions.

Since the second WTO Ministerial Conference (May 1998), the Moratorium on Customs Duties (to maintain the current practice of not imposing custom duties on electronic transmissions) has been maintained. At the 11th Ministerial Conference (December 2017), it was decided to maintain the moratorium until the next Conference. With regard to bilateral EPAs/FTAs, the non-imposition of custom duties is stipulated as a permanent legal obligation in the chapter on electronic commerce of the FTAs concluded by the United States and Australia.

The modalities for custom duties on carrier media including software were discussed at the GATT Committee on Customs Valuation before the creation of the WTO. The Committee decided that "If the software is transmittable through a wired channel or a satellite, there are no issues of custom duties"; this is a circumstance to be considered for custom valuation of software.

If electronic transmissions can be technologically captured in the future, the Moratorium on Customs Duties will end and some WTO member countries may start imposing customs duties on electronic transmissions. The objective of having a provision on electronic commerce within bilateral FTAs is to prepare for these risks.

Nevertheless, even for an electronic transmission from a contracting country to an FTA, it is difficult to determine whether or not the source of the transmission was the contracting country. In other words, a policy of a non-imposition of custom duties that is restricted between two contracting countries is likely to be impossible.

So, it is possible to understand that the objective of this discipline is, through the increase of EPAs/FTAs with this discipline, to actually establish ‘non-imposition community’ which can remain even when electronic transmissions can be captured.

¹ Concerning customs valuation on transportation media containing software, the valuation method of targeting only the transportation medium excluding the cost and price of software was regarded to be consistent with Article VII of GATT(Customs Valuation) in the decision of the Committee on Customs Valuation adopted at the Tokyo Round in 1984 (VAL/8) and the discussions (VAL/M/10). This valuation method has been referred to in WTO Decision VI in relation to the interpretation of the agreement to implement Article VII of GATT.

2. DISCUSSIONS WITHIN MAJOR INTERNATIONAL ORGANIZATIONS

(1) WTO

For discussions at the WTO, see Part II, ADDENDUM-2 “E-COMMERCE.”

(2) OECD

The OECD guidelines have been incorporated into EPAs/FTAs. The OECD Action Plan for Electronic Commerce was adopted in the OECD Ministerial Conference on Electronic Commerce (October 1998). It contains the four principles mentioned below.

(a) Building trust with users and consumers

The main activities that are derived from this principle are consumer protection, privacy protection, and information security and authentication. In particular, with regard to consumer protection, the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce was published (1999; amended in 2016). This document sets forth eight principles: “transparent, effective consumer protection”; “fair sales, advertising and marketing behavior”; “online information disclosure”; “verification processes”; “payment”; “conflict resolution and redress”; “privacy protection”; and “education and publicity”. In addition to the aforementioned eight basic principles, the OECD is recommending and proposing the implementation of guidelines and global cooperation. In particular, in 2003, the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practice Across Borders were established, giving more concrete form to part of the aforementioned principle of “fair sales, advertising and marketing behavior”.

At the same time, the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data, which was enacted in September 1980, is the cornerstone of privacy protection, and, through their implementation, the OECD is promoting activities such as the technological verification of improved privacy protection and increased user awareness. The Guidelines were revised in 2013.

Finally, with regard to information security and authentication, the OECD Guidelines on Security of Information Systems were formulated in 1992, while in 1997, the Guidelines on Cryptography Policy were enacted. The former were revised in 2002 as the Guideline for the Security of Information Systems and Networks, and then further revised in September 2015 as the Digital Security Risk Management for Economic and Social Prosperity.

(b) Setting the basic rules for digital markets

As a result of the Turku Conference, which was held in 1997, conditions concerning the basic framework for the taxation of electronic commerce were enacted at the OECD Ministerial Conference on Electronic Commerce (October 1998). The basic principles of the tax system proposed that the principles of neutrality, efficiency, clarity and certainty, effectiveness and fairness, and flexibility are necessary. The tax system framework for implementing these principles specifies that the elements covered are services for taxpayers, tax administration (administration of information about individual taxpayers and authentication of taxpayers), the collection of taxes, consumption tax, and cooperation with the international tax system.

In December 2000, the OECD submitted a report with an analysis of a table showing each country’s GATS commitments from the particular perspective of the provision of online services.

(c) Strengthening information infrastructure for electronic commerce

With regard to access to and use of information infrastructure, consideration has primarily been given to market trends and policy implications with regard to communications technology, such as approaches to network service prices, telecommunications regulations and interconnectivity between businesses. In particular, with regard to the relationship with electronic commerce, a report entitled *Local Access Pricing and E-Commerce* was published in 2000, which appealed for an awareness of the “international digital divide” brought about by differences in the degree to which international networks have become pervasive.

With regard to Internet management and the domain names system (DNS), a report providing statistical information to the Working Group on Internet Governance was submitted in May 2005, which was formed under the auspices of the United Nations.

(d) Maximizing the benefits brought about by electronic commerce

The main activities arising from this principle relate to the impact on the economy and society, electronic government, small and medium-sized enterprises, education and skills, remote area development and information and communications technology, cooperation in development, and global participation. In order to develop highly consistent international statistics, the OECD has published various reports that scrutinize various private sector surveys, while proposing a definition of electronic commerce and various relevant indicators.

(3) UNCITRAL

A model law related to electronic commerce and electronic signature has been adopted in United Nations Commission on International Trade Law (UNCITRAL), which was established in 1966 as a committee under the direct control of the United Nations General Assembly.

