

Digital Trade Agreements: Korea's Experience

September 12, 2023

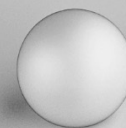
Junghyun PARK | Lee & Ko





Contents

- I.** The Birth of Digital Trade Agreements
- II.** Developments of DTAs
- III.** Digital Trade Agreements of Korea
- IV.** Where does UNCITRAL encounter DTAs?



I. The Birth of Digital Trade Agreements

- **Emergence of digital trade** as an important and growing component of trade flows and its corresponding rise in significance on the trade policy agenda
- **Lack of progress in multilateral negotiations** (WTO E-Commerce Negotiations)
- **No single set of international rules or disciplines for digital trade**
- **Proliferation of Bilateral/Regional Negotiation** of Digital Trade Agreements
- **Digital Trade Agreements formulated** in the form of Provision(s) and a Chapter in FTAs/RTAs, Individual Agreements



II. Developments of Digital Trade Agreements

From	To
<ul style="list-style-type: none">• digital trade provisions/chapters in trade agreements	<ul style="list-style-type: none">• stand-alone agreements
<ul style="list-style-type: none">• focusing on e-commerce	<ul style="list-style-type: none">• expands to data flow, protection of personal info., server localization, source code, even further to digital economy, incl. AI, fintech, <i>etc.</i>
<ul style="list-style-type: none">• cooperation provisions	<ul style="list-style-type: none">• binding obligations

Included in the FTAs/RTAs:

- **Korea-US (KORUS) FTA Chapter 15 Electronic Commerce**
- CPTPP Chapter 14 Electronic Commerce
- USMCA Chapter 19 Digital Trade

Stand-alone Agreements:

- US-Japan Digital Trade Agreement (**USJDTA**)
- **Digital Economy Partnership Agreement (DEPA)**
- Australia-Singapore Digital Economy Agreement (**AUSDEA**)
- **Korea-Singapore Digital Partnership Agreement (KSDPA)**

Basic Provisions on E-commerce:

- Electronic Authentication and Signatures; Electronic Invoicing;
- Electronic Payments; Logistics; Paperless Trading, *etc.*

Expanded to Provisions for Digital Trade/Economy:

- Cross-Border Transfer of Information by Electronic Means;
- Location of Computing Facilities; Personal Information Protection;
- Source Code; Online Consumer Protection;
- Cybersecurity; Online Safety and Security; Data Innovation;
- Competition in the Digital Economy; Artificial Intelligence; Fintech Cooperation, *etc.*

Beginning From Cooperation Provisions:

- The Parties *recognize the importance of* [...]
- Each Party *shall endeavor to* [...]

Binding Obligations Added:

- Neither Party *shall* prohibit or restrict the cross-border transfer of information by electronic means, including personal information, [...]
- Neither Party *shall* require [...] to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

III. Digital Trade Agreements of Korea

Korea's 13 FTAs/RTAs with an individual chapter on E-Commerce

- '06 KOR-**Singapore** FTA (Chapter 14)
- '11 KOR-**EU** FTA & '21 KOR-**UK** FTA (Chapter 7, together with Trade in Services and Establishment)
- '11 KOR-**Peru** FTA (Chapter 14), '12 **KORUS** FTA (Chapter 15)
- '14 KOR-**Australia** FTA (Chapter 15), '15 KOR-**Canada** FTA (Chapter 13)
- '15 KOR-**China** FTA (Chapter 13), '15 KOR-**Vietnam** FTA (Chapter 10)
- '16 KOR-**Colombia** FTA (Chapter 12), '19 KOR-**Central America** FTA (Chapter 14)
- '22 **RCEP** (Chapter 12), KOR-**Israel** FTA (Chapter 13, not in effect)

Features of E-commerce Chapters in Korea's FTAs

- **No customs duties on electronic transmissions** (internal taxes, fees or other charges may vary)
- **Common elements:** ① definition of a digital product, ② electronic authentication and electronic signature, ③ paperless trading, ④ personal information protection, and ⑤ online consumer protection.
- **Non-discriminatory treatment of digital products is not so common** (included in FTAs with Singapore, the U.S., Central America and Israel)
- **Cross-border information flows** is provided for only in KORUS FTA.
- In terms of content, **KORUS FTA Chapter 15** may represent other FTA chapters on e-commerce.

