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U.S. Strategies to Make New Digital Trade Order

새로운 디지털통상 질서 확립을 위한 미국의 전략

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U.S. Strategies to Make New Digital Trade Order

by

Hee Eun Mun

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Abstract

U.S. Strategies to Make New Digital Trade Order

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As the digital economy continues to rapidly grow, accelerated in large part due to the effects of the Covid-19 pandemic, each country's interests in digital trade have also greatly increased. However, only recently have serious discussions on digital trade rules been held in earnest and only after relevant rules and regulations were formed and developed by major digital trade agreements such as the Digital Economy Partnership Agreement (DEPA) and Singapore-Australia Digital Economy Agreement (SADEA), led by a few leading countries in this area including Singapore, New Zealand, and Australia. On the other hand, multilateral discussions at the World Trade Organization (WTO) have not been making much progress mainly due to the differing levels of development amongst member countries' digital economies, making it difficult to narrow the different interests on core issues.

Meanwhile, during the Trump administration, the U.S., which has long played a leadership role in establishing traditional trade norms under the General Agreement on Tariffs and Trade (GATT) and the WTO systems, implemented a unilateral trade policy that puts U.S. interests first and aggressively showed its distrust in multilateralism in trade. This led to the absence of U.S. leadership at a time when major countries were embarking on crucial digital trade rulemaking processes, with the U.S. position in digital trade furthermore weakened after withdrawing from the Trans-Pacific Partnership (TPP). After the Biden administration took office, efforts

have been made to strengthen cooperation and partnership with traditional allies such as the European Union (EU) and Japan with the goal of returning to multilateralism and containing the rise of China. Such efforts are significantly expanding especially in digital trade and technology sectors by taking a cooperative approach with like-minded countries on emerging new trade issues such as supply chains, digital economies, technology standards, and labor and human rights, rather than a comprehensive form of traditional trade agreements.

In this context, this study aims to closely examine the strategies that the U.S., which has lost its competitiveness in digital trade rulemaking for some time, would possibly choose to lead the digital trade rule-setting process in the future. To this end, this study analyzes how the U.S. has formed digital trade rules through existing digital trade agreements as well as each cooperative partnership the U.S. has with Japan and the EU. Based on these examples, this study aims to examine how the U.S. will shape the new digital trade order through possible options it has including the Indo-Pacific Economic Framework (IPEF), providing a thorough analysis of what components of digital trade could be included in the IPEF as a form of a cooperative approach and potential challenges thereof.

Keywords : Digital Trade, CPTPP, USMCA, USJDTA, CoRe Partnership, Trade Technology Council, IPEF
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Abbreviation

AI	Artificial Intelligence
APEC	Asia-Pacific Economic Cooperation
CBPR	Cross-Border Privacy Rules
CoRe Partnership	U.S.-Japan Competitiveness and Resilience Partnership
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DEPA	Digital Economy Partnership Agreement
DSR	Digital Silk Road
EPCC	Economic Policy Consultative Committee
EU	European Union
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDPR	General Data Protection Regulation
ICT	Information and Communication Technology
IPEF	Indo-Pacific Economic Framework
IPRs	Intellectual Property Rights
ISPs	Internet Service Providers
JSI	Joint Statement Initiative
JUCIP	Japan-U.S. Commercial and Industrial Partnership
KORUS FTA	Korea-U.S. FTA
KR-SG DPA	Korea-Singapore Digital Partnership Agreement
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PTA	Preferential Trade Agreement
SADEA	Singapore-Australia Digital Economy Agreement
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TIFA	Trade and Investment Framework Agreements
TiSA	Trade in Services Agreements
TPA	Trade Promotion Authority
TPP	Trans-Pacific Partnership
TTC	U.S.-EU Trade and Technology Council
USITC	United States International Trade Commission
USJDTA	U.S.-Japan Digital Trade Agreement
USMCA	U.S.-Mexico-Canada Agreement
USTR	United States Trade Representative
WTO	World Trade Organization

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Chapter I. Introduction

1. Background and Purpose of Study

Digital trade is not a completely new issue. However, it is one of the very few areas of trade where many countries are eager to join the new rulemaking process. This is not only because not enough rules on digital trade have been made so far, but because digitalization is rapidly progressing around the world, even in developing countries, increasing the necessity of advancing relevant rules to make a safer and more stable digital economic environment.[1] Moreover, considering the nature of the digital economy, which is highly connected through borderless networks, individual efforts through domestic policies cannot fully address relevant issues such as the free flow of data, location of computing facilities, privacy, digital tax, and technology standards, among others.

Based on such shared willingness to engage in new rulemaking on digital trade, there have been multilateral attempts to discuss digital trade agendas at the World Trade Organization (WTO) since 1998, but there have been no fruitful outcomes other than renewing the duty-free moratorium on electronic transmission at every Ministerial Meeting. In 2019, the WTO E-commerce negotiation was officially initiated as the 76 WTO member countries[2] adopted a joint statement that confirmed their shared willingness to initiate negotiations, with 86 WTO members currently

[1] Burri, Mira. "Towards a new treaty on digital trade." *Journal of World Trade* 55, no. 1 (2021).77-100.

[2] Albania; Argentina; Australia; Bahrain, Kingdom of; Brazil; Brunei Darussalam; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union; Georgia; Honduras; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Kuwait, the State of; Lao PDR; Liechtenstein; Malaysia; Mexico; Moldova, Republic of; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; Russian Federation; Singapore; Switzerland; Chinese Taipei; Thailand; the former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Arab Emirates; United States; and Uruguay.

participating in discussions. Despite such efforts, however, the E-commerce discussion at the WTO has been in a stalemate for a long time due to the winner-takes-all features of digital trade which undermines the incentive for member countries to participate in the digital trade rule-setting process and the lack of safeguards against potential challenges in the area of digital trade.[3] Furthermore, the development gap in the digital economy between the developed and developing countries as well as their differing levels of ambition have made it difficult to find appropriate landing zones among countries.

Meanwhile, the U.S. has greatly weakened the trust in multilateralism by taking unilateral trade policies against China and many other countries, and as a result, worsened its relationship with long-time partner countries including the EU. Although there still were efforts to modernize the digital trade rules through plurilateral or multilateral negotiations even in the Trump administration as observed through the cases of the Trans-Pacific Partnership (TPP) and the US-Mexico-Canada Agreement (USMCA), the U.S. ended up withdrawing its participation from the TPP, and therefore, the USMCA is the latest agreement of the U.S. that has an enforcement mechanism on digital trade rules.

While the U.S. was losing its leadership in the international community, especially in the digital trade rulemaking process, other countries such as Singapore, New Zealand, and Australia embarked on setting high standard digital trade norms and accelerated digital trade negotiations to lead digital trade and shape new digital trade architecture. For example, Singapore, as one of the leading countries in the

[3] Lee, Jong-Seok. "The Reasons Why the Establishment of Global Digital Trade Rule has been Delayed and the Implications on Korean Digital Trade Policy." Korea Logistics Review 29, no. 1 (2019): 63-80.

digital trade rulemaking process, signed the Digital Economy Partnership Agreement (DEPA), which came into force on January 7, 2021, with New Zealand and Chile, while replacing the E-commerce chapter of the existing bilateral agreement with Australia with a further advanced digital trade agreement, Singapore-Australia Digital Economy Agreement (SADEA). Given that the U.S. digital trade rules are currently limited to the USMCA as it is not participating in any other multilateral or bilateral trade agreements addressing rules on digital trade such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Regional Comprehensive Economic Partnership (RCEP), the U.S. has lost its ground in digital trade to other countries who endeavored to advance and occupy digital trade rules.

After the Biden administration took office, the U.S. has widely framed its return to multilateralism as a core policy direction, but a mere return to the pre-Trump era would not be enough as the international economic order has been rapidly changing due to various factors. Two years into the pandemic, in particular, there have emerged new challenges such as global supply chains disruption of critical items including raw materials, vaccines, and semiconductors, and many countries, including the U.S., began to pay attention to the concept of "economic security" with a focus on enhancing cooperation among like-minded countries. In this context, the U.S. has made efforts to deepen cooperation with traditional allies such as the EU and Japan not only to strengthen its partnerships with them, but strategically to contain the rise of China. Such efforts are significantly expanding especially in the digital trade and technology sectors by establishing cooperative partnerships with like-minded countries on emerging new trade issues such as supply chains, digital

economies, technology standards, and labor and human rights, rather than negotiating traditional trade agreements.

After the Biden administration firstly announced its new economic initiative toward the Indo-Pacific region in October last year, the so-called "Indo-Pacific Economic Framework (IPEF)" was finally launched on May 23, 2022, with 13 initial participating countries.[4] Given that the IPEF is the most recent initiative of the U.S. whose leadership role was almost absent in the international community over the past years, many countries have shown their strong interest in the IPEF as soon as the Biden administration announced its plans for the initiative. In particular, the digital trade agendas of the "Trade pillar (pillar one)" is one of the important areas in which most countries, including advanced economies such as Singapore, New Zealand, Japan, and South Korea as well as many developing countries in Southeast Asia, are interested in. For those countries who are already committed to a high level of digital trade rules, the digital component of the IPEF is a good opportunity to have aligned rules with the U.S. which is currently not participating in any of the multilateral digital trade agreements. Since the IPEF is not a traditional trade agreement with an adequate enforcement mechanism, the overall structure of the IPEF would be more like a cooperative partnership which is similar to the U.S.-Japan Competitiveness and Resilience Partnership (CoRe Partnership) or the U.S.-EU Trade and Technology Council (TTC). In other words, the digital economy issues could be an advanced version of those cooperative models with additional components.

[4] The U.S., Korea, Japan, Australia, New Zealand, India, Singapore, Philippines, Thailand, Brunei, Indonesia, Malaysia, Vietnam, and Fiji (joined later as the 14th member country).

Against this backdrop, this study aims to examine how the U.S. will shape the new digital trade order through possible options it has including the IPEF. To do that, this study firstly takes a close look at both the typical U.S.-led digital trade agreements such as the (CP)TPP, the USMCA, and the U.S.-Japan Digital Trade Agreement (USJDTA) as well as its strategic partnership with like-minded countries such as the CoRe Partnership and the TTC. It then examines how the components of the cooperative approach are different from those of trade agreement approaches and the interrelation between them, analyzing the challenges and advantages of each approach. Lastly, this study examines how the IPEF would be shaped to maximize the interest of the U.S in digital trade and draws out the policy implications of the U.S. strategies in digital trade rulemaking for the rest of the world, providing an analysis of the expected challenges and advantages of the IPEF.

Chapter II. Development of Digital Trade Rules by the U.S.

1. U.S. Interests in Key Digital Trade Issues

1.1 U.S. Digital Economy and Domestic Policies on Digital Trade

Although the digital economy has already had a great impact on every country's economy and industries for a long time, the importance of the digital economy has become significant to the overall economy more than ever before as digital transformation has been accelerated based on rapid technological development in recent years. Since the outbreak of Covid-19, developed countries where the digital infrastructures are well established have become more dependent on the digital economy while the transition to the digital economy has also been accelerated in developing countries.

