



REGIONAL DIGITAL TRADE INTEGRATION INDEX (RDTII) 2.0

ECONOMY PROFILE 2024

ESCAP-ECA-ECLAC INITIATIVE ON DIGITAL
TRADE REGULATORY INTEGRATION





REGIONAL DIGITAL TRADE INTEGRATION INDEX (RDTII) 2.0

ECONOMY PROFILE 2024

AUGUST 2024

**ESCAP-ECA-ECLAC INITIATIVE ON DIGITAL
TRADE REGULATORY INTEGRATION**



*The shaded areas of the map indicate ESCAP members and associate members.**

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AUSTRALIA

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AUSTRALIA

Australia is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for regulations related to intellectual property rights, standards and procedures, and tariffs and trade defence. However, the economy has relatively complex rules compared to the group average are related to internet intermediary liability, and cross-border data policies.

Among 12 policy areas, the highest compliance costs for Australia are in regulations related to internet intermediary liability, foreign direct investment, and content access. In contrast, the lowest compliance costs are in those related to intellectual property rights, tariffs and trade defence, and standards and procedures.

Table 1: Australia's RDTII overall score and pillars' scores

Australia	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.361	-15%
Pillar 1: Tariffs and trade defence	0.102	-50%
Pillar 2: Public procurement	0.400	-22%
Pillar 3: Foreign direct investment	0.576	-6%
Pillar 4: Intellectual property rights	0.000	-100%
Pillar 5: Telecom regulations and competition	0.456	-2%
Pillar 6: Cross-border data policies	0.365	4%
Pillar 7: Domestic data protection and privacy	0.455	-4%
Pillar 8: Internet intermediary liability	0.625	39%
Pillar 9: Content access	0.458	-5%
Pillar 10: Non-technical NTMs	0.375	-18%
Pillar 11: Standards and procedures	0.200	-51%
Pillar 12: Online sales and transactions	0.325	-20%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Australia has introduced stricter measures related to online safety compared to its past practices. The Online Safety Act No.77, which came into force in 2021, requires internet intermediaries to remove “abhorrent violent material” not only from social media platforms but also from other online services such as games, websites, messaging, and hosting services. Additionally, the Act grants the eSafety Commissioner enhanced authority to collect information relating to online safety and direct internet service providers (ISPs) to temporarily disable access to material depicting violent conduct during “crisis situations”. The 2022 amendments to the Act reduce the time ISPs have to remove harmful content from 48 hours to 24 hours when served with a removal notice from the eSafety Commissioner. The Basic Online Safety Expectations (BOSE) (2022) also enforces safety measures, requiring online service providers to take reasonable steps to maintain a safe online environment by combating cyberbullying and illegal content.

Australia has amended public procurement rules, increasing the regulatory complexity in government tenders. The 2022 amendment to the Commonwealth Procurement Rules (CPRs) requires the state and parliamentary departments to allocate at least 20% of their procurement value or at least 35% of their procurement volume to SMEs. In addition, the enforcement of CPRs has been used as a justification for banning Tik Tok on government-owned devices in 2023 over security concerns.

Australia has toughened the data protection measures. In response to the data breaches in 2022, the Amended Privacy Act No.89 (1988) came into force in July 2023. While the 13 Australian Privacy Principles (APP) of the law remain unchanged, the penalties faced by organisations and agencies who fail to properly secure personal data are sharply increased. Concurrently, the amendment enhances the government's ability to address potential data breaches by granting them the power to obtain information and documents from anyone who may be involved with an actual or suspected data breach.

EXAMPLES OF POLICIES SUPPORTING AUSTRALIA'S DIGITAL TRADE INTEGRATION

INTELLECTUAL PROPERTY RIGHTS

Generally, Australia strongly enforces intellectual property rights through legislation that criminalizes copyright piracy and protects trade secrets. The WIPO reports that, over the period 2013-2022, the number of foreign patent applicants and grants have far exceeded their domestic counterparts.¹ The Copyright Act No.63 (1968), last amended in 2023, also enumerates “fair dealing” exceptions which third parties may use without violating copyrights.

TARIFFS AND TRADE DEFENCE

Australia is a signatory to the 1996 WTO Information Technology Agreement (ITA) as well as the 2015 expansion. Moreover, it maintains a low effective tariff rate of 0.04% for imported digital goods. In fact, almost 91.4% of all digital goods imported by the economy enjoys no tariff. Notably, under the Customs Act No.40 (1901), the Anti-Dumping Commission has the authority to impose anti-dumping duties. The Commission exercised this authority in 2020 by imposing anti-dumping duties on power transformers from Indonesia and Taiwan Province of China, and again in 2022 on PVC flat electric cable from China.

STANDARDS AND PROCEDURES

Australia adheres to widely adopted practices and involves a wide range of stakeholders in setting standards and technical procedures on intellectual property (IP) issues. In terms of conformity, Australia requires stakeholders to hold a Self-Declaration of Conformity (SDoC),² especially for products under the purview of the Australian Communications and Media Authority (ACMC).³ Instead of requiring product screening and testing for ICT goods, the Australian Cyber Security Centre (ACSC) produces the Information Security Manual (ISM) to outline a cyber security framework that organisations can adopt, along with their risk management framework, to protect their systems and data from digital threats. Moreover, the Intelligence Services Act No.152 (2001), last amended in 2022, empowers the Australian Signals Directorate (ASD) to conduct a cryptographic evaluation that uses a combination of open source and in-house tests to ensure correct implementation and assessment of the quality of encryption session keys, digital signatures, key exchange, or other similar keys.

¹ Statistical Economy Profiles, WIPO. Available at <https://www.wipo.int/edocs/statistics-country-profile/en/au.pdf>.

² The ACMC allows a self-declaration of conformity (SDoC) if the declaration contains all the information in Australia's Declaration of Conformity (Form C02) and acknowledges that the product complies with the ACMC standards.

³ This is supported by the Telecommunications Act and the Radiocommunications Act.

EXAMPLES OF POLICY CHALLENGES TO AUSTRALIA'S DIGITAL TRADE INTEGRATION

INTERNET INTERMEDIARY LIABILITY

The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act No.38 2019, which was enacted in the wake of the Christchurch attack in 2019, imposes criminal penalties on ISPs and content providers that fail to report or remove “abhorrent violent material”.⁴

The Online Safety Act No.77 (2021) provides digital platforms and ISPs with the additional responsibility to monitor and remove harmful content on their services within 48 hours or 24 hours after a removal notice by the eSafety Commissioner. The Act encourages the industry to develop new codes to regulate illegal and restricted content.

FOREIGN DIRECT INVESTMENT

Australia adopted the Corporations Act 2001 No.50 (last amended in 2019) which imposes a residency requirement such that a company must have at least one director with resident status in Australia, and a public company must have at least two directors who are ordinarily residents of Australia.

Australia has a foreign investment screening mechanism in place under the Foreign Acquisitions and Takeovers Act 1975 No.92 (last amended in 2023). Following the latest amendment in January 2023, the Act requires foreign investment proposals to align with the economy's national interests, alongside undergoing case-by-case review by the Foreign Investment Review Board (FIRB). This is reported as an investment barrier and raises concern among foreign investors.

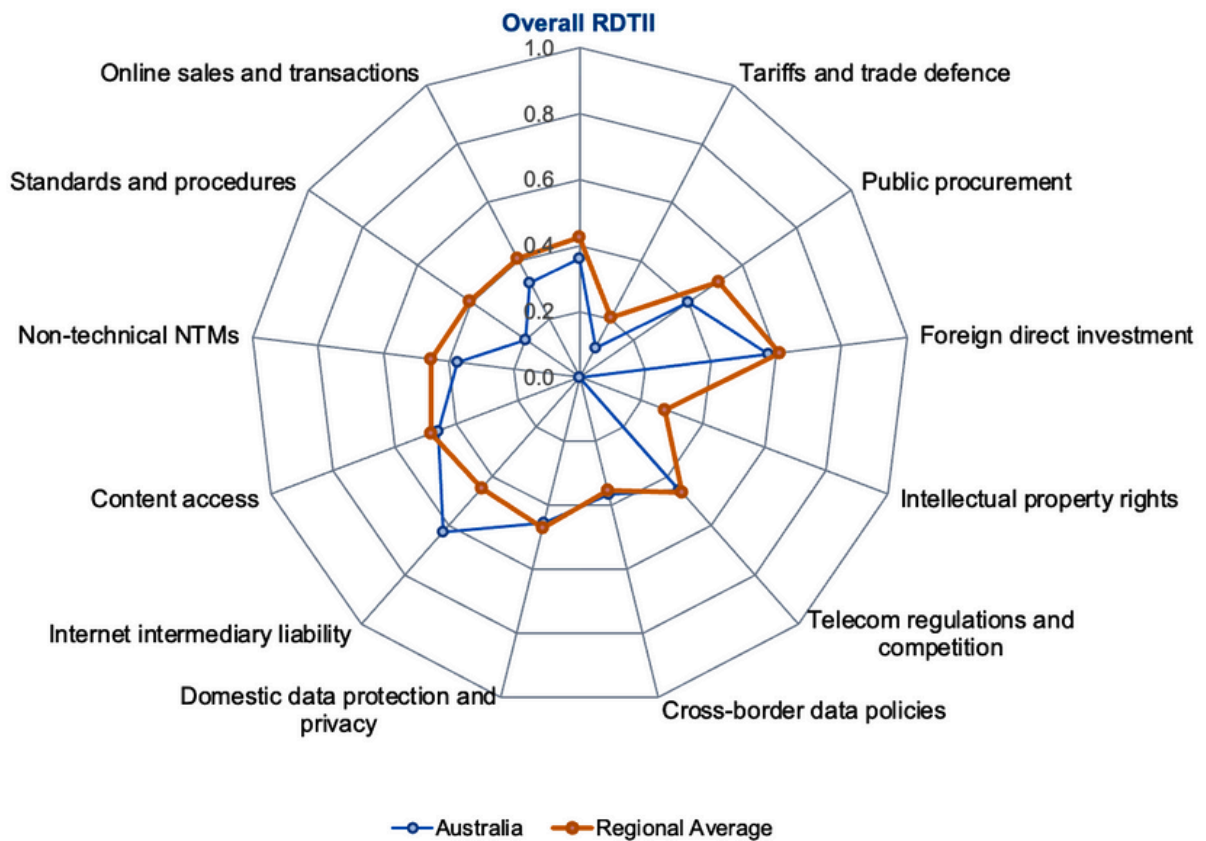
CONTENT ACCESS

Following the introduction of the new Online Safety Act No.77 (2021), Australia imposes heavy regulation on content access. In the Act, the Commissioner may not observe any procedural requirements in submitting a block request for a domain name, URL, or IP address when the material promotes, incites, instructs, or depicts any abhorrent violent conduct. Regarding advertising, under the Broadcasting Services Standard, at least 80% of ads on commercial TV between

⁴ Although the Act does not impose a duty to monitor content, as for “abhorrent violent conduct,” Internet hosts need to put reasonable efforts into monitoring and disabling such materials.

6am and midnight must be Australian made. Moreover, there are specific regulations for children’s TV, vices, political, and therapeutic-related material.

Figure 1: Comparison between Australia’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

AUSTRALIA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Australia actively participates in digital trade arrangements regionally and internationally. Along with Japan and Singapore, Australia is one of the co-conveners of the WTO Joint Statement Initiative on Electronic Commerce. In addition to the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive Economic Cooperation Agreement (CPTPP), Australia signed the 2nd Amendment to the ASEAN-Australia-New Zealand Free Trade Agreement last August 2023, which upgrades the agreement, especially promoting digital technology and sustainable development.⁵

Australia continues to participate in the Digital Economy Agreement (DEA) and preferential trade agreements (PTAs) that feature an e-commerce chapter. These agreements involve ASEAN-New Zealand, Chile, China, Hong Kong; China, Indonesia, Japan, the Republic of Korea, Malaysia, Peru, Singapore, Thailand, and the United States. In December 2022, the Australia-India Economic Cooperation and Trade Agreement (AI-ECTA) came into force, providing Australia access to the growing market of India, and eliminating tariffs for 90% of exported goods to the economy.⁶

⁵ ASEAN Secretariat (2023). Signing of The Second Protocol to Amend the Agreement Establishing The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), Association of Southeast Asian Nations. Available at <https://asean.org/signing-of-the-second-protocol-to-amend-the-agreement-establishing-the-asean-australia-new-zealand-free-trade-area-aanzfta/>.

⁶ Department of Foreign Affairs and Trade. Australia-India ECTA - Snapshot of Benefits, Department of Foreign Affairs and Trade. Available at <https://www.dfat.gov.au/trade/agreements/in-force/australia-india-ecta/outcomes/australia-india-ecta-snapshot-benefits>.

BRUNEI DARUSSALAM

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BRUNEI DARUSSALAM

Brunei Darussalam is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for regulations related to cross-border data policies, tariffs and trade defence, online sales and transactions, and non-technical non-tariff measures (NTMs). However, the economy has relatively complex rules compared to the group average are related to internet intermediary liability, domestic data policies, and content access.

Among 12 policy areas, the highest compliance costs for Brunei Darussalam are in regulations related to cross-border data policies, tariffs and trade defence, and online sales and transactions. In contrast, the lowest compliance costs are in those related to internet intermediary liability, domestic data protection and privacy, and content access.

Table 2: Brunei Darussalam's RDTII overall score and pillars' scores

Brunei Darussalam	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.396	-7%
Pillar 1: Tariffs and trade defence	0.081	-61%
Pillar 2: Public procurement	0.280	-45%
Pillar 3: Foreign direct investment	0.449	-27%
Pillar 4: Intellectual property rights	0.278	1%
Pillar 5: Telecom regulations and competition	0.603	29%
Pillar 6: Cross-border data policies	0.000	-100%
Pillar 7: Domestic data protection and privacy	0.682	45%
Pillar 8: Internet intermediary liability	0.875	95%
Pillar 9: Content access	0.667	38%
Pillar 10: Non-technical NTMs	0.208	-54%
Pillar 11: Standards and procedures	0.450	11%
Pillar 12: Online sales and transactions	0.175	-57%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Brunei Darussalam has implemented the requirement on accounting separation for an operator with significant market power (SMP). The Code of Practice for Competition in the Telecommunications Sector, which was adopted in February 2023, mandates a market player with SMP to keep separate accounts for all or part of its business activities associated with the provision of infrastructure or telecommunications services. Additionally, Brunei Darussalam is pursuing digitalization and e-commerce initiatives. The Digital Economy Masterplan 2025 outlines strategic plans and key projects for the development of a 'Smart Nation'¹, particularly focusing on industry and Government digitalization, talent development, and other flagship projects. Various Government agencies have promoted e-commerce through the introduction of secure server facilities, and the Fintech Regulatory Sandbox Guidelines.² Moreover, the Digital Payment Roadmap³ published in 2018 provides the framework for the development of the digital payment ecosystem.

EXAMPLES OF POLICIES SUPPORTING BRUNEI DARUSSALAM'S DIGITAL TRADE INTEGRATION

CROSS-BORDER DATA POLICIES

Brunei Darussalam does not enforce any restrictive cross-border data policies. Currently, there are no bans on data transfers or any local processing requirements. The existing Data Protection Policy (2014) only safeguards the data processed or controlled by public agencies, both within and outside the economy.

TARIFFS AND TRADE DEFENCE

Brunei Darussalam has a relatively low average tariff rate of 0.02% and an extensive duty-free coverage for 98.9% of all ICT goods imported from ESCAP economies. With the adoption of the Customs Act Cap.36 (2006), Brunei Darussalam does not impose any antidumping, countervailing duties (CVD), or safeguards on imports of ICT goods.

¹ The economy established a Digital Economy Council and published the Digital Economy Masterplan 2025. The Digital Economy Masterplan 2025. Available at <https://www.mtic.gov.bn/DE2025/documents/Digital%20Economy%20Masterplan%202025.pdf>.

² See Guidelines No. FTU/G-1/2017/1. Fintech Regulatory Sandbox Guidelines. Available at <https://www.bdc.gov.bn/docs/fsd/fintech/BDCB-FinTech-Sandbox-Guidelines-Amendment-No.-2-Clean.pdf>

³ <https://cms.bdc.gov.bn/storage/uploads/publications/17089420500944650.pdf>.

ONLINE SALES AND TRANSACTIONS

In Brunei Darussalam, policies governing online sales and transactions especially encourage cross-border e-commerce. Imported goods valued up to 400 BND (approximately 293 USD) are exempt from customs taxes under the de minimis rule. The Brunei Companies Act Cap.39 (1957), last amended in 2021, allows unrestricted foreign ownership in the e-commerce sector. Moreover, in accordance with the Electronic Transactions Act Cap.196 (2008), there are no specific limits on online purchases or licensing requirements for e-commerce providers and no payment-related barriers.

EXAMPLES OF POLICY CHALLENGES TO BRUNEI DARUSSALAM'S DIGITAL TRADE INTEGRATION

INTERNET INTERMEDIARY LIABILITY

There is no explicit legal framework that grants immunity to internet intermediaries. Electronic Transactions Act Cap.196 (2008) provides partial protection for network service providers but enforces contractual obligations and regulatory mandates. Moreover, digital regulation for intermediaries issues registration guidelines for mobile prepaid SIM cards and a class license scheme. The Internet Code of Practice requires Internet Service Providers (ISPs) and Internet Content Providers (ICPs) to block content that is against public interest or threatens national harmony. If any content violates the Internet Code of Practice, the Broadcasting Authority can mandate ISPs and ICPs to remove it or prohibit its broadcasting. The Government often restricts internet access, censors online content, and monitors private communications to identify discussions on topics deemed immoral.

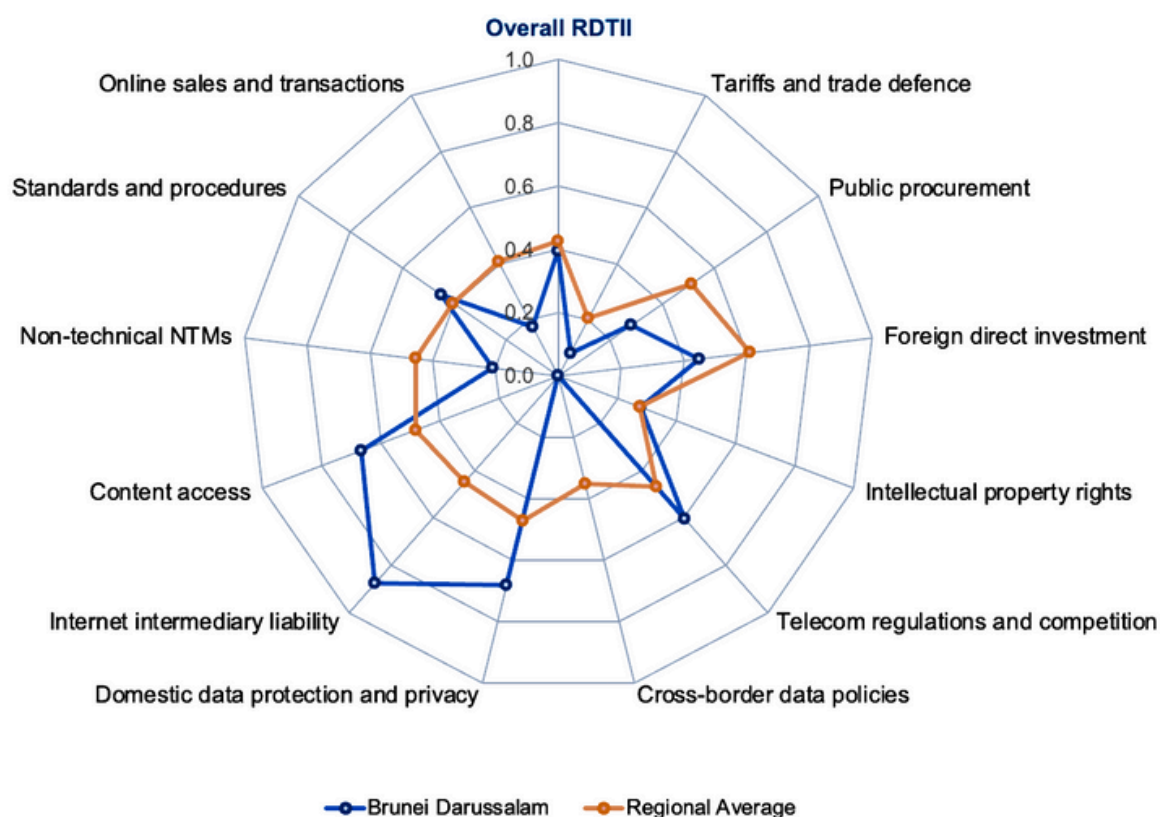
DOMESTIC DATA PROTECTION AND PRIVACY

Brunei Darussalam has not yet adopted a comprehensive legal framework for data protection which is applicable to personal data across all sectors. Instead, it undertakes a sectoral approach addressing specific issues using varied regulations. For instance, the Electronic Transactions Act Cap.196 (2008), Banking Order (2006), and Islamic Banking Order (2008) provide protection for user information confidentiality limited to financial and banking sectors. Furthermore, the Computer Misuse Act Cap.194 (2007) grants authorized personnel, under the Attorney-General's consent, powers to access and inspect computers, including the ability to access any information, code, or technology that can convert encrypted data into a readable format. Brunei Darussalam also mandates a five-year data retention requirement for businesses under the Record Keeping (Business) Order Cap.249 (2022).

CONTENT ACCESS

Under the Internet Code of Practice, ISPs and ICPs are required to use their best efforts to ensure that content available on the Internet does not go against the public interest or national harmony. The Censorship of Films and Public Entertainments Act (1963), Undesirable Publications Act (1982), Penal Code (1952), and Sedition Act (1983), allow the government to restrict online content access under different circumstances. The Broadcasting (Class Licence) Notification (2001) mandates class licenses for Value Added Network (VAN) computer online services provided by ISPs and ICPs.

Figure 2: Comparison between Brunei Darussalam’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

BRUNEI DARUSSALAM'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Brunei Darussalam engages actively in regional and bilateral digital trade agreements. As a member of the World Trade Organization (WTO), Brunei Darussalam contributes to the WTO Joint Statement Initiative on Electronic Commerce. The economy is also a signatory to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and ratified the Regional Comprehensive Economic Partnership (RCEP) in October 2021, solidifying its regional economic ties. Since joining the ASEAN Single Window (ASW) initiative in 2013, Brunei Darussalam employs its National Single Window (BDNSW) System to streamline trade processes in the ASEAN Region. Brunei Darussalam is also a participant in the ASEAN-Australia-New Zealand Free Trade Agreement, which includes a dedicated e-commerce chapter.



CAMBODIA

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CAMBODIA

Cambodia is among the economies with relatively low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for regulations related to cross-border data policies, public procurement and non-technical non-tariff measures (NTMs). However, the economy has relatively complex rules compared to the group average are related to tariffs and trade defence, intellectual property rights, and domestic data protection and privacy.

Among 12 policy areas, the highest compliance costs for Cambodia are in regulations related to cross-border data policies, public procurement, and non-technical NTMs. In contrast, the lowest compliance costs are in those related to domestic data policies, content access, and intellectual property rights.

Table 3: Cambodia's RDTII overall score and pillars' scores

Cambodia	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.411	-3%
Pillar 1: Tariffs and trade defence	0.488	138%
Pillar 2: Public procurement	0.180	-65%
Pillar 3: Foreign direct investment	0.466	-24%
Pillar 4: Intellectual property rights	0.514	86%
Pillar 5: Telecom regulations and competition	0.441	-6%
Pillar 6: Cross-border data policies	0.000	-100%
Pillar 7: Domestic data protection and privacy	0.682	45%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.542	12%
Pillar 10: Non-technical NTMs	0.313	-31%
Pillar 11: Standards and procedures	0.450	11%
Pillar 12: Online sales and transactions	0.488	19%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Cambodia recently introduced new measures that increase the regulatory complexity of telecommunications and internet services. Sub-Decree No. 41 on the Registration of Identity of Telecommunications Equipment using SIM Modules (2023) requires telecommunications equipment with SIM modules to be registered with the Equipment Identity Registration System. The registration is mandatory and should be prepared and managed by mobile operators.¹ Moreover, the Telecommunications Notification No.0836 (2023), requires companies registered in Cambodia to utilise a local domain name (such as .com.kh) for their websites and email addresses.

Cambodia is in the process of drafting a comprehensive Law on Trade Secrets and Undisclosed Information.² Until this Law is adopted, various existing laws are used to protect different types of information. For instance, a non-disclosure agreement may be used and enforced under the Contract Law of 1998 to maintain information in employment or other contractual relationships. Another regulation being drafted is the Cybercrime Law which aims to prevent and combat all kinds of cyber-related crimes.³

EXAMPLES OF POLICIES SUPPORTING CAMBODIA'S DIGITAL TRADE INTEGRATION

CROSS-BORDER DATA POLICIES

Cambodia currently does not enforce any restrictive cross-border data policies. As a member of the Regional Comprehensive Economic Partnership (RCEP) since 2022, Cambodia has affirmed its commitment to open transfers of cross-border data flows. However, a Draft Law on Personal Data Protection was circulated to selected private organizations in September 2023 for review and comment. This draft proposes rules including a complete prohibition on all personal data transfers and specific data localization requirements, which conflict with the economy's commitments under the RCEP. It is important to note that the Draft Law is still in its preliminary stages and may undergo significant adjustments before it is finalised.

¹ Lexology. (2023). Sub-Decree on Telecommunications Equipment Identity Registration. Available at <https://www.lexology.com/library/detail.aspx?g=f57a77b5-3968-423d-8f31-75f1478c59e6>.

² EU South-East Asia IPR SME Helpdesk. (2017). IP Factsheet: Cambodia. Available at <https://op.europa.eu/en/publication-detail/-/publication/b4fa3416-50c8-11ec-91ac-01aa75ed71a1/language-en/format-PDF/source-317979855>.

³ Legal analysis of the draft law highlights that the proposed legislation neglects to incorporate protective measures and overlooks the necessity to ensure the qualification of cybersecurity inspectors. Please see <https://www.phnompenhpost.com/national/concerns-over-draft-cyber-law-allayed-official-explanation>.