(a) Model Law on Electronic Commerce

This was adopted by UNCITRAL in 1996, and was adopted as an international resolution of the General Assembly in January 1997. Its objective is to provide a model law which can apply to use of electronic means, instead of paper-based means, for communication and information storage.

The main relevant provisions include “the legal weight, effectiveness or enforceability of information must not be denied on the grounds that it takes the form of a data message (Article 5)”, and “in relation to the completion of contracts, as long as there is no particular agreement between the parties, it is possible to display applications and consent to applications by means of data messages (Article 11)”. (This model law was revised in 1998.)

(b) Model Law on Electronic Signature

Based on Article 7 of the Model Law on Electronic Commerce, concerning electronic signature, this model law was adopted by UNCITRAL in 2001, reflecting the latest technological developments relating to electronic signatures. This model law specified the establishment of standards relating to technological reliability in order to certify the equivalence of electronic signatures with written signatures, and the guaranteeing of technological neutrality to ensure that no legal advantage is given to a particular technological product used for electronic signatures.

(4) APEC

The Leader’s Declaration as “A Vision for the 21st Century” (1997) and the “Blueprint for Action on Electronic Commerce (1998)” recognized the large potential and importance of electronic commerce. In 1999, the ECSG (Electronic Commerce Steering Group) was established as an APEC

Senior Officials' Special Task Force. Data privacy and paperless trade have been discussed and a model of electronic commerce chapter has been formulated for EPA/FTAs.

(a) Data privacy

With the aim of promoting consistent information privacy protection measures in APEC member countries, in order to prevent flows of information relating to trade between member countries being hindered unnecessarily, the APEC Privacy Framework was adopted at the APEC Leaders' Summit held in November 2005. This framework itself acknowledged that it is fundamentally consistent with the 1980 OECD Guidelines, with new provisions to prevent tangible harms to individuals. Furthermore, based on the Framework, the development of the Cross-border Privacy Rules (CBPRs) proceeded as a rule for organizations handling personal information across borders.

Based on the APEC Data Privacy Pathfinder adopted in 2007 by both the APEC Ministers' Meeting and the APEC Leaders' Summit, the Pathfinder project, which began in 2008, involves discussions aimed at the formulation of documents such as self-assessment guidelines for businesses and the Cross-border Privacy Enforcement Agreement (CPEA).

The main document of the CBPR was approved at the Ministerial Meeting held in November 2011. In January 2014, the Common Referential for the Structure of the EU System of Binding Corporate Rules and APEC Cross Border Privacy Rules System was completed. Its objective was promoting interoperability of information distribution systems between APEC and the EU. Moreover, the updating of the APEC Privacy Framework was promoted. At the Ministerial Meeting in November 2016, the APEC Privacy Framework 2015 was approved.

As of February 2018, the CBPR system is participated in by the United States, Mexico, Japan, Canada, and Korea, while Singapore has applied to become a member and Taiwan, the Philippines, and Australia are preparing for participation. Accountability Agents review companies' cross-border data protection systems and certify their compliance with the APEC Data Privacy Pathfinder. So far, one institution in the United States and another in Japan (IPDEC, since June 2016) have been recognized by the ECSG and started their service as Accountability Agents. These institutions have given certification to 22 companies and one company, respectively.

(b) Paperless trade

Based on the Strategies and Actions Toward a Cross-border Paperless Trading Environment approved at the sixteenth APEC Ministerial Meeting (November 2004), work that will facilitate the electronic transmission of trade-related information (electronic certificate of origin, electronic invoice, electronic documents and electronic trade financing) within the APEC region by 2020 is underway.

3. CHAPTER ON ELECTRONIC COMMERCE IN EPAs/FTAs

The chapter discusses the scope, non-imposition of customs duties and non-discriminatory treatment of digital products, electronic signature and certification, and consumer protection.

(1) SCOPE

(a) Technological neutrality in services provided electronically

Based on the principle of technological neutrality, the regulations concerning trade in services should be neutral about the technical methods to provide the service. With regard to electronic commerce, this provision confirms that regulation of trade in services shall be equally applicable to services provided electronically and non-electronically.

(b) Clearly stipulating items exempt from the application of the regulation

Sensitive items can exempt either from the whole chapter on electronic commerce or from individual regulations. Such exemptions may include domestic taxation, subsidies and government procurement, broadcasting and audiovisual services, general exceptions and exceptional measures relating to security in GATT and GATS, and measures concerning regulatory inconsistencies in investment services (so-called “non-conforming” measures).

(2) PROVISIONS CONCERNING CONSISTENCY WITH OTHER REGULATIONS

Adjustments are made in the form of "do not apply to the extent of inconsistency with..." when other chapters, such as chapters of trade in goods, trade in services, investment and intellectual property rights, are applicable.

(3) NON-DISCRIMINATORY TREATMENT OF DIGITAL PRODUCTS

The classification of digital content in the WTO has become deadlocked, however, the EPAs/FTAs define digital content as “digital products” and set forth the details of national treatment and most-favored-nation treatment in relation to such products.

(a) The definition of digital products

Digital products were defined in the US-Singapore FTA as "computer programs, text, video, images, sound recordings and other products that are digitally encoded". This definition is applied in most of the EPAs/FTAs defining digital products.

However, some definitions say "regardless of whether they are fixed on a carrier medium or transmitted electronically", and others say "not including ones that are fixed on a carrier medium".

(b) National treatment

This is the stipulation that there will be no discrimination between domestic and foreign with regard to the country of origin or nationality of the manufacturer, etc. of digital products; this is the same concept as the national treatment concept in trade in goods and services.