This tendency can be easily found even in the U.S. which has long led the digital industry as both the largest producer and consumer of the Information and Communication Technology (ICT) industries and products. As shown in Table 1, the U.S. digital economy represents $3.31 trillion of gross output, which accounts for 10.2% of U.S. gross domestic product (GDP) in 2020, creating 7.8 million jobs.[5] Even during the Covid-19 pandemic, when most areas of the U.S. economy experienced significant declines to a greater or lesser degree, the U.S. digital economy has shown continuous growth at an average annual rate of 4.0%, greatly outpacing the 3.4% growth in the overall economy in the same year. Such growth

[5] U.S. Bureau of Economic Analysis (BEA). *New and Revised Statistics of the U.S. Digital Economy, 2005–2020*. May 2022.

was mainly driven by digital infrastructure and business-to-consumer (B2C) E-commerce, among others.[6]

Table 1 Digital Economy Gross Output by Activity in 2020

Category	Amount (Million USD)
Digital Economy	3,305,894
Infrastructure	1,022,201
Hardware	394,437
Software	627,764
E-commerce	831,490
Business-to-Business E-commerce	581,298
Business-to-Consumer E-commerce	250,192
Priced Digital Services	1,452,203
Cloud Services	161,790
Telecommunications Services	754,551
Internet and Data Services	202,486
All other Priced Digital Services	333,376

Source: Updated Digital Economy Estimates, U.S. Bureau of Economic Analysis, (June 2021)

As the digital economy based on ICT and the internet plays a crucial role in the U.S. economy, the importance of digital trade[7] which is the core of the digital economy has also increased. In particular, the nature of digital trade, which is being traded through a borderless digital environment, raised the need for new rules that are different from those for trade in goods and services. Moreover, as the big tech companies of the U.S. such as Google, Apple, Facebook, and Amazon, which is the so-called "GAFA", dominated the global market and became an important factor in the U.S. economy and national competitiveness, building a safe and stable digital trade environment became one of the key interests of the U.S. In this regard, the U.S.

[6] Ibid.

[7] According to the U.S. International Trade Commission (USITC), digital trade is defined as "U.S. domestic commerce and international trade in which the internet and internet-based technologies play a particularly significant role in ordering, producing, or delivering products and services."

began to make efforts to build a more favorable digital environment for U.S. companies by further advancing its own digital interests and reflecting them in domestic and foreign trade policies.

One example that directly shows the overall position of the U.S. on digital trade is the Trade Promotion Authority (TPA), where Congress sets its detailed guidance to the administration on trade policy priorities and negotiating objectives for future agreements. According to the latest TPA[8] as sown in Table 2, which was signed on June 29, 2015, during the Obama administration and valid until July 1, 2021[9], Congress clearly indicated its strong support for the application of existing WTO commitments including the principle of non-discriminatory treatment of digital products as well as the moratorium on customs duties on electronic transmissions, which has been renewed since 1998.[10] Also, it directed the administration to prevent forced localization of computing facilities and restrictions on the free flow data, while recognizing the possibility that legitimate policy objectives can limit digital trade or cross-border data flows although they are still required to be the least restrictive on trade, non-discriminatory, and transparent. Moreover, it also included the negotiating objectives related to Intellectual Property Rights (IPRs), which have become more important in the digital economy in recent years, such as ensuring the legal and technological means of 'rightholders' in controlling and preventing the use of their works, and providing strong protection for emerging technologies and relevant methods.[11]

[8] Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26)
[9] Congressional Research Service (CRS). *Trade Promotion Authority (TPA) (IF10038).* December 14, 2020
[10] SEC. 102. TRADE NEGOTIATING OBJECTIVES. (b)(6)
[11] Ibid, (5)

Table 2 Negotiating Objectives related to Digital Trade under the TPA 2015

Trade Priorities and Accountability Act of 2015
• Ensure application of existing WTO commitments to the digital trade environment, ensuring no less favorable treatment to physical trade • Prohibit forced localization requirements and restrictions to digital trade and data flows • Keep electronic transmissions duty-free • Ensure relevant legitimate regulations are as least trade-restrictive as possible

Source: Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26)

Meanwhile, the U.S. has taken a relatively clear position on various agendas related to digital trade. For example, the United States Trade Representative (USTR) identifies a list of restrictive measures that could affect E-commerce in its annual reports, and a number of policies of an individual country were comprehensively considered trade restrictions that may affect the 'E-commerce' of the U.S. until 2016[12]. As shown in Table 3, however, such measures have been specifically identified from the aspect of 'digital trade' since 2017, covered in a separate section of the report along with other key trade barriers including import policies and Sanitary and Phytosanitary (SPS) or Technical Barriers to Trade (TBT).[13] Also, in its latest report, the USTR has indicated that it is carefully monitoring policies that have been newly implemented by certain countries such as the responsibilities of digital platforms and internet service providers (ISPs) on harmful contents, digital taxation, and privacy rules. [14]

[12] USTR. *National Trade Estimate Report on Foreign Trade Barriers*. 2013-2016.
[13] USTR. *National Trade Estimate Report on Foreign Trade Barriers*. 2017-2021.
[14] USTR. *National Trade Estimate Report on Foreign Trade Barriers*. 2022.

Table 3 Barriers to Digital Trade identified by the USTR

Potential Barriers to *Digital Trade*	• High tariffs on ICT or digital goods/services • Localization requirements • Restrictions on cross-border data flow • IPR infringement • Discriminatory standards, testing/certification requirements • Cybertheft of U.S. trade secrets • Forced technology transfer
2022 NTE Report	• Responsibilities of digital platforms and internet service providers (ISPs) on harmful contents (Australia, Korea) • Digital Taxation (Canada, EU) • Privacy rules (EU)

Source: Organized by author based on the USTR's National Trade Estimate Reports on Foreign Trade Barriers 2017-2022

In many cases, moreover, the rapid development of a country's digital technologies can be directly related to security matters of other countries and some digital trade issues are even being considered important national security issues for the U.S. According to the Interim National Security Strategic Guidance published by the Biden administration in March 2021, the U.S. emphasized the importance of enhancing its ties with partners and allies in the digital sectors based on shared values of democracies, human rights, etc.[15]

On the other hand, as indicated in Table 4, U.S. interests in digital trade are well reflected in U.S. law as well. Overall, the U.S. supports the free flow of data, preventing data localization and disclosure of source code, duty-free and non-discriminatory treatment of digital products, enhancing cybersecurity, and business-friendly data protection measures. Specifically, interactive computer services and taxation, among others, are noteworthy as the U.S. has been actively pursuing them through both trade agreements and cooperative partnerships in recent years.

[15] White House. *Interim National Security Strategic Guidance*. March 2021.

Table 4 U.S. Domestic Laws affecting E-commerce

Issue	Act	Main provisions
Privacy and Data Protection	Federal Trade Commission Act of 1914 (FTCA), 15 U.S.C. §§ 41-58, as amended	Applies to advertising on the Internet. Prevents unfair methods of competition and unfair or deceptive acts or practices affecting interstate commerce.
	Electronic Communications Privacy Act (ECPA) of 1986, P.L. 99-508	Regulates the interception of electronic communications, and provides for federal criminal penalties for anyone who improperly accesses, uses, intercepts or discloses electronic communications that affect interstate or foreign commerce.
	Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191	Applies to healthcare providers, data processors, pharmacies, and other entities that handle medical information, and sets out standards that apply to the electronic transmission of medical data.
	Gramm-Leach-Bliley Act of 1999 (GLBA), P.L. 106–102	Regulates the collection, use, protection and disclosure of non-public personal information by financial institutions. Requires financial institutions to explain their information-sharing practices to their customers.
	Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the CAN-SPAM Act), P.L. 108-187	Governs unsolicited email communications, and prohibits false or misleading email header information and deceptive subject lines.
Cybercrime	Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030	Governs computer hacking, and makes unlawful certain computer-related activities involving the unauthorized access of a computer.
Interactive Computer Services	Section 230 of the Communications Decency Act of 1996 (Title V of the Telecommunications Act of 1996), 47 U.S.C. § 230	Section 230(c) (1) provides immunity from non-IP, civil liability for providers and users of an "interactive computer service" who publish information provided by third-party users. It specifies that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
Intellectual Property Rights	Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act of 1998 (DMCA), P.L. 105-304	Contains provisions and procedural requirements that, in certain circumstances, insulate internet service providers (ISPs) from copyright infringement claims based on actions by users of their services.

	Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO IP), P.L. 110-403	Increased both civil and criminal penalties for trademark and copyright infringement, including online infringement.
Consumer Protection	Anti-cybersquatting Consumer Protection Act of 1999 (ACPA), 15 U.S.C. § 1125(d)	Established a civil cause of action for owners of trademarks and service marks against a person who (i) registers, traffics in or uses a domain name that is identical or confusingly similar to the mark; or (ii) in the case of a famous mark, dilutes the mark and has a bad faith intent to profit from the use of the mark.
	Restore Online Shoppers' Confidence Act (ROSCA), P.L. 111-345	Places restrictions on third-party data passing from initial merchant. Under ROSCA, a third-party seller is prohibited from charging a consumer for any goods or services sold on the Internet, unless it has disclosed clearly all material terms of the transaction, and has obtained the consumer's express informed consent to the charge. Initial merchants are prohibited from disclosing to third-party sellers any billing information used to charge consumers post-transaction, except subsidiaries, corporate affiliates or successors to the initial merchant.
Electronic Transmission	Electronic Signatures in Global and National Commerce Act of 2000 (the ESIGN Act)	Main law regarding the enforceability of contracts formed over the Internet, and the enforceability of electronic signatures
Taxation	Internet Tax Freedom Act, P.L. 105-277	Forbids federal, state and local governments from taxing Internet access and from imposing discriminatory Internet-only taxes. It also prohibits multiple taxes on electronic commerce.

Source: Reorganized by author based on WTO Trade Policy Review and Report by the U.S. (WT/TPR/S/382/Rev.1)

1.2 WTO Joint Statement Initiative (JSI) on E-commerce

The U.S. has endeavored to advance its interests in digital trade through its bilateral and multilateral engagements, including through consultations with its free trade agreement (FTA) partners and discussions in various international fora such as the WTO, G20, G7, Organization for Economic Co-operation and Development

(OECD), and Asia-Pacific Economic Cooperation (APEC), if necessary. In this context, its participation in the ongoing WTO E-commerce negotiations is a good opportunity to assess U.S. interests in digital trade. In particular, the Joint Statement Initiative (JSI) on E-commerce is particularly useful as it is considered the groundwork where specific interests of all member countries are reflected in the process of making the very first multilateral digital trade agreement. Table 5 shows what the U.S. specifically proposed on key digital trade issues which are well aligned with the TPA negotiating objectives and the U.S. laws. For example, the basic principles that the U.S. has valued such as free flow of information, privacy protection, fair treatment of digital products, and protection of proprietary information are included in the JSI with similar language to TPA negotiating objectives and the domestic laws. Regarding data localization, the U.S. further expanded the scope of subject facilities to financial services computing facilities which is also found in the latest U.S.-led digital trade agreements such as the USJDTA, indicating its strong will to remove potential barriers to digital trade that can hinder any business activities, especially of the U.S. companies. As mentioned before, the liability of ISPs is a key interest for the U.S. as its big tech companies have been involved in many legal arguments about whether ISPs are responsible for harmful and illegal content created by users. Although many countries have had active discussions on the issue and there have been concerns over the abuse of the exemptions even within the U.S.[16], this business-friendly norm along with other principles is likely to be continuously pursued by the U.S. in the digital trade rule-making process in the future. The U.S. proposals for promoting digital access of

[16] Kim, Ho-Cheol. "A Study of New Trade Rules in the USMCA." *International Trade Law* 147 (2020): 158-199.