PUBLIC PROCUREMENT

Cambodia has generally maintained an unrestricted approach to public procurement. Law on Public Procurement (2012) (amended in 2023) ensures that publicly competitive bidding is used for selecting suppliers, contractors, or service providers, with tenders open to all international bidders. However, an import ban is in place for used computers and spare parts. Additionally, Cambodia does not mandate the surrender of patents, source codes, or trade secrets as a condition for winning tenders. Notably, Cambodia is not a signatory to the WTO Government Procurement Agreement (GPA).

NON-TECHNICAL NTMS

Cambodia's non-technical NTMs are generally not very burdensome for businesses in digital trade. Specifically, the Sub-Decree on The Enforcement of the List of Prohibited and Restricted Goods (2020) and Sub Decree on the Establishment and Management of the Special Economic Zone (2005) do not place export restrictions or local content requirements on ICT products and online services.

EXAMPLES OF POLICY CHALLENGES TO CAMBODIA'S DIGITAL TRADE INTEGRATION

DOMESTIC DATA PROTECTION AND PRIVACY

Cambodia does not have a comprehensive data protection law across all sectors. Instead, it uses a sectoral approach in data protection, addressing issues in a few relevant areas. In particular, the E-commerce Law (2019) and the Consumer Protection Law (2019) have regulations on the storage of electronic data and establish requirements for consent and the protection of consumer rights. Despite there being no specific minimum period for data retention in the e-commerce sector, service providers are required by law to preserve information as evidence if such information could potentially result in civil or criminal liability. Additionally, the Law on Customs (2007) states that traders and Government agencies must keep accurate documents, records, and other information in electronic format pertaining to the import and export of goods for ten years.

Cambodia allows the Government to access personal data without a warrant or court order. The Law on Telecommunications (2015) requires that all telecommunications operators and persons involved with the telecommunications sector shall provide the telecommunications information and communication technology service data to the Ministry of Post and Telecommunications. This requirement gives the Ministry unfettered rights to demand that all telecommunications service providers provide data on their service users.

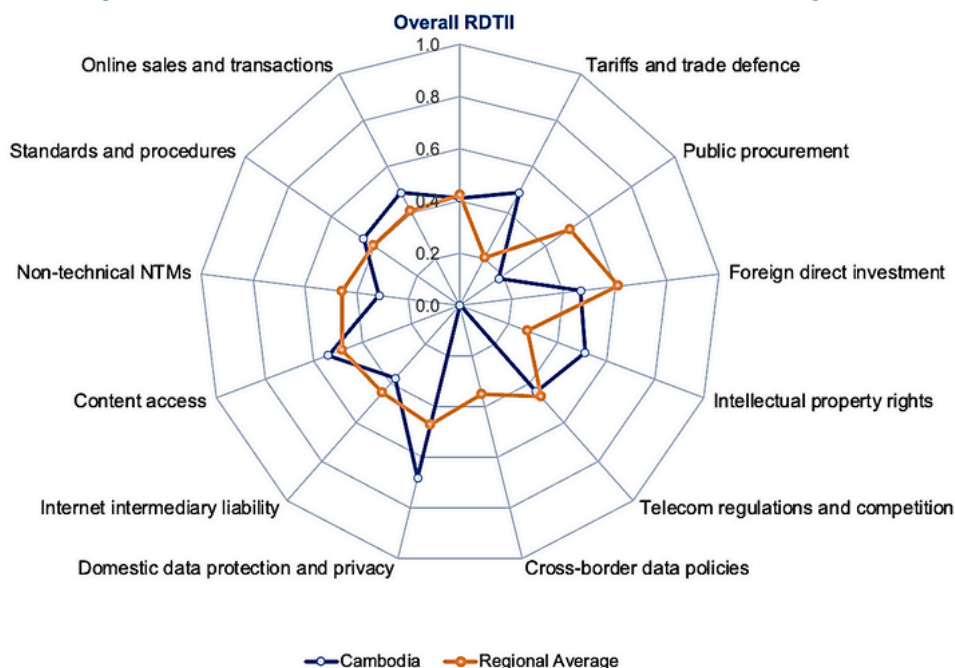
CONTENT ACCESS

According to the Sub-decree on the Establishment of the National Internet Gateway, all internet traffic in Cambodia must pass through a regulatory body. This body is charged with monitoring online activity and has the authority to block or disconnect any network connections. There is no online advertising restriction in Cambodia, and the Law on Consumer Protection (2019) mainly provides protection from the misleading advertisements both offline and online by having Khmer Language as a written language for the content of the advertisement. However, Cambodia has online content monitoring requirements for internet service providers (ISPs). ISPs must install software programs and equip themselves with Internet surveillance tools to easily filter and block any social media accounts or pages that run their business activities and/or advertise illegally.

INTELLECTUAL PROPERTY RIGHTS

Specific patent and copyright laws, including explicit copyright exceptions are in place. However, a draft trade secrets legal framework is currently under consideration.⁴ In terms of enforcement, the Law on the Patents, Utility Model Certificates and Industrial Designs (2003) permits the Government to exploit a patented invention itself, or allows third parties to do so for the purpose of promoting 'public interests' including national defence, nutrition, health and development. In addition, Cambodia is not a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Figure 3: Comparison between Cambodia's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁴ Law on the Patents, Utility Model Certificates and Industrial Designs 2003, and Law on Copyright and Related Rights 2003. A non-disclosure agreement is governed under the Contract Law of 1998.

CAMBODIA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Cambodia has engaged in multiple trade agreements with provisions related to digital trade as it is making efforts to advance its digital integration within the ASEAN region. This commitment is demonstrated through its participation in the ASEAN Work Programme on Electronic Commerce 2017-2025 and the ASEAN Digital Integration Framework Action Plan 2019-2025.⁵ Furthermore, Cambodia is a signatory to the Regional Comprehensive Economic Partnership (RCEP), a comprehensive trade agreement that includes a substantial e-commerce chapter.⁶

⁵ ASEAN Secretariat. (2021). ASEAN Work Programme on Electronic Commerce. Available at https://asean.org/wp-content/uploads/2021/09/ASEAN-Work-Programme-on-Electronic-Commerce_published.pdf.

⁶ The Government of Cambodia. (2022). The Regional Comprehensive Economic Partnership (RCEP) and the business prospects for Cambodia. Available at <https://asean2022.mfaic.gov.kh/posts/2022-02-06-News-The-Regional-Comprehensive-Economic-Partnership-RCEP-and-the-business-prospects-for-Cambodia-00-33-44>.



INDIA

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INDIA

India is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly higher than the group average for regulations in several areas, for example, tariffs and trade defence, non-technical non-tariff measures (NTMs), and intellectual property rights, public procurement, and foreign direct investment. However, the economy has relatively lower compliance costs compared to the group average for telecommunication regulations and competition.

Among 12 policy areas, the highest compliance costs for India are in regulations related public procurement, non-technical NTMs, and foreign direct investment. In contrast, the lowest compliance costs are in those related to telecommunication regulations and competition, internet intermediary liability, and domestic data protection and privacy.

Table 4: India's RDTII overall score and pillars' scores

India	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.671	58%
Pillar 1: Tariffs and trade defence	0.601	193%
Pillar 2: Public procurement	1.000	95%
Pillar 3: Foreign direct investment	0.915	50%
Pillar 4: Intellectual property rights	0.556	101%
Pillar 5: Telecom regulations and competition	0.441	-6%
Pillar 6: Cross-border data policies	0.692	97%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.500	11%
Pillar 9: Content access	0.625	29%
Pillar 10: Non-technical NTMs	1.000	120%
Pillar 11: Standards and procedures	0.600	48%
Pillar 12: Online sales and transactions	0.575	41%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

In recent years, India has increased regulatory requirements related to data protection and data flows. In August 2023, the economy adopted the Digital Personal Data Protection Act (DPDPA) which introduces data localisation requirements, restrictions on the cross-border flows of personal data and data processing by data fiduciaries. The DPDPA adds administrative responsibilities for data fiduciaries by requiring the appointment of a data protection officer and periodic data protection impact assessments. Before the adoption of DPDPA, India had sectoral data protection limited to internet service providers, telecom service providers, banking information and certain corporate entities. With DPDPA, India has unified and comprehensive data protection, recognising both the right of individuals to protect their personal data and the necessity to process such data for lawful purposes.

India had also introduced data localisation requirements. The Amended Companies Act (2022) requires every company to store books and papers in an electronic mode which should remain accessible in India, at all times. A similar data retention requirement was introduced by the Ministry of Electronic and Information Technology, mandating all service providers, data centres, and government bodies to maintain logs of all their ICT systems securely within the Indian jurisdiction for a period of 180 days.

In August 2023, India imposed measures on importing ICT goods. Imports of certain electronics such as laptops, tablets and personal computers under the HS code 8741 now require a valid 'Licence for Restricted Imports'. Additionally, amendments in the Bureau of Indian Standards Regulations introduced testing requirements for imported ICT goods to meet government standards. However, it acknowledges the "Self-declaration of Conformity" for foreign manufacturers of ICT goods.

India has implemented policies for closely monitoring social media and digital content. An amendment in the IT Rules (2021) introduced two procedures, which are blocking information on the recommendation of the Inter-Departmental Committee (IDC) and blocking news and current affairs content in case of emergency. Non-compliance may result in the loss of safe harbour protections for internet service providers.

Indian parliament approved the Telecommunications Bill in December 2023 which will repeal the current governing laws to reform the telecom sector. The Bill seeks to foster competition, implement protective measures to manage telecom infrastructure and replace the license requirement with government authorisation for providing telecommunication services.¹ The Bill grants the government authority to temporarily manage telecom services in the interest of national security or public emergency.

¹ Economic Times. (2023). Lok Sabha approves Telecom Bill 2023: Key things to know. Available at <https://economictimes.indiatimes.com/industry/telecom/telecom-news/lok-sabha-approves-telecom-bill-2023-key-things-to-know/articleshow/106161221.cms>.

EXAMPLES OF POLICIES SUPPORTING INDIA'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

India allows 100% FDI ownership with an automatic entry route in the telecommunication sector. However, the investors must comply with the terms and conditions of the Unified License (UL) and prescribed guidelines. The 2021 amendment of Unified License allows infrastructure sharing of core networks between telecom operators in order to reduce costs and enhance services. Moreover, India has been a signatory to the WTO Telecom Reference Paper since 1994 and in 2001, it established the independent Telecom Regulatory Authority of India.

INTERNET INTERMEDIARY LIABILITY

The Information Technology Rules (2021) provides intermediaries with immunity for unlawful content, as long as they follow the prescribed due diligence requirements and do not conspire, abet or aid an unlawful act. However, the immunity lapses if intermediaries fail to remove any information after receiving 'actual knowledge' of any content used to commit an unlawful act, or being notified of such content. Social media intermediaries have additional requirements such as appointing personnel for compliance, enabling identification of the first originator of information and deploying technology-based automated monitoring tools to continue to claim immunity.

DOMESTIC DATA PROTECTION AND PRIVACY

The DPDA (2023) provides a comprehensive framework for data protection to "provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto". It provides safeguards for personal data and enhances transparency. However, it requires localization of data storage and increases compliance costs for data fiduciaries.

EXAMPLES OF POLICY CHALLENGES TO INDIA'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

India is an observer of the WTO Agreement on Government Procurement (GPA). As a result, public procurement in India can have local content requirements. The Guidelines for Providing Preference to Domestically Manufactured Electronic Products in Government Procurement (2015) provide that the minimum percentage of domestic procurement for any electronic product is 30%. Moreover, the 2018 amendment requires the Central Government Ministries, Departments and Public Sector Undertakings to procure a minimum of 25% of their annual value of goods and services from Indian micro and small enterprises. Since 2020, the Ministry of Electronics and Information Technology has mandated that cellular mobile phones should be exclusively procured from local suppliers. For cybersecurity, Public Procurement Order (2018) states that only domestically manufactured cybersecurity products or cyber security products with a minimum local content of 60% can be procured.

NON-TECHNICAL NTMS

India puts relatively heavy quantitative trade restrictions on ICT goods and digital services. Smart TVs, PCs, laptops, tablets, mobile phones (including secondhand devices) and other electronic items have been subject to a special importing license from India's Directorate General of Foreign Trade. In addition, in 2020, the Ministry of Information and Technology banned 267 apps in view of possible national and data security and privacy threats posed by these apps.² India also imposes a local content requirement on single-brand retailers, including their e-commerce entities with physical stores in India, by requiring them to purchase 30% of the value of goods domestically.

FOREIGN DIRECT INVESTMENT

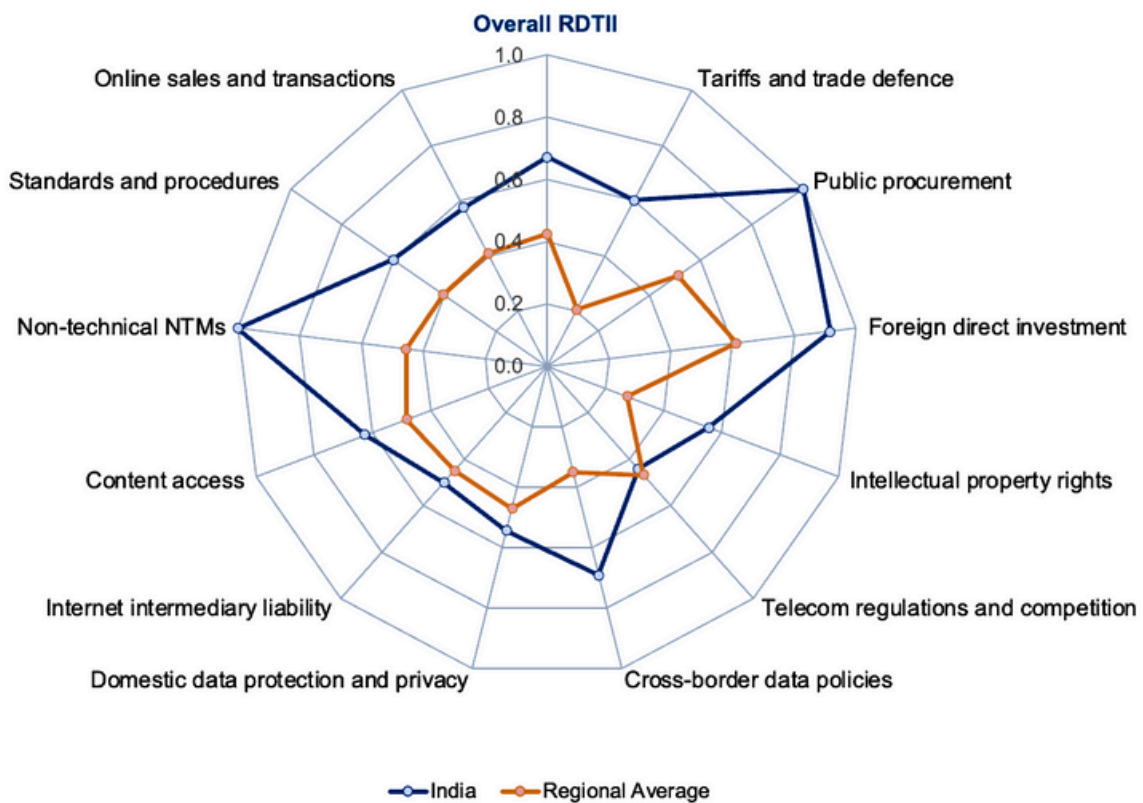
Since 2013, the Consolidated FDI policy of India requires local citizenship for C-suite positions in the broadcasting service sector.³ This is in addition to the local residency requirement under the Companies Act (2013) for every company to have at least one director who has stayed in India for a total period not less than 182 days in the previous calendar year.

² On June 29, 2020, the Government of India blocked access to 59 mobile apps. An additional 47 apps were banned on July 27, 2020, followed by 118 more apps on September 2, 2020. Furthermore, 43 apps were banned on November 24, 2020. Lists of the prohibited apps can be accessed via the Press Information Bureau's website, available at: <https://www.pib.gov.in/AdvanceSearch.aspx>

³ "C-suite" generally refers to the executive-level managers within a company. In the context of the Consolidated FDI policy of India, it includes the Chief Executive Officer (CEO), Chief Officer in-charge of technical network operations and Chief Security Officer.

The FDI policy further stipulates the screening of foreign ownership above 49% in single-brand retailing e-commerce entities that have both physical and digital stores. In addition, India requires online single-brand retailers, including foreign ones, that sell their products through e-commerce to establish brick-and-mortar stores within 2 years. Moreover, in 2020, the amended Consolidated FDI policy implemented FDI caps on broadcasting content services as follows: (i) 49% under government route in terrestrial broadcasting (FM radio) and up-linking of 'news and current affairs' TV channels. (ii) 26% under government route in uploading/streaming of 'news and current affairs' through digital media; and (iii) 100% under automatic route in up-linking of non-news and current affairs' TV channels/ down-linking of TV channels.

Figure 4: Comparison between India's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

INDIA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

India signed the Comprehensive Economic Cooperation and Partnership Agreement with Mauritius which came into force in 2021. India also signed the India-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement and the Australia-India Economic Cooperation and Trade Agreement which, both of which came into force in 2022. These agreements include provisions on digital trade, cross-border data flows and e-commerce and promote the implementation of electronic certificates, e-government, and other trade facilitating technologies, especially, paperless trade facilitation. India is currently negotiating the India-United Kingdom Free Trade Agreement (FTA) and the India-EU FTA, aiming to reduce the regulatory barriers to data and digital trade.⁴

⁴ Nikkei. India-U.K. trade talks home in on digital trade, investor protection. Available at <https://asia.nikkei.com/Economy/Trade/India-U.K.-trade-talks-home-in-on-digital-trade-investor-protection>.



INDONESIA

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

INDONESIA

Indonesia is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, compliance costs are significantly higher than the group average for regulations related to online sales and transactions, public procurement, cross-border data policies, and foreign direct investment. However, the economy has relatively lower compliance costs compared to the group average for tariffs and trade defence, standards and procedures, and internet intermediary liability.

Among 12 policy areas, the highest compliance costs for Indonesia are in regulations related to public procurement, online sales and transactions, and foreign direct investment. In contrast, the lowest compliance costs are in those related to tariffs and trade defence measures, intellectual property rights, and standards and procedures.

Table 5: Indonesia's RDTII overall score and pillars' scores

Indonesia	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.512	21%
Pillar 1: Tariffs and trade defence	0.050	-76%
Pillar 2: Public procurement	1.000	95%
Pillar 3: Foreign direct investment	0.831	36%
Pillar 4: Intellectual property rights	0.236	-14%
Pillar 5: Telecom regulations and competition	0.500	7%
Pillar 6: Cross-border data policies	0.615	75%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.417	-14%
Pillar 10: Non-technical NTMs	0.417	-9%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.913	124%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

In 2022, Indonesia introduced measures aimed at promoting local content within its public procurement projects. In March 2022, Indonesia issued President Instruction No.22/2022, requiring all government agencies to spend at least 40% of their budget on local products produced by SMEs. Within the same Instruction, government bodies are also required to provide a price preference margin - maximum between 7.5% and 25%, depending on the sector - for local products with at least 25% local content. Ultimately, the objective is to increase the use of local products to support the "Proud of Using Products Made in Indonesia" campaign.

Liberalisation measures have been introduced for foreign investment in many sectors, including those related to digital trade. Under the Omnibus Law, adopted in 2020 and amended in 2022, the Financial Service Authority of Indonesia (OJK) issued Regulation No.10/POJK.05/2022, reducing foreign ownership on the information technology-based co-financing services sector, which includes peer-to-peer lending services, from 100% to 85%.

Indonesia introduced the Personal Data Protection Law No.27 (PDPL), which entered into force on 17 October 2022. The PDPL Law closely aligns with international data privacy standards and is largely modelled on the European Union's General Data Protection Regulation (GDPR). It establishes responsibilities for the processing of personal data and rights for individuals in a manner similar to other international data protection laws. The PDPL requires data controllers transferring personal data abroad to ensure that the recipient economy has a level of data protection at least equal to that required in Indonesia.¹

¹ Other issues covered in the PDPL including the scope of personal data, consent to data processing, data subject rights, and dispute resolution. See the summary analysis of PDPL at <https://privacymatters.dlapiper.com/2023/09/indonesia-prepare-now-for-the-new-personal-data-protection-law/>.

EXAMPLES OF POLICIES SUPPORTING INDONESIA'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Indonesia does not have any trade defence measures against ICT products. The economy signed the WTO Information Technology Agreement (ITA I), but it has yet to join the ITA II expansion. The effective tariff on ICT goods imported from ESCAP countries is relatively low, standing at 0.25%, with 75% of zero-tariff coverage on certain ICT goods.

INTELLECTUAL PROPERTY RIGHTS

With the amended Omnibus Law No. 11 (2020), the use of a patent is no longer restricted to production solely in Indonesia. The importation or licensing of the patented product/process would also be considered as an implementation of the patent in Indonesia. Indonesia issued Law on Trade Secrets No.30 (2000) maintaining confidentiality of information in the field of technology and/or business that is not known by the public. Trade secrets are legally defined and effectively regulated under this law. Indonesia also ratified the WIPO Copyright Treaty in 1997 and the WIPO Performances and Phonograms Treaty in 2004.

STANDARDS AND PROCEDURES

Indonesia has a transparent approach to the formulation of standards and technical regulations. Law on Standardization and Conformity Assessment No.20 (2014) stipulates that Indonesia National Standards (SNI) should be developed in accordance with international standards by taking into account the considerations of national interest and global competition. More specifically, the SNI ISO/IEC 19790:2015 standard regulates information technology, security techniques, and security requirements for cryptographic modules. The economy allows a wide range of stakeholders, including consumer associations, experts and industry representatives, to participate in the processes of standards and technical regulations formulation.

Additionally, Indonesia allows third-party certification via Conformity Assessment Bodies (CABs) from several countries for IT and telecommunication equipment that is to be sold or imported into the Indonesian market. The National Cyber and Crypto Agency (BSSN) is currently preparing a draft Agency Regulation concerning the Implementation of Indonesian Cryptographic Algorithms and the Cryptographic Module Security Assessment Scheme. The regulation includes general criteria and specific criteria for Indonesian cryptographic algorithms, the Indonesian cryptographic committee, and the cryptographic module security certification scheme.

EXAMPLES OF POLICY CHALLENGES TO INDONESIA'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

The Ministry of Industry Regulation No.02/M-IND/PER/1/2014 on the Guidelines for the Increase of the Use of Domestic Products in the Procurement of Government Goods/Services restricts the participation of foreign suppliers in public procurement. According to the regulation, the procurement of public goods and services is categorized depending on the Domestic Component Level (TKDN) and the Company Utilization Point Rating (BMP) which is based on investments of the suppliers in Indonesia.² The regulation also includes price preferences for bidders with more than 25% of TKDN or striving to achieve at least 30%. The price preferences can be up to 15% for the procurement of goods and maximum 7.5% for services.

The Presidential Regulation No.16/2018 provides the latest minimum thresholds of bid value for foreign companies who want to cooperate with a national company to participate in public procurement.³ In March 2022, Indonesia issued President Instruction No.22/2022, mandating all government agencies to spend at least 40% of their budget on local products produced by SMEs. The Ministry of Industry Regulation No.49/2009 requires the use of domestic products and services in 558 sub-sectors for public procurement, with minimum local content requirements ranging from 15% up to 96%. Currently, the economy is an observer to the WTO Agreement on Government Procurement (GPA). These restrictions on public procurement will need to be adjusted if Indonesia will join the agreement.

ONLINE SALES AND TRANSACTIONS

E-commerce sector is subjected to several requirements. Specifically, Indonesia has foreign investment restrictions on delivery services. Under Government Regulation No.46/2021, foreigners are not allowed to own more than 49% of express delivery services. Moreover, foreign delivery companies are prohibited from inter-province delivery and are required to cooperate with local delivery service companies to conduct the delivery at the provincial level. Indonesia has implemented e-commerce license requirements, categorized into three major types.⁴ Businesses need to remain vigilant, actively monitoring the validity of their licenses, and ensuring timely renewal. On 19 May 2020, the Government issued Ministry of Trade Regulation No.50/2020 that requires certain foreign e-commerce operators to establish a local representative

² According to Article 10, domestic service suppliers need to be prioritized. To be considered as a domestic service supplier, the majority of shares have to belong to an Indonesian citizen and two-thirds of the board members have to be locals. If no domestic service suppliers are participating in the procurement, service suppliers where more than 50% up to 90% is owned by a foreign company or foreign citizen will be taken into consideration

³ The thresholds are approximately USD 4.5 million for goods and services and USD 2.25 million for consulting services.

⁴ These categories include: general business license, which covers a broad range of e-commerce activities across various business entities; industrial business license, specific to e-commerce operations in industrial sectors; and construction business license, tailored for e-commerce activities related to the construction industry.

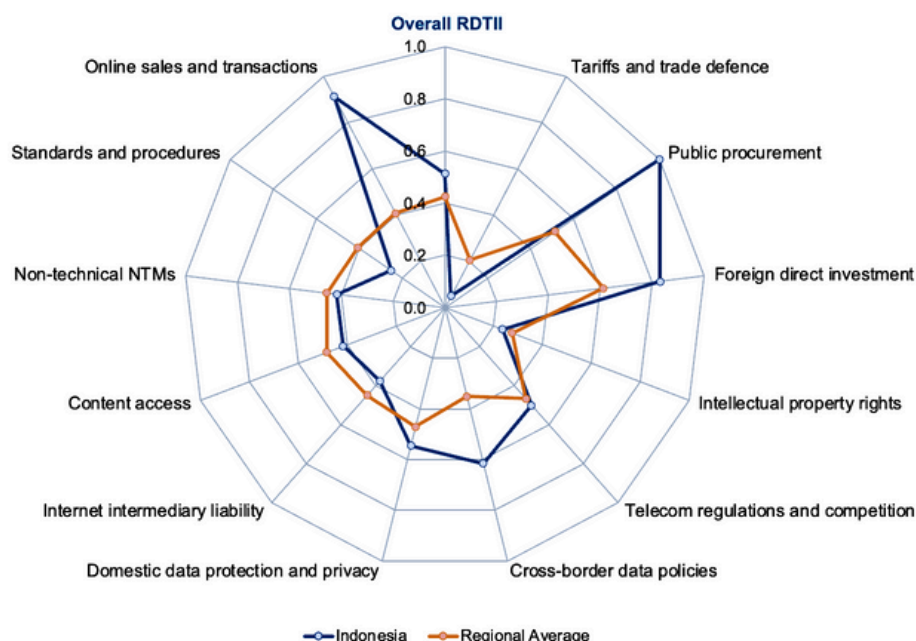
office in the economy. Moreover, foreign Private Electronic System Operators (ESOs) are mandated to register their businesses to the relevant ministry through the online single submission system. ESOs should also appoint liaison officers, who must be domiciled in Indonesia.