(c) Most-favored-nation treatment

This is the same concept as the most-favored-nation treatment concept in trade in goods and services, and stipulates that there will be no discrimination against non-signatory countries with regard to the country of origin or nationality of the manufacturer, etc. of digital products.

(4) CUSTOMS

The moratorium on the imposition of customs duties has continued since the 2nd WTO Ministerial Meeting in 1998, right up to the present day; this is given substance in bilateral agreements as a permanent regulation that is legally binding.

However, with regard to the fine points of the provision, there are two models: the United States model, which states that “apart from domestic taxes, tariffs, fees or other levies” shall not be imposed “in relation to the import or export of digital products”, regardless of whether data is fixed on CD, DVD, or other media, or transmitted electronically; and the Australian model, which adopts the WTO moratorium wording and states that “the Parties shall maintain the current practice of not imposing custom duties on electronic transmissions between the Parties.”

(5) SOURCE CODE

In the past, measures requiring access to the source code of the software embedded in devices had been adopted/discussed in China and India. There have been requests by other countries at the WTO to review these measures.

While protectionist policies were observed in some countries, such regulations may possibly be implemented by some country in the future under domestic industry promotion policies and other economic policies, etc. This situation can be a potential concern for ICT device manufacturers, service providers, and investors in the area. In order to prevent such requirements from being made, source code provisions require the government not to request transfer and disclosure of source code as a condition for import or sale of software or devices with embedded software. This provision was provided for the first time among EPAs concluded by Japan in the Japan-Mongolia EPA (in the chapter on Electronic Commerce) and TPP also contains similar provision.

The Japan-Mongolia EPA provides for exceptions stipulating that software subject to this provision does not include software used for critical infrastructure.

(6) PROHIBITION ON REQUIREMENT CONCERNING THE LOCATION OF COMPUTING FACILITIES

For businesses providing so-called cloud computing services, requirements to locate their servers and data centers in that country can be a disrupting factor for the optimal global deployment of their facilities. In addition, companies using these services and seeking overseas business development with global service providers as partners must bear unnecessary costs if they are required to use domestic servers from the overseas sites. This provision prohibits, in principle, contracting parties from making such requirements. In consideration of the electronic commerce market that has been rapidly developing and expanding in recent years and the needs for creating new rules, this provision was provided for the first time among EPAs concluded by Japan in the Japan-Mongolia EPA (in the chapter on Electronic Commerce) and TPP also contains similar provision.

Additionally, the Japan-Mongolia EPA and the TPP provide that it shall be permitted to adopt and maintain an inconsistent measure under certain circumstances in order to achieve a legitimate public policy objective.

(7) CROSS-BORDER TRANSFER OF INFORMATION VIA ELECTRONIC MEANS

This rule states that each contracting party shall allow cross-border transfer of information (including personal information) by electronic means if such transfer is for business purposes. Inclusion of this rule in the TPP was the first time in any EPA signed by Japan.

Additionally, the TPP provides that a contracting party shall be permitted to adopt and maintain an inconsistent measure under certain circumstances in order to achieve a legitimate public policy objective.

(8) DOMESTIC REGULATIONS

This provision clearly stipulates the basic principle of industry-led development of electronic commerce and minimization of regulatory burdens, and adopts wording similar to the UNCITRAL model law on electronic commerce, the APEC model measures, and clauses on national regulations in GATS Article VI.

(9) ELECTRONIC SIGNATURES AND AUTHENTICATION SERVICES

In general, this provision includes the pursuit of interoperability with regard to electronic certificates that use Public Key Infrastructure (PKI), mutual recognition between signatories of electronic certificates, particularly those issued by governments in relation to administrative services, guarantee of equivalence between conventional signature and electronic signature, assurance of technological neutrality on the choice of means of signature, and the prevention of legislation that hinders the opportunity for a party to an agreement to testify in court regarding the compliance of electronic commerce with the law.

Bilateral discussions on interoperability and mutual recognition tend to be difficult when the two countries have different definitions of electronic signature under their own domestic laws.

(10) PAPERLESS TRADE ADMINISTRATION

These regulations stipulate that trade administration documents, from certificates of origin to documents for customs, quarantine, and entry, should be in a form that can be used publicly in an electronic format, and that governments should accept trade administration documents submitted electronically as being legally equivalent to those submitted as paper documents.

In some cases, these provisions are set forth as a legal obligation which does not apply where there are requirements under existing domestic or international laws, or cases in which computerization would actually decrease the efficiency of trade administration.

(11) ONLINE CONSUMER PROTECTION

This provision reflects the principle regarding the adoption and maintenance by each country of measures relating to consumer protection set out in the 1999 OECD Guidelines for Consumer Protection in the Context of Electronic Commerce. Some agreements also advocate cooperation between consumer protection groups, and contain measures against unsolicited E-mail and protection of privacy.

With regard to privacy, the two main documents are the 2005 APEC Privacy Framework and its forerunner, the 1980 OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data; the main provisions in bilateral agreements advocate the necessity of protection and give consideration to international standards.

(12) PRIVATE SECTOR PARTICIPATION

This was originally formulated as a separate clause by Australia after summarizing the section that incorporated into bilateral agreements the principle that industry should take the initiative, which is contained in the Domestic Regulatory Framework in the APEC model measures.

In the Japan-Switzerland EPA, the provision advocating self-regulation by the private sector that was summarized as “cooperation” in the APEC model measures is contained in this clause.