SMEs are also important not only because there is a general trend that leading countries in digital trade including the U.S. have recently addressed issues related to SMEs in their latest digital trade agreements and strategic partnerships, which will be elaborated on in later parts of the study, but also because the U.S. has strongly emphasized the importance of inclusiveness in its trade policies.

Table 5 the U.S. Proposals in the JSI on E-commerce

Principle	Relevant rules	Proposal
Free Flow of Information	Cross-Border Transfer of Data	• Cross-border electronic information transfer should not be restricted if it is for business purposes (unless the restrictions are for "legitimate public policy objective(s)" and are not a "disguised restriction on trade"
	Preventing Data Localization	• "No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory" • ***No requirements regarding the locations of financial services computing facilities***
Privacy Protection	Online Consumer Protection	• Members should enact regulations for the protection of personal information • "Any restrictions on cross-border flows of personal information [should be] necessary and proportionate to the risks presented"
	Personal Information Protection	
Fair Treatment of Digital Products	Duty-Free Treatment of Digital Products	• No customs duties should be imposed on electronic transmissions
	Non-Discriminatory Treatment of Digital Products	• Digital products shall not be given less favorable treatment (not applicable in cases of subsidies such as government-supported loans or insurance)
Protection of Proprietary Information	Protecting Source Code	• "No party shall require the transfer of, or access to, source code of software owned by a person of another Party" except in cases of legal investigations or enforcement action

Electronic Transmission	Electronic Payments	• Electronic signatures should be legally accepted • Parties should be allowed to negotiate the best authentication methods for their transaction and should not be prevented from defending the legality of their transaction before the relevant authorities • Members may require certain authentication standards for specific types of transactions
	Electronic Contracts	
Digital Security	Encryption	• Members should build their capacity to respond to cybersecurity threats and "strengthen existing collaboration mechanisms" • "Risk-based approaches" should be implemented for cybersecurity threat responses
	Cybersecurity	
	Open Government Data	• Government data, when publicly available, should be presented in a usable form
	Liability for Non-IP Content	• Governments holding internet intermediaries liable for content created by third parties can suppress vibrant online forums and stifle innovation in services that deepened user engagement
Inclusiveness	Small and Medium Enterprises	• Interactive computer services should be promoted for E-commerce growth, and are important for small and medium-sized enterprises (SMEs) • Open government data is especially important for SMEs

Source: Compiled by author based on the WTO JSI, Communication from the U.S. (INF/ECOM/5), and Garcia-Israel, Katya, and Julien Grollier. "Electronic commerce joint statement: Issues in the negotiations phase." CUTS.

2. Trade Agreements on Digital Trade

The U.S. used to prefer making trade rules mainly through the General Agreement on Tariffs and Trade (GATT), which was established as the architect of the Bretton Woods System, and its successor, the WTO, but it has begun to utilize various bilateral and regional FTAs in advancing trade rules since the collapse of the Doha Round in 2018.[17] Regarding digital trade rules, in particular, the U.S. has paid more attention to bilateral and regional FTAs than the multilateral discussions in the WTO in recent years because the E-commerce negotiation has been in a stalemate for a long time mainly due to the development gap in the digital economy between developed and developing countries as well as their differing level of ambitions, which has made it difficult for the U.S. to achieve high levels of digital trade rules. According to the report published by the U.S. International Trade Commission (USITC) last year[18], it is indicated that "Since E-commerce was not addressed in the URAs (Uruguay Round Agreements), U.S. FTAs have been the primary venue for commitments to advance U.S. trade in digital products and services." This clearly explains the U.S. intentions to accelerate the digital trade rulemaking process through FTAs.

Since the U.S.-Jordan FTA, the very first U.S. FTA where the rules on digital trade including the duty-free treatment of digital transmissions are introduced in its E-commerce chapter[19] for the first time, the provision that requires the duty-free treatment of digital transmissions has been included in most of the U.S. FTAs

[17] Gao, Henry. "Regulation of digital trade in US Free Trade Agreements: From trade regulation to digital regulation." *Legal Issues of Economic Integration* 45, no. 1 (2018).
[18] U.S. International Trade Commission (USITC). *U.S. Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures*, 2021 Report. June 2021.
[19] The U.S.-Jordan FTA Article 7.1.(a)

afterward.[20] Moreover, the U.S has also added new rules on digital trade in its regional trade agreements with the goal of achieving high-level standards on digital trade. Especially, U.S. interests in digital trade mandated by Congress were largely reflected in the E-commerce chapter of the CPTPP as it was the earliest agreement where the U.S. started settling to incorporate the aforementioned TPA negotiating objectives on digital trade into the trade agreement.[21]

2.1 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The TPP, which was originally launched among the so-called "Pacific Four (P4)" countries, New Zealand, Singapore, Chile, and Brunei, grew out of its earlier preferential trade agreement (PTA) format and more countries in the Asia Pacific region started to join it after a series of discussions.[22]

However, when then-President Trump woh was aggressively pursuing protectionism in trade decided to withdraw from the TPP, the 11 remaining countries newly launched the agreement with a new name, the CPTPP. Even after the U.S. dropped out of the TPP, U.S. efforts to secure high-standards rules on digital trade are well reflected in the CPTPP because all elements of digital trade of the TPP were

[20] The Dominican Republic-Central America FTA (CAFTA-DR), the U.S.-Chile FTA, the U.S.-Singapore FTA, the U.S.-Australia FTA, the U.S.-Morocco FTA, the U.S.-Bahrain FTA, the U.S.-Oman FTA, the U.S.-Peru FTA, the KORUS FTA, the U.S.-Columbia FTA, the U.S.-Panama FTA, etc.

[21] Congressional Research Service (CRS). *CPTPP: Overview and Issues for Congress (IF12078).* April 8, 2022.

[22] Haller, Andrea, Roger B. Altman, Marie F. Soulière, Scott C. Blanchard, and Ronald Micura. "Folding and ligand recognition of the TPP riboswitch aptamer at single-molecule resolution." *Proceedings of the National Academy of Sciences* 110, no. 11 (2013): 4188-4193.

kept in the CPTPP as they were.[23] Compare to the Trump administration who was explicitly against the TPP, the Obama administration viewed the TPP as an effective tool not only to reflect U.S. priorities in digital trade, but also to address various issues that were not covered by the existing WTO agreements back then, which includes digital trade, SOEs, labor, and the environment.[24]

As the USTR called it '21st-century agreement', the CPTPP set a new standard for global trade to deal with next-generation issues.[25] In particular, the E-commerce chapter of the CPTPP was far more evolved and comprehensive compared to previous trade agreements, advancing the digital trade rules in terms of both a framework and substance.

Firstly, as shown in Table 6, the E-commerce chapter of the CPTPP consists of a total of 18 provisions, including 2 general provisions, 11 mandatory provisions, and 5 cooperation provisions, which are almost double compared to the Korea-U.S. FTA (KORUS FTA). Specifically, certain elements of the E-commerce chapter such as 'Scope and General Provisions', 'Customs Duties', and 'Non-discriminatory Treatment of Digital Products', which were usually covered together in the existing agreements, are divided into separate provisions, making the rules much clearer than before. Compared to the KORUS FTA, moreover, Domestic Electronic Transactions Framework (Art.14.5), Personal Information Protection (Art.14.8), Location of Computing Facilities (Art.14.13), Unsolicited Commercial Electronic Messages (Art.14.14), Source Code (Art.14.17), and Dispute Settlement (Art.14.18) are newly

[23] Burri, Mira. "Exploring the Potential of a Future EU-Japan Digital Partnership for Trade Governance." Elcano Royal Institute Research Paper ARI 24 (2022).
[24] CRS. (IF12078).
[25] U.S. Trade Representative (USTR). *Summary of the Trans-Pacific Partnership Agreement*. 2015.

added as mandatory provisions to the agreement as well as other cooperation provisions including Internet Interconnection Charge Sharing (Art.14.12), Cooperation (Art.14.15), and Cooperation on Cybersecurity Matters (Art.14.16).

Table 6 Electronic Commerce Chapter of the CPTPP

Type	Chapter 14. Electronic Commerce
General Provisions (2)	Article 14.1 Definitions
	Article 14.2 Scope and General Provisions
Mandatory Provisions (11)	Article 14.3 Customs Duties
	Article 14.4 Non-discriminatory Treatment of Digital Products
	Article 14.5 Domestic Electronic Transactions Framework
	Article 14.6 Electronic Authentication and Electronic signatures
	Article 14.7 Online Consumer Protection
	Article 14.8 Personal Information Protection
	Article 14.11 Cross-border Transfer of Information by Electronic means
	Article 14.13 Location of Computing Facilities
	Article 14.14 Unsolicited Commercial Electronic Messages
	Article 14.17 Source Code
	Article 14.18 Dispute Settlement
Cooperation Provisions (5)	Article 14.9 Paperless Trading
	Article 14.10 Principles on Access to and Use of the International for Electronic Commerce
	Article 14.12 Internet Interconnection Charge Sharing
	Article 14.15 Cooperation
	Article 14.16 Cooperation on Cybersecurity Matters

Source: CPTPP E-commerce Chapter

Just like the KORUS FTA, the CPTPP excludes government procurement and related information from the application of the E-commerce chapter.[26] Furthermore, as for investment, cross-border trade in services, and financial services that are delivered or performed electronically, the CPTPP stipulates that they are subject to the obligations in the relevant provisions in each chapter.[27] However, the CPTPP

[26] CPTPP Article 14.2.3
[27] CPTPP Article 14.2.4

not only makes the rules on online consumer protection mandatory[28], which are merely cooperation provisions in the KORUS FTA[29], but also requires member countries to adopt or maintain laws related to personal information protection that are not included in the KORUS FTA.[30] It also recognizes that there are differences in legal approaches between the member states in protecting personal information and encourages mechanisms that promote compatibility between those different legal systems.[31] In terms of trade facilitation factors, Electronic Authentication and Electronic Signatures (Art.6) and Paperless Trading (Art.14.9) are included as mandatory and cooperation provisions, respectively, therefore requiring member states to ensure autonomy and technological neutrality in electronic authentication methods with a few exceptional cases.[32]

The CPTPP is the first agreement that introduces the free flow of data by electronic means as a mandatory provision in principle, where all member states are not allowed to prohibit or restrict the cross-border transfer of data, including personal data, by electronic means if any activity is for the conduct of the business.[33] At the same time, however, paragraph 1 of the same article recognizes each party's own regulatory requirements and paragraph 3 recognizes exceptions to the cross-border transfer of information by electronic means for achieving legitimate public policy

[28] Article 14.7.2 of the CPTPP is as follows:
Each party *shall* adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

[29] Article 15.5.3 of the KORUS FTA is as follows:
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.