E-payment services are also subject to several restrictions. In Indonesia, any e-money issuer must be licensed by Indonesia’s Central Bank. Additionally, the Bank Indonesia Regulation No.20/6/PBI/2018 added a limit to the maximum amount stored e-money at IDR 2 million (approximately USD 123) for unregistered e-money and IDR 10 million (approximately USD 617) for registered e-money. The economy has not signed the United Nations Convention on the Use of Electronic Communications in International Contracts, nor does it adopt the UNCITRAL Model Laws on Electronic Commerce or on Electronic Signatures.

FOREIGN DIRECT INVESTMENT

There is a limit of 49% on the shares that can be acquired by foreign investors in government-controlled firms in Indonesia. This includes foreign participation in state owned enterprises (SOEs) in the telecommunication and delivery service sectors. Furthermore, Indonesia introduces joint venture requirements in several sectors. The Ministry of Communication and Information Technology Regulation No.6/2017 introduces the requirement that any consortium providing Internet Protocol Television (IPTV) must consist of at least two Indonesian entities. Consultancy services related to the installation of computer hardware and software implementation services are also required to form a joint operation through a representative office in Indonesia. In addition, the Ministry of Manpower and Transmigration Regulation No.40/2012 specified 19 positions that are reserved for Indonesian nationality only, ranging from Chief Executive Officer to various directors, managers, and supervisors’ positions within a company.

Figure 5: Comparison between Indonesia’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

INDONESIA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Indonesia participates in the Regional Comprehensive Economic Partnership (RCEP), which includes an explicit e-commerce chapter. Since 2017, Indonesia has joined the WTO Joint Statement Initiative on Electronic Commerce. Regionally, Indonesia contributed to the efforts of the ASEAN bloc on digital trade, including the ASEAN Digital Integration Framework Action Plan 2019-2025 and the ASEAN Agreement on Electronic Commerce. Indonesia also participates in the ASEAN Preferential Trade Agreement (PTAs) with several countries, such as the upgraded ASEAN-China, upgraded ASEAN-Australia-New Zealand, ASEAN-India, ASEAN-Japan, and ASEAN-Hong Kong, China.⁵

⁵ All agreements include a dedicated e-commerce chapter with an exception on the ASEAN-China PTA upgrade.



JAPAN

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

JAPAN

Japan is among the economies with relatively low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for non-technical non-tariff measures (NTMs), followed by tariffs and trade defence, content access, and foreign direct investment. However, the economy has relatively complex rules compared to the group average are public procurement, and online sales and transactions.

Among 12 policy areas, the highest compliance costs for Japan are in regulations related to public procurement, domestic data protection and privacy, and online sales and transactions. In contrast, the lowest compliance costs are in those related to non-technical NTMs, tariffs and trade defence, and content access.

Table 6: Japan's RDTII overall score and pillars' scores

Japan	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.284	-33%
Pillar 1: Tariffs and trade defence	0.062	-70%
Pillar 2: Public procurement	0.600	17%
Pillar 3: Foreign direct investment	0.237	-61%
Pillar 4: Intellectual property rights	0.194	-30%
Pillar 5: Telecom regulations and competition	0.279	-40%
Pillar 6: Cross-border data policies	0.231	-34%
Pillar 7: Domestic data protection and privacy	0.455	-4%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.167	-65%
Pillar 10: Non-technical NTMs	0.000	-100%
Pillar 11: Standards and procedures	0.400	-1%
Pillar 12: Online sales and transactions	0.413	1%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Japan has augmented consumer protection, and data privacy into regulations related to digital sector and telecommunications. Specifically, an amendment to the Telecommunications Business Act No. 86 (1984) in 2021, has extended extraterritorial enforcement to foreign companies, that provide telecom services to Japanese customers, requiring them to register with the Ministry of Internal Affairs and Communications, designate a local representative in Japan, and protect consumer right to secrecy of communication. Additional amendments in effect since June 16, 2023, introduce new regulations for third-party cookies and specific user information handling.¹ Moreover, the 2022 amendment to the Act on the Protection of Personal Information No.57 (2003) mandates entities to implement appropriate security control measures for personal data management and comply with regulations on supervising employees and sharing data with third parties.²

EXAMPLES OF POLICIES SUPPORTING JAPAN'S DIGITAL TRADE INTEGRATION

NON-TECHNICAL NTMS

Japan does not impose any import bans or restrictions on ICT goods or digital services. However, there is an export procedure under the Export Trade Control Order (Cabinet Order No. 378 of 1949) and Foreign Exchange Order (Cabinet Order No. 260 of 1980) that specifies a list of controlled items. These items typically include weapons or dual-use items related to weapons of mass destruction and conventional weapons, which are outside the scope of digital trade-related products.

TARIFFS AND TRADE DEFENCE

Japan has very low effective tariffs on imported ICT goods from ESCAP economies, at 0.3%, and maintains 94.42% zero-tariff coverage on such goods. Japan barely imposes trade defence measures on ICT goods, except for antidumping duties on electrolytic manganese dioxide (a component of batteries) imported from China. The economy is a signatory of the 1996 WTO Information Technology Agreement (ITA) and its ITA II extension.

¹ For more information regarding the Telecommunications Business Act amended in 2023, please see https://insightplus.bakermckenzie.com/bm/consumer-goods-retail_1/japan-telecommunications-business-act-amendments-introducing-new-regulations-for-cookies-and-user-identification-information_1.

² For more information regarding the Updates for the Amendment of Japan's Act on the Protection of Personal Information in 2022, please see <https://www.dlapiper.com/en/insights/publications/2022/03/updates-for-the-amendment-of-japans-act-on-the-protection-of-personal-information>

CONTENT ACCESS

Japan does not take a heavy-handed approach to regulating online content services. Apart from a measure to filter content harmful to young people, Japan does not pursue site blocking or content filtering as an anti-piracy tool. This is largely due to concerns regarding consistency between Article 21(2) of the Constitution and Article 4 of the Telecommunications Business Act No.86 (1984).³ The economy does not apply restriction to online advertising. While registration is implemented, there is no licensing requirement for digital content provider. However, businesses that intermediate communications among users in Japan, including providers of cross-border services, are mandated to register as telecommunications providers with the Ministry of Internal Affairs and Communications, appoint a representative or agent physically domiciled in Japan, and comply with regulations imposed on domestic operators under the Telecommunications Business Act No.86 (1984).

EXAMPLES OF POLICY CHALLENGES TO JAPAN'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

Japan imposes restrictive measures for public procurement. The cryptographic technology used in e-government is required to undergo evaluations by Cryptography Research and Evaluation Committees (CRYPTREC).⁴ The head of information security officers of the procuring government entity must specify the algorithms and operational models for encryption and electronic signatures. These measures include the use of the algorithm in the e-Government Recommended Ciphers List and the examination of the necessity of an emergency response plan in the case of an algorithm compromise. Japan is a signatory to the WTO Government Procurement Agreement (GPA). However, the commitment does not include computer and related services, telecommunication-related services (CPC 754), while telecommunications services (CPC 752) are partially covered. It is reported that the share of foreign participation in government procurement projects is low due to non-regulatory barriers, such as distance and lack of information on the market.⁵

DOMESTIC DATA PROTECTION AND PRIVACY

Japan's Act on the Protection of Personal Information No.57 (2003) establishes a comprehensive data protection regulation. However, certain domestic data policies in Japan involve high compliance costs. Specifically, there are data retention requirements and government access rights to personal data held by

³ Stephens, H. (2017) 'Site blocking in Japan – A call for action', Available at: <https://hughstephensblog.net/2017/11/20/site-blocking-in-japan-a-call-for-action/>

⁴ See Management Standards for Information Security Measures for the Central Government Computer Systems 2011. Available at: <https://www.nisc.go.jp/eng/pdf/K304-111e.pdf>.

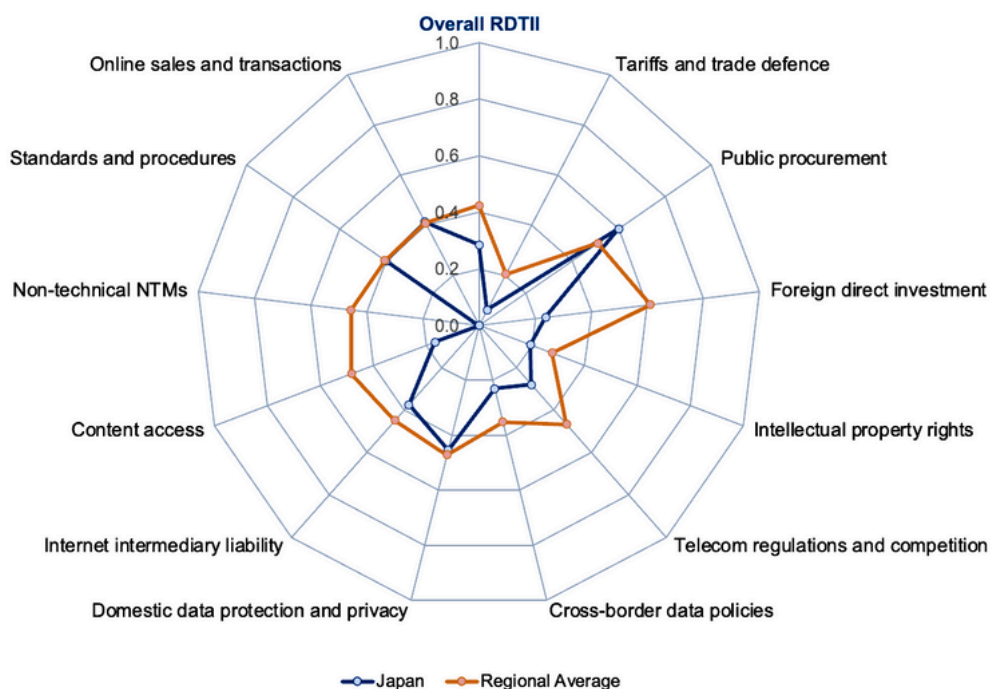
⁵ European Parliament. (2017) 'Openness of Public Procurement market in key third countries', Available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/603840/EXPO_STU\(2017\)603840_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/603840/EXPO_STU(2017)603840_EN.pdf)

business enterprises. In the case of data retention requirement, the Act No.57 mandates that data specified by Cabinet Order as harmful to public or other interests must be retained for no longer than one year. For government access, law enforcement agencies may request or order the decryption of encrypted electronic records held by business enterprises, not necessarily with a warrant, in accordance with the Criminal Procedure Code No.131 (1948) and the Act on the Interception of Communications for Criminal Investigations No.137 (1999) for the assistance of on-going investigations.

ONLINE SALES AND TRANSACTIONS

Japan's e-commerce regulatory environment is relatively complex possibly due to requirements that necessitate local- or commercial presence. For instance, an applicant for the domain name ".jp" is required to have a permanent address in Japan. The Act on Improving Transparency and Fairness of Digital Platforms Act No.38 (2020), has been in effect since February 2021, mandating that specified digital platform providers appoint a person domiciled in Japan to perform necessary business management.⁶ According to the Installment Sales Act (2016), a foreign acquirer that conducts business to enable credit card acquiring for a merchant in Japan, must either perform registration itself or entrust the work to a registered Payment Service Provider. Japan has not reported the adoption or participation of the UNCITRAL Model Law on Electronic Signatures, the Model Law on Electronic Commerce, and the United Nations Convention on the Use of Electronic Communications in International Contracts.

Figure 6: Comparison between Japan's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁶ The Act is designed to prevent the anti-competitive practice of online platform companies with huge market impact by requiring (i) disclosure of terms and conditions for the use of their platforms, (ii) certain measures that promote mutual understanding of digital transactions, and (iii) filing of an annual report among others. This Act has raised concern among major companies over lack of transparency.

JAPAN'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Japan has been one of the most active economies in leading digital trade negotiations. In 2019, Japan issued the Osaka Declaration on Digital Economy at the G20 Osaka Summit Meeting and launched the “Osaka Track,” demonstrating its commitment to “promote international policy discussions, inter alia, international rule-making on trade-related aspects of electronic commerce at the WTO”.⁷ Following the Osaka Declaration, Japan, along with Australia and Singapore as co-conveners of the WTO Joint Statement Initiative on Electronic Commerce, has continued the negotiations and developed a consolidated negotiating text at the end of 2020. Regionally, Japan is a signatory to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). Similarly, Japan continues to affirm its commitment in Southeast Asia to further its economic cooperation with the ASEAN bloc through the Implementation Plan of the Joint Vision Statement on ASEAN-Japan Friendship and Cooperation, marking its 50th anniversary.⁸

⁷ WTO (2019), “Azevêdo Joins Prime Minister Abe and Other Leaders to Launch “Osaka Track” on the Digital Economy”. Available at https://www.wto.org/english/news_e/news19_e/dgra_28jun19_e.htm.

⁸ ‘Implementation Plan of the Joint Vision Statement on ASEAN-Japan Friendship and Cooperation’ (2023) Association of Southeast Asian Nations [Preprint]. Association of Southeast Asian Nations. Available at <https://asean.org/wp-content/uploads/2023/12/Final-Implementation-Plan-of-the-ASEAN-Japan-Joint-Vision-Statement.pdf>.

KAZAKHSTAN

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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KAZAKHSTAN

Kazakhstan is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly higher than the group average for regulations related to cross-border data policies, followed by content access and non-technical non-tariff measures (NTMs). However, the economy has relatively lower compliance costs compared to the group average for tariffs and trade defence, online sales and transactions, and intellectual property rights.

Among 12 policy areas, the highest compliance costs for Kazakhstan are in regulations related to cross-border data policies, foreign direct investment, and content access. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, intellectual property rights, and online sales, and transactions.

Table 7: Kazakhstan's RDTII overall score and pillars' scores

Kazakhstan	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.553	30%
Pillar 1: Tariffs and trade defence	0.134	-35%
Pillar 2: Public procurement	0.600	17%
Pillar 3: Foreign direct investment	0.780	28%
Pillar 4: Intellectual property rights	0.264	-4%
Pillar 5: Telecom regulations and competition	0.662	42%
Pillar 6: Cross-border data policies	0.808	130%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.500	11%
Pillar 9: Content access	0.729	51%
Pillar 10: Non-technical NTMs	0.688	51%
Pillar 11: Standards and procedures	0.550	36%
Pillar 12: Online sales and transactions	0.375	-8%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Kazakhstan has strengthened measures for monitoring online content. Under the Law on Online Platforms and Online Advertising No.18-VIII, adopted in July 2023, online platform owners are obliged to make the average monthly number of users in Kazakhstan over the past six months of their operations publicly available. They must also store information about online advertising for one year after the last placement or distribution. The removal of illegal content should be conducted within 24 hours after receiving the notification from the government to receive immunity from copyright and other infringements that occurred on their platforms. In addition, the law established mandatory requirements for translating interfaces into the Kazakh language and moderating content on online platforms.

Moreover, the Law on Online Platforms and Online Advertising No.18-VII (2023) requires that owners of online platforms and/or instant messaging services (with an average daily access of more than 100,000 users per month) appoint a legal representative in Kazakhstan. This legal representative must interact with the authorized body, ensure the execution of court decisions, and consider and act on injunctions, representations, and other decisions of state bodies.

Regarding data regulations, in November 2021, the Parliament of Kazakhstan introduced a proposed bill for amending the Law on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT). The Bill came into force in January 2022 presenting rules relevant to access to personal data by officials for investigation purposes.

Additionally, the Law “On Ratification of the Agreement on Mutual Legal Assistance on Administrative Issues in the Field of Personal Data Exchange” (No. 113-VII) was signed on April 1, 2022. The agreement aims to ensure effective cooperation between the Commonwealth of Independent States (CIS) member States by creating a system for providing mutual legal assistance on administrative issues in the field of exchange of personal data.

EXAMPLES OF POLICIES SUPPORTING KAZAKHSTAN'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Kazakhstan maintains a low effective tariff rate of 0.86% for imported ICT-related goods from the ESCAP economies. Nearly 69% of the tariff lines of digital goods have zero tariff rate. The economy is a signatory to the 1996 WTO Information Technology Agreement (ITA), along with the ITA II expansion. Although Kazakhstan imposes anti-dumping duties and price undertakings on certain products, none of them are on ICT-related products.

INTELLECTUAL PROPERTY RIGHTS

Under the Patent Law No.427-I (1999), foreign individuals and entities residing in the economy receive the same patent rights as Kazakhstani citizens. Kazakhstan also ratified the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty in 1997, harmonising its national regulations on patents with international rules. However, some barriers exist such as the requirement of having patent attorneys residing in the economy for the foreign patent applicant. The fair-use and fair-dealing practices are also not allowed under the Law on Copyright and Related Rights No.6-I (1996).

ONLINE SALES AND TRANSACTIONS

In general, Kazakhstan has a conducive regulatory approach for the development of the e-commerce sector. There is no foreign direct investment cap or any purchase limit on e-commerce. In addition, the economy shares a common threshold for duty-free import of goods for personal use with other EAEU countries, which is 1,000 euros (approximately 1,080 USD) and/or 31 kg for goods transported by a carrier or in postal items, imported as luggage by all modes of transport, except by air or on foot. In terms of consumer protection, Article 33 of the Law on Protection of Consumer Rights No.274-IV (2010) includes provisions for the protection of online consumers. Additionally, online consumers enjoy the same protections as regular consumers.

EXAMPLES OF POLICY CHALLENGES TO KAZAKHSTAN'S DIGITAL TRADE INTEGRATION

CROSS-BORDER DATA POLICIES

Since November 2015, the Law on Information No.418-V has required internet resources to be hosted on hardware and software located in Kazakhstan. In particular, internet resources using ".kz" and ".kaz" domains must be hosted on a server in a data centre located in Kazakhstan. The Law on Personal Data and Their Protection No. 94-V (2013) further states that personal data must be stored by the owner and/or operator, as well as by a third party in a database located in Kazakhstan. According to this law, personal data can be transferred cross-border under certain conditions, such as ensuring the same level of protection of personal data in third countries in accordance with the Law and obtaining the consent of data owners for the cross-border transfer of their personal data.

FOREIGN DIRECT INVESTMENT

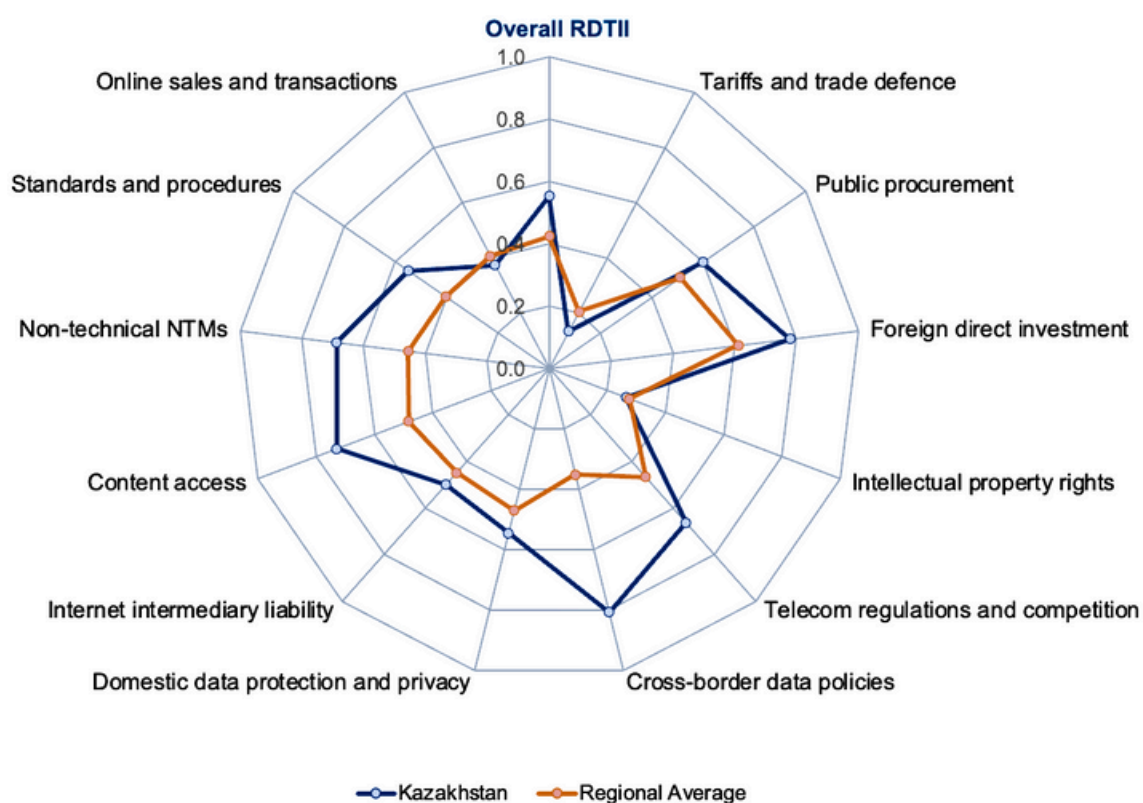
Although Kazakhstan has removed the foreign equity cap in the telecommunication sector, it still imposes a 49% limit on the economy's main telecommunication operator, KazakhTeleCom. Foreign investors who seek to acquire more than 49% of shares in telecom companies must obtain a government waiver. The Law on Mass Media No.451-I (1999) further limits the FDI on online mass media to 20%. In addition, current regulations on e-commerce mandate commercial sellers or intermediaries involved in e-commerce to provide information of their BIN (Business Identification Number), business address in Kazakhstan, and mobile telephone number registered in Kazakhstan to relevant state authorities, compelling both commercial and physical presence requirements to foreign entities.

CONTENT ACCESS

The Law on Information No.418-V (2015) allows authorities to restrict access to internet resources that pose a threat to individuals, society, or the state; promote terrorist activities and riots, or participation in illegal public events. The law also allows authorities to access personal information for criminal investigation. According to the Ministry of Information and Social Development (MISD), as of May 2023 there are over 68,000 banned web pages. Additionally, Kazakhstan has introduced several restrictions on online advertising. The Law on Advertisement No.508 (2003) prohibits comparing advertised goods or services with those of other individuals and entities to protect their business reputation, regardless of the means of distribution of the advertisement. The online platform must also store

information about online advertising for at least one year after the distribution. The Law on Online Platforms and Online Advertising No.18-VII (2023) further requires local residency for legal representatives of online platforms.

Figure 7: Comparison between Kazakhstan's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

KAZAKHSTAN'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Kazakhstan participates in the WTO Joint Statement Initiative on Electronic Commerce. The economy is also a signatory to the WTO ITA I but doesn't participate in the ITA II expansion. The economy is also a member of the Eurasian Economic Union (EAEU), in which has signed preferential trade agreements (PTAs) with Viet Nam since 2015¹ and Serbia since 2019². These agreements cover cooperation on e-commerce and data privacy. According to these agreements, the Parties shall endeavour to adopt and maintain in force measures aimed at the protection of the private data of e-commerce users.

¹ WTO Center VCC. Vietnam – Eurasian Economic Union PTA. Available at <https://wtocenter.vn/upload/files/fta/174-ftas-concluded/188-vietnam---eurasian-/241-full-text/FTA%20VN%20-%20EAEU%20-%20Full%20text.pdf>.

² EAEU. Serbia – Eurasian Economic Union PTA. Available at <https://eec.eaeunion.org/upload/medialibrary/56c/Agreement.pdf>.

LAO PDR

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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LAO PDR

Lao PDR is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for standards and procedures, tariffs and trade defence, non-technical non-tariff measures (NTMs), and foreign direct investment. However, the economy has relatively complex rules compared to the group average are intellectual property rights, online sales and transactions, and internet intermediary liability.

Among 12 policy areas, the highest compliance costs for Lao PDR are in regulations related to internet intermediary liability, public procurement, and online sales and transactions. In contrast, the lowest compliance costs are in those related to standards and procedures, tariffs and trade defence, and non-technical NTMs.

Table 8: Lao PDR's RDTII overall score and pillars' scores

Lao PDR	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.281	-34%
Pillar 1: Tariffs and trade defence	0.023	-89%
Pillar 2: Public procurement	0.480	-6%
Pillar 3: Foreign direct investment	0.169	-72%
Pillar 4: Intellectual property rights	0.361	31%
Pillar 5: Telecom regulations and competition	0.426	-9%
Pillar 6: Cross-border data policies	0.192	-45%
Pillar 7: Domestic data protection and privacy	0.318	-32%
Pillar 8: Internet intermediary liability	0.500	11%
Pillar 9: Content access	0.333	-31%
Pillar 10: Non-technical NTMs	0.104	-77%
Pillar 11: Standards and procedures	0.000	-100%
Pillar 12: Online sales and transactions	0.463	13%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Lao PDR is making substantial efforts aimed at advancing its digital economy. In December 2021, Lao PDR became the first least-developed economy to join the WTO's Information Technology Agreement (ITA) and its expansion (ITA II). Starting from 1 January 2022, the economy began eliminating import duties on 358 out of 399 affected ICT products. Additionally, duties on 523 out of 571 products covered under the ITA Expansion will be phased out.¹ Lao PDR has also implemented the National Digital Economic Development Vision for 2021-2040, the National Digital Economic Development Strategy for 2021-2030, and the National Digital Economic Development Plan for 2021-2025.²

EXAMPLES OF POLICIES SUPPORTING LAO PDR'S DIGITAL TRADE INTEGRATION

STANDARDS AND PROCEDURES

Lao PDR is open to cooperation on standards with foreign economies, regional bodies, and international organizations. Its technical standards conform to international frameworks. According to the Law on Standardization No.55/NA (2014), Lao PDR allows self-assessments of conformity, including testing and implementing MRAs.³

TARIFFS AND TRADE DEFENCE

The effective tariff on ICT goods imported from ESCAP economies is relatively low, standing at 0.57%, with 80.7% of tariff lines for ICT goods having zero tariff rates. The economy does not apply trade defence measures to ICT products. In January 2022, the economy recently became a participant to the WTO Information Technology Agreement (ITA I) and its expansion (ITA II).