Evolving toward comprehensive agreements for digital economy

- **Multi-layered approach:** bilateral, plurilateral and multilateral digital trade agreement negotiations concluded or are in progress.
- **KSDPA** entered into force early this year; **Korea's DEPA accession** negotiation is recently concluded; **IPEF Pillar 1 negotiation** in progress; and **WTO Joint Statement Initiative (JSI) on E-commerce negotiation** in progress.
- **New elements added:** cross-border transfer of information by electronic means, location of computing facilities, source code, unsolicited commercial electronic messages, *etc.*

KORUS FTA Chapter 15 Electronic Commerce

- entered into force on March 15, 2012
- functioned as a model for the subsequent provisions/agreements on digital trade, incl. CPTPP, USMCA, *etc.*

KSDPA

- entered into force on January 14, 2023
- amending Chapter 14 (Electronic Commerce) of Korea-Singapore FTA

DEPA

- negotiation concluded on June 9, 2023
- opinion inquiry for the Korean text in progress (until September 16, 2023)

E-Commerce Facilitation

Provision	KORUS FTA	KSDPA	DEPA
Customs duties	Art. 15.3	Art. 14.5	Art. 3.2
Domestic electronic transactions framework		Art. 14.7	Art. 2.3
Electronic authentication and electronic signature	Art. 15.4	Art. 14.8	
Logistics		Art. 14.9	Art. 2.4
Electronic invoicing		Art. 14.10	Art. 2.5
Electronic payments		Art. 14.11	Art. 2.7
Paperless trading	Art. 15.6	Art. 14.12	Art. 2.2
Express shipments		Art. 14.13	Art. 2.6

Digital Business Facilitation

Provision	KORUS FTA	KSDPA	DEPA
Non-discrimination	Art. 15.3	Art. 14.6	Art. 3.3
Cross-border transfer of information	Art. 15.8	Art. 14.14	Art. 4.3
Location of computing facilities		Art. 14.15	Art. 4.4
ICT products that use cryptography		Art. 14.18	Art. 3.4
Artificial Intelligence		Art. 14.28	Art. 8.2
Fintech Cooperation		Art. 14.29	Art. 8.1
Digital Identities		Art. 14.30	Art. 7.1
SMEs and Startups		Art. 14.32	Arts. 10.1 thru 10.4

Business and Consumer Trust

Provision	KORUS FTA	KSDPA	DEPA
Personal information protection		Art. 14.17	Art. 4.2
Source code		Art. 14.19	
Unsolicited commercial electronic Messages		Art. 14.20	Art. 6.2
Online consumer protection	Art. 15.5	Art. 14.21	Art. 6.3
Cybersecurity cooperation		Art. 14.22	Art. 5.1
Online safety and security		Art. 14.23	Art. 5.2

Others

Provision	KORUS FTA	KSDPA	DEPA
Principles on access to and use of the internet for electronic commerce	Art. 15.7	Art. 14.24	Art. 6.4
Data innovation		Art. 14.25	Art. 9.4
Open government data		Art. 14.26	Art. 9.5
Competition in the digital economy		Art. 14.27	Art. 8.4
Digital Inclusion			Art. 11.1

IV. Where does UNCITRAL encounters Digital Trade Agreements?

- **CPTPP** firstly provided for an obligation to maintain a legal framework governing electronic transactions consistent with the principles of the ***UNCITRAL Model Law on Electronic Commerce (1996) and the UN Convention on the Use of Electronic Communications in International Contracts (2005)***.
- Followed by **USMCA, USJDTA, Singapore-Australia DEA, and DEPA,**
- **The more recently** concluded, **the more the UNCITRAL rules** referred to.
- **KOR-Australia FTA Art. 15.4 and KOR-Vietnam FTA Art. 10.4** also provide for the obligation to adopt or maintain measures regulating electronic commerce taking into account the ***UNCITRAL Model Law on Electronic Commerce (1996)***.

KSDPA Art.14.7 (Domestic Electronic Transactions Framework) provides:

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the ***UNCITRAL Model Law on Electronic Commerce (1996)*** or the ***United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York, November 23. 2005.***
2. Each Party shall endeavour to: [...]
 - (b) adopt the ***UNCITRAL Model Law on Electronic Transferable Records (2017)***; [...]

DEPA Art. 2.3 (Domestic Electronic Transactions Framework) provides:

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of:

a) the ***UNCITRAL Model Law on Electronic Commerce (1996)***;

or

b) the ***United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York, November 23, 2005.***

2. Each Party shall endeavour to adopt the ***UNCITRAL Model Law on Electronic Transferable Records (2017)***.

[...]



Thank you!

Junghyun PARK

junghyun.park@leeko.com

+82-2-6386-6649

Lee
& KO