[30] CPTPP Article 14.8.2

[31] CPTPP Article 14.8.5

[32] CPTPP Article 14.6

[33] CPTPP Article 14.11.2

objectives. Due to such exceptions that are broadly defined, it is often seen that the impact of the mandatory provision on the cross-border transfer of information can be limited.[34]

Regarding Principles on Access to and Use of the Internet for Electronic Commerce (Art.14.10), it is to ensure users' free choice in accessing and using E-commerce. It is a cooperative regulation that provides almost the same level of protection as the KORUS FTA, but the rights to run applications and have the benefit of competition (KORUS FTA Art. 15.7(b), (d)) have been deleted and replaced with language concerning the users' right to access information regarding the management practices of internet service suppliers instead.[35]

Lastly, one of the significant features of the E-commerce chapter of the CPTPP is that the disputes regarding obligations under the E-commerce chapter are subject to Dispute Settlement (Chapter 28), which enhances compliance with the agreement. In the application of the provision, however, Malaysia has a two-year grace period for Non-discriminatory (Art.14.4) and Cross-border Transfer of Information by Electronic Means (Art.14.11) after the agreement enters into force, while Vietnam also has a two-year grace period for Location of Computing Facilities (Art.14.13) in addition to the two aforementioned provisions.[36]

As examined so far, the CPTPP has significantly advanced digital trade rules in favor of U.S. interests in digital trade, diffusing its rules to many other subsequent agreements[37] of the countries who are currently leading the digital trade rulemaking

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[34] Lee, Hyo-Young. "디지털 무역 관련 국제규범의 동향과 쟁점." *주요국제문제분석* (2021).
[35] CPTPP Article 14.10.(c)
[36] CPTPP Article 14.18
[37] For example, the Singapore-Sri Lanka FTA, the Australia-Peru FTA, the Brazil-Chile FTA, and the Australia-Indonesia FTA.

process such as Singapore, Australia, and Chile. The overall framework of the CPTPP is further developed in the USMCA reaffirming the U.S. approach to digital trade issues[38], which will be examined below.

2.2 U.S.-Mexico-Canada Agreement (USMCA)

After May 2017, when the Trump administration notified Congress of its intention to renegotiate the North American Free Trade Agreement (NAFTA), the negotiating process of the newly named USMCA began in August of the same year and concluded in September 2018. The USMCA was signed by the member states in November 2018 and finally came into effect on January 1, 2020.

Since NAFTA was concluded in 1992 when digital trade was not considered as important nor significant in the field of international trade, provisions related to E-commerce were not included in the agreement. However, the USMCA includes E-commerce in a separate chapter (Chapter 19) and sets relative norms on E-commerce, reflecting the changing trade environment and the increasing importance of digital trade. It is noteworthy that the term "digital trade", instead of the more commonly used term "electronic commerce" found in other agreements, is first used in the USMCA. Seemingly, the digital trade chapter of the USMCA sets a similar level of standards on digital trade to the E-commerce chapter of the CPTPP. Some of the provisions, however, which were just recommendation provisions in the CPTPP, are now much more enhanced as they are replaced by legally binding measures in the USMCA digital trade chapter. Moreover, on top of the general provisions regarding the cross-border data flow or localization requirements in the existing agreements,

[38] Burri, Mira (2021).

new rules such as Interactive Computer Services (Art.19.17) and Open Government Data (Art.19.18) are newly included in the USMCA, which makes the USMCA a more advanced agreement than the CPTPP.

While some provisions such as Customs Duties (Art.19.3), Non-Discriminatory Treatment (Art. 19.4), Domestic Electronic Transactions Framework (Art.19.5), Electronic Authentication and Electronic Signatures (Art.19.6), and Online Consumer Protection (Art.19.7) are regulated at the same level as the CPTPP, a new element can be found in some provisions of the USMCA. In Personal Information Protection (Art.19.8), for example, an additional principle that the Parties recognize the importance of ensuring any restrictions on cross-border flows of personal information are proportionate to the risks presented is newly added.[39]

Also, Cross-Border Transfer of Information by Electronic Means (Art.19.11) is further strengthened compared to the CPTPP, where the clause begins by recognizing that each Party may have its own regulatory requirements, as it is not included in the USMCA. Furthermore, given it is indicated that "Each Party shall allow the cross-border transfer of information by electronic means…" in paragraph 2 of Article 14.11 of the CPTPP, the changed phrase in paragraph 1 of Article 19.11 of the USMCA, which starts with "No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means…", implies that the language is slightly stronger in the USMCA.

[39] Article 19.8.3 of the USMCA is as follows:
The Parties recognize that pursuant to paragraph 2, key principles include: limitation on collection; choice; data quality; purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability. The Parties also recognize the importance of ensuring compliance with measures to protect personal information and ensuring that any restrictions on cross-border flows of personal information are necessary and proportionate to the risks presented.

A similar change can be found in Location of Computing Facilities (Art.19.12) as well. As mentioned earlier, paragraph 1 of Article 14.13 of the CPTPP recognizes the regulatory requirements regarding the use of computing facilities that each Party may have, and paragraph 3 of the same article makes exceptions to the obligatory prohibition of the location of computing facilities if there is a legitimate public policy objective to be achieved. However, both paragraphs are excluded in the USMCA, and it just clearly prohibits the use or location of computing facilities. Regarding source code, both the CPTPP and the USMCA do not allow the transfer of, or access to source code in principle, the rules on source code are slightly protective in the USMCA, as the relevant provision (Art.19.16) further expands the scope of the requirement to algorithms expressed in that source code to protect the competitiveness of digital suppliers.[40]

Meanwhile, the newly added Interactive Computer Services (Art.19.17) is about the extent of liability of a service provider, which stipulates that the supplier does not bear any liability for any damage caused by online information or content. This is particularly an interest of the U.S., which is based on Article 230 (Protection for private blocking and screening of offensive material) of the U.S. Communications Decency Act, and the U.S. has consistently insisted on in other negotiations including the Trade in Services Agreements (TiSA).[41]

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[40] Article 19.16.2 of the USMCA is as follows:
This Article does not preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding,6 subject to safeguards against unauthorized disclosure.

[41] Lie, Han-Young, Cha, Seong-Min. " Trade Consistency of Regulation on Cross-border Data Flow and Its Policy Lessons for Korea." *[KIEP] Long-term Trade Strategies Study Series* 18, no. 03 (2018): 1-272.

As mentioned earlier, Open Government Data (Art.19.18) is newly added as a cooperation provision in the USMCA and it recognizes the importance of facilitating public access to and use of government information in fostering economic and social development and others[42] while providing that the Parties shall endeavor to cooperate to devise ways to expand access to and innovative use of government information in the business sector, especially for SMEs.[43]

2.3 U.S.-Japan Digital Trade Agreement (USJDTA)

In 2018, the U.S. proposed a bilateral negotiation to Japan to address concerns over the weakening competitiveness in the Japanese market due to the entry into force of the EU-Japan and the CPTPP as well as the continued trade deficit with Japan and its trade barriers.[44] Japan later accepted the proposal of the U.S. with the goal of exempting Section 232 tariffs as the U.S. imposed trade pressure on Japan by considering imposing high tariff rates on Japanese automobiles, which are the largest exports to the U.S., based on Section 232 of 'the Trade Expansion Act of 1962'. On the occasion of the U.S.-Japan Summit, which was held on September 26, 2018, the two countries officially initiated the first stage of bilateral trade negotiations on the limited areas of market access for agriculture and industrial goods, and digital trade.[45] Following four summits and follow-up consultations between the two countries, the agreement took effect on January 1, 2020.[46] Although it was signed along with the U.S.-Japan trade agreement, the USJDTA is the first

[42] UMSCA Article 19.18.1
[43] USMCA Article 19.18.3
[44] Kim, Jeong-Kyun, Kwak, Dong-Chul. "미일 무역협정의 주요 내용과 시사점." *Trade Report* (2019): 1-20.
[45] U.S. Trade Representative (USTR). Fact Sheet on U.S.-Japan Trade Agreement. 2019.
[46] U.S. Trade Representative (USTR). U.S.-Japan Trade Agreement Negotiations.

agreement presented as an independent agreement on digital trade, besides the existing form of the E-commerce chapter of the FTA.

Both the U.S. and Japan, whose digital trade environments are the most developed in the world, formed a strong consensus that they would establish enforceable rules to grow digital trade industries in all areas of their economy so that other countries can set similar ones based on them. In this regard, along with the USMCA, the USJDTA is considered the most advanced and comprehensive digital trade agreement on digital trade barriers.[47]

Firstly, regarding Customs Duties (Art.7), the provision is similar to that of the USMCA[48], but the scope of its application is limited to 'digital products' in the USMCA, while it is broadened in the USJDTA to 'electronic transmissions, including content transmitted electronically' like the CPTPP. Moreover, the overall principles of Non-Discriminatory Treatment of Digital Products (Art.8) are also similar to the USMCA, but the USJDTA specifically indicates several exceptions for subsidies, IPRs, and restrictions on broadcasting suppliers' foreign capital participation through additional provisions[49] or a footnote[50]. Other provisions are

[47] U.S. Trade Representative (USTR). *2020 Trade Policy Agenda and 2019 Annual Report*. 2020.

[48] Article 19.3 of the USMCA is as follows:

1. No Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products transmitted electronically, between a person of one Party and a person of another Party.
2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees, or other charges on a digital product transmitted electronically, provided that those taxes, fees, or charges are imposed in a manner consistent with this Agreement.

[49] Articles 8.2, 8.3, and 8.4

[50] It indicates as follows:

For the purposes of this paragraph, for Japan, "broadcasting" means the transmissions of telecommunications with the aim of direct reception by the public (paragraph 1 of Article 2 of the *Broadcast Law* (Law no. 132 of 1950)) and does not include on-demand services including such services supplied over the Internet.

evaluated as the same level of regulations as the USMCA, such as Domestic Electronic Transactions Framework (Art.9), Electronic Authentication and Electronic Signatures (Art.10), Cross-Border Transfer of Information by Electronic Means (Art.11), Location of Computing Facilities (Art.12), Online Consumer Protection (Art.14), Personal Information Protection (Art.15), Unsolicited Commercial Electronic Messages (Art. 16), Source Code (Art.17), Interactive Computer Services (Art.18), Cybersecurity (Art.19), and Open Government Data (Art.20).

Meanwhile, unlike existing FTAs where the general exceptions of the GATT and the General Agreement on Trade in Services (GATS) are usually applied through the 'Exceptions Chapter' of each FTA, the USJDTA has a separate exception provision within the text of the agreement, providing general exceptions (Art.3 through 5), and even sets a particular exception rule on Taxation (Art.6). In contrast to the CPTPP, where requiring the location of computing facilities is prohibited in principle with the exception of a legitimate public policy purpose, the USJDTA aims to remove any possibility the exception provision would be abused as a means of protective trade measures by deleting such provisions, as in the USMCA.

Compared to other agreements including the CPTPP and the USMCA, some provisions such as Paperless Trading, Principles on Access to and Use of the Internet for Electronic Commerce, and Cooperation are not included in the USJDTA because these rules regulate basic levels of digital norms which are usually used for agreements among developing countries whose digital infrastructure is less developed. Therefore, it is assumed that the U.S. and Japan did not necessarily need to include them as mandatory provisions in the agreement. However, the fact that the USJDTA does not have a separate provision for dispute settlements could limit the

agreement in cases of dispute, considering that most of the regulations are either mandatory provisions or WTO plus regulations which makes it hard to apply to the WTO dispute settlement procedures.[51] Nevertheless, along with the USMCA, the USJDTA will be an important cornerstone of the future discussion on digital trade including the plurilateral negotiation at the WTO.