¹ Lao PDR joins information technology agreements. Available at https://www.wto.org/english/news_e/news21_e/ita_02dec21_e.htm.

² Lao PDR focuses on creating digital economy, and society. Available at <https://kpl.gov.la/En/detail.aspx?id=73403>.

³ As an ASEAN member, Lao PDR implements the ASEAN Sectoral MRA for Electrical and Electronic Equipment (ASEAN EE MRA) 2002 and the ASEAN Harmonized Electrical and Electronic Equipment Regulatory Regime (AHEEERR) 2005. For instance, a member State shall accept or recognize the test reports and certifications issued by the testing laboratories and certification bodies of other parties (ASEAN EE MRA Article 3).

NON-TECHNICAL NTMS

Lao PDR does not impose import bans or export restrictions on ICT products and related services. The local content requirement has been eliminated under the Decree on the Cancellation of Local Content Requirements No.154/PM (2012). However, under Law on Telecommunications No.05/NA (2021) and Decision on Radio Frequency for communications Internet of Things (IoT) No.2116/MPT (2018) import restrictions have been introduced on ICT products, including import controls on certain types of telecommunication equipment, and import approvals for the IoT equipment.

EXAMPLES OF POLICY CHALLENGES TO LAO PDR'S DIGITAL TRADE INTEGRATION

INTERNET INTERMEDIARY LIABILITY

Lao PDR has implemented a safe harbour regime, protecting internet intermediaries. Nevertheless, digital service providers are still subject to user identity and monitoring requirements. Following the Decree on Internet Information Management No.327/Gov (2014), individuals must register their full names and addresses to create a social media account, a possible limitation to the freedom of expression. Moreover, under the Decree on the Management and Use of the Internet and Domain Name No.164/Gov (2012), internet service providers are responsible for thoroughly checking content and information before allowing dissemination on their websites. Internet intermediaries also have the duty to manage and train users to comply with relevant regulations.

PUBLIC PROCUREMENT

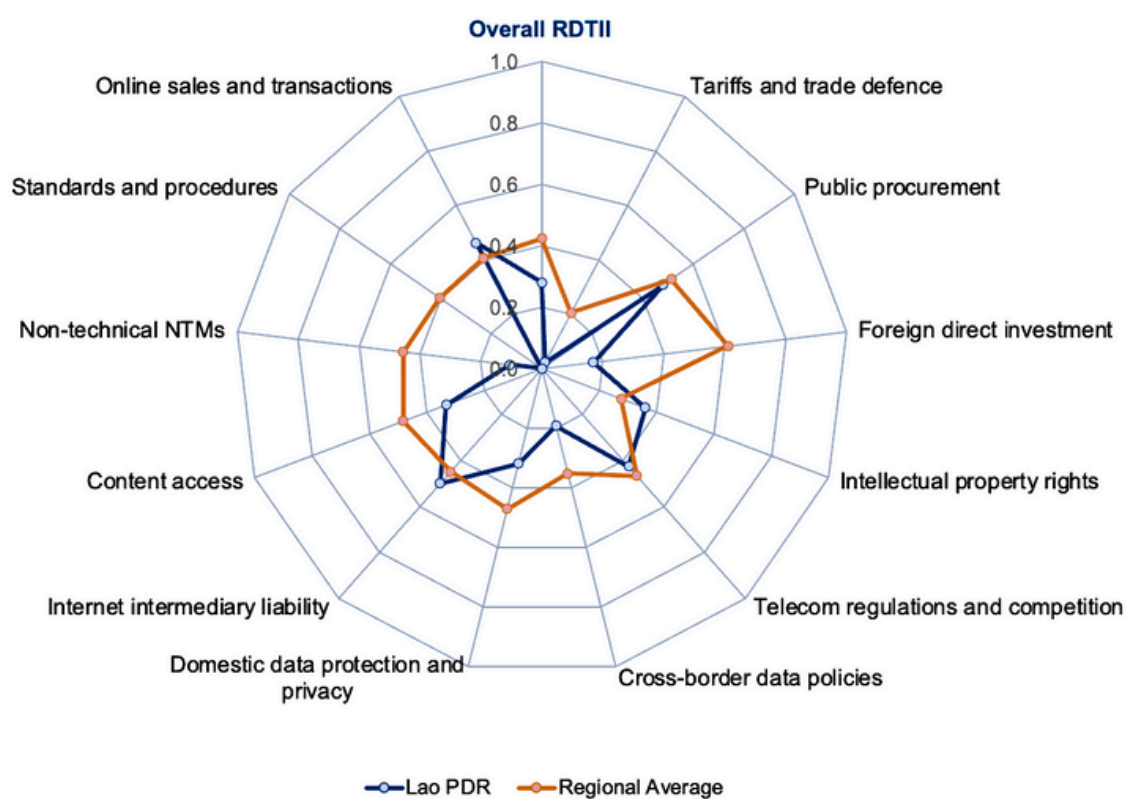
The Law on Public Procurement No.30/NA (2017) explicitly grants domestic preference to local contractors, suppliers and consultants in international competitive bidding. For works and maintenance, a local bidder whose bid price does not exceed 7.5% of an international bidder's bid price will be considered the winning bidder. The preference also extends to goods manufactured in Lao PDR to promote domestic products. Notably, Lao PDR is not a signatory to the WTO Agreement on Government Procurement (GPA).

ONLINE SALES AND TRANSACTIONS

Effective from June 2021, the Decree on E-Commerce No. 296/GOV establishes a regulatory framework for e-commerce businesses in Lao PDR. E-commerce businesses, that trade through platforms or electronic marketplaces, must notify and submit documents to the Ministry of Industry and Commerce to obtain an acknowledgement certificate.

Moreover, the electronic marketplace is required to be an incorporated entity and must secure an e-commerce business license from the Ministry. The Decree mandates that foreign investment in e-commerce is subject to a 90% equity cap of the entity’s shares, and a minimum registered capital of LAK 10 billion (approximately USD 450,450). Furthermore, the Law on Payment System No.292/P (2017) specifies that the unit of electronic money must be in Kip. Despite the adoption of the UNICTRAL Model Law on Electronic Commerce, Lao PDR does not participate in the UNCTIRAL Model Law on Electronic Signatures and the United Nations Convention on the Use of Electronic Communications.

Figure 8: Comparison between Lao PDR’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

LAO PDR'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Lao PDR participates in the digital trade negotiation that involve ASEAN. Lao PDR joined the consensus on strategic directions to develop e-commerce and digital integration in ASEAN through the ASEAN Work Programme on Electronic Commerce 2017- 2025 and the ASEAN Digital Integration Framework Action Plan 2019-2025. Notably, the economy has signed three preferential trade agreements (PTAs) with the e-commerce chapter, namely the ASEAN Economic Community, ASEAN-Australia-New Zealand, and the Regional Comprehensive Economic Partnership (RCEP). Apart from joining WTO's Information Technology Agreement (ITA) and its expansion (ITA II), Lao PDR is also part of the WTO Joint Statement Initiative on Electronic Commerce, with an aim to negotiate a plurilateral agreement on trade-related aspects of electronic commerce.



MALAYSIA

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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MALAYSIA

Malaysia is among the economies with relatively low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for regulations related to cross-border data policies, tariffs and trade defence, domestic data privacy, and protection. However, the economy has relatively complex rules compared to the group average are related to content access, non-technical non-tariff measures (NTMs) and telecom regulations and competition.

Among 12 policy areas, the highest compliance costs for Malaysia are in regulations related to foreign direct investment, content access, and non-technical NTMs. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, cross-border data policies, and online sales and transactions.

Table 9: Malaysia's RDTII overall score and pillars' scores

Malaysia	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.381	-10%
Pillar 1: Tariffs and trade defence	0.080	-61%
Pillar 2: Public procurement	0.480	-6%
Pillar 3: Foreign direct investment	0.720	18%
Pillar 4: Intellectual property rights	0.236	-14%
Pillar 5: Telecom regulations and competition	0.588	26%
Pillar 6: Cross-border data policies	0.115	-67%
Pillar 7: Domestic data protection and privacy	0.227	-52%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.667	38%
Pillar 10: Non-technical NTMs	0.625	37%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.213	-48%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Several digital trade-related policy measures and proposals have emerged in the past few years. In August 2020, the Ministry of Communications and Multimedia Malaysia (MCMM) announced that the Government of Malaysia is still in discussions regarding the amendment of the Personal Data Protection Act 2010 (Act 709), also known as the PDPA. The amendment of PDPA may impact policies on cross-border data transfers and domestic data protection and privacy.¹

In May 2022, the government of Malaysia adopted the Malaysian Communications and Multimedia Content Code, regulating online advertisement, content access, and monitoring requirements. The regulation mandates the removal of prohibited content within 24 hours. It also requires internet service providers (ISPs) to inform their subscribers to take down prohibited content within a period of 2 working days from the time of notification or otherwise requiring a suspension or termination of their access account. Furthermore, the Code prohibits online advertisement on several products and services. Another new regulation is the Customs (Prohibition of Imports) Order (2023), which bans certain products relevant to digital trade such as, but not limited to, the broadcast receivers capable of receiving radio communication within certain ranges.

In February 2022, Malaysia's new Copyright (Amendment) Act (Act A1645) was adopted. The Act introduces new offenses for the unauthorized sharing of links to copyrighted works and for addressing streaming technologies that commit or facilitate copyright infringement in any work.

EXAMPLES OF POLICIES SUPPORTING MALAYSIA'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Malaysia has no restrictions on tariffs and trade defence measures. As a signatory of the WTO Information Technology Agreement (ITA I) and its expansion (ITA II), the economy has eliminated duties on most ICT goods. The effective tariff on ICT goods imported from ESCAP economies is relatively low, standing at 1.84%, with 69% of tariff lines for ICT goods having zero tariff rates.

¹ Data Guidance. (2020). Malaysia: MCMM announces continued discussions on amending PDPA. Available at [Malaysia: MCMM announces continued discussions on amending PDPA | News post | DataGuidance](#).

CROSS-BORDER DATA POLICIES

The Personal Data Protection Act (Act 709) does not include any local storage requirements, nor does it require internet service providers to construct their own data centers in Malaysia. While the Act prohibits the transfer of personal data out of the country, it provides a set of exceptions to this prohibition under certain conditions. In terms of multilateral efforts, Malaysia has joined the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes binding commitments to open cross-border data transfers under Article 14.11.

ONLINE SALES AND TRANSACTIONS

In 2006, Malaysia enacted the Electronic Commerce Act (Act 658) to facilitate the growth of e-commerce in the country. So far, there are no restrictions on foreign ownership, limitations on online purchases, or licensing requirements in the e-commerce sector. Online consumer protection is governed by the Consumer Protection (Electronic Trade Transactions) Regulation P.U. (A) 458 (2012) and the Consumer Protection Act 1999 (Act 599). Specifically, online marketplace operators are required to disclose their contact details and terms and conditions of purchase. They must also keep and maintain records of the names, telephone numbers, and addresses of any person who supplies goods or services on their platform for two years.

However, there is still room for regulatory improvement in Malaysia's e-commerce sector. For instance, the country has not yet signed the United Nations Convention on the Use of Electronic Communications in International Contracts or adopted the UNCITRAL Model Law on Electronic Signatures.

EXAMPLES OF POLICY CHALLENGES TO MALAYSIA'S DIGITAL TRADE INTEGRATION

NON-TECHNICAL NTMS

Malaysia has complex measures to regulate imports of ICT products. On 13 April 2023, the government of Malaysia issued Customs (Prohibition of Imports) Order which added broadcast receivers capable of receiving radio communication within the ranges (68-87) MHz and (108-174) MHz, film, videotape, laser disc, colour slides, computer diskettes to the list of prohibited imports. Malaysia also requires import licenses for hybrid ICT products, including devices with multiple features including toys, medical devices, and computer products. In addition, the service tax on imported digital services was increased from 0% to 6% on 1 January 2020.

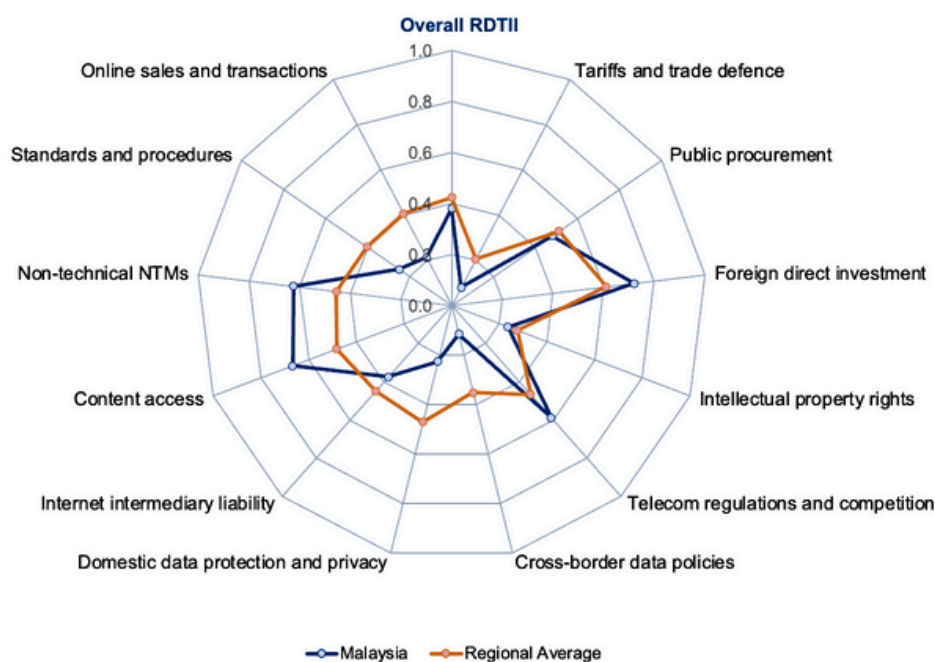
FOREIGN DIRECT INVESTMENT

FDI and business regulations are quite complex in Malaysia. For example, foreign investors can acquire up to a 30% equity stake in broadcasting services. The Companies Act 2016 (Act 777) further prescribes the minimum number of directors in a company. Section 196(1) of the Act provides that a private company shall have a minimum of one director who ordinarily resides in Malaysia and has a principal place of residence in Malaysia ('resident director'). For a public company, it shall have a minimum of two resident directors. In addition, a foreign company may only conduct business in Malaysia by either incorporating a local company or registering a branch in Malaysia.

CONTENT ACCESS

Online content is significantly regulated in Malaysia. The Malaysian Communications and Multimedia Content Code (2022) requires both Internet Access Service Provider (IASP) and Internet Content Hosting Provider (IHC) to remove prohibited content within 1 to 24 hours from the time of notification.² The Code also include a list of unacceptable products and services such as slimming products, firecrackers, and marriage agencies for online advertisement. In addition, according to the Malaysian Communications and Multimedia Commission (MCMC) guidelines, there is a licence requirement for Content Applications Service Provider (CASP) and Applications Service Provider (ASP). When assessing the shareholding structure of an applicant, the MCMC considers the need to encourage more local SMEs in the ICT industry.

Figure 9: Comparison between Malaysia's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

² The prohibited content includes menace content that leads to public disorder, a threat to national security or public safety, and bad language which is language that is contrary to audience expectations.

MALAYSIA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Malaysia actively participates in digital trade negotiations. The economy has been part of the WTO Joint Statement Initiative on Electronic Commerce since 2017. At the regional level, Malaysia participates in ASEAN's digital trade initiatives, including the ASEAN Digital Integration Framework Action Plan 2019-2025. Along with the other ASEAN economies, Malaysia ratified the ASEAN Agreement on Electronic Commerce, the ASEAN-China PTA upgrade, the ASEAN-Australia-New Zealand PTA upgrade, and PTAs with ASEAN-India, ASEAN-Japan, and ASEAN-Hong Kong, China.³ Malaysia also participates in both the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) covering issues related to e-commerce.

³ Except for the ASEAN-China PTA upgrade, all agreements include a dedicated e-commerce chapter.



NEPAL

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NEPAL

Nepal is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are relatively lower compared to the group average for non-technical non-tariff measures (NTMs), domestic data protection and privacy, and standards and procedures. However, the economy has significantly higher compliance costs than the group average for regulations related to tariffs and trade defence measure, followed by public procurement, and intellectual property rights.

Among 12 policy areas, the highest compliance costs for Nepal are in regulations related to public procurement, tariffs and trade defence, and foreign direct investment. In contrast, the lowest compliance costs are in those related to non-technical NTMs, domestic data protection and privacy, and standards and procedures.

Table 10: Nepal's RDTII overall score and pillars' scores

Nepal	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.394	-7%
Pillar 1: Tariffs and trade defence	0.672	228%
Pillar 2: Public procurement	0.680	33%
Pillar 3: Foreign direct investment	0.449	-27%
Pillar 4: Intellectual property rights	0.361	31%
Pillar 5: Telecom regulations and competition	0.441	-6%
Pillar 6: Cross-border data policies	0.308	-12%
Pillar 7: Domestic data protection and privacy	0.227	-52%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.417	-14%
Pillar 10: Non-technical NTMs	0.208	-54%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.338	-17%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

There has been an important development for data regulations as Nepal adopted the Data Act No. 2079 in September 2022, streamlining regulations surrounding data collection and enhancing the reliability and timeliness of data production, processing, storage, and distribution. The Act takes a more flexible approach, refraining from imposing sector-specific bans, obligatory local data processing requirements for specific industries or data types, and restrictions on cross-border data transfers. The Act includes provisions related to data protection, privacy, and data breach notification, as well as rules for the protection of personal data in the economy.

Following the Decision of the Council of Ministers in December 2022, Nepal lifted the import ban on expensive mobile phones. The import ban on mobile sets costing more than USD 300 was initially imposed in April 2022 to address the decreasing foreign exchange reserves and was extended several times.¹ The removal of the import ban eliminates the quantity restriction for digital goods in Nepal.

EXAMPLES OF POLICIES SUPPORTING NEPAL'S DIGITAL TRADE INTEGRATION

NON-TECHNICAL NTMS

Nepal minimally implements non-technical NTMs. As mentioned above, in December 2022, the Council of Ministers lifted bans on imports of expensive mobile phones.² Nepal imposes no export restrictions on ICT goods and online services. The Information Technology Policy No. 2057 (2000) requires an increase of Nepali content on the Internet to promote culture and rural development. However, specific measures for the implementation of the policy are yet to be adopted.

¹ It was reported that the International Monetary Fund (IMF) had questioned the consideration of lengthening the ban on certain products, including expensive mobile phones, before it was lifted in December 2022. See the full article at <https://kathmandupost.com/money/2022/12/06/nepal-lifts-seven-month-long-import-ban-on-luxury-goods>.

² See Decision of the Council of Ministers of the 06/12/2022. Available at: <https://nepaltradeportal.gov.np/web/guest/guide-to-importing>

DOMESTIC DATA PROTECTION AND PRIVACY

Nepal has flexible data privacy laws. The Privacy Act No. 2075 (2018) and the Data Act (No. 2079 (2022) require consent from the data subject for data collection and specify limits on data use. Data can only be disclosed to court in specific situations, such as criminal investigations or data accuracy verification. Moreover, these Acts require impact assessments, data protection officers, or unrestricted government access to personal data.

STANDARDS AND PROCEDURES

The standard rules under the Nepal Standards Act No. 2037 (1980) amended in 1991 follow the globally recognized standards. The standard-setting process involves multi-stakeholder committees with diverse representation and includes public feedback for transparency. Nepal's Electronics Transactions Rules No. 2064 (2007) mandates the use of international standards of quality in information technology services and prescribes Public-Key Cryptography Standards#7 (PKCS#7) as the minimum standard for digital encryption, promoting adherence to global technical standards.³

EXAMPLES OF POLICY CHALLENGES TO NEPAL'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

Public procurement of ICT goods and online services from foreign vendors faces several limitations in Nepal. The Public Procurement Act No. 2064 (2007) allows foreign participation in procurement only under specific circumstances such as when goods cannot be procured nationally at a competitive price, no national bid has been submitted, or goods are perceived as complex and of a special nature. The regulation puts a price preference on the public procurement of Nepali goods at prices that are 15% higher than foreign alternatives in general bidding. In the case of international bidding, the Act puts a price preference for domestic entities at 5% higher than those from foreign competitors. In addition, Section 70 (2a) of the Act excludes foreign suppliers in consultancy services offering NPR 100 million (approximately USD 800,000), which exceeds international standards according to the WTO Agreement on Government Procurement.

³ PKCS #7 is a standard syntax for storing signed and/or encrypted data, and it is one of the family of standards called Public-Key Cryptography Standards (PKCS) created by RSA Laboratories. PKCS #7 proposes a broad-spectrum syntax and format for creating digital signatures, which is elaborated in detail in RFC 2315 Use of international standards ("reliable standards recognized in the world") is prescribed while specifying quality standards for services relating to information technology.

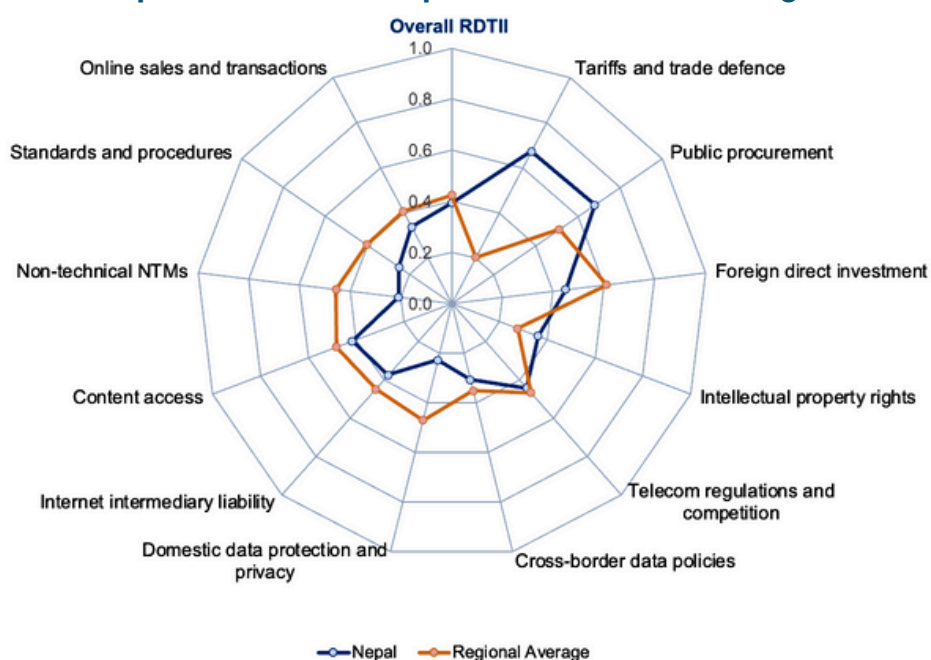
TARIFFS AND TRADE DEFENCE

Nepal has relatively high tariffs levied on digital-related products. As of 2021, Nepal imposed an applied tariff rate of 6.8% on digital-related products imported from ESCAP economies, which is relatively high compared to other economies in the region. Additionally, there are few duty-free tariff lines, covering only 27.9% of the tariff lines of ICT goods. Nepal is not a signatory to the 1996 WTO Information Technology Agreement (ITA I) or its ITA II expansion.

FOREIGN DIRECT INVESTMENT

Nepal has relatively complex rules on FDI. The Foreign Investment and Technology Transfer Act No.2075 (2019) restricts FDI in consultancy services to 51% and completely prohibits FDI in management, accounting, engineering, and computer training services. Under the Company Act No.2063 (2006), companies with over 10 million rupees (approximately USD 75,450) in paid-up capital must employ a Nepali company secretary, limiting the engagement of foreign experts. The Labor Act No.2074 (2017) and Labor Rules (2018) impose constraints on hiring foreign workers. Specifically, the Labor Act No.2074 (2017) prohibits hiring foreign workers, including at the managerial level, if local workers with similar skills, are available. A slightly relaxed measure was introduced in Labor Rules (2018) where a company with FDI can have up to three foreign workers without performing the labour market test. In addition, Nepal mandates a screening and approval mechanism for FDI under the Foreign Investment and Technology Transfer Act 2019 (No.2075), adding administrative complexity for foreign investments in digital trade-related sectors.

Figure 10: Comparison between Nepal's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

NEPAL'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Nepal has not yet engaged substantially in digital trade negotiations at bilateral, regional and multilateral levels. Despite its membership in the WTO since 2004, Nepal has not yet acceded to several important multilateral accords such as the WTO ITA, WTO Government Procurement Agreement (GPA), WIPO Patent Cooperation Treaty (PCT), and UNCITRAL Model Laws.

Nepal's presence in digital trade agreements is also absent. However, the existence of the preferential trade agreements (PTAs) between India and Nepal, known as the Indo-Nepal Treaty of Trade is worth mentioning. This agreement, signed in 1996 and amended in 2009, stands as a significant trade pact in terms of trade volume and represents a notable aspect of Nepal's trade relations.



NEW ZEALAND

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NEW ZEALAND

New Zealand is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for regulations related to public procurement, internet intermediary liability, content access, and tariffs and trade defence. However, the economy has relatively complex rules compared to the group average are related to non-technical non-tariff measures (NTMs).

Among 12 policy areas, the highest compliance costs for New Zealand are in regulations related to non-technical NTMs, foreign direct investment, and the telecom sector. In contrast, the lowest compliance costs are in those related to public procurement, internet intermediary liability, and content access.

Table 11: New Zealand's RDTII overall score and pillars' scores

New Zealand	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.242	-43%
Pillar 1: Tariffs and trade defence	0.001	-99%
Pillar 2: Public procurement	0.000	-100%
Pillar 3: Foreign direct investment	0.576	-6%
Pillar 4: Intellectual property rights	0.208	-24%
Pillar 5: Telecom regulations and competition	0.456	-2%
Pillar 6: Cross-border data policies	0.231	-34%
Pillar 7: Domestic data protection and privacy	0.318	-32%
Pillar 8: Internet intermediary liability	0.000	-100%
Pillar 9: Content access	0.000	-100%
Pillar 10: Non-technical NTMs	0.583	28%
Pillar 11: Standards and procedures	0.300	-26%
Pillar 12: Online sales and transactions	0.225	-45%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

New Zealand introduced new regulations aimed at eliminating digital trade barriers. For example, the Retail Payment System Act, adopted in 2022, establishes a new regulatory regime for the economy's retail payments. The new regime requires merchants to ensure that their Internet payment systems comply with the Payment Card Industry Data Security Standard, which is a global payment card industry standard. In addition, the ".nz Rules 2023" require InternetNZ to develop and monitor a competitive registrar market.¹ This requirement ensures a fair environment for the registration and management of .nz domain names.