(13) COOPERATION

This provision relates to the promotion of electronic commerce by small and medium-sized enterprises, the sharing of information concerning advanced technologies and business practices, and active participation in discussions in international forums that are incorporated into the APEC Blueprint for Action on Electronic Commerce.

4. DETAILS OF SPECIFIC PROVISIONS IN BILATERAL AGREEMENTS

(see Figure III-7-3)

- (1) AUSTRALIA - SINGAPORE FTA (SIGNED FEBRUARY 2003, ENTERED INTO FORCE JULY 2003)**
 - (2) UNITED STATES - SINGAPORE FTA (SIGNED MAY 2003, ENTERED INTO FORCE JANUARY 2004)**
 - (3) UNITED STATES - CHILE FTA (SIGNED JUNE 2003, ENTERED INTO FORCE JANUARY 2004)**
 - (4) UNITED STATES – AUSTRALIA FTA (SIGNED MAY 2004, ENTERED INTO FORCE JANUARY 2005)**
 - (5) INDIA - SINGAPORE COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (SIGNED JUNE 2005, ENTERED INTO FORCE AUGUST 2005)**
 - (6) KOREA - UNITED STATES FTA (SIGNED JUNE 2007, HAS NOT YET ENTERED INTO FORCE)**
 - (7) JAPAN - SWITZERLAND EPA (SIGNED FEBRUARY 2009, ENTERED INTO FORCE SEPTEMBER 2009)**
 - (8) KOREA - EU FTA (SIGNED OCTOBER 2010, ENTERED INTO FORCE JULY 2011)**
 - (9) JAPAN - AUSTRALIA EPA (SIGNED JULY 2014, ENTERED INTO FORCE JANUARY 2015)**
 - (10) JAPAN-MONGOLIA EPA (SIGNED FEBRUARY 2015)**
 - (11) CHINA - KOREA FTA (SIGNED JUNE 2015, ENTERED INTO FORCE IN DECEMBER 2015)**
 - (12) CHINA-AUSTRALIA FTA (SIGNED JUNE 2015, ENTERED INTO FORCE IN DECEMBER 2015)**
- For the features of the above EPAs, see pages 958-966 of the 2017 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, EPA/FTA and IIA -.
- (13) TRANS-PACIFIC PARTNERSHIP (TPP) AGREEMENT (SIGNED IN FEBRUARY 2016)**

Chapter 14 “Electronic Commerce” consists of Definitions (Article 1), Scope and General Provisions (Article 2), Customs Duties (Article 3), Non-Discriminatory Treatment of Digital Products (Article 4), Domestic Electronic Transactions Framework (Article 5), Electronic Authentication and Electronic Signatures (Article 6), Online Consumer Protection (Article 7),

Personal Information Protection (Article 8), Paperless Trading (Article 9), Principles on Access to and Use of the Internet for Electronic Commerce (Article 10), Cross-Border Transfer of Information by Electronic Means (Article 11), Internet Interconnection Charge Sharing (Article 12), Location of Computing Facilities (Article 13), Unsolicited Commercial Electronic Messages (Article 14), Cooperation (Article 15), Cooperation on Cybersecurity Matters (Article 16), Source Code (Article 17) and Dispute Settlement (Article 18).

The Agreement provides for “Cross-Border Transfer of Information by Electronic Means,” which permits cross-border transfer of information, including personal information, by electronic means if such transfer is made by companies, etc. for business purposes. It also provides for “Location of Computing Facilities,” which prohibits each contracting party from requiring companies, etc. to, for example, establish computing facilities in its territory as a condition for conducting business in that territory; and “Source Code,” which prohibits each contracting party from requiring the transfer of, or access to, source code of mass-market software owned by a person of another Party.

(14) COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP) (SIGNED MARCH 2018)

Same as the TPP explained above. (Yet to be approved by the Diet as of March 2018.)

Figure III-8-1 The Lineage of Major International Initiatives Relating to Electronic Commerce

	WTO	OECD	UNCITRAL	APEC	Bilateral Agreements (Date of Signature)
1980		Guidelines Governing the Protection of Transborder Flows of Personal data			
1992		Guidelines on Security of Information Systems			
1997		Guidelines on Cryptography Policy	Model Law on Electronic Commerce		
1998	Ministerial Declaration on Global Electronic Commerce E-Commerce Work Programme Agreement on a moratorium on the non-imposition of customs duties	Electronic Commerce Taxation Framework Conditions, OECD Action Plan for Electronic Commerce		APEC Blueprint for Action on Electronic Commerce	
1999		Guidelines for Consumer Protection in the Context of Electronic Commerce		Electronic Commerce Steering Group	
2000		Local Access Pricing and E-Commerce, Round Table Discussions on Electronic Commerce			
2001	Extension of the moratorium on the non-imposition of customs duties		Model Law on Electronic Signature		
2002		Guidelines for the Security of Information Systems and Networks			
2003		Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial			Australia-Singapore FTA US-Singapore FTA US-Chile FTA