Table 7 below shows the provisions of the CPTPP, the USMCA, and the USJDTA discussed so far. Overall, the three agreements are similar in structure and substance to one another, though it is evident that regulations have been gradually strengthened and developed into a more comprehensive agreement covering new digital trade issues.

Table 7 Provisions of the CPTPP, the USMCA, and the USJDTA

Provisions	CPTPP	USMCA	USJDTA
Definitions	Art. 14.1	Art. 19.1	Art. 1
Scope and General Provisions	Art. 14.2	Art. 19.2	Art. 2
Taxation	-	-	Art. 6
Customs Duties	Art. 14.3	Art. 19.3	Art. 7
Non-discriminatory Treatment of Digital Products	Art. 14.4	Art. 19.4	Art. 8
Domestic Electronic Transactions Framework	Art. 14.5	Art. 19.5	Art. 9
Electronic Authentication and Electronic signatures	Art. 14.6	Art. 19.6	Art. 10
Online Consumer Protection	Art. 14.7	Art. 19.7	Art. 14
Personal Information Protection	Art. 14.8	Art. 19.8	Art. 15
Paperless Trading	Art. 14.9	Art. 19.9	-
Principles on Access to and Use of the International for Electronic Commerce	Art. 4.10	Art. 19.10	-
Cross-border Transfer of Information by Electronic means	Art. 14.11	Art. 19.11	Art. 11
Internet Interconnection Charge Sharing	Art. 14.12	-	-
Location of Computing Facilities	Art. 14.13	Art. 19.12	Art. 12
Location of Financial Service Computing Facilities for Covered Financial Service Suppliers	-	-	Art. 13
Unsolicited Commercial Electronic Messages	Art. 14.14	Art. 19.13	Art. 16

[51] Kim, Do-Hee, Park, Myung-Hee, Chung, Min-Jeong. "바이든 시기 미·일 관계 주요 현안과 시사점." *National Assembly Research Service* (2021): 1-28.

Cooperation	Art. 14.15	Art. 19.14	-
Cooperation on Cybersecurity Matters	Art. 14.16	Art. 19.15	Art. 19 (cybersecurity)
Source Code	Art. 14.17	Art. 19.16	Art. 17
Interactive Computer Services	-	Art. 19.17	Art. 18
Dispute Settlement	Art. 14.18	-	-
Open Government Data	-	Art. 19.18	Art. 20
Information and Communication Technology Goods that use Cryptography	-	-	Art. 21
Amendment, Entry into Force, and Termination			Art. 22

Source: Compiled by author based on the text of each agreement

3. Strategic Partnerships with Allies and Partners

Just as digitalization has been accelerated by the rapid development of technologies, rules to regulate emerging technologies and relevant issues have also rapidly developed. The latest digital trade agreements such as the DEPA and the SADEA have begun to lead digital trade norms by addressing various new issues, such as Artificial Intelligence (AI), Fin Tech and Reg Tech, Data Identities, and Standards and Conformity Assessment for Digital Trade, which have not been covered in any of the U.S. digital trade agreements.

Meanwhile, the U.S. has taken a different approach than other countries and focused more on recovering its ties with traditional allies such as the EU and Japan, which deteriorated during the Trump administration as they implemented unilateral and aggressive trade policies towards them. However, it was not simply a re-establishment of the relationships with allies, but it was rather a strategic choice for the U.S. to regain the global dominance by cooperating with strategic partners and countering its competitor, namely China. In its efforts to counter digital authoritarianism and address new issues related to emerging technologies, the Biden administration specifically indicated its intention to enhance its engagements with allies in its National Security Strategy Report.[52]

In this context, the two strategic partnerships that the U.S. has recently established with Japan and the EU can be good references to further predict U.S. strategy to lead the digital trade rulemaking process in the future.

[52] Congressional Research Service (CRS). *Digital Trade and U.S. Trade Policy (R44565).* December 9, 2021.

3.1 U.S.-Japan Competitiveness Resilience Partnership (CoRe Partnership)

Japan is one of the most important allies of the U.S. both politically and economically. In terms of economy, Japan is the fifth-largest trade partner and the fourth-largest investment partner of the U.S., while being the largest foreign holder of U.S. government debt.[53] Based on this close economic tie, the two countries have shared similar economic interests and this alignment has further developed into digital trade as the importance of establishing a stable, open, and safe digital environment. Furthermore, the two countries share a common interest in responding to geopolitical risks that have disrupted the supply chains of semiconductors, a key driver of the digital economy. The fact that Japan has already committed to digital trade rules that align with U.S. priorities including the CPTPP and the USJDTA allows Japan to establish itself as a strategically important partner to the U.S.[54]

Against this back drop, on April 16, 2021, on the occasion of the U.S.-Japan Summit, the U.S. and Japan released a joint statement[55] and agreed to establish the U.S.-Japan Competitiveness and Resilience (CoRe) Partnership where the two countries pledged to further strengthen their alliance and enhance cooperation on 1) competitiveness and innovation, 2) Covid-19 response, global health, and health security, and 3) climate change, clean energy, and green growth and recovery.[56] As clearly indicated in the joint statement, in particular, the U.S. and Japan recognize

[53] Congressional Research Service (CRS). *U.S.-Japan Trade Agreement Negotiations (IF11120).* April 18, 2022.
[54] Solís, Mireya. "Toward a US-Japan digital alliance." (2021)
[55] White House. *U.S. - Japan Joint Leaders' Statement: 'U.S. – JAPAN GLOBAL PARTNERSHIP FOR A NEW ERA*. April 16, 2021.
[56] White House. *Fact Sheet: U.S.-Japan Competitiveness and Resilience (CoRe) Partnership*. April 16, 2021.

the importance of the digital economy and emerging technologies as key drivers for economic growth and emphasize the enhanced partnership between the two countries based on shared values of openness and democracy. Specifically, the U.S. and Japan are committed to advancing secure and open 5G networks, including Open Radio Access networks ("Open-Ran") by fostering innovation, promoting trustworthy vendors and diverse markets, and strengthening competitiveness in the digital field. Moreover, the two countries agreed to expand investments in research, development, testing, and deployment of secure networks and advanced ICT including next-generation mobile networks ("6G" or "Beyond 5G").

This emphasis on advancing mobile networks is comes at a time when China has a clear dominance in the global telecommunication market, which is highly concentrated with a few firms including Huawei.[57] Also, China has fostered the domestic ICT industries with numerous subsidy programs while allowing limited market access to other countries. Through the Digital Silk Road (DSR) initiative, moreover, China has been aggressively expanding the digital infrastructure based on Chinese standards across the Asian and African regions, which is a serious concern for the U.S. and its key allies. The U.S. used to just directly regulate Chinese companies but is now trying to preempt mobile telecommunications networks and expand U.S. standards with its key allies. The CoRe Partnership can be seen as one such effort. For example, through the CoRe Partnership, the U.S. and Japan have agreed to spend $2.5 billion and $2 billion, respectively, on research and

[57] In 2020, it was estimated that Nokia, Ericsson, and Huawei supply about 80% of the 5G base station market. (Source: Garcia-Israel, Katya, and Julien Grollier. "Electronic commerce joint statement: Issues in the negotiations phase." CUTS. https://www.cuts-geneva.org/pdf/1906-Note-RRN-WTO_Work_Programme.pdf (Assessed: 2022. 7. 1) (2019).

development, testing, and deployment of secure networks and advanced mobile networks to strengthen their competitiveness in the digital sector.[58]

In terms of digital trade itself, the CoRe partnership includes more practical and specific cooperation agendas than the rules found in the USJDTA. For example, as indicated in Table 8, both the CoRe Partnership and the USJDTA cover issues on cybersecurity, but the USJDTA covers much broader principles on cooperation, while the CoRe Partnership specifically lay out several ways to cooperate on cybersecurity between the two countries, which includes organizing the flagship Industrial Control Systems Cybersecurity Week with the EU and provide cybersecurity training resources for the ASEAN-Japan Cybersecurity Capacity Building Centre.

Table 8 Comparison between the USJDTA and CoRe Partnership

	Cybersecurity
USJDTA (Art. 19)	1. The Parties recognize that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties shall endeavor to: (a) build the capabilities of their respective competent authorities responsible for computer security incident response; and (b) strengthen existing collaboration mechanisms for cooperating to identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and use those mechanisms to swiftly address cybersecurity incidents, as well as for the sharing of information for awareness and best practices. 2. Given the evolving nature of cybersecurity threats, the Parties recognize that risk-based approaches may be more effective than prescriptive regulation in address those threats. Accordingly, each Party shall endeavor to employ, and encourage enterprises within its territory to use, risk-based approaches that rely on consensus0based standards and risk management best practices to identify and protect against cybersecurity risks and to detect, respond to, and recover from cybersecurity events.

[58] White House. Fact Sheet: *U.S.-Japan Competitiveness and Resilience (CoRe) Partnership*. April 16, 2021.

CoRe Partnership	• The U.S. and Japan concurred on the urgent need to take a collective approach to enhancing cybersecurity in an increasingly digital world with sophisticated cyber threats. • The U.S. and Japan, together with the EU, will organize the flagship Industrial Control Systems Cybersecurity Week to provide training in the Indo-Pacific Region. • The U.S. plans to provide cybersecurity training resources for the ASEAN-Japan Cybersecurity Capacity Building Centre funded and supported by Japan.

Source: Compiled by author based on the text of the USJDTA and Fact Sheet: *U.S.-Japan Competitiveness and Resilience (CoRe) Partnership*. April 16, 2021.

The goals under the CoRe Partnership, which were identified and agreed upon by the leaders of the two countries, were later elaborated upon in the Japan-U.S. Commercial and Industrial Partnership (JUCIP). On November 15, 2021, Department of Commerce Secretary Gina M. Raimondo and Minister of Economy, Trade, and Industry Hagiuda Koichi established the JUCIP to deepen the economic relationship between the U.S. and Japan, based on the goals agreed upon in the CoRe Partnership.[59] At the first meeting of the JUCIP, that was held on May 4, 2022, furthermore, the Ministers affirmed that ongoing cooperation and tangible achievements under the JUCIP serve as a cornerstone of the new U.S.-Japan Economic Policy Consultative Committee (EPCC or the Economic "2+2"), which President Biden and Prime Minister Kishida agreed to launch in January 2022.[60] In the first meeting of the JUCIP, the U.S. and Japan shared their achievements in semiconductors, export controls, digital economy, and trade and investment. Regarding the digital economy, in particular, it was indicated that the U.S. and Japan

[59] Ministry of Economy, Trade and Industry (METI). *Joint Statement between Department of Commerce Secretary Gina Raimondo and Ministry of Economy, Trade, and Industry Minister Hagiuda Koichi.* November 15, 2021.
[60] Department of Commerce (DOC). *FACT SHEET: First Ministerial Meeting of the Japan-U.S. Commercial and Industrial Partnership (JUCIP).* May 4, 2022.

agreed on establishing the Global Cross-Border Privacy Rules (CBPR) Forum with other countries including Canada, the Republic of Korea, the Philippines, Singapore, and Chinese Taipei in order to enhance interoperability between data privacy regimes around the world.[61] This perfectly reflects U.S. efforts to lead the rules on privacy, making the CBPR a global standard against the General Data Protection Regulation (GDPR) led by the EU. The U.S. and Japan also embarked on an early discussion of potential areas of cooperation on standards such as AI.

