

Reassessing RCEP's Implications for Digital Trade and E-Commerce

RCEP's chapter 12 should produce digital economy opportunities in all RCEP countries, but it seems highly likely that China, Japan, and South Korea will emerge the biggest winners.

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This is the final piece in a four-part series re-examining the [trade](#), [FDI](#), and [political consequences](#) of RCEP

One noteworthy facet of the Regional Comprehensive Economic Partnership (RCEP) agreement is chapter 12, which contains RCEP's rules on digital trade and e-commerce. These rules have fueled feelings of acclaim, apprehension, and anticlimax. One enthusiast hypes that small- and medium-sized enterprises (SMEs) will profit from reduced transaction costs and a more seamless digital experience for customers. The anxious fret that RCEP's digital trade and e-commerce rules will [“embed the power of incumbents and erect barriers to digital industrialization by developing countries.”](#) Other worriers warn chapter 12 might cede China a greater role in international rulemaking in this new trade policy area. The disappointed deem RCEP's digital trade and e-commerce rules uninspiring, falling short in preventing data localization restrictions.

RCEP's implications deserve increased corporate attention given the rapid growth of the digital economy in the Asia-Pacific region, the significant (often explosive) growth of e-

commerce, fintech, gig economies, platforms, and social networking firms in most RCEP signatories, and the importance of data to the competitiveness of both tech and non-tech companies. Chapter 12 is of interest to policymakers given its relevance for economic growth and independence, cybersecurity, individual privacy, national security, and potential to give China a leadership role in shaping future digital trade rules. Below, we detail some key parts of chapter 12, review optimistic and pessimistic perspectives about it, and identify various business and policy implications flowing from our assessment.

The general aim of chapter 12 is to promote e-commerce as well as create a supportive legal, regulatory, and policy environment for it. With respect to the former, it pushes paperless trading, more widespread and easier use of e-signatures, reduced regulatory burdens, duty free electronic transmissions, and flexibilities in data storage and cross-border data transmission. Turning to the latter, chapter 12 calls for collaborative work to empower SMEs to use e-commerce, joint capacity building, the sharing of best practices, the establishment of consumer protection structures, greater regulatory transparency, and cooperation in cybersecurity. Two particularly striking aspects of chapter 12 are its prohibitions against requirements for localized computer facilities and localized data. It's worth noting that China, as an RCEP signatory, made its first-ever commitment, in principle, to binding prohibitions against the localization of data facilities and data, a significant departure from its long-standing hard sovereignty stance toward data.

One RCEP signatory, the government of Singapore, praises chapter 12 as one of RCEP's many provisions that expand the scope and commitments of previous ASEAN + 1 free trade agreements (FTAs) and "provide a more conducive digital trade environment for businesses." Optimists tout that chapter 12 offers great potential for growth and recovery by building up the institutional environment in the Asia-Pacific region surrounding the digital economy. More specifically, chapter 12's improvements in areas like paperless trading, consumer protection, and data transfers will usher in a new virtual world through pathways such as fostering a more convenient online business environment, reducing cybersecurity risks, enhancing the e-commerce environment, freeing websites, data transfer, and data facilities, and building trust. Above all, RCEP putatively will profit SMEs because it will help them to expand their connections in multiple directions (e.g., diversify their suppliers and customers), reduce their costs, and increase their efficiencies.

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While impressive on paper, SMEs and non-SMEs will enjoy the aforementioned benefits only if RCEP members follow through on chapter 12, which is not assured. In addition, RCEP countries will need to reduce logistics costs, improve SME training, and provide more supportive domestic regulatory environments to maximize their gains from chapter 12.

Chapter 12 contains language severely undercutting the data localization prohibitions mentioned above. Signatories have unlimited discretion to require others to locate or use computing facilities within their territorial

boundaries or to restrict cross-border information transfer if they themselves believe they have a legitimate public policy or security rationale. Beyond this, chapter 12 does not apply to government procurement, government information, and electronic service delivery. These exceptions and omissions mean chapter 12 has a much more limited scope of coverage as well as far less demanding (read: business friendly) provisions than the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Fans of the CPTPP and other FTAs (the “liberals”) with digital provisions view them as superior because they protect source code, require the non-discriminatory treatment of digital products, and institute permanent zero tariffs on electronic transmissions. Furthermore, for the liberals, a huge advantage of CPTPP versus RCEP is that it has much stronger prohibitions against data localization and data transfer restrictions. Chapter 12 further does not allow its signatories to use RCEP’s dispute settlement mechanism for disagreements relating to chapter 12.

For other critics, the liberals are focused on the wrong set of issues. Those worried about the power of big countries and big business, for example, deride RCEP for failing to do more to rectify the hegemony of big digital economy players or to protect individual data privacy. It is questionable, though, if their recommendations for addressing these limits — e.g., allowing countries to force technology transfers or strictly limit data transfers — will solve the defects they identify.

In our view, what is missing from both lines of criticism is serious reflection about RCEP’s impact on digital trade and FDI volumes and the

distribution of digital trade. Pondering the volume issue, RCEP's relatively shallow provisions combined with its intentionally designed flexibilities to allow RCEP members greater policy space might bound business gains and create greater investment uncertainties, limiting digital trade and FDI volumes. Even if digital trade and FDI grow for the RCEP region as a whole, it remains far from assured that the vast majority of RCEP signatories will experience notable increases in digital trade given their *inter alia* shortages of capital, insufficient digital infrastructure, inadequate human talent, poor entrepreneurial environment, and backward logistics. China, Japan, and South Korea's greater bargaining power, government capacity, and hosting of mega-digital economy players suggest these countries not only will profit most from chapter 12, but also will have the ability to ensure its implementation in line with their own domestic political and business preferences.

Chapter 12 enthusiasts see it yielding nothing but benefits as well as building a foundation that ensures a bright future for the development of RCEP's digital economy. In line with our earlier pieces reconsidering the [trade](#), [FDI](#), and [political effects](#) of RCEP, our reevaluation of chapter 12 suggests greater moderation is warranted. Therefore, companies should be cautious, continuously monitoring what is transpiring in the digital space before undertaking any dramatic new initiatives. In fact, it is quite likely they will have to push RCEP governments regularly to ensure chapter 12 delivers what it promises. Governments themselves will have to strive to create the proper legal, economic, educational, regulatory, and social milieu if they wish to realize maximal benefits from chapter 12.

In the end, Chapter 12 should produce digital economy opportunities in all RCEP countries, but it seems highly likely that the “Big Three” (China, Japan, and South Korea) will emerge the biggest winners. Businesses will need to plan accordingly and smaller states will need to coordinate to ensure they remain competitive and extract some of the disproportionate gains likely to accrue to the Big Three.

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