New Zealand has also released its Digital Strategy for Aotearoa, which aims to secure its place as a world-leading, trusted, and thriving digital nation anchored in the themes of trust, inclusivity, and growth.² As part of this strategy, New Zealand published a roadmap covering proposed yearly milestones from 2022 to 2027, governed by the Digital Executive Board housed under the Ministry of Internal Affairs.³

EXAMPLES OF POLICIES SUPPORTING NEW ZEALAND'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

New Zealand's public procurement policy is open. The Government Procurement Principles, Charters, and Rules ensure the principles of non-discrimination based on the nationality of suppliers (Rule 3) and the protection of trade secrets for suppliers (Rule 4). The Government indicates preference towards certain New Zealand businesses, such as indigenous businesses and social enterprises. However, it does not preclude suppliers from being successful bidders if they provide the best value (Rule 17). Moreover, New Zealand is a signatory to the WTO Government Procurement Agreement and fully covers the service sectors relevant to digital trade.

¹ InternetNZ is a not-for-profit open membership organisation and the designated manager for the .nz country code top-level internet domain. See <https://internetnz.nz>.

² New Zealand Government. Towards a digital strategy for Aotearoa, New Zealand Government. Available at <https://www.digital.govt.nz/dmsdocument/193~towards-a-digital-strategy-for-aotearoa/html>.

³ New Zealand Government. 2022–23 Action Plan for the Digital Strategy for Aotearoa, New Zealand Government. Available at <https://www.digital.govt.nz/dmsdocument/238~202223-action-plan-for-the-digital-strategy-for-aotearoa/html>.

INTERNET INTERMEDIARY LIABILITY

The amended Copyright Act (2008) provides safe-harbour provisions for Internet service providers (ISPs) from liability of copyright and other infringements by their users. Unless they have specific knowledge or notice of infringement on their platforms, ISPs are immune from potential liability if the content is deleted, or its access is disabled. ISPs are also not liable for illegal content on their platforms if they take appropriate remedial actions under the Harmful Digital Communication Act (2015).

CONTENT ACCESS

New Zealand imposes no notable restrictions on content access. There are no restrictive measures for securing a license for digital service providers or for online advertisements. New Zealand has also refrained from interfering with content access. The Department of Internal Affairs launched the Digital Child Exploitation Filtering System (DCEFS), which blocks content containing objectionable child sexual abuse material. However, the application of DCEFS by ISPs is voluntary.

EXAMPLES OF POLICY CHALLENGES TO NEW ZEALAND'S DIGITAL TRADE INTEGRATION

NON-TECHNICAL NTMS

New Zealand's Radiocommunications Regulations Notice⁴ imposes an import ban on electrical and radio products such as unrestricted two-way radio, some short-range vehicular radar, animal tracking, and training devices that could cause interference to radio reception. New Zealand also implements an export control measure on certain products, including digital-related technology, in the Strategic Goods List. To export these products, exporters are required to secure approval from the Ministry of Foreign Affairs and Trade.

FOREIGN DIRECT INVESTMENT

Companies Act (1993), which applies horizontally across sectors including those pertinent to digital trade, mandates a commercial presence and residency requirement for the board of directors. The Act requires at least one director to

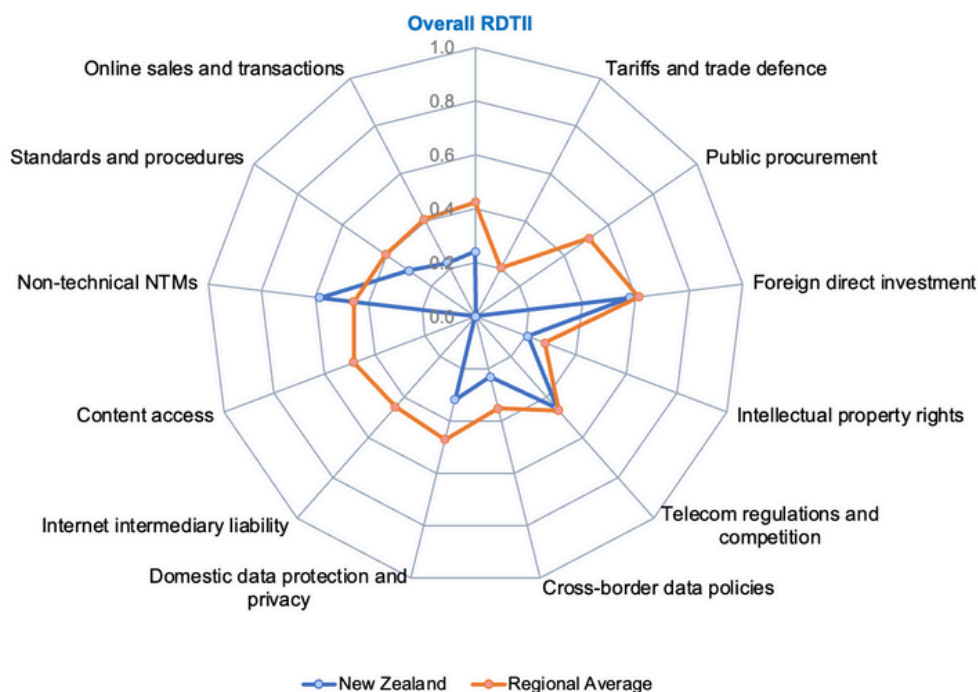
⁴ The prohibitions are issued under various Radiocommunications Regulations Notices, such as the Radiocommunications Regulations (Prohibited Equipment - Unrestricted Two Way Radio) Notice (2018), the Radiocommunications Regulations (Prohibited Equipment - Radio Jammer Equipment) Notice (2011), and the Radiocommunications Regulations (Prohibited Equipment) Notice (2002).

reside in New Zealand or in an “enforcement country”.⁵ Moreover, foreign investment is potentially subject to a three-stage investment screening process: (1) The Overseas Investment Act (2005) requires consent for significant business assets;⁶ (2) The Overseas Investment (Urgent Measures) Amendment Act (2020) introduces a national interest test such that consent may be declined if a transaction is contrary to national interest, especially for investments in strategic sectors (such as, telecommunications and media); and (3) The 2020 Act also allows Government intervention referred to as ‘call in transactions’ for investments posing risks to national security or public order.

TELECOM REGULATIONS AND COMPETITION

New Zealand introduced several requirements affecting telecommunication infrastructure and competition. Under the Telecommunications Act (2001), telecom companies are required to obtain a network operator license to construct a telecommunications or broadcasting line. Moreover, although the Act requires a functional separation for significant market power holders, accounting separation is not mandated. It was reported that New Zealand requires Chorus, a dominant telecommunication player in the economy, to appoint local citizen as at least half of its board members.⁷

Figure 11: Comparison between New Zealand’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁵ Per Section 12 of the Companies Act Regulations (1994), the only enforcement country currently named in the regulation is Australia.

⁶ Significant business asset refers to an investment activity that results in a 25% or greater ownership or whose value exceeds NZD 100 million (approximately USD 71 million). See Section 13 of the Overseas Investment Act (2005).

⁷ Chorus Limited. Constitution of Chorus Limited. Wellington, Wellington: Chorus Limited. Available at <https://company.chorus.co.nz/file-download/download/public/816>.

NEW ZEALAND'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

New Zealand is active in digital trade negotiations. The economy participates in the WTO Joint Statement Initiative on Electronic Commerce. Regionally, New Zealand forms economic pacts with several regional partners to set rules on cross-border digital trade, such as the Regional Comprehensive Economic Partnership (RCEP) and the ASEAN-Australia-New Zealand Free Trade Agreement (FTA). The 2nd Amendment of the ASEAN-Australia-New Zealand FTA in August 2023 includes the promotion of digital technology and sustainable development.⁸

Moreover, New Zealand is one of the founding members of the Digital Economy Partnership Agreement (DEPA), together with Chile and Singapore, which entered into force in January 2021. DEPA comprehensively covers various aspects of the digital economy that support digital trade. Additionally, in July 2023, New Zealand signed an FTA with the European Union. The agreement will eliminate tariff on nearly 91% of all New Zealand trade and offer substantial provisions on services, procurement, and digital trade.⁹

⁸ ASEAN Secretariat. (2023). Signing of The Second Protocol to Amend the Agreement Establishing The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), Association of Southeast Asian Nations. Available at: <https://asean.org/signing-of-the-second-protocol-to-amend-the-agreement-establishing-the-asean-australia-new-zealand-free-trade-area-aanzfta/> (Accessed: 17 December 2023).

⁹ Ministry of Foreign Affairs & Trade. (2023). NZ-EU FTA – Highlights. Wellington, Wellington: New Zealand Government. Available at <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Highlights-.pdf>.

PAKISTAN

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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PAKISTAN

Pakistan is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, compliance costs are significantly higher than the group average for regulations related to tariffs and trade defence measures, as well as for non-technical non-tariff measures (NTMs). However, the economy has relatively lower compliance costs compared to the group average for foreign direct investment, standards and procedures, and online sales and transactions.

Among 12 policy areas, the highest compliance costs for Pakistan are in regulations related to tariffs and trade defence, non-technical NTMs, and content access. In contrast, the lowest compliance costs are in those related to standards and procedures, online sales and transactions, and intellectual property rights.

Table 12: Pakistan's RDTII overall score and pillars' scores

Pakistan	Index score (0: low compliance costs, 1: high compliance costs)	Differences from regional average (%)
Overall score	0.523	23%
Pillar 1: Tariffs and trade defence	0.918	348%
Pillar 2: Public procurement	0.680	33%
Pillar 3: Foreign direct investment	0.339	-45%
Pillar 4: Intellectual property rights	0.292	6%
Pillar 5: Telecom regulations and competition	0.368	-21%
Pillar 6: Cross-border data policies	0.500	42%
Pillar 7: Domestic data protection and privacy	0.727	54%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.750	55%
Pillar 10: Non-technical NTMs	0.792	74%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.288	-30%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Pakistan is enhancing regulatory oversight in the digital economy. The economy introduced the Cloud First Policy in February 2022, promoting the adoption of cloud technology in all public sector entities at the federal government level, including all ministries, departments, agencies, and institutions. The Policy aims to promote a shift towards the use of cloud-based systems. It also attempts to provide guidelines for security standards corresponding to different types of data, which are open data, public data, restricted data, sensitive/confidential data, and secret information.^{1 2} In 2022, amendments to the Import Policy Order (2016) introduced additional measures for the importation of ICT goods. Specifically, the import of certain products such as tablets, satellite mobile phones, and mobile phone spare parts are subject to approval by the Pakistan Telecommunication Authority (PTA) and the production of a Certificate of Clearance (CoC).

EXAMPLES OF POLICIES SUPPORTING PAKISTAN'S DIGITAL TRADE INTEGRATION

STANDARDS AND PROCEDURES

The Pakistan Standards and Quality Control Authority (PSQCA) adopts international standards such as ISO and IEC. During standard development, multiple stakeholders from government bodies, consumers, scientists, manufacturers, and laboratories are consulted. Additionally, Pakistan Conformity Assessment Rule (2011) allows self-certification for foreign applicants and recognises test reports from overseas laboratories under the Mutual Recognition Arrangement (MRA) with the authority.

ONLINE SALES AND TRANSACTIONS

In October 2019, Pakistan implemented the E-commerce Policy. There are no limits on e-commerce purchases and delivery, and no licensing mechanism is in place for e-commerce businesses. Moreover, under the Investment Policy (2023),

¹Lexology. (2022). Pakistan's Cloud First Policy. Available at <https://www.lexology.com/library/detail.aspx?g=a85c133e-06ba-41ea-bd78-308f2779c3b4>.

² Secret or secret information refers to information requiring the highest level of protection from serious threats, whose breach will likely cause threats to life or public security, financial losses, serious damage to public interest, such as Lead directly to widespread loss of life; Threaten directly the internal stability of Pakistan or friendly nations; Raise international tension; Cause exceptionally grave damage to relations with friendly nations; Cause exceptionally grave damage to the continuing effectiveness of extremely valuable security or intelligence operations; Cause long-term damage to the Pakistani economy; Cause major, long-term impairment to the ability to investigate or prosecute serious organized crime.

foreigners are allowed a 100% equity share. These low compliance costs are accompanied by consumer protection laws applicable to online transactions.³

INTELLECTUAL PROPERTY RIGHTS

Pakistan has adopted clear copyright exceptions and streamlined regulations for patent application procedures through the Patent Ordinance (2000) amended in 2010, Patent Rules (2003), and Copyright Ordinance (1962) amended in 2000. Despite the absence of specific regulations governing trade secrets, there are no reported cases of mandatory disclosure of trade secrets.⁴ However, there is still room for improvement in participating in international frameworks, specifically the Patent Cooperation Treaty, WIPO Copyright Treaty, and WIPO Performances and Phonograms Treaty.

EXAMPLES OF POLICY CHALLENGES TO PAKISTAN'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Pakistan has relatively high tariffs and trade defence measures applied to the importation of ICT goods from other Asia-Pacific economies. Pakistan is not a signatory to the 1996 WTO Information Technology Agreement (ITA) nor its expansion (ITA II), reflecting a high level of tariffs of 8% and low coverage of zero-tariffs of 24.6% applied to ICT goods imported from ESCAP economies. Several anti-dumping measures have been implemented on ICT goods. For instance, since April 2022, Pakistan has imposed anti-dumping duties on offset printing inks imported from China and the Republic of Korea.⁵

NON-TECHNICAL NTMS

Non-tariff barriers are applied to imports from selected economies. For instance, products originating or imported from India or Israel are banned from entering Pakistan. Similarly, no goods shall be exported to India except therapeutic products, which are outside the scope of digital trade.⁶ Under the Import Policy Order (2016), Pakistan has banned the import of Digital Enhanced Cordless Telecommunications (DECT) 6.0 phones, discs, and tapes.

³ Relevant laws for consumer protection include the E-commerce Policy of Pakistan 2019, the Consumer Protection Act (1995), the Khyber Pakhtunkhwa Consumer Protection Act (1997), the Balochistan Consumer Protection Act (2003), and Punjab Consumers Protection Act (2005).

⁴ Trade secrets in Pakistan are protected under the Trade Marks Act (1940), Section 67.

⁵ See National Tariff Commission Government of Pakistan ADC No.40/2015/NTC/OPI/SSR/2022. The rate of anti-dumping duty on imports from China ranges from 16.67% to 17.92% depending on the type of the company. The rate of duty on imports from the Republic of Korea ranges from 2.16% to 12.88% depending on the type of the company.

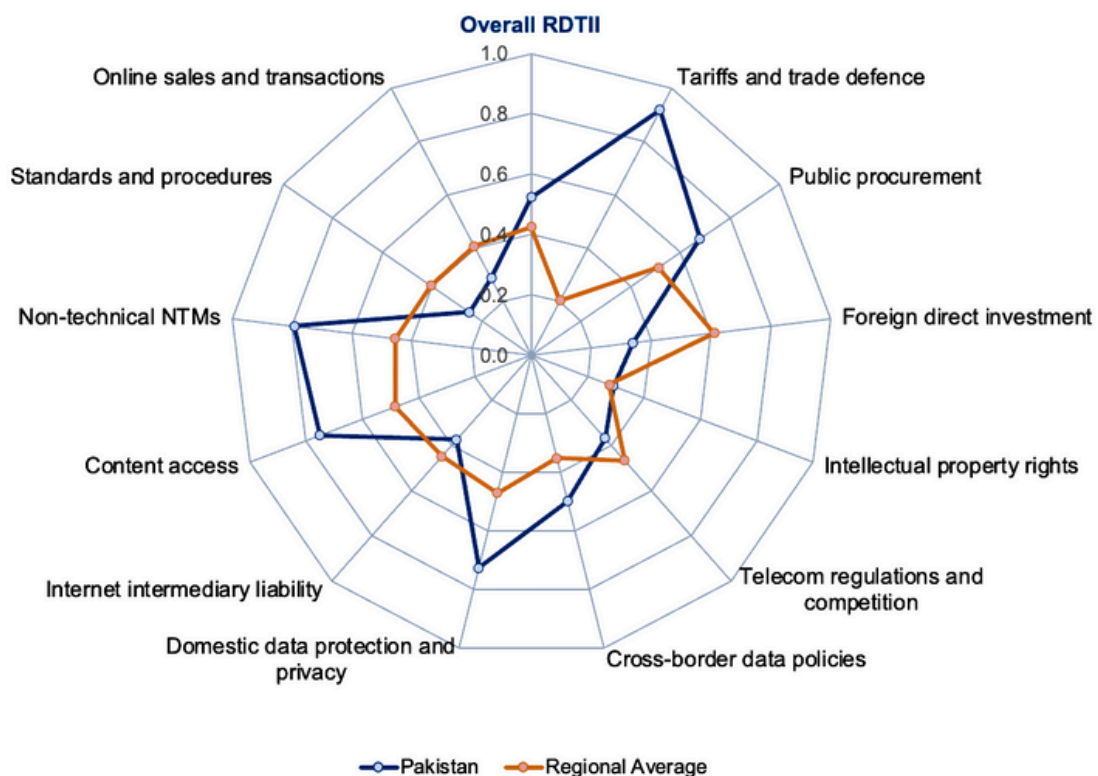
⁶ See amended Import Policy Order (2016), Clause 5(2)), and amended Export Policy Order (2016).

Additionally, import of 3D printers require prior approval from the Ministry of Interior. The Order also mandates that transmission apparatus can only be imported by Government authorities and companies that have entered into an agreement with them.

CONTENT ACCESS

Content access is heavily regulated in Pakistan.⁷ Under the Prevention of Electronic Crimes Act (2016), the Pakistan Telecom Authority (PTA) authorises internet service providers (ISPs) to block access to information deemed necessary for the glory of Islam or the integrity, security, or defence of public order. The Removal and Blocking of Unlawful Online Content Rules (2021) expand the powers of the PTA's to censor online content considered offensive under the Pakistan Penal Code (1860) last amended in 2016. Section 7.3 of the Rules also mandates ISPs and social media companies to deploy mechanisms for immediate blocking of live streaming through information systems in Pakistan. In addition, there are several limitations on online advertising originating from India under the Government of Pakistan Electronic Media Code of Conduct (2015).⁸

Figure 12: Comparison between Pakistan's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁶ See amended Import Policy Order (2016), Clause 5(2)), and amended Export Policy Order (2016).

⁷ While the ban on TikTok has been lifted since November 2021, it is reported that over 25,000 URLs, including Facebook, Twitter, and YouTube were blocked in the same year for allegedly carrying anti-state materials.

⁸ The Government of Pakistan Electronic Media Code of Conduct prohibits the broadcasting of advertisements produced in India or featuring Indian actors and characters in Pakistan.

PAKISTAN'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Pakistan does not participate in the Joint Statement Initiative on Electronic Commerce negotiations at the WTO. Pakistan has engaged in fourteen preferential trade agreements (PTAs), with the Pakistan-Türkiye and Pakistan-Uzbekistan PTAs being the latest to enter into force in 2022 and 2023, respectively. However, most of the signed PTAs primarily focus on tariff reductions and other issues related to trade in goods, with no dedicated provisions or chapters to digital trade.⁹

⁹ Out of the 14 agreements, there are 3 agreements with a focus beyond trade in goods: Pakistan-China; Pakistan-Malaysia; and the South Asian Free Trade Area (SAFTA) and SAARC Agreement on Trade in Services (SATIS), but none of them include digital-trade relevant provisions or chapters.

PHILIPPINES

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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PHILIPPINES

The Philippines is among the economies with relatively low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are relatively lower compliance costs compared to the group average for tariffs and trade defence, content access, and cross-border data policies. However, the economy has significantly higher compliance costs than the group average for regulations related to intellectual property rights, internet intermediary liability and foreign direct investment.

Among 12 policy areas, the highest compliance costs for the Philippines are in regulations related to foreign direct investment, internet intermediary liability, and public procurement. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, cross-border data policies, and content access.

Table 13: The Philippines's RDTII overall score and pillars' scores

Philippines	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.415	-2%
Pillar 1: Tariffs and trade defence	0.008	-96%
Pillar 2: Public procurement	0.600	17%
Pillar 3: Foreign direct investment	0.831	36%
Pillar 4: Intellectual property rights	0.514	86%
Pillar 5: Telecom regulations and competition	0.368	-21%
Pillar 6: Cross-border data policies	0.192	-45%
Pillar 7: Domestic data protection and privacy	0.318	-32%
Pillar 8: Internet intermediary liability	0.750	67%
Pillar 9: Content access	0.208	-57%
Pillar 10: Non-technical NTMs	0.375	-18%
Pillar 11: Standards and procedures	0.350	-13%
Pillar 12: Online sales and transactions	0.463	13%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

The Philippines have ramped up intellectual property (IP) laws and their enforcement. In August 2022, the Philippine Congress enacted the Philippine Creative Industries Development Act RA 11904.¹ This Act provides enforcement of copyright online by empowering the Philippine Creative Industries Development Council to monitor and protect the intellectual property rights of creative industry stakeholders. The creative industries include many sectors relevant to digital trade such as audiovisual media, digital interactive media, and online advertising. Additionally, House Bill on the Intellectual Property Code of the Philippines No. 7600 (1997)² is currently under consideration. If passed, it will amend the IP Code to address piracy and counterfeiting and empower the Intellectual Property Office to gather intelligence information, investigate violations of the IP Code, and develop countermeasures.

There have been several developments regarding telecom regulations. In December 2020, Subscriber Identity Module (SIM) Registration Act RA 11934 was introduced, requiring Public Telecommunications Entities (PTEs) or direct seller of SIM cards to request valid identification with photo from end users upon purchase. Furthermore, to promote e-commerce, guidelines for online businesses were issued in January 2022 through the Joint Administrative Order on Guidelines for Online Businesses Reiterating the Laws and Regulations Applicable to Online Businesses and Customers No.22-01, highlighting applicable laws, and ensuring online consumer protection.

Moreover, in April 2023, the Revised Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities³ were released. These guidelines aim to improve competition for projects under joint ventures, enhance performance of private sector participations, and strengthen checks and balances to ensure the technical and financial viability of government projects. Under this guidelines, foreign businesses can voluntarily operate in the Philippines through joint ventures with local enterprises.

¹ Senate and House of Representatives of the Philippines. (2022). An act providing for the development and promotion of the Philippine creative industries, and appropriating funds therefore. Available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/2/95614>.

² Senate of the Philippines. (2023). An act strengthening the powers and functions of the Intellectual Property Office of the Philippines, amending for the purpose Republic Act No. 8293, as amended, otherwise known as the 'Intellectual Property Code of the Philippines'. Available at https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=19&q=HBN-7600-.

³ National Economic and Development Authority of the Philippines. (2023). 2023 Revised Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities. Available at <https://neda.gov.ph/wp-content/uploads/2023/04/2023-NEDA-JV-Guidelines-as-signed-and-published-with-flowcharts.pdf>.

EXAMPLES OF POLICIES SUPPORTING THE PHILIPPINES' DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

The Philippines has low tariffs on ICT goods. In 2021, the Philippines' effectively applied tariff rate for ICT goods imported from ESCAP economies was at 0.21%, with a coverage rate of 84.1% of ICT goods subject to duty-free tariff lines. The economy participates in the WTO Information Technology Agreement (ITA I) and the ITA expansion (ITA II).

CROSS-BORDER DATA POLICIES

The Data Privacy Act RA 10173 (2012) regulates data protection and processing in the Philippines. It does not ban cross-border data transfers or impose local storage or infrastructure requirements. However, for financial services, commercial banks must follow confidentiality principles for their cross-border data transfers.

CONTENT ACCESS

The Philippines does not have specific measures concerning licensing requirements for certain online services such as social media platforms, news providers, VPNs, and cloud services. There is also no blocking or filtering to access online content carried out to consumers in the online marketplace. However, the Consumer Act (RA 7394) (1992) mandates that e-commerce platforms and e-marketplaces must only advertise registered and government-approved food, cosmetics, devices, and hazardous substances.

EXAMPLES OF POLICY CHALLENGES TO THE PHILIPPINES' DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

Regulations on digital businesses and investments are quite complex. The Foreign Investment Act No. RA 7042 (1991) as amended by the Executive Order No. 175 (2022) prohibit foreign ownership in certain sectors, many of which are relevant to digital trade. List A of Executive Order No.175 imposes a complete foreign equity ban on mass media (except recording and internet businesses) and retail trade enterprises with paid-up capital of less than PHP 2.5 million (approximately USD 44,000). List A also sets foreign equity limitations in advertising sector (up to 30% foreign equity); the operation of public utilities (up to 40% foreign equity); and up to 40% on private radio communication networks. List B of Executive Order No.175 sets foreign equity limits on domestic market enterprises with paid-in equity capital of less than the equivalent of USD 100,000 (up to 40% foreign equity).