	WTO	OECD	UNCITRAL	APEC	Bilateral Agreements (Date of Signature)
		Practice Across Borders			
2004	Extension of the moratorium on the non-imposition of customs duties			Guidelines on Techniques for Issuing Certificates That Can be Provided for Use in Electronic Commerce Throughout the APEC Region	US-Australia FTA Australia-Thailand FTA
2005	Extension of the moratorium on the non-imposition of customs duties		United Nations Convention on the Use of Electronic Communications in International Contracts	APEC Privacy Framework	Thailand-New Zealand Closer Economic Partnership Agreement India-Singapore Comprehensive Economic Cooperation Agreement Korea-Singapore FTA
2006					US-Peru FTA US-Colombia FTA
2007				APEC Data Privacy Pathfinder, agreement on APEC Trade Facilitation Model Measures Concerning Electronic Commerce Chapters of FTAs	Korea-US FTA
2008					Australia-Chile FTA
2009	Extension of the moratorium on the non-imposition of customs duties				Japan-Switzerland EPA
2010				APEC Cross-border Privacy Enforcement Arrangement (CPEA)	Korea-EU FTA
2011	Extension of the moratorium on the non-imposition of customs duties			APEC Cross-border Privacy Rules System (CBPR)	
2010	Extension of the moratorium			APEC Cross-border Privacy	Korea - EU FTA

	WTO	OECD	UNCITRAL	APEC	Bilateral Agreements (Date of Signature)
2011	on the non-imposition of tariffs			Enforcement. Arrangement (CPEA) APEC Cross-border Privacy Rules System (CBPR)	
2012	Extension of the moratorium on the non-imposition of customs duties	Guidelines Governing the Protection of Transborder Flows of Personal Data revised			Australia-Malaysia FTA
2013					
2014					
2015	Extension of the moratorium on the non-imposition of customs duties				Japan-Australia EPA Japan-Mongolia EPA China-Korea FTA China-Australia FTA
2016		Digital Security Risk Management for Economic and Social Prosperity			TPP
2017	Extension of the moratorium on the non-imposition of customs duties Joint statement on Electronic Commerce	Guidelines for Consumer Protection in the Context of Electronic Commerce revised			

Figure III-8-2 Various Definitions of “Electronic Commerce”

From the WTO Electronic Commerce Action Plan adopted in September 1998.	(Paragraph 1.3 Sentence 1) Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term “electronic commerce” is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.
From the UNCITRAL Model Law on Electronic Commerce adopted by United Nations General Assembly resolution in January 1997.	(Preamble, Paragraph 2) Noting that an increasing number of transactions in international trade are carried out by means of electronic data interchange and other means of communication, commonly referred to as “electronic commerce”, which involve the use of alternatives to paper-based methods of communication and storage of information

Part III: FTA/EPA and IIA

From <i>Measuring Electronic Commerce</i> , a document published by the OECD in January 1997	Electronic commerce refers generally to all forms of transactions relating to commercial activities, including both organizations and individuals, which are based upon the processing and transmission of digitized data, including text, sound and visual images.
Based on the definition in the Summary Record of the 2001 meeting [DSTI/ICCP/IIS (2001) M], a document published by the OECD in 2001	An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks. The goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.
From the definition of Internet transaction in the Summary Record of the 2001 meeting [DSTI/ICCP/IIS (2001) M], a document published by the OECD in 2001	An Internet transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over the Internet. The goods and services are ordered over the Internet, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.
2009 Integration of broad and narrow OECD definitions	An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organizations.

Figure III-8-3 Specific content prescribed in bilateral agreements, etc.

	Australia-Singapore FTA		USA-Singapore FTA		USA-Chile FTA		USA-Australia FTA	
	Signed February 2003 Effective July 2003		Signed May 2003 Effective January 2004		Signed June 2003 Effective January 2004		Signed May 2004 Effective January 2005	
1. Scope	● "Affirmation of conformity to the WTO regulation" (Preamble) ● Objectives and general definition (Article 1) ● Exceptions (Article 9) ● Non-application of dispute settlement provisions		● General (Article 14.1) ● Electronic supply of services (Article 14.2) ● Definitions (Article 14.4) ● GATS general exceptions applicable (General and final provisions, Article 21.1 Paragraph 2) ● Financial prudential measures excluded from scope of chapter on		● General provisions (Article 15.1) ● Excludes related provisions, exceptions and non-conforming measures in the Agreement or Annex ● Electronic supply of services (Article 15.2) ● Definitions (Article 15.6) ● GATS general exceptions applicable (Exceptions chapter		● General (Article 16.1) ● Electronic supply of services (Article 16.2) ● Definitions (Article 16.8) ● GATS general exceptions applicable (General and final provisions, Article 22.1 Paragraph 2) ● Financial prudential measures excluded from scope of chapter on	

	Australia-Singapore FTA		USA-Singapore FTA		USA-Chile FTA		USA-Australia FTA	
	Signed February 2003 Effective July 2003		Signed May 2003 Effective January 2004	electronic commerce (Finance chapter Article 10.10 Paragraphs 1 and 2)	Signed June 2003 Effective January 2004	Article 23.1 Paragraph 2) Financial prudential measures excluded from scope of chapter in electronic commerce (Finance chapter Article 12.10 Paragraphs 1 & 2)	Signed May 2004 Effective January 2005	electronic commerce (Finance chapter Article 13.10 Paragraphs 1 & 2)
2. Provision on consistency with other regulations								● Adjustment between non-discriminatory treatment of digital products (Article 17) and intellectual property rights chapter (Article 16.4 Paragraph 3(c))
3. Non-discriminatory treatment of digital products			● Digital products (Article 14.3 Paragraphs 3 & 4) ● NT and MFN provision including both carrier media and electronic transmissions ● Broadcasting services excluded from the scope of application ● Consistency measures set forth in the chapters on cross-border services, finance and investment are also excluded from the scope of application of the chapter on electronic commerce	● Non-discriminatory treatment of digital products (Article 15.4) ● NT and MFN provisions regarding electronic transmissions only ● Current non-conforming measures can be maintained for up to one year after the effective date of the Agreement (only measures described in the Annex can be maintained after that)	● Non-discriminatory treatment of digital products (Article 16.4) ● NT and MFN provisions including both carrier media and electronic transmissions ● Audio-visual and broadcasting services excluded from the scope of application ● Consistency measures set forth in the chapter on services and investment are also excluded from the scope of application of the chapter on electronic commerce ● Subsidies and administration services are also excluded			
4. Customs duties	● Perpetual obligation not to impose customs duties on bilateral “electronic transmissions” (Article 3)	● Non-discriminatory treatment of digital products (Article 14.3 Paragraphs 1 & 2) ● Perpetual obligation not to impose customs duties on bilateral “electronic transmission” ● Obligation to maintain custom procedures on digital products on carrier media	● Customs duties on digital products (Article 15.3) ● Perpetual obligation not to impose customs duties on bilateral “electronic transmissions”	● Customs duties (Article 16.3) ● Perpetual obligation not to impose customs duties on bilateral “electronic transmissions”				
5. Domestic regulations	● Domestic regulatory frameworks							