As discussed so far, the CoRe Partnership and its subsequent dialogues between the U.S. and Japan clearly demonstrate U.S. intentions and strategy to make new digital trade order, particularly in terms of mobile networks, privacy, and emerging technologies including AI, while containing China's influence in these areas. It is important to note that cooperation agendas are further specified and developed in this cooperative form of partnership with Japan compared to the USJDTA and other existing trade agreements and discussions have been accelerated to expedite key digital trade issues.

3.2 U.S.-EU Trade and Technology Council (TTC)

Despite the highly integrated economic relationship between the U.S. and the EU, there is still no bilateral trade agreement between the two countries. The Trump administration formally initiated a bilateral trade negotiation with the EU, notifying Congress in October 2018, but the talks ended in failure due to the different views

[61] Ibid.

on the scope of the agreement between the two countries, particularly the exclusion of agriculture.[62]

On June 15, 2021, on the occasion of the U.S.-EU Summit, the two countries agreed to establish a Trade and Technology Council (TTC) to strengthen the bilateral trade and investment relationship between the two countries as well as to enhance cooperation on emerging trade issues such as technology, digital trade, and supply chains.[63] Prior to the Summit, on December 2, 2020, the EU, in fact, had proposed several key agendas to be discussed during the Summit as first steps toward a new transatlantic agenda for global cooperation.[64] In its proposal, the EU emphasized the importance of renewing transatlantic leadership in the global community and deepening bilateral engagement based on shared values of human dignity, individual rights, and democratic principles.[65] The EU argued that the two countries, as the most influential regulators of the world, should closely work together to maximize the opportunities for market-driven transatlantic collaboration, enhance their technological and industrial leadership, and expand bilateral trade and investment. Furthermore, the EU elaborated on the importance of closer transatlantic cooperation on specific issues such as investment screening, IPRs, forced transfers of technology, and export controls. Based on the EU's proposal, the detailed agendas and format of the TTC were discussed later during the Summit and the U.S and the EU agreed to cooperate in comprehensive areas, including trade and investment, TBT, digital trade, supply chain security, technology standards, regulatory policy, and enforcement

[62] Congressional Research Service (CRS). U*.S.-EU Trade Agreement Negotiations: Trade in Food and Agricultural Products (R46241).* February 27, 2020.
[63] White House. *U.S.-EU Summit Statement.* June 15, 2021.
[64] European Commission (EC). *Joint Communication to the European Parliament, the European Council and the Council*. December 2, 2020.
[65] Ibid.

cooperation by including the initial 10 working groups in the TTC as indicated in Table 9.

Table 9 US-EU Trade and Technology Council

TTC Working Group	Topics	US Departments	EU Directorates General
Technology Standards Cooperation	Artificial Intelligence, Internet of Things	Commerce	CONNECT
	Biotechnology, Pharmaceutical products, medical devices		GROW
	Additive manufacturing, robotics, blockchain, and other emerging technologies		
Climate and Clean Technologies	Climate, energy, and environmental initiative that involve trade and technology	State	CONNECT
		USTR	CLIMA
		Energy	GROW
Secure Supply Chains	Semiconductors	Commerce	TRADE
	Batteries, critical minerals, active pharmaceutical ingredients	State	GROW
			CONNECT
ICTS Security and Competitiveness	Data security standards	State	CONNECT
	Secure, resilient, and diverse telecommunications and ICT infrastructure supply chains, 5G/6G	Commerce	
Data Governance and Technology Platform	Establish responsibility of technology platforms, content regulation, targeted advertising, and use of big data	White House	CONNECT
			JUST
Misuse of Technology Threatening Security & Human Rights	Counter cyber threats and technology used to violate human rights	State	CONNECT
	Address those conducting information disinformation operations		EEAS
			JUST
Export Controls Cooperation	Align export controls, improve information sharing and assess risks for sensitive and emerging technologies,	Commerce	TRADE
		State	

	including surveillance technologies impacting human rights		
Investment Screening Cooperation	Improve information-sharing for screening of inbound foreign investment	Treasury	TRADE
		State	
Promoting SME Access to and Use of Digital Technologies	Empower SMEs to reach more clients, and ensure digital technologies benefit underserved communities	Commerce	GROW
			CONNECT
Global Trade Challenges	Trade Policy toward non-market economics	USTR	TRADE
	Avoid new technical barriers to trade with each other		
	Trade and labor, including forced labor		
	Other		

ICTS = Information Communication Technology Services; SME = small and medium-sized enterprise; USTR = US Trade Representative; CONNECT = Directorate-General for Communications Networks, Content & Technology; CLIMA = Directorate-General for Climate Action; GROW = Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs; TRADE = Directorate-General for Trade; EEAS = European External Action Service; JUST = Directorate-General for Justice and Consumers.

Source: Brown, C. & Malmström, C., "What is the US-EU Trade and Technology Council? Five things you need to know." *Peterson Institute for International Economics* (2021)

On September 29, 2021, the inaugural meeting of the TTC was held in Pittsburgh, where the U.S. Co-chairs, Secretary of State Antony Blinken, Secretary of Commerce Gina Raimondo, and USTR Katherine Tai, were joined by the EU CO-Chairs, European Commission Executive Vice Presidents Margrethe Vestager and Valdis Dombrovskis.[66] During the meeting, the U.S. and the EU had an in-depth discussion on a set of critical issues such as investment screening, export controls, AI, semiconductor supply chains, global trade challenges, and trade distortive practices. Both countries also outlined the future works of each working group. In terms of digital trade-related issues, the TTC working groups were tasked with

[66] White House. *Statement by NSC Spokesperson Emily Horne Announcing the Inaugural U.S.-EU Trade and Technology Council Meeting*. September 09, 2021.

developing ways of coordinating and cooperating in critical and emerging technology standards to ensure security, diversity, interoperability, and resilience across the ICT supply chain to exchange information on data governance and technology platform governance of each part, to prevent arbitrary or unlawful surveillance and enhance cooperation on the prevention of foreign information manipulation, and to ensure digital tools and technologies for SMEs.[67]

Subsequently, the second meeting was held on May 15-16, 2022, in Paris. Although the U.S. and the EU continued the discussion following the previous meeting, the second meeting was especially focused on responding to the Russia-Ukraine war as it was held in the midst of Russia's aggressive actions against Ukraine. In this meeting, the two countries shared the urgent need to counter Russia by cooperating with and enhancing sections and export control measures against Russia, while continuing the existing discussions on AI, international standards development, digital platforms, ICT suppliers, cybersecurity as well as a range of global trade challenges including supply chains.[68]

Just like the CoRe Partnership, the TTC is not a traditional form of free trade agreement, but it is also based on shared values between the U.S. and the EU such as human rights, worker-centered trade policy, and democracy. Moreover, the two countries share the concerns over China's approach to trade and technology[69], which is why the TTC specifically address the agendas on trade and technology. More importantly, the TTC can be seen as a clear example of the Biden administration

[67] White House. *U.S.-EU Trade and Technology Council Inaugural Joint Statement.* September 29, 2021.
[68] White House. *FACT SHEET: U.S.-EU Trade and Technology Council Establishes Economic and Technology Policies & Initiatives*. May 16, 2022.
[69] Brown, C. & Malmström, C., "What is the US-EU Trade and Technology Council? Five things you need to know." *Peterson Institute for International Economics* (2021)

trying to differentiate its policies from the previous administration's unilateralism and to signal to its allies that the U.S. is ready for re-engagement with them. In this respect, the restoration of the transatlantic alliance through the TTC is particularly meaningful as the relationship between the two countries deteriorated during the Trump administration due to bilateral issues such as Section 232 tariffs and the Boeing-Airbus dispute, whereas there was no such issues that explicitly weakened the bilateral relationship between the U.S. and Japan.

Although the overall structure of the CoRe Partnership and the TTC is slightly different to each other, in terms of content, they share a lot of similarities. Table 10 shows the digital trade areas that are covered in both the CoRe Partnership and the TTC, which imply the specific digital trade interests of the U.S. and therefore are highly likely to be included in future discussions. For example, both the Core Partnership and the TTC emphasize the importance of having a secure and diverse ICT infrastructure including 5G networks and Open-Ran based on the competitiveness and innovation of the parties. Moreover, both partnerships indicate the need for enhancing cooperation on technology standards for emerging technologies such as AI and the Internet of Things by strengthening collaboration and information exchange between the parties.

Table 10 Digital Trade Issues of the CoRe Partnership and the TTC

CoRe Partnership (*Competitiveness and Innovation*)	**TTC WGs & Topics**
Advance secure and open 5G networks, including Open Radio Access Networks ("Open-Ran") by fostering innovation and by promoting trustworthy vendors and diverse markets.	***ICTs Security and Competitiveness*** Secure, resilient, and diverse telecommunications and ICT infrastructure supply chains, 5G/6G
Strengthen competitiveness in the digital field by investing in research, development, testing, and deployment of secure networks and advanced ICT	

including 5G and next-generation mobile networks ("6G" or "Beyond 5G").	
Build on successful U.S.-Japan cooperation in third countries and launch a Global Digital Connectivity Partnership to promote secure connectivity and a vibrant digital economy while building the cybersecurity capacity of our partners to address shared threats.	
Strengthen collaboration and information exchange between U.S. and Japanese ICT experts in global standards development.	***Technology Standards Cooperation*** Artificial Intelligence, Internet of things, Additive manufacturing, robotics, and other emerging technologies

Source: Compiled by author based on *Fact Sheet: U.S.-Japan Competitiveness and Resilience (CoRe) Partnership.* April 16, 2021.

Chapter III. U.S. Options to Make New Digital Trade Order

1. The Connection between the 'USJDTA-Plus Provisions' and the Strategic Partnerships

As examined thus far, the U.S. has taken two different approaches to make digital trade rules, one through a trade agreement and the other through a cooperative partnership with its allies. Although it seems that the U.S. has sought different goals and levels of ambitions for each approach, they are, in fact, highly related to each other in that the issues that are not covered in the existing trade agreement of the U.S. are addressed in its two cooperative partnerships with Japan and the EU.

Table 11 shows the correlation of components among the latest USJDTA, the U.S. cooperative partnerships, and the latest digital trade agreements of other countries such as the SADEA and the DEPA. Unlike the SADEA and the DEPA, where various emerging digital trade issues are addressed, the USJDTA covers only two provisions of 'Open Government Data' and 'Information and Communications Technology Goods that use Cryptography'. Instead, the U.S. has addressed the remaining issues, which are newly included in the SADEA or DEPA, but are not covered in the existing U.S. digital trade agreement (hereafter referred to as "the USJDTA Plus Provisions") through the CoRe Partnership and the TTC. In other words, the emerging issues in the USJDTA Plus Provisions such as 'Creating a Safe Online environment', Standards and Conformity Assessment for Digital Trade', 'Artificial Intelligence', 'Stakeholder Engagement', 'Small and Medium Enterprises', and 'Capacity Building' are currently addressed by the cooperative approach, instead of a form of traditional trade or digital trade agreements.