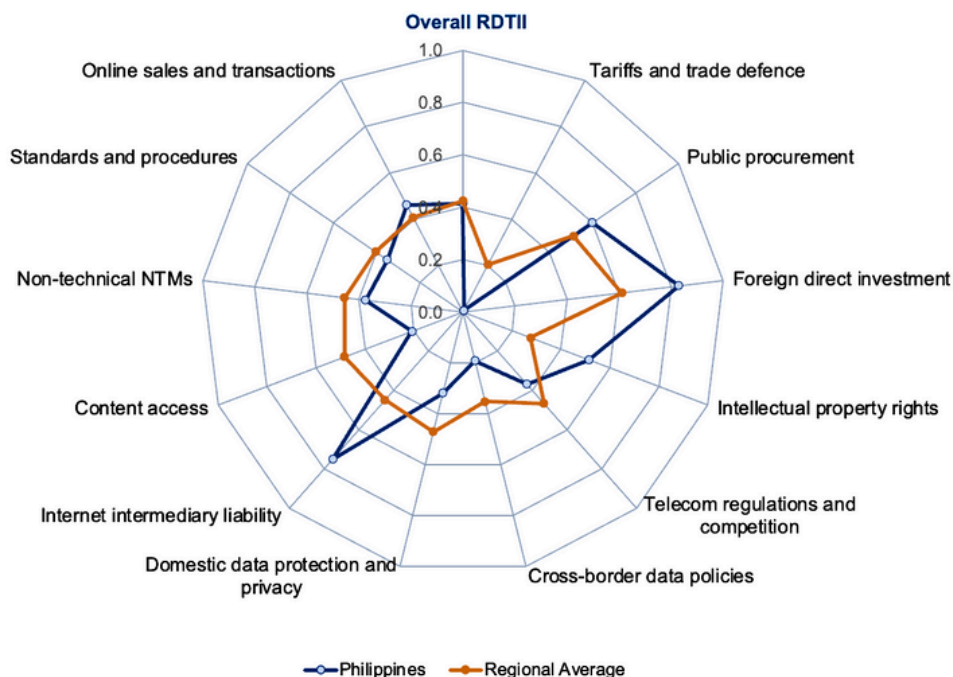
INTERNET INTERMEDIARY LIABILITY

Internet intermediaries have limited protection and face high compliance costs. The Electronic Commerce Act RA 8792 (2000) and the Cybercrime Prevention Act RA 10175 (2012) contain provisions related to intermediary liability, yet their definitions of intermediaries are limiting, primarily addressing electronic documents and defined cybercrimes, resulting in sectoral and content-specific safe harbours rather than full coverage safe harbour for internet service providers (ISPs). While Section 30 of the Electronic Commerce Act RA 879 (2000) offers a liability shield, its effectiveness is undermined by the absence of practical remedies for dealing with digital IP infringement and complex court procedures. In addition, in the gaming sector, the Philippine Amusement and Gaming Corporation requires mandatory collection of player information, including personal details and sources of income, potentially impacting personal data privacy and security.

PUBLIC PROCUREMENT

The Philippines introduces several measures affecting foreign participation in public procurement. Under Section 4.4 of the Implementing Rules and Regulations (2016), foreign consultants engaged in public procurement are required to transfer their technology and knowledge, potentially including patents and trade secrets, as a condition of their engagement. Foreign contractors with less than 75% Filipino ownership can bid for public procurement only under specific international agreements or by forming joint ventures with local contractors. Furthermore, the preference for domestic bidders is reinforced by the Commonwealth Act 138, which provides a 15% price preference for local bidders.

Figure 13: Comparison between the Philippines’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

THE PHILIPPINES' PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

The Philippines participates in various preferential trade agreements, particularly through its membership in ASEAN. Since June 2023, the economy has enforced the Regional Comprehensive Economic Partnership (RCEP), which encompasses commitments related to digital trade and e-commerce. Furthermore, the nation engages actively in multilateral agreements such as the WTO ITA and Government Procurement Agreement (GPA).



REPUBLIC OF KOREA

REGIONAL DIGITAL TRADE INTEGRATION INDEX
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REPUBLIC OF KOREA

The Republic of Korea is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, compliance costs are significantly higher than the group average for regulations related to cross-border data policies, standards and procedures, public procurement, and internet intermediary liability. However, the economy has relatively lower compliance costs compared to the group average for tariffs and trade defence, foreign direct investment, and intellectual property rights.

Among 12 policy areas, the highest compliance costs for the Republic of Korea are in regulations related to public procurement, cross-border data policies, and standards and procedures. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, intellectual property rights, and foreign direct investment.

Table 14: Republic of Korea's RDTII overall score and pillars' scores

Republic of Korea	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.505	19%
Pillar 1: Tariffs and trade defence	0.026	-87%
Pillar 2: Public procurement	1.000	95%
Pillar 3: Foreign direct investment	0.169	-72%
Pillar 4: Intellectual property rights	0.139	-50%
Pillar 5: Telecom regulations and competition	0.515	10%
Pillar 6: Cross-border data policies	0.808	130%
Pillar 7: Domestic data protection and privacy	0.318	-32%
Pillar 8: Internet intermediary liability	0.750	67%
Pillar 9: Content access	0.542	12%
Pillar 10: Non-technical NTMs	0.375	-18%
Pillar 11: Standards and procedures	0.800	98%
Pillar 12: Online sales and transactions	0.613	50%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

The Republic of Korea adopted the amended Personal Information Protection Act (PIPA) in 2023. The amendment establishes the conditions under which data transfers outside the economy are allowed. These conditions include having an international agreement in data transfer with the Republic of Korea which includes the overseas recipient organisation obtaining data protection certification from the Personal Information Protection Committee (PIPC), the data transfer being necessary to fulfil a contract with the data subject where storage details are fully disclosed, or obtaining the data subject's consent to provide personal information to a third party overseas. The PIPA creates a conditional flow regime where a data controller is required to obtain the data subjects' consent only if the data transfer is not "within a scope reasonably related to the original purpose of the collection", which includes outsourcing personal information.

Additionally, in the same year, the economy launched the New Growth 4.0 Strategy Promotion Plan which aims to address new technology, daily life, and market challenges. The strategy, as a response to the declining industrial output driven by demographic shifts, recognizes the need for a private sector-centred approach, beyond a government-led approach.¹

¹ OECD. (2023). The New Growth 4.0 Strategy Promotion Plan EC-OECD STIP Compass. Available at: <https://stip.oecd.org/stip/interactive-dashboards/policy-initiatives/2023%2Fdata%2FpolicyInitiatives%2F99995772>.

EXAMPLES OF POLICIES SUPPORTING THE REPUBLIC OF KOREA'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

The Republic of Korea has relatively low effective tariffs on ICT goods imported from ESCAP economies, standing at 0.66%, with 85% of tariff lines of ICT goods being duty free. The economy is a signatory of the 1996 WTO Information Technology Agreement (ITA) and its ITA II expansion. There are no trade defence measures on ICT goods imported from other Asia-Pacific economies.

INTELLECTUAL PROPERTY RIGHTS

The Republic of Korea is a party to several important international frameworks for IPRs, such as the Patent Cooperation Treaty. The economy maintains a supportive regulatory environment, especially for trade secrets and copyrights, through the Copyright Act (2010) and Unfair Competition Prevention and Trade Secret Protection Act (2018). The Copyright Act includes provisions for both fair use and fair dealing exceptions. The Korean Copyright Commission provides alternative dispute resolution procedures for civil infringement cases to enforce copyright online. To combat copyright piracy, the Copyright Protection Agency, established in 2016, holds hearings and issues corrective orders, including shutting down physical facilities that host pirated materials. Individuals who commit copyright piracy are subject to imprisonment or fines.²

FOREIGN DIRECT INVESTMENT

The environment for foreign investment is open. Under the Foreign Investment Promotion Act (FIPA) (1998) and the Foreign Exchange Transaction Act (FETA) (2009), there are, in principle, no foreign investment restrictions and foreign joint venture requirements. For cross-border services, a commercial presence is not required. However, the FIPA has a provision allowing the Government to decline foreign investment when it deems that it poses a threat to national security and public interest.

² Article 136 of the Copyright Act provides that a person who infringes on copyright or other property rights protected pursuant to the Copyright Act (excluding the rights under Article 93) by means of reproduction, performance, public transmission, exhibition, distribution, lease, or preparation of derivative works can be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won, or may be punished by both.

EXAMPLES OF POLICY CHALLENGES TO THE REPUBLIC OF KOREA'S DIGITAL TRADE INTEGRATION

PUBLIC PROCUREMENT

Regulations for public procurement in ICT-related sectors are complex. The main issues are discrimination against foreign bidders and the requirement for source code transfer. Limited opportunities for international bidding in public procurement are meant to protect SMEs. This has been exacerbated by the adoption of the Act on Facilitation of Purchase of Small and Medium Enterprise Manufactured Products and Support for Development of Their Markets and the Software Industry Promotion Act in 2009.

Additionally, public procurement for software, network equipment, and other hardware procurement requires a specific type of encryption mandated by the National Intelligence Service (NIS) to win tenders. The Republic of Korea also demands the surrender of source codes in digital devices under its Cryptographic Module Testing and Validation Guidelines (2004).

CROSS-BORDER DATA POLICIES

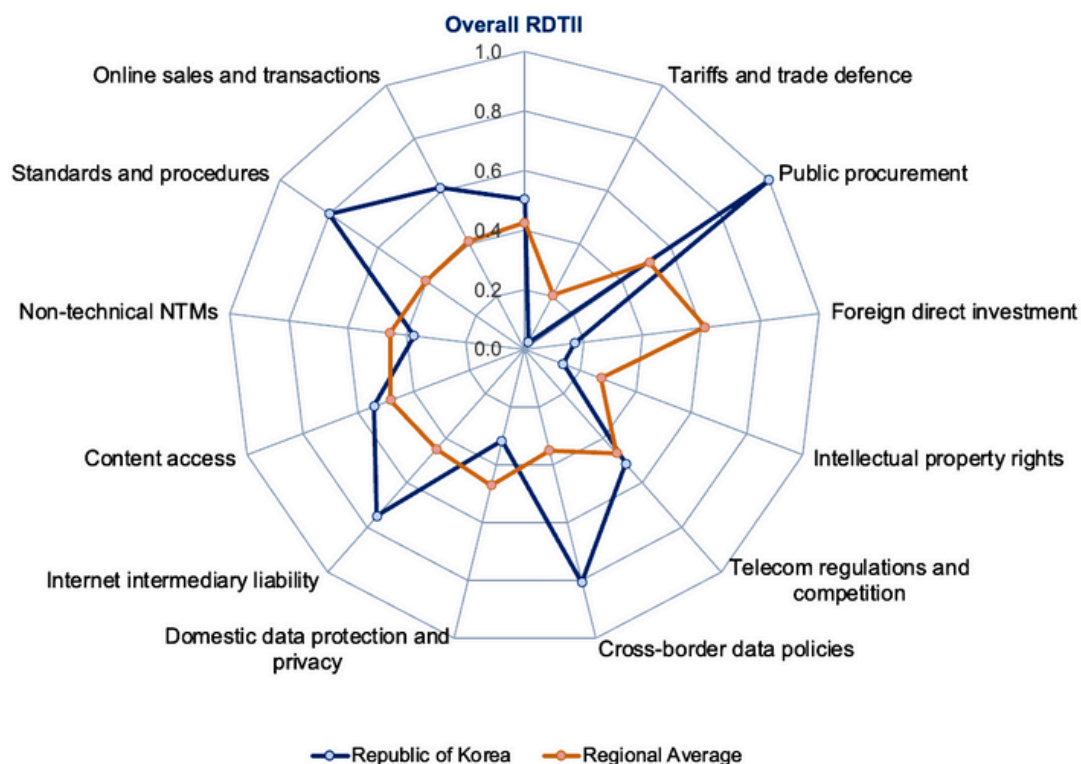
Cross-border data flow conditions are complex due to different conditional flow regimes applied to specific types of data and to personal data. The Personal Information Protection Act (PIPA) (2013) amended in 2023 mandates that data controllers must obtain consent from data subjects before transferring personal information across borders. While, the Establishment, Management of Spatial Data Act (2014), Credit Information Use and Protection Act (2009) amended in 2020, and the Development of Cloud Computing and Protection of Its Users Act (2015) establish specific conditional flow regimes for the transfer of location-based service data, financial data, and cloud computing data.

Under the Regulations on Electronic Financial Supervisory (2018), the Republic of Korea requires local processing for financial service providers using cloud services for user data. In order to obtain a Cloud Security Assurance Program (CSAP) certification by the Korea Internet and Security Agency (KISA), the service provider's cloud computing system and associated data, backup systems, and management and operating personnel must also be located domestically. In 2023, the Republic of Korea amended PIPA, allowing cross-border data transfers if a third economy has similar data protection levels, the overseas recipient organisation is certified by the Personal Information Protection Committee (PIPC), or with the consent of the data owner.

STANDARDS AND PROCEDURES

Technical standards for digital devices in the Republic of Korea are complex. The certification schemes for certain imported electronic devices and radio equipment require local testing under the Electrical Appliances Safety Control Act (2016) and the Radio Wave Act (2010). The Government mandates domestic encryption standards for network equipment rather than referring to internationally recognized ones. Specifically, the National Intelligence Service (NIS) certifies encryption modules based on the Korean-developed ARIA and SEED encryption algorithms rather than the internationally standardized Advanced Encryption Standard (AES) algorithm. Furthermore, network equipment certified at a Common Criteria Recognition Arrangement (CCRA) accredited lab may not pass the security verification scheme conducted by the NIS.

Figure 14: Comparison between the Republic of Korea's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

THE REPUBLIC OF KOREA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

The Republic of Korea actively participates in digital trade negotiations. In May 2024, the economy has successfully acceded to the Digital Economy Partnership Agreement (DEPA) with Singapore, Chile, and New Zealand, becoming the first new member to join the agreement.³ The Republic of Korea also signed Digital Partnership Agreements with the European Union and Singapore in November 2022 and a Data Agreement with the United Kingdom in July 2022.⁴ During the 24th ASEAN-Republic of Korea Summit, the ASEAN ministers called for more open collaboration with the region's economies, especially in emerging areas including digital trade.⁵ The Republic of Korea has joined the WTO Joint Statement Initiative on Electronic Commerce.

³ Ministry of Foreign Affairs and Trade of Korea. (2023) Joint press release on the accession of the Republic of Korea to the Digital Economy Partnership Agreement, Ministry of Foreign Affairs and Trade. Available at <https://www.mfat.govt.nz/en/media-and-resources/joint-press-release-on-the-accession-of-the-republic-of-korea-to-the-digital-economy-partnership-agreement/>.

⁴ Department for Digital, Culture, Media and Sport of the United Kingdom. (2022). New Data Agreement with the Republic of Korea to Spark New Era of Digital Trade, Department for Digital, Culture, Media and Sport. Available at: <https://www.gov.uk/government/news/new-data-agreement-with-the-republic-of-korea-to-spark-new-era-of-digital-trade>.

⁵ ASEAN Secretariat. (2023). Chairman's Statement of The 24th ASEAN-Republic of Korea Summit. Available at: <https://asean.org/wp-content/uploads/2023/09/FINAL-Chairmans-Statement-of-the-24th-ASEAN-ROK-Summit.pdf>.

RUSSIAN FEDERATION

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

RUSSIAN FEDERATION

The Russian Federation is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, compliance costs are significantly higher than the group average for regulations related to intellectual property rights, standards and procedures, content access, and foreign direct investment. However, the economy has relatively lower compliance costs compared to the group average for online sales and transactions, and telecom regulations and competition.

Among 12 policy areas, the highest compliance costs for the Russian Federation are in regulations related to foreign direct investment, standards and procedures, and content access. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, online sales and transactions, and telecom regulations and competition.

Table 15: Russian Federation's RDTII overall score and pillars' scores

Russian Federation	Index score (0: lowest compliance costs, 1: highest compliance costs)	Difference from regional average (%)
Overall score	0.562	33%
Pillar 1: Tariffs and trade defence	0.243	19%
Pillar 2: Public procurement	0.680	33%
Pillar 3: Foreign direct investment	0.920	51%
Pillar 4: Intellectual property rights	0.625	127%
Pillar 5: Telecom regulations and competition	0.353	-24%
Pillar 6: Cross-border data policies	0.500	42%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.500	11%
Pillar 9: Content access	0.750	55%
Pillar 10: Non-technical NTMs	0.583	28%
Pillar 11: Standards and procedures	0.800	98%
Pillar 12: Online sales and transactions	0.250	-39%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

The Russian Federation has increased regulatory requirements related to public procurement. In 2023, the Government of Russia issued Decree No.486 “On Amendments to Certain Act of the Government of the Russian Federation”, establishing a three-tier mechanism for public procurement of electronics. Within this mechanism, the highest priority of procured products will be given to Russian equipment operating on Russian processors.¹ In May 2023, the Federal Service for Supervision of Communications, Information Technology and Mass Media of Russia announced a list of foreign messengers that are prohibited for use by public entities and financial organizations.²

The new policy on foreign direct investment aims to increase regulation and oversight of foreign influence. The Federal Law No.255-FZ “On Control over the Activities of Persons Under Foreign Influence”, effective since December 2022, governs foreign agents in Russian Federation. A foreign agent, who receives support or is influenced by foreign entities, must register with the Ministry of Justice. Non-compliance will result in restrictions on access to their information resources.

Notably, there are positive developments in patent enforcement. The Russian Federation has lifted the Decree of the Government of the Russian Federation No.299 of 2022,³ which permitted the utilization of inventions, utility models and individual designs without compensation if the rights holders associated with foreign states commit unfriendly actions against Russian legal entities or natural person.⁴ Moreover, Order No.1532 of 2022⁵ by the Ministry of Industry and Trade, which suspended protection against parallel importation for various goods, is no longer in effect.

¹ The highest priority will be given to Russian equipment operating on Russian processors. It will be classified as 'first-level' production and have a corresponding mark in the registry of the Ministry of Industry and Trade. If Russian equipment is equipped with components of foreign production, it will be considered 'second-level' production and will be purchased only in the absence of proposals for 'first-level' production. Completely foreign technology is defined as 'third-level' production. Proposals for such deliveries will be considered last.

² The list includes Discord, Microsoft Teams, Skype for Business, Snapchat, Telegram, Threema, Viber, WhatsApp, and WeChat. See the Federal Service for Supervision of Communications, Information Technology and Mass Media. "To the attention of Russian organizations using foreign services".

³ Decree of the Government of the Russian Federation No.299 “On Amending Item 2 of the Methodology of Calculation of Compensation’s Amount to be Paid to Patent Owner Resulted in Decision to Use Invention, Utility Model or Industrial Design Without Patent Owner’s Consent, and Procedure of its Payment” (2022).

⁴ See WIPO Background Paper on the Zero Remuneration Rate, available at https://www.wipo.int/edocs/mdocs/sct/en/sct_45/sct_45_russian_federation_info_paper_2.pdf

⁵ Order No.1532 “On Approval of the List of Goods (Groups of Goods)” in Respect of Which the Provisions of Subparagraph 6 of Article 1359 and Article 1487 of the Civil Code of the Russian Federation do not apply, subject to the Introduction of these Goods (Groups of Goods) into Circulation Outside the Territory of the Russian Federation by Rightholders (Patent Holders), as well as with their Consent (as amended up to Order of the Ministry of Industry and Trade No. 4456 of the Russian Federation of October 21, 2022).

EXAMPLES OF POLICIES SUPPORTING RUSSIAN FEDERATION'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

The Russian Federation has relatively low tariffs on ICT goods. The average effective tariff rate for ICT products imported from the ESCAP region is around 1.73%. Approximately 60% of the tariff lines for such products are tariff-free. The Russian Federation is a party to the WTO Information Technology Agreement (ITA I). However, the economy has not extended its participation to the ITA II expansion of 2015. Since October 2020, the economy has imposed an anti-dumping measure on aluminium alloy strips originating from Azerbaijan and China.

ONLINE SALES AND TRANSACTIONS

In general, the regulatory landscape for online sales and transactions in the Russian Federation demonstrates a commitment to fostering a clear and comprehensive legal environment. The regulatory landscape for online sales and transactions includes the Civil Code of the Russian Federation (1996) last amended in 2023 and the Federal Law No.2300-1 "On Consumer Rights Protection" (2011). The Law regulates all disputes related to electronic contracts, particularly those involving foreign entities offering goods to consumers in the Russian Federation over the Internet, even when such foreign entities do not have a legal presence within the economy.

Apart from being a signatory to the United Nations Convention on the Use of Electronic Communications in International Contracts in April 2007,⁶ the Russian Federation adopted the Federal Law No.63-FZ "On Electronic Signature" (2011), recognizing the same legal effect of electronic signatures as handwritten signatures. Notably, no restrictions are found on foreign equity caps, online purchasing limits, licensing requirements for e-commerce, domain names, and de minimis threshold.

⁶ Signed in April 2007 and entry into force in January 2014. Upon acceptance, the Russian Federation declared: 1. In accordance with article 19, paragraph 1, of the Convention, the Russian Federation will apply the Convention when the parties to the international contract have agreed that it applies; 2. In accordance with article 19, paragraph 2, of the Convention, the Russian Federation will not apply the Convention to transactions for which a notarized form or State registration is required under Russian law or to transactions for the sale of goods whose transfer across the Customs Union border is either prohibited or restricted.

TELECOM REGULATIONS AND COMPETITION

In the Russian Federation, conducive telecom regulatory measures, such as passive infrastructure and accounting separation are in place. Specifically, the obligation for passive infrastructure sharing was mandated in Decree of the Government of Russian Federation No.2106 “On the Procedure for Non-Discriminatory Access to Infrastructure for the Deployment of Telecommunication Networks” in 2022 requiring natural monopolies in the telecommunications sector to provide access to their infrastructure facilities as regulated by law.⁷ Although it functions as a state-owned enterprise, Rostelecom, the incumbent operator, has less than a 50% government stake. The Russian Federation has also included the schedule of commitments from the WTO Telecom Reference Paper in its regulatory framework.

EXAMPLES OF POLICY CHALLENGES TO RUSSIAN FEDERATION’S DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

The Russian Federation imposes several foreign investment limits in sectors relevant to digital trade. The Federal Law No.57-FZ “On the Procedure for Foreign Investments in Business Entities of Strategic Importance for Ensuring National Defense and State Security” (2008) amended in 2022 prevents foreign investors from acquiring over 50% shares or obtaining majority voting rights in strategic companies. The Federal Law No.2124-I FZ “On Mass Media” (1991) amended in 2023 prohibits foreign founders in mass media organizations. Similarly, the amended Federal Law No.395-1 FZ “On Banks and Banking Activities” (1990)⁸ establishes a maximum threshold of 50% for foreign capital in the aggregate charter capital of credit organizations.

Foreign investments are also subject to screening mechanisms. For instance, under the amended Federal Law No.160-FZ “On Foreign Investments in the Russian Federation” (1999),⁹ transactions by foreign investor concerning Russian business entities are subject to preliminary approval by the Chairman of Government Commission for the Control of Foreign Investments to ensure national defence and security of the state.

⁷ Passive infrastructure sharing has been implemented before 2022. Previously, the infrastructure sharing requirement is regulated under the Resolution of the Government of the Russian Federation 2014, which have been declared invalid.

⁸ The Federal Law No.395-1 “On Banks and Banking Activities” (1990) was amended by the Federal Law No.372-FZ “On amending articles 16 and 18 of the Federal Law “On Banks and Banking Activities” (2015).

⁹ The Federal Law No.160-FZ “On Foreign Investments in the Russian Federation” (1999) with the amendments in 2002, 2003, 2005, 2006, 2007, 2008, 2011 and 2014.

In addition, under the Federal Law No.236-FZ “On the Activities of Foreign Entities in the Information and Telecommunications Network “Internet” in the Russian Federation” (2021), tech companies with over 500,000 daily users, such as Apple, Google, Meta (formerly Facebook), are required to register as legal entities in the Russian Federation.

STANDARDS AND PROCEDURES

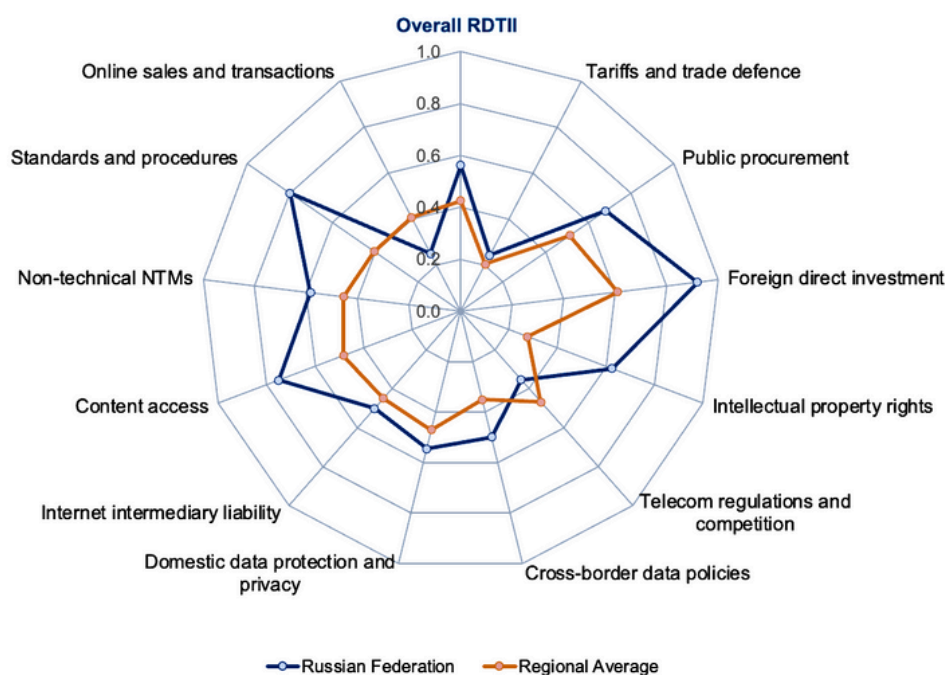
The Russian Federation enforces stringent licensing and certification requirements for telecommunication products. The Federal Law No.126-FZ “On Communications” (2004) and Decree of the Government of the Russian Federation No. 113 “On Approval of the List of Communication Facilities Subject to Mandatory Certification and Invalidation of Certain Acts” (2022) establish licensing and certification requirements for telecommunication products. A declaration of conformity needs to be registered by an applicant, with the relevant evidence of the communication device’s conformity obtained from accredited test laboratories. Regarding encryption facilities, the Federal Law No.99-FZ “On Licensing Specific Types of Activity” (2011) requires companies to gain a license in order to be engaged in developing, manufacturing, and distributing encryption facilities. In addition, export and import of equipment containing encryption need to be registered with the Federal Security Service.

CONTENT ACCESS

The Russian Federation has developed different regulations limiting access to commercial web content. For instance, the Federal Law No.482-FZ “On Amendments to the Federal Law on Enforcement Actions Regarding Persons Involved in Violations of Fundamental Human Rights and Freedoms and the Rights and Freedoms of the Russian Federation Citizens” (2021) grants Roskomnadzor the authority to restrict access to online resources if the Prosecutor General of the Russian Federation, in agreement with the Russian Ministry of Foreign Affairs, decide that a resource of the Internet is complicit in the violations of fundamental human rights and freedoms.