Part III: FTA/EPA and IIA

	Australia-Singapore FTA Signed February 2003 Effective July 2003 (Article 4)	USA-Singapore FTA Signed May 2003 Effective January 2004	USA-Chile FTA Signed June 2003 Effective January 2004	USA-Australia FTA Signed May 2004 Effective January 2005
6. Electronic signatures and authentication services	● Electronic authentication and electronic signatures (Article 5)			● Authentication and digital certificates (Article 16.5)
7. Paperless trade administration	● Paperless trade (Article 8)			● Paperless trade administration (Article 16.7)
8. Online consumer protection	● Online consumer protection (Article 6) ● Online personal data protection (Article 7)			● Protection of online consumers (Article 16.6) ● Invokes provisions from the OECD "Guidelines for protection consumers regarding electronic commerce"
9. Private sector participation	● Domestic regulatory frameworks (Article 4)			
10. Cooperation			● Cooperation (Article 15.5)	
11. Cross-border information flow			● Cooperation (Article 15.5) ● Paragraph (c) ● Cooperation in maintaining cross-border information flow of the APEC model measures	
12. Unsolicited mail				
13. Others	● Transparency (Article 2)			

	Australia-Thailand FTA Signed July 2004 Effective January 2005	Thailand-New Zealand CEPA Signed April 2005 Effective July 2005	India-Singapore CECA Signed June 2005 Effective August 2005	Korea-USA FTA Signed June 2007 Effective March 2012
1. Scope	● Objectives and definitions (Article 1101) ● Non-application of dispute settlement provisions (Article 1109)	● Objectives and definitions (Article 10.1) ● Non-application of dispute settlement provisions (Article 10.8)	● General provisions (Article 10.1) ● Electronic supply of services (Article 10.3) ● Definitions (Article 10.2) ● Exceptions (Article 10.5) ● Government procurement is excluded ● General and security exceptions apply ● Non-conforming measures in other	● General (Article 15.1) ● Electronic supply of services (Article 15.2) ● Definitions (Article 9) ● GATS general exceptions applicable (Exceptions chapter Article 22.1 Paragraph 2) ● Financial prudential measures excluded from scope of chapter on electronic commerce (Finance

	Australia-Thailand FTA		Thailand-New Zealand CEPA		India-Singapore CECA		Korea-USA FTA	
	Signed July 2004 Effective January 2005		Signed April 2005 Effective July 2005		Signed June 2005 Effective August 2005		Signed June 2007 Effective March 2012	
					- chapters are excluded - Broadcasting services excluded from the scope of application	chapter Article 13.10 Paragraphs 1 & 2)		
2. Provisions on consistency with other regulations								
3. Non-discriminatory treatment of digital products					- Digital products (Article 10.4 Paragraphs 3 & 4) - NT provisions including both carrier media and electronic transmissions - Broadcasting services excluded from the scope of application - Consistency measures set forth in the chapters on cross-border services, finance and investment are also excluded from the scope of application of the chapter on electronic commerce	- Digital products (Article 15.3 Paragraphs 2 & 3) - NT and MFN provisions including both carrier media and electronic transmissions (in particular, NT emphasizes the application to bilateral trade) - Broadcasting services excluded from the scope of application - Consistency measures set forth in the chapters on cross-border services, finance and investment are also excluded from the scope of application of the chapter on electronic commerce - Subsidies and government services are also excluded		
4. Customs duties	Perpetual obligation not to impose customs duties on bilateral “electronic transmissions” (Article 1102)		Perpetual obligation not to impose customs duties on bilateral “electronic transmissions” (Article 10.2)		- Digital products (Article 10 Paragraphs 1 & 2) - Perpetual obligation not to impose customs duties on bilateral “electronic transmissions” - Obligation to maintain customs procedures on digital products on carrier media	- Non-discriminatory treatment of digital products (Article 15.3 Paragraph 1) - Perpetual obligation not to impose customs duties on bilateral “electronic transmissions” or digital products on carrier media - There is a consultation provision concerning differences in outlook relating to the operation of the regulations		
5. Domestic regulations	Domestic regulatory frameworks (Article 1103)		Domestic regulatory frameworks (Article 10.3)					