Table 11 the USJDTA Plus Provisions

Provisions	USJDTA	SADEA	DEPA	CoRe/TTC
Interactive Computer Services	Art. 18	-	-	X
Open Government Data	Art. 20	Art. 27	Art. 9.5	X
Information and Communication Technology Goods that use Cryptography	Art. 21	Art. 7 ("ICT Products")	Art. 3.4	X
Creating a Safe Online Environment	-	Art. 18	Art. 5.2	O
Submarine Telecommunication Cable Systems	-	Art. 22	-	X
Data Innovation	-	Art. 26	Art. 9.4	X
Digital Identities	-	Art. 29	Art. 7.1	X
Standards and Conformity Assessment for Digital Trade	-	Art. 30	Art. 10.3 (Information sharing)	O
Artificial Intelligence	-	Art. 31	Art. 8.2	O
Fin Tech and Reg Tech Cooperation	-	Art. 32	Art. 8.1 (Fin Tech)	X
Stakeholder Engagement	-	Art. 35	Art. 10.4 (Digital SME Dialogue)	O
Small and Medium Enterprises	-	Art. 36	Module 10	O
Capacity Building	-	Art. 37	-	O

Source: Compiled by author based on the text of each agreement

One possible reason why the U.S. has pursued the cooperative approach to address the emerging issues is the expiration of the TPA 2015. Currently, the Biden administration cannot proceed with any formal trade negotiations that require congress' approval and for the U.S., the USMCA was the last trade agreement under the TPA 2015. As explained earlier, the USJDTA is not formally considered by Congress under TPA's expedited procedures, but it is an executive agreement, which therefore did not require congressional approval before its implementation, where the two countries reaffirm their shared willingness to cooperate on certain issues.[70]

[70] White House. *Notification of Initiation of United States—Japan Trade Agreement.* September 16, 2019.

Given that the USJDTA came into force shortly before the conclusion of the SADEA and the DEPA were concluded[71], the U.S. and Japan could have simply included the USJDTA Plus Provisions in their bilateral agreement. However, the U.S. chose to address those issues through a separate partnership with Japan on a more practical level, seeking consistency and interoperability of the rules between the two countries.

Meanwhile, the rise of China and its aggressive expansion in the digital economy might have drove the U.S. to enhance its ties with allies based on shared values such as democracy, human rights, and inclusiveness in trade. The U.S. has been concerned over the so-called "digital authoritarianism" based on extensive censorship and surveillance system of the state, which directly clashed with the strong U.S. digital interests in the free flow of data and the prevention of data localization. Moreover, the Biden administration has strongly pursued inclusive trade policy, emphasizing that there was a lack of engagement with communities who are likely to be affected the most by the decision-making in trade policy although inclusive engagement is a core value in securing durable and equitable trade policy.[72] This policy direction especially targets those who have long been underrepresented in U.S. policy, such as workers, women, and SMEs. In this regard, the ongoing forced labor and inequality issues in other countries, especially in China, would have not only been a great concern to the U.S. but also a good means of countering China by enhancing the partnerships with its allies who share the same values including those in digital trade.

[71] The USJDTA entered into force on January 1, 2020, and the SADEA and the DEPA were concluded on March 23, 2020, and on June 12, 2020, respectively.
[72] U.S. Trade Representative (USTR). *2022 Trade Policy Agenda and 2021 Annual Report*. 2022.

Lastly, in recent years, the world has been facing unprecedented challenges such as the Covid-19 pandemic and climate crisis, increasing a need for responding to such challenges in a collaboration with other countries as they cannot simply be solved by an effort of a single country. This explains why the Covid-19 response, health security, and climate change are concretely addressed in both the Core Partnership and the TTC. Also, certain issues such as supply chain disruption, which has been caused by the pandemic and intensified by the recent war between Russia and Ukraine, have increased the importance of securing stable supply chains. In this context, the U.S. would have needed to strengthen cooperation with its allies to comprehensively address those challenges along with digital trade issues.

2. Challenges and Advantages of the Two Different Approaches

In its decision to address the emerging digital trade issues along with other urgent challenges through the cooperative approach, the U.S. might have been able to take advantage of some benefits of the cooperative approach, while also facing challenges from it.

Table 12 shows the possible challenges and advantages of each approach in making digital trade rules. First of all, as for the trade agreement approach, the U.S. can achieve high standards rules with an enforcement mechanism as it is a result of a formal negotiation process under the TPA, and in doing so, it can be supported by Congress in the process of both the negotiation and the ratification, which reduces the possibility of political interference and unnecessary conflict between the administration and Congress. At the same time, however, there might be some political interference in trade negotiations as some issues of negotiations would be particularly sensitive to certain industries and interest groups who have a great influence on Congressmen. Moreover, there needs to be high and specific incentives for other countries to commit to such high standards and this is usually compromised through market access negotiation, giving freer market access to the counterparts.

Through the cooperative approach, on the other hand, the U.S. can quickly respond to emerging digital trade issues. This is particularly important because digital trade itself and the relevant technologies are quickly changing and developing and thus, agile responses to them are key to leading digital trade rule-making. As confirmed through examples of the CoRe Partnership and the TTC, moreover, it can

comprehensively cover various issues at once, and in doing so, the U.S. can link certain issues to others as leverage to preserve their core interests.

Furthermore, through the cooperative approach, it is possible for the U.S. and its allies to cultivate a win-win situation, where they can utilize advantages to achieve their shared goals. The U.S. also can save time that it would have spent on a long negotiation and ratification process because discussions of cooperative partnerships are usually held one time (CoRe Partnership) or on a regular basis (TTC), without any time limit or additional processes.

However, the fact that the cooperative approach is not equipped with an enforcement mechanism can be a critical obstacle for the U.S. in ensuring high-standards rules on digital trade and the rules-based digital trade environment. Also, without market access, countries are not incentivized enough to commit to high standards, and therefore, the U.S. would need to offer specific incentives that can offset what its allies have to pay in order to cooperate with the U.S.

Table 12 Challenges and Advantages of Trade Agreement Approach and Cooperative Approach

	Trade agreement approach	Cooperative approach
Challenges	• High and specific incentives required • Congress' approval required (potential) political interference)	• No binding force • No incentive for commitment to high standards (e.g. no market access)
Advantages	• High-Standards Rules • Support from Congress	• Agile response to emerging digital trade issues • Issue linkage • Win-win Situation • Efficiency (Time-saving Process)

Source: Formulated by author

Chapter IV. Implications to the Indo-Pacific Economic Framework (IPEF)

1. IPEF and Digital Trade

In October 2021, the Biden administration announced a new Indo-Pacific strategy, the IPEF, as the centerpiece the administration's economic and security strategy toward the Indo-Pacific region. Although not many details about the IPEF have been disclosed since then, the administration has made it clear that the IPEF will consist of four "pillars": (1) fair and resilient trade, (2) supply chain resilience, (3) infrastructure and decarbonization, and (4) tax and anti-corruption.[73] It has been also said that countries who wish to join the IPEF will be able to choose to participate in certain pillars that they are interested in, and in doing so, the IPEF is expected to attract as many countries as possible. On May 23, 2022, the IPEF was officially launched in Japan with 13 initial participating countries and the official trade negotiations are expected to begin in the near future, possibly ahead of the Mid-election of the U.S. in November, and to be concluded next year, possibly before the Asia-Pacific Economic Cooperation (APEC) Leaders' Meeting, which will be hosted by the U.S. in November 2023.[74]

Although the IPEF is a comprehensive initiative that encompasses various areas of the economy, security, and the environment, there is no doubt that digital trade is one of the most important components of pillar one, in which participating countries and potential participants are most interested. For those developed countries, such as Korea, Japan, Australia, Singapore, and New Zealand, the digital component of the

[73] Goodman, Matthew P., and Arasasingham, Aidan. "Regional Perspectives on the Indo-Pacific Economic Framework" *CSIS* (2022).
[74] Arasasingham, Aidan., Benson, Emily., Goodman, Matthew P., and William Reinsch. "Unpacking the Indo-Pacific Economic Framework Launch" *CSIS* (2022).

IPEF is a good opportunity to have aligned rules with the U.S. which is currently not participating in any of the multilateral digital trade agreements. On the contrary, for those developing countries, especially the Philippines, India, Indonesia, and Thailand, who have not committed to any U.S.-led digital trade rules, digital trade issues may represent less of an offer and more of a request from the U.S. However, they are still open to making commitments to high U.S. digital standards as it offers various capacity building, talent investment, and foreign direct investment assistance.[75]

As examined in Chapter III, both the existing digital trade agreements of the U.S. and cooperative partnerships present how the U.S. has established digital trade rules so far. Furthermore, they also indicate what the digital trade rules in the U.S.-led initiative in the future, including the IPEF, may look like.

In this regard, some implications can be drawn from Table 13 which summarizes the discussions in the previous chapters. The first column shows the key provisions of the USJDTA. As explained earlier, rules on taxation, location of financial service computing facilities, and ICT goods that use cryptography were first introduced in the USJDTA, and therefore are highly likely to be included in future U.S. proposed rules along with other basic principles for which the U.S. has clearly expressed its preference. Interactive Computer Services is also noteworthy as one of the key digital trade rules in future discussions as the U.S. has actively promoted relevant rules both through its domestic regulations and existing trade agreements including the USMCA.

[75] Goodman, Matthew P., and Arasasingham, Aidan. (2022)

The second column indicates the USJDTA Plus Provisions, which are included in the most recent digital trade agreements such as the DEPA or the SADEA. The provisions on a safe online environment, standards and conformity assessment for digital trade, AI, stakeholder engagement, SMEs, and capacity building, among others, indicate issues that are relatively new and have not been included in any U.S.-led trade agreements. Instead, they are mostly addressed in the CoRe Partnership and the TTC in the form of a cooperative approach, as indicated in the last two columns. In particular, enhancing digital access of the SMEs to the digital economy and stakeholder engagement is closely related to the overall trade policy direction of the U.S. which emphasizes "inclusiveness". Moreover, countering global trade challenges caused by non-market economies and misuse of technology threatening security and human rights are well aligned with the U.S. strategy to decouple certain countries, namely China and its allies, from the U.S.-centered world economic order. In other words, it is expected that the U.S. will comprehensively put together digital trade issues in the IPEF from provisions of its existing trade agreement to those that are currently covered under the Core Partnership and the TTC. The key issues would be related to enhancing consistency and interoperability of technology standards, data governance, making a safe online environment, strengthening Cybersecurity, and preparing relevant rules for AI, based on shared values with its allies.