The Federal Law No.90-FZ “On Amendments to the Federal Law “On Communications” (2019) and the Federal Law No.487-FZ “On Information, Information Technologies and Information Protection” passed in 2019, provide the possibility to install technical tools on communication networks to limit access to prohibited content. Additionally, broadcasting service provider are mandated to obtain permission from state authorities per the Federal Law No.99-FZ “On Licensing of Certain Types of Activities” (2011).

Figure 15: Comparison between Russian Federation's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

RUSSIAN FEDERATION'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

The Russian Federation's existing preferential trade agreements (PTAs) do not include provisions for digital trade or e-commerce. However, the Russian Federation is one of the WTO Members participating in the Joint Statement Initiative to commence WTO negotiations on trade-related aspects of electronic commerce. Additionally, as a member of the Eurasian Economic Union (EAEU), the Russian Federation is involved in efforts to integrate the EAEU's information system and advance the Union's Digital Agenda.

10 EEC. (2023). EAEU started reformatting digital agenda. Available at: <https://eec.eaeunion.org/en/news/v-eaes-nachalos-pereformatirovanie-tsifrovoy-povestki/>.

SINGAPORE

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

SINGAPORE

Singapore is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for intellectual property rights, tariff trade and defence, public procurement and cross-border data policies. However, the economy has relatively complex rules compared to the group average are related to non-technical non-tariff measures (NTMs), domestic data protection and privacy, and content access.

Among 12 policy areas, the highest compliance costs for Singapore are in regulations related to non-technical NTMs, domestic data protection and privacy, and content access. In contrast, the lowest compliance costs are in those related to tariffs and trade defence measures, intellectual property rights, and public procurement.

Table 16: Singapore's RDTII overall score and pillars' scores

Singapore	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.313	-26%
Pillar 1: Tariffs and trade defence	0.000	-100%
Pillar 2: Public procurement	0.080	-84%
Pillar 3: Foreign direct investment	0.449	-27%
Pillar 4: Intellectual property rights	0.000	-100%
Pillar 5: Telecom regulations and competition	0.426	-9%
Pillar 6: Cross-border data policies	0.173	-51%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.542	12%
Pillar 10: Non-technical NTMs	0.625	37%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.288	-30%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

In 2023, Singapore strengthened policies related to online safety. The Online Safety Act (2022), which entered into force on 1 February 2023, allows the government to fine any person who provides access to egregious content and fails to block such content. Singapore also enacted the Code of Practice for Online Safety in July 2023, prioritising protection from harmful content, especially for children. The regulation requires social media services to minimize exposure to harmful content, create tools for reporting harmful content, and have accountability to ensure these measures are known in annual online safety reports.

Singapore has reformed Goods Services Tax (GST) policies to cover low-value imported goods. The de minimis threshold for low-value imported goods by air or post is set at SGD 400. Since 1 January 2023, GST has been extended to low-value imported goods by air or post valued at SGD 400 (approximately USD 300) or below that are purchased from GST-registered local and overseas suppliers. Additionally, GST is applied to all imported remote services, including both digital and non-digital services that are purchased from the registered suppliers.¹

Moreover, Singapore continues its Smart Nation Initiative, providing policies focusing on Digital Society, Digital Economy, and Digital Government.² As a supplement to the initiative, in 2023 Singapore launched the Digital Connectivity Blueprint³ and National Artificial Intelligence Strategy (NAIS) 2.0.⁴ These initiatives aim to ensure that Singaporean enterprises and individuals have the necessary infrastructure to pursue new opportunities in emerging areas.

¹ Inland Revenue Authority of Singapore. GST on Imported Low-Value Goods. Available at [https://www.iras.gov.sg/taxes/goods-services-tax-\(gst\)/consumers/gst-on-imported-low-value-goods](https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/consumers/gst-on-imported-low-value-goods)

² Smart Nation and Digital Government Office. Pillars of a Smart Nation, Smart Nation and Digital Government Office. Available at <https://www.smartnation.gov.sg/about-smart-nation/pillars-of-smart-nation/>.

³ Ministry of Communications and Information and Info-communications Media Development Authority. (2023). Singapore's Digital Connectivity Index. Singapore, Singapore: MCI and IMDA.

⁴ Government of Singapore. (2023). NAIS 2.0: Singapore National AI Strategy - AI for the Public Good, For Singapore and the World. Singapore, Singapore: Government of the Republic of Singapore.

EXAMPLES OF POLICIES SUPPORTING SINGAPORE'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Singapore imposes no tariffs and trade defence measures on ICT goods imported from other ESCAP economies. Additionally, Singapore is a member of the WTO Information Technology Agreement (ITA) and its ITA II expansion. The effective tariff on ICT goods imported from ESCAP countries is 0%, with 100% of ICT goods tariff lines incurring zero-tariff rate.

INTELLECTUAL PROPERTY RIGHTS

Singapore does not impose any restrictions on intellectual property rights. The economy has actively engaged in international frameworks such as the ratification of the Patent Cooperation Treaty and shows a low piracy rate. Specifically, in 2022, the WIPO reports that the number of foreign patent applications and approvals in Singapore has far exceeded domestic ones, ranking it at 23rd globally for patent applications.⁵ Singapore also provides protection to trade secrets through the common law doctrine of breach of confidence which safeguards confidential information comprising copyrighted material.⁶ The Computer Misuse Act (1993) amended in 2021 can be applied in cases of cybersecurity threats involving breaches of trade secrets.

PUBLIC PROCUREMENT

Singapore's public procurement policies are open to foreign participation. Under the Government Procurement Act (2002) amended in 2021, the Government Procurement Regulations (2014) and the Government Procurement (Application) Order (2002) amended in 2004, there are no restrictions on foreign participation or domestic preferences. The principles of national treatment and non-discrimination are outlined in the Government Procurement Regulations. Singapore is also a signatory to the WTO Government Procurement Agreement (GPA), although its schedule does not include telecommunications-related services (CPC 754) and does not fully cover computer-related services (CPC 84) and telecommunications services (CPC 752).

⁵ WIPO. (2022). Statistical Economy Profiles. Available at <https://www.wipo.int/edocs/statistics-country-profile/en/sg.pdf>.

⁶ The copyrighted material includes, such as, instruction manuals, computer software, databases, and trade secrets.

EXAMPLES OF POLICY CHALLENGES TO SINGAPORE'S DIGITAL TRADE INTEGRATION

NON-TECHNICAL NTMS

The Telecommunication Act (1999) amended in 2021 prohibited the importation of certain ICT goods into Singapore, including military communication equipment and telephone voice changing equipment, among others.⁷ The Act outlines the list of prohibited ICT goods that local manufacturers are not able to produce, import, let for hire, sell, or pose threat to public safety.⁸ The Manufacture of Optical Discs Act (2004) amended in 2020 also establishes an import licensing requirement for optical disc mastering and replication equipment implemented by the Economic Development Board (EDB).

DOMESTIC DATA PROTECTION AND PRIVACY

Singapore has relatively complex regulations on the use of data at the individual and entity level. Infocomm Media Development Authority of Singapore (IMDA) reserves the right to require its telecom licensees to retain records for, on average, 12 months.⁹ Under Section 40 of the Criminal Procedure Code, police officers have the power to conduct surveillance interception and to access computers and decryption information without any prior judicial authorisation. The same Code requires the appointment of at least one data protection officer to ensure an organisation's compliance with the Act.

CONTENT ACCESS

Singapore imposes restrictions on content access. Under the Protection from Online Falsehoods and Manipulation Act (2019), IMDA has the right to block websites that the Government considers against public interest order, national

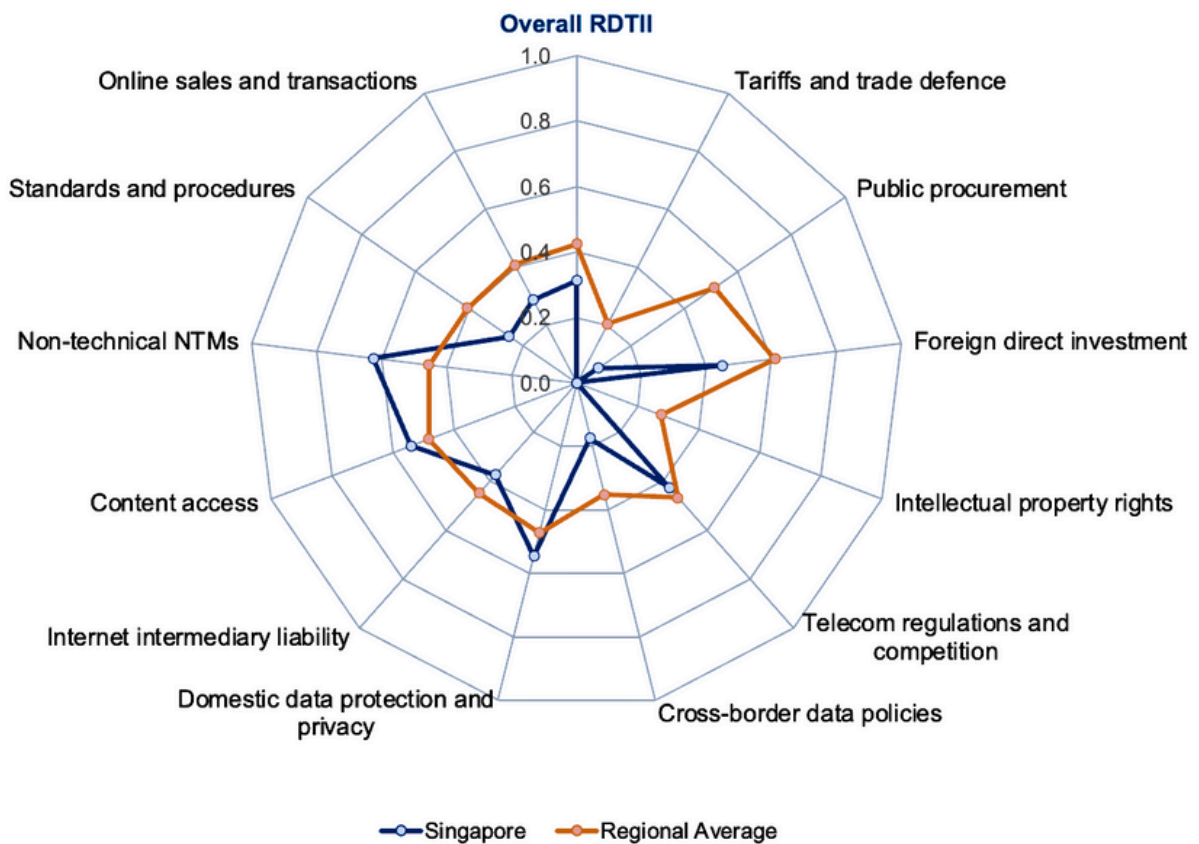
⁷ The prohibited ICT goods include scanning receivers, military communication equipment, telephone voice changing equipment, radio-communication equipment operating in frequency bands 880-915 MHz, 925-960 MHz, 1900-1980 MHz and 2110-2170 MHz except cellular mobile phones, or such other equipment approved by Info-communications Media Development Authority of Singapore, radio-communication jamming devices operating in any frequency band, and obscene articles, publications and video tapes or discs.

⁸ IMDA. (2023). Prohibited Telecommunication Equipment, Infocomm Media Development Authority. Available at <https://www.imda.gov.sg/infocomm-regulation-and-guides/infocomm-regulation/prohibited-telecommunication-equipment>.

⁹ The Licence to Provide Facilities-based Operations Granted by the Info-Communications Media Development Authority to Singapore Telecommunications Limited under Section 5 of the Telecommunications Act (Chapter 323) requires telecom licensees to maintain data records for 12 calendar months, which shall be made available for inspection by authorised Singapore government agencies: assigned source IP address and date and time stamps; and assigned user ID/user name (e.g., subscriber records).

harmony or offensive to good taste or decency. Content publishers and internet intermediaries can be held liable if they do not comply with orders to issue corrections or remove content. In addition, the Online Safety Act (2022) provides fines or outright blocks to a person or an entity who is identified as providing online communication service or internet access with “egregious content” and fails to block access to such content. Since 2013, IMDA has provided guidelines for online news websites with significant users to provide regular reports and to acquire an individual license.¹⁰

Figure 16: Comparison between Singapore’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

¹⁰The licensed websites are required to remove content that breaches content standards within 24 hours of being notified to ensure that the websites are accountable for their content to the public. Personal blogs are not affected if they do not morph into news sites.

SINGAPORE'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Singapore has been one of the most active economies in pursuing digital trade cooperation through Digital Economy Agreements (DEAs). It is a founding member of the Digital Economy Partnership Agreement (DEPA) with New Zealand and Chile and has a DEA with Australia.¹¹ Singapore has also signed the Republic of Korea-Singapore Digital Partnership Agreement (KSDPA) and United Kingdom-Singapore Digital Economy Agreement (UKSDEA). These DEAs focus on the transformation of international trade through digital technologies and services, requiring a framework for Government-to-Government cooperation, and establishing interoperability. Singapore has recently launched negotiations on digital trade with the European Free Trade Association and European Union.¹²

Singapore and the European Union recently signed the European Union-Singapore Digital Partnership (EUSDP), which is focused on promoting digital cooperation and creating opportunities to explore new and emerging areas.¹³ Singapore has been actively engaging with its counterparts as it supports the Indo-Pacific Economic Framework for Prosperity. Along with Japan and Australia, Singapore is one of the co-conveners of the WTO Joint Statement Initiative on Electronic Commerce.

¹¹A Digital Economy Agreement (DEA) is a treaty that establishes digital trade rules and digital economy collaborations between two or more economies. Through DEAs with key partners, Singapore hopes to develop international frameworks to foster standards and systems interoperability and support our businesses, especially SMEs, engaging in digital trade and electronic commerce. For more information. Available at <https://www.mti.gov.sg/Trade/Digital-Economy-Agreements>.

¹²European Union. (2023). Joint statement on the launch of negotiations for an EU-Singapore Digital Trade Agreement, European Commission. Available at https://policy.trade.ec.europa.eu/news/joint-statement-launch-negotiations-eu-singapore-digital-trade-agreement-2023-07-20_en.

¹³Ministry of Trade and Industry. European Union-Singapore Digital Partnership (EUSDP), Ministry of Trade and Industry. Available at <https://www.mti.gov.sg/Trade/Digital-Economy-Agreements/EUSDP>.

THAILAND

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

THAILAND

Thailand is among the economies with relatively low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, the economy has lower compliance costs compared to the group average for tariffs and trade defence, internet intermediary liability, and standards and procedures. However, its compliance costs are significantly higher than the group average for regulations related to telecom regulations and competition, intellectual property rights, and foreign direct investment.

Among 12 policy areas, the highest compliance costs for Thailand are in regulations related to foreign direct investment, telecom regulations and competition, and domestic data protection and privacy. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, standards and procedures, and internet intermediary liability.

Table 17: Thailand's RDTII overall score and pillars' scores

Thailand	Index score (0: lowest compliance costs, 1: highest compliance costs)	Difference from regional average (%)
Overall score	0.412	-3%
Pillar 1: Tariffs and trade defence	0.011	-95%
Pillar 2: Public procurement	0.480	-6%
Pillar 3: Foreign direct investment	0.746	22%
Pillar 4: Intellectual property rights	0.361	31%
Pillar 5: Telecom regulations and competition	0.662	42%
Pillar 6: Cross-border data policies	0.385	9%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.250	-44%
Pillar 9: Content access	0.438	-9%
Pillar 10: Non-technical NTMs	0.375	-18%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.438	7%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

The regulatory landscape for data protection, intellectual property (IP), and digital platforms in Thailand has seen significant developments. The implementation of the Personal Data Protection Act in June 2022 established a comprehensive framework for data processing, collection, usage, and transfer. The Personal Data Protection Commission (PDPC) has issued secondary legislation prescribing specific rules on various data aspects such as data breach assessments. In 2022, amendments to the Copyright Act No.5 B.E.2565 (2022) and the Notification by the Ministry of Digital Economy and Society regarding Procedures, Computer Data Dissemination and Transmission of the Computer Data B.E.2565 (2022), have been enacted to enhance protection to internet service providers (ISPs) against online copyright infringement and streamline the notification and take-down procedure, respectively.

Since August 2023, the Royal Decree on the Operation of Digital Platform Services Business that are Subject to Prior Notification B.E.2565 (2022) introduced criteria for the operation of digital platform service businesses¹ to ensure transparency and user protection. Digital platform services must undergo prior notification, and offshore operators, that meet the specified criteria on income and active monthly users, are required to comply with annual full-form notification requirement.²

¹ Under Section 3 of the Royal Decree on the Operation of Digital Platform Services Business that are Subject to Prior Notification B.E.2565 (2022), “digital platform service” means the provision of electronic intermediary services that manage data to facilitate the connection, through computer networks, between business users, consumers or users with a view to concluding an electronic transaction, regardless of whether remuneration has been charged, but shall not include a digital platform service that is intended for offering goods or services of a single digital platform service operator or an affiliated company which is an agent of such operator, irrespective of whether the goods or services are offered to third persons or to affiliated companies.

² A digital platform service that possesses any of the following characteristics shall submit the full-form notification to the Electronic Transactions Development Agency prior to the commencement of the business: (1) The service generates exceeding THB 1.8 million annually in case the operator is a natural person, or exceeding THB 50 million in case the operator is a juristic person; (2) The service has more than 5,000 average monthly users calculated from the average monthly usage in the past according to the rules prescribed in the Notification of the Agency. Specifically, the full-form notification must include detailed information such as the business operator’s details, transaction value, gross revenue, and the contact person’s name. For operators that do not meet these criteria, a short-form notification is required, which involves providing less information.

EXAMPLES OF POLICIES SUPPORTING THAILAND'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

As a signatory of the WTO Information Technology Agreement (ITA I) and its expansion (ITA II), Thailand has removed import duties on many ICT goods. The effective tariff on ICT goods imported from ESCAP countries is relatively low at 0.28%, with 85% of ICT goods tariff lines incurring zero-tariff rate. Thailand does not impose a trade defence measure on ICT goods.

STANDARDS AND PROCEDURES

Thailand has good practices in technical standards and procedures. Thai Industrial Standards Institute, the national standard body, has established technical standards for electronic appliances and accessories in line with international benchmarks, such as the ISO and IEC. Self-declaration of conformity from foreign businesses is recognized. Additionally, as an ASEAN member, Thailand accepts test reports and certifications issued by conformity assessment bodies under the ASEAN Framework Agreement on Mutual Recognition Arrangements.³

INTERNET INTERMEDIARY LIABILITY

Thailand's safe harbour regime protects internet intermediaries from third-party liabilities, including copyright infringements and other offences.⁴ The Copyright Act No.5 B.E. 2565 (2022) and the Notification of the Ministry of Digital Economy and Society regarding Procedures, Computer Data Dissemination and Transmission of the Computer Data B.E.2565 (2022) highlight the continued effort to safeguard the intermediaries. Moreover, internet intermediaries are not required to monitor content.

³ See ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment (ASEAN EE MRA) (2002) and ASEAN Harmonized Electrical and Electronic Equipment Regulatory Regime (AHEEERR) (2005).

⁴ The safe harbour protection for copyright infringements is protected under the Copyright Act (No.2) B.E.2558 (2015), and the Copyright Act (No.3) B.E.2558 (2015), and the other offences are protected under the Commission of Computer-Related Offences Act B.E.2550 (2007) last amended by the Commission of Computer-Related Offences Act (No.2) B.E.2560 (2017).

EXAMPLES OF POLICY CHALLENGES TO THAILAND'S DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

Investment regulations in Thailand are complex. Foreign investment is regulated mainly by the Foreign Business Act (FBA) B.E.2542 (1999), which categorizes controlled business activities into three lists. Each list applies different foreign equity limits and approval procedures. Foreign investors must meet the required qualifications to obtain a foreign business license. For instance, Section 16.2 of the FBA prescribes that a foreigner who intends to apply for a business license in Thailand must have a residence in the Kingdom or be permitted to temporarily enter the Kingdom.

In addition to the FBA requirements, foreign investors must comply with sector-specific laws. If there is a conflict between a provision of sectoral rules and general rules, the rules that impose a stricter standard will apply. The Budget Procedures Act B.E.2561 (2018) also restricts foreigners from acquiring more than 50% of shares in certain state enterprises.⁵

TELECOM REGULATIONS AND COMPETITION

Thailand has established the National Broadcasting and Telecommunications Commission (NBTC), an independent regulator overseeing all telecommunications and broadcasting services, since 2010. However, the regulatory environment in the telecommunication sector remains complex. The National Telecom Public Company, which is fully owned by the Ministry of Finance, holds substantial market power with a 66% market share in the fixed-line telephone segment.⁶ The foreign equity cap varies based on the type of telecom license. A type 3 telecommunications license, which applies to operators with their own telecommunications network for public use, is subject to a 49% foreign cap.

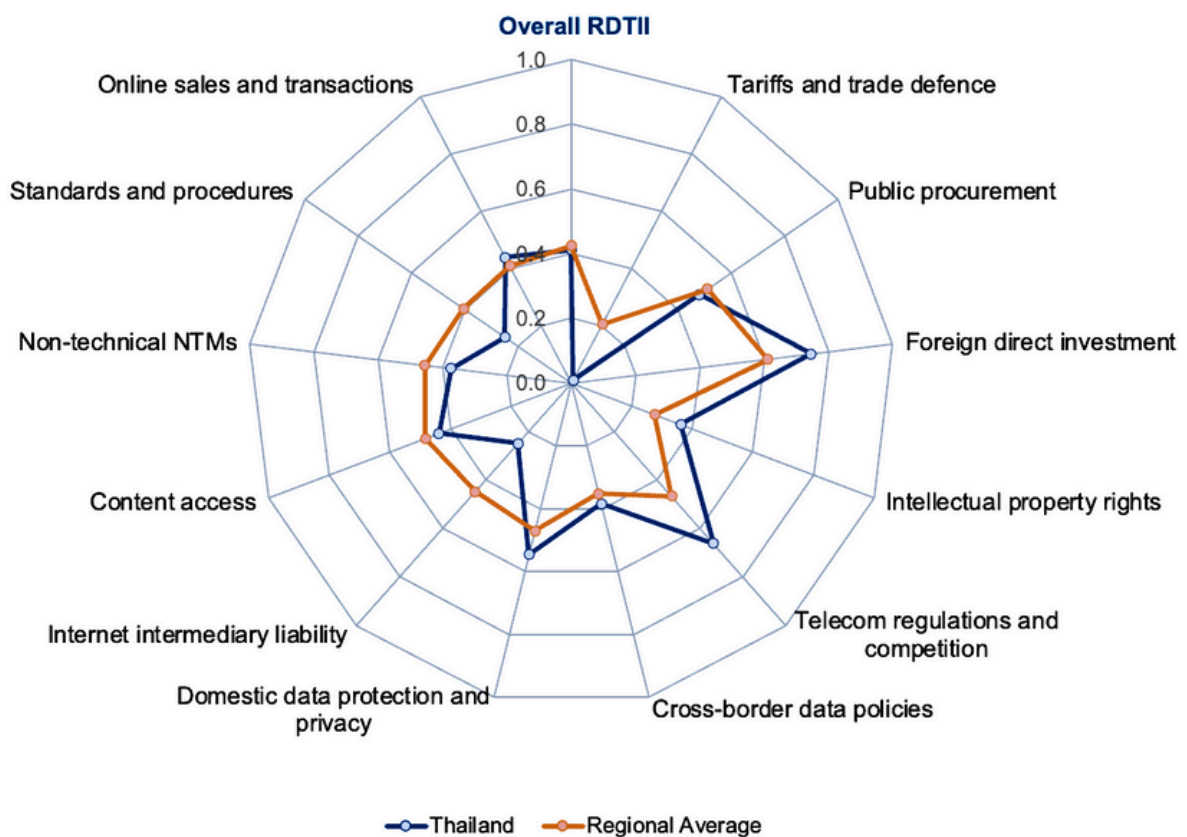
⁵ Section 4 of the Budget Procedures Act B.E.2561 (2018) provides that "State enterprise" means: (1) a Government organisation under the law on the establishment of Government organisations, a State undertaking established by law or a State-owned business entity; (2) a limited company or public limited company of which more than fifty percent of the capital is contributed by a Government agency or a State enterprise under (1); (3) a limited company or public limited company of which more than fifty percent of the capital is contributed by a Government agency and a State enterprise under (1) or (2) or by State enterprises under (1) and (2) or by a State enterprise under (2).

⁶ NTBC Telecommunications Market Report (B.E.2565) as of October 2022.

DOMESTIC DATA PROTECTION AND PRIVACY

The Personal Data Protection Act B.E.2562 (2019), entered into force on 1 June 2022, establishes a requirement to appoint a Data Protection Officer, which imposes high compliance costs, especially for MSMEs.⁷ Thailand requires a minimum period of data retention in certain cases. For instance, under the Commission of Computer-Related Offences Act B.E.2560 (2017), a service provider is obliged to retain computer traffic data for not less than 90 days from the date when the data was entered into the computer system. Other requirements include the obligation to appoint a data protection officer and provide government access to personal data for “national security” investigations within the specified period, as regulated by the National Intelligence Act B.E.2562 (2019).

Figure 17: Comparison between Thailand’s RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁷ Section 41 of the Personal Data Protection Act B.E.2562 (2019) specifies that the data controller and data processor shall designate a data protection officer in the following circumstances: the activities such as collection, use, or disclosure of the personal data. Moreover, Article 42 prescribes the duty of the Data Protection Officer (DPO), including: advise the data controller and data processor, investigate the performance of the data controller and data processor, coordinate, and cooperate with the Office or the Personal Data Protection Committee (PDPC) when there are problems and keep confidentiality of the personal data.

THAILAND'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Since 2019, Thailand has been participating in the WTO Joint Statement Initiative on Electronic Commerce. At the regional level, Thailand is involved in ASEAN digital-related initiatives, including the ASEAN Digital Integration Framework Action Plan 2019-2025. Thailand also participates in the Regional Comprehensive Economic Partnership (RCEP) agreement since 2020, which covers issues related to e-commerce. In addition, twelve of the seventeen preferential trade agreements (PTAs) to which Thailand is a party include a dedicated chapter or provision on electronic commerce.⁸ Notably, several of them are plurilateral agreements signed under ASEAN, including ASEAN Agreement on Electronic Commerce, the upgraded ASEAN-China PTA, the upgraded ASEAN-Australia-New Zealand PTA, the ASEAN-India PTA, the ASEAN-Japan PTA, and the ASEAN-Hong Kong, China PTA.