	Australia-Thailand FTA		Thailand-New Zealand CEPA		India-Singapore CECA		Korea-USA FTA	
	Signed July 2004 Effective January 2005		Signed April 2005 Effective July 2005		Signed June 2005 Effective August 2005		Signed June 2007 Effective March 2012	
6. Electronic signatures and authentication services	Electronic authentication and digital certificates (Article 1104)						- Electronic authentication and electronic certificates (Article 15.4) - There is an additional provision regarding the principle of technological neutrality in relation to electronic signatures - There is an exception relating to “legitimate governmental objectives”	
7. Paperless trade administration	Paperless trading (Article 1107)		Paperless trading (Article 10.6)				Paperless trading (Article 15.6)	
8. Online consumer protection	- Online consumer protection (Article 1105) - Online personal data protection (Article 1106)		- Online consumer protection (Article 10.4) - Online personal data protection (Article 10.5)				- Online consumer protection (Article 15.5) - Adopts the principles of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce - Provision on cooperation between governmental authorities in both countries (law enforcement authorities and national consumer protection agencies, in relation to fraud, etc.) (Article 15.8) - Provision on the protection of personal data (incorporates the principles of the APEC Privacy Framework)	
9. Private sector participation	- Domestic regulatory frameworks (Article 1103) - Cooperation (Article 1108)		- Domestic regulatory frameworks (Article 10.3) - Cooperation (Article 10.7)					
10. Cooperation								
11. Cross-border information flow							- Cross-border information flow (Article 15.8) - Provisions related to personal information protection (invokes	

	Australia-Thailand FTA	Thailand-New Zealand CEPA	India-Singapore CECA	Korea-USA FTA
	Signed July 2004 Effective January 2005	Signed April 2005 Effective July 2005	Signed June 2005 Effective August 2005	Signed June 2007 Effective March 2012
				provisions from the APEC Privacy Framework)
12. Unsolicited mail				
13. Others			● Transparency (Article 10.6)	● "Principle of access to and use of the internet for electronic commerce" (Article 15.7)

	Japan-Switzerland EPA	ASEAN-Australia-New Zealand FTA	Korea-EU FTA	Australia-Malaysia FTA
	Signed February 2009 Effective March 2009	Signed February 2009 Effective January 2010	Signed October 2010 Effective July 2011	Signed May 2012 Effective January 2013
1. Scope	● Scope (Article 70) ● General Principles (Article 71) ● Definitions (Article 72) ● Exceptions (Article 83) ● GATS/GATT general and security exceptions cited ● Subsidies, government services and special tax measures are also excluded	● Objective (Article 1) ● Definitions (Article 2)	● General (Article 7.48 Paragraph 1) ● Exclusion of audio-visual services (Cross-border services trade section Article 7.4 Paragraph 1 and Establishment section Article 7.10) ● Audio-visual services are stipulated in the EU-Korea Protocol on Cultural Cooperation	● Objective (Article 15.1) ● Electronic supply of services (Article 15.2) ● Definitions (Article 15.3)
2. Provisions on consistency with other regulations	● Provision regarding coordination with the chapters on trade in goods, trade in services, investment and intellectual property (General principles (Article 71, Paragraph 3))	● Non-application of Chapter 17 Consultations and Dispute Settlement) (Article 10)		
3. Non-discriminatory treatment of digital products	● Non-discriminatory treatment of digital products (Article 73) ● NT and MFN provisions regarding electronic transmissions only (however, for NT it is a “best effort” provision) ● Consistency measures set forth in the chapters on services and investment are also excluded from the scope of application of the chapter on electronic commerce ● Sets forth provisions and principles on determining the nationality of digital products and also establishes an obligation to explain ● Stipulates that consultations are to take places 5 years after the effective date of the agreement			

	Japan-Switzerland EPA	ASEAN-Australia-New Zealand FTA	Korea-EU FTA	Australia-Malaysia FTA	
				Signed May 2012 Effective January 2013	Signed May 2012 Effective January 2013
4. Customs duties	Provision affirming the WTO moratorium on the imposition of customs duties (Article 76)	Signed February 2009 Effective January 2010	- Signed October 2010 Effective July 2011 - Objective and principles (Article 7.48 Paragraph 3) - Non-imposition of customs duties on electronic transmissions (Footnote: "The inclusion of the provisions on electronic commerce in this Chapter is made without prejudice to Korea's position on whether deliveries by electronic means should be categorized as trade in services or goods."	Customs duties (Article 15.4)	
5. Domestic regulations	- Domestic regulation (Article 77) - Partially invokes the principles on Article VI of GATS (domestic regulations)	Domestic regulatory frameworks (Article 3)		Domestic regulatory frameworks (Article 15.5)	
6. Electronic signatures and authentication services	- Electronic signatures and certification services (Article 78) - There is an exception relating to specified transactions stipulated in domestic laws - There is an exception relating to "legitimate governmental objectives"	Electronic authentication and digital certificates (Article 5)	Cooperation on regulatory issues (Article 7.49 Paragraph 1(a))	Electronic authentication and digital certificates (Article 15.6)	
7. Paperless trade administration	Paperless trade administration (Article 79)	- Paperless trading (Article 8) - Cooperation on electronic commerce (Article 9 Paragraph (a))	Cooperation on regulatory issues (Article 7.49 Paragraph 1(c))	Paperless trading (Article 15.9)	
8. Online consumer protection	- Protection of online consumers (Article 80) - Also includes provisions on the principles of the protection of privacy	- Online consumer protection (Article 6) - Online personal data protection (Article 7) - Cooperation on electronic commerce (Article 9 Paragraph (c))	- Objective and principles (Article 7.48 Paragraph 2) - Development of electronic commerce in line with international standards of data protection	- Online consumer protection (Article 15.7) - Online personal data protection (Article 15.8)	