Table 13 Digital Trade Issues of the USJDTA, the USJDTA Plus Provisions, the CoRe Partnership, and the TTC

USJDTA	USJDTA Plus Provisions	CoRe Partnership	TTC
Taxation	Creating a safe Online Environment	Secure 5G network	Technology Standards Cooperation
Customs Duties	Submarine Telecommunication Cable Systems	Competitiveness in the digital field (6G or Beyond 6G)	ICTs Security and Competitiveness
Non-discriminatory Treatment of Digital Products	Data Innovation	Digital Connectivity	Data Governance and Technology Platform
Domestic Electronic Transactions Framework	Digital Identities	Cybersecurity Capacity Building	Misuse of Technology Threatening Security & Human Rights
Electronic Authentication and Electronic signatures	Standards and Conformity Assessment for Digital Trade	Global Standard Development	Promoting SME Access to and Use of Digital Technologies
Online Consumer Protection	Artificial Intelligence	Biotechnology	Global Trade Challenges (Non-market Economy, New TBTs, Forced Labor)
Personal Information Protection	FinTech and RegTech Cooperation		
Cross-border Transfer of Information by Electronic means	Stakeholder Engagement		

Location of Computing Facilities	Small and Medium Enterprises
Location of Financial Service Computing Facilities for Covered Financial Service Suppliers	Capacity Building
Unsolicited Commercial Electronic Messages	
Cooperation on Cybersecurity Matters	
Source Code	
Interactive Computer Services	
Open Government Data	
Information and Communication Technology Goods that use Cryptography	

Source: Compiled by author

On the other hand, however, those comprehensive digital trade agendas set by the U.S. could be interrupted by certain domestic regulations of countries that are currently participating in the IPEF. Table 14 shows the possible digital trade barriers of the 13 IPEF participants, which are identified by the USTR in its annual report.[76]

Table 14 Potential Digital Trade Barriers of Participating Countries of the IPEF

	Digital Trade Barriers	**Bilateral Trade relationship with the U.S. (E*)**	**Multilateral / Plurilateral Trade Agreement**
Australia	Mandatory Bargaining Code of Conduct, Interactive Computer Services	US-AU FTA (O)	CPTPP, RCEP, SADEA
Singapore	-	US-SG FTA (X)	CPTPP, RCEP, SADEA, DEPA
New Zealand	-	US-NZ TIFA (X)	CPTPP, RCEP, DEPA
Japan	Privacy Regulation, Digital Platform Regulation	USJDTA	CPTPP / RCEP
Brunei	Localization Requirements for ICT firms that work on Government Projects	US-BN TIFA (X)	
Malaysia	Data Localization	US-MY TIFA (X)	
Vietnam	Cybersecurity, Internet Services (Online Advertising Services, Internet-Based Content Services, Personal Data Protection Regulation)	US-VN TIFA (X)	
Korea	Cross-Border Transfer of Data (license required for exporting location-based data, Personal Information Protection Act, IT Network Use and Protection Act), Interactive Computer Services, Network Usage Fees, In-app Payments	KOR-US FTA (O)	RCEP, KR-SG DPA, DEPA (Application process)
Philippines	Internet Services, E-commerce	US-PH TIFA (X)	RCEP
Thailand	Technology, Data Localization, Internet Services	US-TH TIFA (X)	

[76] U.S. Trade Representative (USTR). *National Trade Estimate Report on Foreign Trade Barriers.* 2022.

India	Data Localization (E-payment services, Personal Data Protection Bill, Non-Personal Data, E-commerce Policy), Technology, Internet Services (Digital Taxation)	US-IN Trade Policy Forum (X)	
Indonesia	Data Localization Requirements, Digital Products (Tariffs on Digital Products), Digital Services Tax, Internet Services	US-ID TIFA (X)	
Fiji	-	US-Fiji TIFA (X)	-

Note: E* indicates whether the country has agreed on digital rules through the bilateral trade agreement with the U.S. / TIFA: Trade and Investment Framework Agreements
Source: Compiled by author based on 2022 National Trade Estimate Report on Foreign Trade Barriers (March 1, 2022)

Firstly, Australia, Singapore, and New Zealand have relatively low or zero digital trade barriers as leading countries in digital trade rule-making, and they are already committed to the high standards rules of the CPTPP and even further advanced rules of the DEPA or the SADEA. Therefore, it would be relatively easy for them to agree on the rules that represent the U.S. digital interests in the IPEF.

Japan, which has been deeply engaged with the U.S., by having both the digital trade agreement and cooperative partnership with the U.S., would also have no difficulty accepting the U.S.-preferred digital trade rules. On the contrary, Brunei, Malaysia, and Vietnam, who are all participating in the CPTPP, would face some challenges that are incompatible with their domestic regulations if certain digital trade rules are further strengthened or advanced in the IPEF, especially on data localization, and cybersecurity.

Korea has some domestic regulations that could possibly conflict with some of the U.S. interests in privacy or interactive computer services. However, the fact that there is already KORUS FTA by which the two counties share rules on E-commerce and the fact that Korea concluded a bilateral digital trade agreement with Singapore

last year and more recently began initiating official negotiations to join the DEPA should be considered as positive indicators.

Lastly, the Philippines, Thailand, India, and Indonesia are expected to face some challenges in committing to the high standards rules of the U.S., which would possibly be included in the IPEF. Not only because their level of the digital economy is relatively lower than other participating countries and they have many restrictive domestic regulations, but also they have not committed to any high standards of digital trade rules so far. Although they are participating in the RCEP, it sets relatively low and flexible rules compared to other digital trade agreements. Therefore, the U.S. would need to find out ways to incentivize them to commit to high standards rules.

2. Challenges and Expectations of the IPEF

As examined earlier in Chapter III, there are several challenges and advantages to the cooperative approach of making digital trade rules. Based on these discussions, some implications can be drawn for the IPEF as well.

As shown in Table 15, first and foremost, specific incentives should be offered to participating countries, especially those who are currently not participating in advanced digital trade agreements, so that they can commit to U.S.-preferred high standards digital trade rules even without offering market access. Furthermore, the U.S. should be prepared for the expected conflict or disagreements especially between the administration and Congress as well as with low-developed participating countries. So far, it has been announced that the IPEF would not need congressional approval during both the negotiation and ratification processes as it is not a formal trade agreement, but within Congress, there have been split views on details of the IPEF including the format, components, and participants.

Additionally, some of the participants have restrictive domestic regulations and lack digital infrastructure which could hinder them from committing to the high standards rules. Therefore, the U.S. should come up with appropriate strategies to consult with both domestic groups and participating countries of the IPEF.

Regarding the expansion of membership of the IPEF, it is important to have as many participants as possible to enhance the interoperability and preemptive effect on digital standards and rules. However, there are limited participants in the IPEF for now, and other countries such as Taiwan, Canada, Mexico, and Chile who are critical to the U.S. digital trade interests have not joined it. The fact that Canada and Mexico already share advanced digital trade rules with the U.S. through the USMCA

and that Chile is also a member of the DEPA, including them in the IPEF would be a strategic move for the U.S. to sufficiently secure its specific interests in digital trade.

Table 15 Challenges and Expectations of the IPEF

	Digital Trade of the IPEF
Challenges	• Specific incentives should be offered to set high standards digital trade rules without market access • No binding commitments • Possibility of domestic political conflict between the executive branch and Congress • Different levels of digital economy among participating countries (*the Philippines, Thailand, India, and Indonesia*) • Limited participants
Expectations	• The U.S. presence in the Indo-Pacific region • Diffusion effect of the U.S.-proposed rules, mitigating the current fragmentation of Rules • Agile response to emerging digital trade issues • Issue linkage (***Politically Binding***) • Win-win Situation

Source: Formulated by author

Nevertheless, the IPEF will be a good opportunity to strengthen U.S. presence in the Indo- Pacific region and to diffuse U.S.-led rules over the region which could mitigate current fragmentation of digital trade rules. Additionally, under the form of a cooperative partnership, the U.S. would be able to quickly respond to emerging digital trade issues as it can simply expand the scope of discussions by adding new negotiating agendas to the already established cooperative body.

Although there would not be a mechanism that could enforce the commitments made by the participating countries, a politically binding force based on issue linkage between digital trade and security, or digital trade and economic security could be more effective in binding countries to the integrated digital trade rules. At the same time, a win-win situation can result from the IPEF. Instead of joining other digital

trade agreements such as the DEPA or the SADEA, the U.S. can take advantage of the voices of countries that are participating in both the IPEF and those agreements so that it can induce them to align with U.S. interests. On the contrary, other countries can benefit from other areas or pillars, including supply chain or infrastructure, which are critical to their economic security in the midst of an uncertain trade environment.

Chapter V. Conclusion

The U.S. has taken two different approaches to make digital trade rules, one through a digital trade agreement and the other through a cooperative partnership. Under the current situation where the U.S does not have the TPA nor a clear intention to renew the TPA, the U.S. is likely to continue to pursue the cooperative approach deepening the engagement with its allies to make digital trade norms instead of joining or initiating formal trade agreements. However, the overall stance of the U.S. on digital trade would still remain the same or possibly strengthen while closely cooperating with countries that are participating in both the IPEF and other digital trade agreements in order to diffuse the U.S.-preferred rules in digital trade.

Additionally, the U.S. will continue to make digital trade rules to lower the digital trade barriers to ensure U.S. big tech firms' autonomy and market competitiveness, especially by actively promoting rules on interactive computing service, privacy, and digital taxation even under the cooperative approach.

Moreover, the tendency for the linkage between digital trade norms and values such as democracy, human rights, and inclusiveness will continue in the future as a strategy to counter China, although it remains to be seen whether such a, including the IPEF, will lead to an actual decoupling with China or Russia due to several factors such as China's influence on ASEAN countries, the low level of the digital economy in some ASEAN countries, and limited participants in the IPEF currently.

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국문 초록

디지털기술이 빠르게 발전하고, 코로나 19 이후 전세계 디지털화가 가속화됨에 다라 디지털통상에 대한 각국의 관심이 크게 제고되고 있다. 그러나, 디지털통상 관련 규범에 대해서 본격적으로 논의가 이루어진 것은 비교적 최근이며, 싱가포르, 뉴질랜드, 호주 등 일부 국가가 주도하는 DEPA, SADEA 등의 주요 디지털무역협정을 중심으로 관련 규범이 구성되고 발전되어가고 상황이다. 한편, WTO 차원의 다자적 논의는 국가 간 디지털경제발전 수준의 차이로 주요 이슈에 대한 이견이 좁혀지지 않아 그다지 큰 진전을 보이고 있지 않다.

GATT 및 WTO 체제 하 전통적인 통상 규범 정립을 오랫동안 주도해온 미국은 트럼프 행정부 시절 다자무역주의에 대한 불신을 바탕으로 미국의 이익을 최우선으로 고려한 일방적인 통상정책을 펼쳐왔다. 이는 특히 디지털통상 규범에 대한 논의가 본격적으로 시작되었던 시기에 미국의 리더십의 부재를 초래하였고, TPP 탈퇴 등으로 인해 디지털통상 분야에서의 미국의 입지가 더욱 줄어들게 되었다.

미국은 바이든 정부 출범 이후 다자주의로의 회귀와 중국 견제를 목표로 기존 동맹국과의 협력 및 연대를 강화하는 노력을 지속해오고 있다. 특히 이러한 미국의 움직임은 디지털통상 및 기술 분야에서 크게 확대되고 있는데, 주목할 점은 최근 미국이 주력하고 있는 파트너십은 전통적인 무역협정을 기반으로 한 포괄적인 형태가 아닌, 공급망, 디지털경제, 노동, 인권 등 새롭게 부상하고 있는 신통상 의제에 대한 협력체의 성격을 지니고 있다는 것이다.

이러한 관점에서 본 논문은 디지털통상 분야를 선도하고 있는 일부 국가들에 비해 다소 경쟁력이 약화된 미국이 향후 디지털 통상규범을 선도하기 위해 취할 수 있는 전략을 면밀히 검토하고자 한다. 이를 위해 미국의 기존 디지털통상 관련 협정문과 일본 및 EU 와 각각 체결한 전략적 파트너십의 주요 내용을 살펴보고, 이를 바탕으로 최근 새롭게 출범한 인도·태평양경제프레임워크(IPEF)에서 디지털통상 관련 규범이 어떻게 구성될지, 그리고 그에 따른 한계점은 무엇인지 등에 대해 논의하고자 한다.

주제어 : 디지털통상, CPTPP, USMCA, 미-일 디지털무역협정, 무역기술위원회, 인도·태평양 경제프레임워크

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