Part III: FTA/EPA and IIA

	Japan-Switzerland EPA	ASEAN-Australia-New Zealand FTA		Korea-EU FTA		Australia-Malaysia FTA	
		Signed February 2009 Effective March 2009	Signed February 2009 Effective January 2010	Signed February 2009 Effective January 2010	Signed October 2010 Effective July 2011	Signed May 2012 Effective January 2013	
9. Private sector participation	Private sector participation (Article 81)	Cooperation on electronic commerce (Article 9 Paragraph (g))					
10. Cooperation	Cooperation (Article 82)	Cooperation on electronic commerce (Article 9)		Cooperation on regulatory issues (Article 7.49)			
11. Cross-border information flow							
12. Unsolicited mail	- Cooperation (Article 82.2 Paragraph (b)) - Consumer/data protection (Electronic transmission service Annex Article 9.1 Paragraph (a))	Cooperation on electronic commerce (Article 9 (Paragraph (c))		- Cooperation on regulatory issues (Article 7.49 Paragraph 1(c)(d)) - Measures on unsolicited electronic commercial communications and consumer protection		Unsolicited commercial electronic messages (Article 15.10)	
13. Others	- Non-discriminatory treatment of services (Article 74) - Consistency measures set forth in the chapters on services and investment area excluded from the scope of application of the chapter on electronic commerce - Market access (Article 75) - Consistency measures set forth in the chapters on services and investment are excluded from the scope of application of the chapter on electronic commerce	Transparency (Article 3)		- Cooperation on regulatory issues (Article 7.49 Paragraph 1(b)) - Liability of intermediary service providers with respect to the transmission or storage of information			

	Japan-Australia EPA Signed July 2014 Effective January 2013	Japan-Mongolia EPA Signed February 2015	China-Korea FTA Signed June 2015 Effective December 2015	China-Australia FTA Signed June 2015 Effective December 2015
	Basic principles (Article 13.1) Definitions (Article 13.2)	General provisions (Article 9.1) Definitions (Article 9.2)	General (Article 13.1) Definitions (Article 13.8)	Purpose and objective (Article 12.1) Definitions (Article 12.2)
1. Scope	• Basic principles (Article 13.1) • Definitions (Article 13.2)	• General provisions (Article 9.1) • Definitions (Article 9.2)	• General (Article 13.1) • Definitions (Article 13.8)	• Purpose and objective (Article 12.1) • Definitions (Article 12.2)
2. Provisions on consistency with other regulations		• Provision regarding coordination with the chapters on trade in goods, trade in services, and intellectual property (Article 9.1 General provisions)	• Relation to other chapters (Article 13.2) • Non-application of dispute settlement (Article 13.9)	• Dispute settlement provisions (Article 12.11)
3. Non-discriminatory treatment of digital products	• Non-discriminatory treatment of digital products (Article 13.4) • NT and MFN provisions regarding electronic transmissions only • Provision regarding coordination with non-conforming measures, properties, government procurement, subsidies, and services supplied in the exercise of government authority in the chapters on investment and trade in services	• Non-discriminatory treatment of digital products (Article 9.4) • NT and MFN provisions including digital products fixed on a carrier medium • Government procurement, subsidies provided by a Party or a state enterprise (including grants, government-supported loans, guarantees and insurance), and measures listed in the Schedules of Specific Commitments and List of MFN Treatment Exemptions of the trade in services chapter and in the Reservations of the investment chapter are excluded from the scope of application of the chapter on electronic commerce		
4. Customs duties	• Customs duties (Article 13.3) • Perpetual obligation not to impose customs duties on bilateral “electronic transmissions”	• Customs duties (Article 9.3)	• Customs duties (Article 13.3)	• Customs duties (Article 12.3)
5. Domestic regulations	• Domestic regulation (Article 13.5)	• Domestic regulation (Article 9.9)		• Domestic regulatory frameworks (Article 12.5)
6. Electronic signatures and authentication services	• Electronic signature (Article 13.6)	• Electronic signature (Article 9.5)	• Electronic signatures and authentication services (Article 13.4)	• Electronic authentication and digital certificates (Article 12.6)

Part III: FTA/EPA and IIA

	Japan-Australia EPA		Japan-Mongolia EPA		China-Korea FTA		China-Australia FTA	
	Signed July 2014 Effective January 2013		Signed February 2015		Signed June 2015 Effective December 2015		Signed June 2015 Effective December 2015	
7. Paperless trade administration	Paperless trade administration (Article 13.9)	Paperless trade administration (Article 9.8)	Paperless trading (Article 13.6)	Paperless trading (Article 12.9)				
8. Online consumer protection	- Consumer protection (Article 13.7) - Personal data protection (Article 13.8)	Consumer protection (Article 9.6)	Protection of personal information in electronic commerce (Article 13.5)	- Online consumer protection (Article 12.7) - Online data protection (Article 12.8)				
9. Private sector participation	Cooperation (Article 13.10)	Cooperation (Article 9.12)		Cooperation on electronic commerce (Article 12.10)				
10. Cooperation								
11. Cross-border information flow								
12. Unsolicited mail		Unsolicited commercial e-mail (Article 9.7)						
13. Others		- Prohibition of requirement concerning the location of computing facilities (Article 9.10) - Source code (Article 9.11) - Sub-Committee on Electronic Commerce (Article 9.13)		Transparency (Article 12.4)				