⁸ All agreements include a dedicated e-commerce chapter, except for ASEAN-China PTA upgrade. ASEAN-Hong Kong, China, ASEAN-India, ASEAN-Japan, Thailand-Chile, Thailand-India, and Thailand-Japan PTAs include e-commerce provisions.

TÜRKIYE

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

TÜRKIYE

Türkiye is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average for non-technical non-tariff measures (NTMs), intellectual property rights, foreign direct investment, and internet intermediary liability. However, the economy has relatively complex rules compared to the group average are related to content access, online sales and transactions, and domestic data protection and privacy.

Among 12 policy areas, the highest compliance costs for Türkiye are in regulations related to content access, domestic data protection and privacy, and online sales and transactions. In contrast, the lowest compliance costs are in those related to intellectual property rights, non-technical NTMs, and tariffs and trade defence.

Table 18: Türkiye's RDTII overall score and pillars' scores

Türkiye	Index score (0: lowest compliance costs, 1: highest compliance costs)	Difference from regional average (%)
Overall score	0.373	-12%
Pillar 1: Tariffs and trade defence	0.209	2%
Pillar 2: Public procurement	0.480	-6%
Pillar 3: Foreign direct investment	0.339	-45%
Pillar 4: Intellectual property rights	0.139	-50%
Pillar 5: Telecom regulations and competition	0.456	-2%
Pillar 6: Cross-border data policies	0.308	-12%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.250	-44%
Pillar 9: Content access	0.646	34%
Pillar 10: Non-technical NTMs	0.208	-54%
Pillar 11: Standards and procedures	0.400	-1%
Pillar 12: Online sales and transactions	0.500	23%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Türkiye has been actively updating its digital trade regulations to support cross-border e-commerce and improve consumer protection. The Law on the Regulation of Electronic Commerce No.6563 (2014), amended in January 2023, requires e-commerce intermediaries with substantial transactions to obtain licenses before January 1, 2025. The law also does not limit the delivery of products bought online in Türkiye. A September 2022 amendment to Article 35 of Law No.5809 eased domain name registration, allowing applications without a physical presence in Türkiye. The October 2022 amendment to the Law on Consumer Protection No.6502 (2013)¹ includes provisions on distance contracts, improving consumer protection to meet international standards.

EXAMPLES OF POLICIES SUPPORTING TÜRKIYE'S DIGITAL TRADE INTEGRATION

INTELLECTUAL PROPERTY RIGHTS

Türkiye is a member of the Patent Cooperation Treaty, WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. The Industrial Property Law No.6769 (2016) and amended the Law on Intellectual and Artistic Works No.5846 (1951)² guide the patent applications and enforcement while also providing clear copyright limitations. Trade secrets are protected under several Turkish regulations, such as the Civil Code No.4721 (2003), Commercial Code No.6102 (2011), and Penal Code No.5237 (2004), without mandatory disclosure requirements.³

NON-TECHNICAL NTMS

Türkiye fosters an accessible market for digital trade by eliminating restrictive measures on ICT goods and online products/services. Customs Law No.4458 (1999) eliminates both import and export bans on ICT goods and online products/services. There are no local content requirements. In May 2020, Turkish Ministry of Trade issued a licensing requirement on the imports of mobile phones

¹ The Law on Consumer Protection No.6502 (2013) was amended by the Law on Consumer Protection No.7392 (2022)

² The Law on Intellectual and Artistic Works No.5846 (1951) was amended by the Law on Intellectual and Artistic Works No.5728 (2008).

³ The most detailed protection for trade secrets is under the provisions on unfair competition under the Commercial Code No.6102 (2011), which states that disclosing manufacturing and business secrets that belong to others unlawfully constitutes unfair competition. For more information, see <https://gun.av.tr/insights/articles/trade-secret-protection-turkey-chapter>.

with a minimum price threshold of USD 5 per piece. However, in October 2021, the Turkish government abolished the licensing requirement on the import of mobile phone parts in complete knockdown (CKD) condition. This revision applies only to smartphones.

TARIFFS AND TRADE DEFENCE

In 2021, Türkiye's effective applied tariff rate on ICT goods imported from Asia-Pacific economies was notably low at 1.46% along with a 62.4% coverage of duty-free ICT goods. The economy participates in the 1996 WTO Information Technology Agreement (ITA) but has not extended its participation to the ITA II expansion.

EXAMPLES OF POLICY CHALLENGES TO TÜRKIYE'S DIGITAL TRADE INTEGRATION

CONTENT ACCESS

Türkiye has introduced several strict measures to regulate content access. Law on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting No.5651 (2007) amended in 2020, initially designed for website bans and content removal for child protection, is now used for various reasons, including intellectual property infringements, materials deemed illegal under Turkish laws, and sites that defame or insult Turkish leaders. In addition, Türkiye frequently shuts down the Internet, impacting the infrastructure for conducting digital trade.⁴ The Commercial Advertising and Unfair Commercial Practices Regulation No.29232 (2015) amended in 2022 restricts various online advertisements, affecting businesses offering dating, legal, audit, tax, financial, and consultancy services.

DOMESTIC DATA PROTECTION AND PRIVACY

Regulatory environment for data protection in Türkiye is complex. Data retention is required under several laws and regulations. For example, Electronic Communications Law No. 5809 (2008) amended in 2020 mandates a two-year data retention period for personal data access logs. The Regulation on Commercial Communications and Commercial Electronic Communications No.6563 (2015) also requires a three-year retention period for electronic commercial communication-related consents and records. Other data retention requirements are imposed on issues related to health, accounting, and employment.

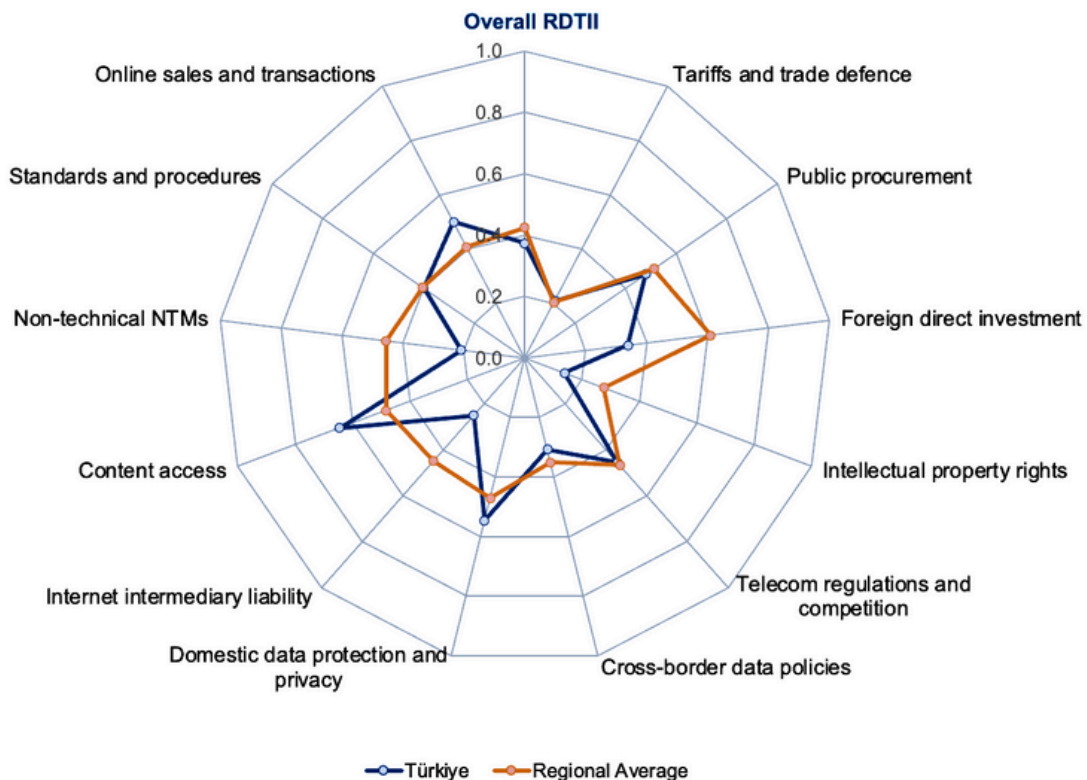
⁴ The indicator "6.2.4 - Government Internet shut down in practice" of the V-Dem Dataset, which measures whether the government has the technical capacity to actively make internet service cease, thus interrupting domestic access to the Internet or whether the government has decided to do so, has a score of 2.924 in Türkiye. This corresponds to when internet shutdown occurs extremely often. V-Dem Dataset available at <https://v-dem.net>.

Türkiye requires the appointment of data controller for internet service providers (ISPs) under the Protection of Personal Data Law No.6698 (2016) for the purpose of technical and administrative matters. The Law also outlines situations where personal data can be shared without the consent of the data owners, including for the purpose of crime prevention or investigation. In fact, the regulation does not mention the need for a warrant or court order in the processing of such data transfer.

ONLINE SALES AND TRANSACTIONS

Türkiye has increased requirements for online transactions. In July 2020, Türkiye's amended Law on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting No. 5651 (2007) introducing a requirement for foreign social network providers with high daily access in Türkiye to appoint a local representative. Law on Payment and Security Settlement Systems, Payment Services and Electronic Money Institutions No.6493 (2013) as amended in 2015 mandates that companies offering electronic payment and money services obtain a license from the Central Bank of Türkiye, with some commercial activity limitations. Additionally, in 2019, Türkiye removed the de minimis threshold for imported goods, affecting all imported products except books and publications under €150 (approximately USD 165).

Figure 18: Comparison between Türkiye's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

TÜRKİYE'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Türkiye continues to actively engage in and negotiate several Preferential Trade Agreements (PTAs) with Asia-Pacific partners. For example, the economy has agreements with Malaysia since 2015, the Republic of Korea since 2013, and Singapore since 2017. The current negotiations with Indonesia, Japan, and Thailand highlight Türkiye's efforts to expand its digital trade cooperation in the Asia-Pacific region.



VANUATU

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

VANUATU

Vanuatu is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average in several areas, such as regulations related to content access, public procurement, intellectual property rights, cross-border data policies, and internet intermediary liability. However, the economy has relatively complex rules compared to the group average are related to tariffs and trade defence, and foreign direct investment.

Among 12 policy areas, the highest compliance costs for Vanuatu are in regulations related to foreign direct investment, tariffs and trade defence, and domestic data protection and privacy. In contrast, the lowest compliance costs are in those related to content access, intellectual property rights, and cross-border data policies.

Table 19: Vanuatu's RDTII overall score and pillars' scores

Vanuatu	Index score (0: lowest compliance cost, 1: highest compliance costs)	Difference from regional average (%)
Overall score	0.255	-40%
Pillar 1: Tariffs and trade defence	0.522	155%
Pillar 2: Public procurement	0.080	-84%
Pillar 3: Foreign direct investment	0.873	43%
Pillar 4: Intellectual property rights	0.056	-80%
Pillar 5: Telecom regulations and competition	0.147	-69%
Pillar 6: Cross-border data policies	0.077	-78%
Pillar 7: Domestic data protection and privacy	0.500	6%
Pillar 8: Internet intermediary liability	0.125	-72%
Pillar 9: Content access	0.000	-100%
Pillar 10: Non-technical NTMs	0.208	-54%
Pillar 11: Standards and procedures	0.250	-38%
Pillar 12: Online sales and transactions	0.225	-45%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Vanuatu is in the process of developing a legal framework for digital trade and has been working on data privacy laws since 2021. The Cybercrime Act No.22 (2021) protects confidentiality and prevents misuse of computer systems and data. The Sim Card Registration Regulation Order No.105 (2022) requires all SIM card users to register with their local address.

To support the digital economy, the Reserve Bank of Vanuatu launched the VANKLIA payment system in September 2023, which includes automated clearing house transfers and real-time gross settlements to reduce payment delays.¹

EXAMPLES OF POLICIES SUPPORTING VANUATU'S DIGITAL TRADE INTEGRATION

CONTENT ACCESS

The Telecommunications and Radiocommunications Regulation Act No.30 Act (2009) is the primary law overseeing online content. The economy has not established specific regulations for online activities and does not restrict content access.

INTELLECTUAL PROPERTY RIGHTS

Vanuatu is a signatory to the WIPO Copyright Treaty and WIPO Performance and Phonograms Treaty, and has adopted regulatory frameworks for patents, copyrights, and trade secrets. For instance, the Copyright and Related Rights Act No. 42 (2000)² requires the adoption of clear copyright exception and provisions against copyright infringement. In addition, the Trade Secrets Act No.52 (2000) provides protection for trade secrets and other undisclosed information.

¹ See Vanuatu's New Payment System to Support Digital Economy and Boost Financial Inclusion. Available at <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=27738>; Vanuatu launches VANKLIA System to Automate Large, Small Payments. Available at <https://www.microcapital.org/microcapital-brief-vanuatu-launches-vanklia-system-to-automate-large-small-payments/>.

² Vanuatu addresses copyright infringements through the Copyright and Related Rights Act No.42 2000. Part 6 of the Act states that the Supreme Court has jurisdiction in respect of civil and criminal matters under this Act (Sections 34 and 35). Deliberate and profit-driven infringement is an offense punishable by a fine or imprisonment, or both (Section 35.2). The Court can issue injunctions to prohibit the infringement.

CROSS-BORDER DATA POLICIES

Although Vanuatu has not entered into agreements with binding commitments on data transfer, cross-border data transfers are allowed unconditionally. Vanuatu is drafting the Data Protection Bill. Additionally, under the Electronic Transaction Act No.24 (2000), the Ministry has authority to prescribe standards for the processing of personal data, regardless of whether the data originates inside or outside Vanuatu. However, these standards have not yet been implemented.

EXAMPLES OF POLICY CHALLENGES TO VANUATU'S DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

Regulatory requirements related to foreign investment are complex. While there are no foreign equity caps for most activities, certain occupations, such as electricians and electro-technicians, are reserved for Vanuatu citizens, as specified in the "Prohibited, Reserved, and Restricted" lists.³ Under the Foreign Investment Act No.25 (2019), foreign businesses must form a joint venture with a Vanuatu citizen if their enterprises expand more than threefold in the form of a variation. The Act also mandates that foreign businesses shall employ locals and provide capacity building. In addition, the Companies Act No.27 (2012) last amended in 2018 requires foreign companies to register their offices in Vanuatu. The 2018 amendment of the Act imposes a residency requirement for broad of directors where, a company must have at least one director who ordinarily resides in Vanuatu.

TARIFFS AND TRADE DEFENCE

Vanuatu's effective tariff on ICT goods imported from ESCAP economies is relatively high, at 6.4%, with only 46.7% of the tariff lines of ICT goods having a zero-tariff rate. These conditions increase the costs of accessing essential devices for the expansion of the digital economy. Moreover, Vanuatu is not a signatory to the WTO Information Technology Agreement (ITA).

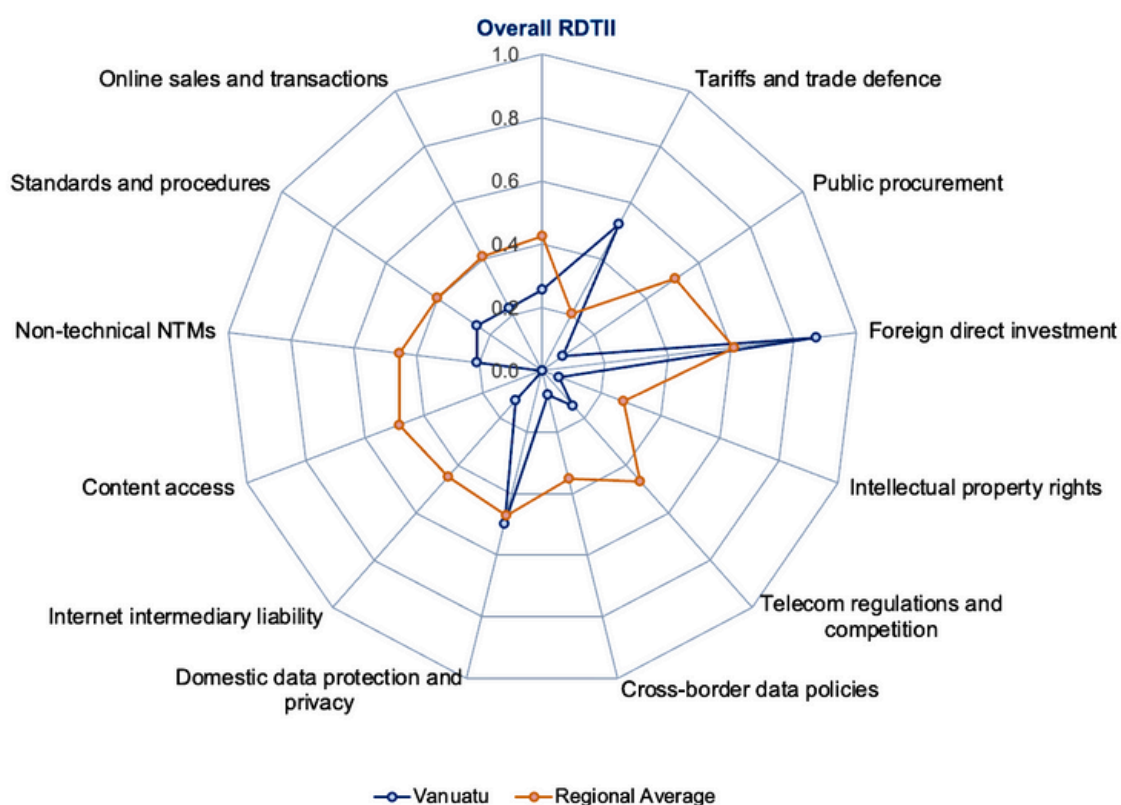
³ See Section 12 of the Vanuatu Foreign Investment Act No. 25 of 2019 [CAP 248], and Part 2 of the Schedule. Available at [https://tradeportal.gov.vu/media/Foreign%20Investment%20Act%20No%20%2025%20of%202019%20\(2\).pdf](https://tradeportal.gov.vu/media/Foreign%20Investment%20Act%20No%20%2025%20of%202019%20(2).pdf).

DOMESTIC DATA PROTECTION AND PRIVACY

While Vanuatu lacks a comprehensive data privacy protection framework, data protection is governed by sectoral laws, such as the Electronic Transaction Act No.24 (2000), Cybercrime Act No.22 (2021), and Telecommunications and Radiocommunications Regulation Act No.30 (2009) last amended in 2018. Under the E-Business Act (2000), companies engaged in electronic business must appoint a data protection officer to ensure compliance with the prescribed standards.

Moreover, the Government can access personal data without judicial procedure. The Cybercrime Act No.22 (2021) grants the Commissioner of Police authority to access subscriber data or traffic data without a court order if deemed necessary for law enforcement purposes or a foreign serious offence.⁴

Figure 19: Comparison between Vanuatu's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁴ Under the Cybercrime Act No.22 of 2021, Article 1 (interpretation) prescribes 'foreign serious offence' to have the same meaning as in the Proceeds of Crime Act [CAP 284], which defines as a serious offence against law of a foreign country under Article 2 (Definition for Act).

VANUATU' PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Vanuatu's participation in regional and multilateral negotiations related to digital trade is minimal. The economy does not participate in the WTO Joint Initiative on E-commerce. In 2017, Vanuatu marked its first signed free trade agreement (FTA) with digital trade provisions under the Pacific Agreement on Closer Economic Relations (PACER) Plus, a preferential trade agreement between the Forum Island economies, Australia, and New Zealand. However, PACER Plus does not include a dedicated e-commerce chapter and covers only a few digital provisions, namely transparency in e-commerce, paperless trade, and customs automation.



VIET NAM

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

VIET NAM

Viet Nam is among the economies with high regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly higher than the group average for regulations related to non-technical non-tariff measures (NTMs), standards and procedures, internet intermediary liability, and foreign direct investment. However, the economy has relatively lower compliance costs compared to the group average for tariffs and trade defence, intellectual property rights, and public procurement.

Among 12 policy areas, the highest compliance costs for Viet Nam are in regulations related to foreign direct investment, non-technical NTMs, and internet intermediary liability. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, intellectual property rights, and public procurement.

Table 20: Viet Nam's RDTII overall score and pillars' scores

Viet Nam	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.569	34%
Pillar 1: Tariffs and trade defence	0.046	-78%
Pillar 2: Public procurement	0.480	-6%
Pillar 3: Foreign direct investment	1.000	64%
Pillar 4: Intellectual property rights	0.194	-30%
Pillar 5: Telecom regulations and competition	0.662	42%
Pillar 6: Cross-border data policies	0.538	53%
Pillar 7: Domestic data protection and privacy	0.545	16%
Pillar 8: Internet intermediary liability	0.750	67%
Pillar 9: Content access	0.563	16%
Pillar 10: Non-technical NTMs	0.792	74%
Pillar 11: Standards and procedures	0.700	73%
Pillar 12: Online sales and transactions	0.563	38%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Viet Nam has strengthened regulations related to data. The introduction of Decree on Personal Data Protection No.13/2023/ND-CP (2023) provides a comprehensive legal framework for data protection covering various aspects of data privacy protection. The Decree imposes conditions on transferring personal data abroad, emphasizing the need for Personal Data Protection Committee approval, consent from the data subject and equivalent data protection standards. The Decree also grants the Government the right to process personal data without the consent of the data subject in certain situations, for instance, when disclosure is necessary to protect the health of data subject or others, or in a state emergency related to national security.

Furthermore, Decree on Elaborating a Number of Articles of the Law on Cybersecurity of Vietnam No.53/2022/ND-CP adopted in October 2022, strengthened requirements for data localization and local office requirements for entities processing personal data in Viet Nam. Notably, data generated by Vietnamese service users are subject to local storage and a minimum data retention period of 24 months.

EXAMPLES OF POLICIES SUPPORTING VIET NAM'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

In 2021, Viet Nam had a low effectively applied tariff rate of 0.15% for ICT goods imported from the Asia-Pacific region. Moreover, the economy has a high coverage rate of duty-free tariff lines for ICT goods at 87.3%. Viet Nam is a signatory of the 1996 WTO Information Technology Agreement (ITA), but it has not extended its participation to the ITA II expansion.

INTELLECTUAL PROPERTY RIGHTS

Viet Nam has a three-track enforcement system for copyrights – criminal, civil and administrative. The Intellectual Property Rights Law No.50/2005/QH11 (2006) and its amendments¹ include provisions on copyright exceptions on fair use. These laws grant exclusive rights to patent owners to use and exploit their patented inventions.

¹ The amendments are under the Law on Amending and Supplementing a Number of Articles of the Law on Intellectual Property Rights No. 36/2009/QH12 (2010), and Law on Intellectual Property Rights No.07/2022/QH15 (2022).

Any third party that makes, uses, sells, or imports the patented product or process without the patent owner's consent is infringing the patent. Additionally, the economy reinforces these rights by safeguarding trade secrets through the adoption of the Decree No.54/2000/ND-CP (2000)² and the existing Intellectual Property Rights Law and its amendment. Under this framework, trade secrets are protected when they remain confidential and confer a competitive advantage in business operations.

PUBLIC PROCUREMENT

Viet Nam's Public Procurement Law No.43/2013/QH13 (2013) does not mandate the surrender of source codes, encryption standards, or trade secrets for winning public tender.³ In general, foreign businesses are allowed to participate in public procurement. However, there is a room for further improvement regarding domestic preference.⁴ Additionally, Viet Nam is currently an observe to the WTO Government Procurement Agreement (GPA).

EXAMPLES OF POLICY CHALLENGES TO VIET NAM'S DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

With an aim to ensure local participation, Viet Nam has complex requirements for foreign investment. The Decree on Detailing and Guiding the Implementation of the Investment Law No.31/2021/ND-CP (2021) of the Law on Investment No.61/2020/QH14 (2020), outlines sectors where foreign investors are subject to market access restriction. It lists 25 sectors completely closed to foreign investments (Prohibition List) and 58 sectors where foreign investors must meet certain conditions (Market Entry List). The Market Entry List includes sectors relevant to digital trade, such as travel services and public survey services. In telecommunications, Decree on Detailing and Guiding the Implementation of a Number of Articles of the Telecommunications Law No.25/2011/ND-CP (2011) requires cross-border telecommunications services to be provided through an agreement with a licensed Vietnamese telecom company. In addition, Law on Enterprises No.59/2020/QH14 (2020) mandates that all enterprises in Viet Nam shall have at least one in-economy legal representative.

² The Decree on the Protection of Industrial Property Rights to Business Trade Secrets, Geographical Indications, Trade Names and on Protection Against Unfair Competition in Respect of Industrial Property No.54/2000/ND-CP (2000).

³ Viet Nam has a Law on Technology Transfer No.80/2006/QH11 (2006), amended under Law on Technology Transfer No.07/2017/QH14 (2017), which deals with issues related to intellectual property in technology transfers. However, the Law does not mandate the surrender of source codes or trade secrets for winning public tenders.

⁴ Directive No. 494/CT-TTg (2010), Law on Tendering No.43/2013/QH13 (2014), Decree 73/2019/ND-CP (2020), and Law on Technology Transfer No. 07/2017/QH14 (2017) provide preferences for domestic bidders. Moreover, the Public Private Partnership Law No.64/2020/QH14 (2021) mandates that PPT projects employ foreign labour if domestic labour is deemed underqualified (Article 58.5).

NON-TECHNICAL NTMS

Viet Nam has put in place regulations to control the import and export of digital devices. In 2021, the Ministry of Information and Communications issued Circular No. 43/2020/TT-BTTTT (2021)⁵, requiring all mobile phones both manufactured or imported into Viet Nam to use Evolved Universal Terrestrial Radio Access (E-UTRA) or 4G technology. This means mobile devices with lower technology, such as 2G, 3G, or combined technology, cannot be imported into Viet Nam.

Moreover, the Network Information Security Law No.86/2015/QH13 (2015) requires import and export licenses on various network information security products with encryption capabilities, including hardware, software and database. Recently, since June 2023, Decree on Amending and Supplementing Some Articles of Decrees Guiding the Implementation of the Law on Land No.32/2023/ND-CP (2023) has mandated export licenses for smartphone, high-speed television cameras, digital cameras, video cameras, radiation-hardened cameras, radiation-tolerant cameras, and night vision cameras.⁶

INTERNET INTERMEDIARY LIABILITY

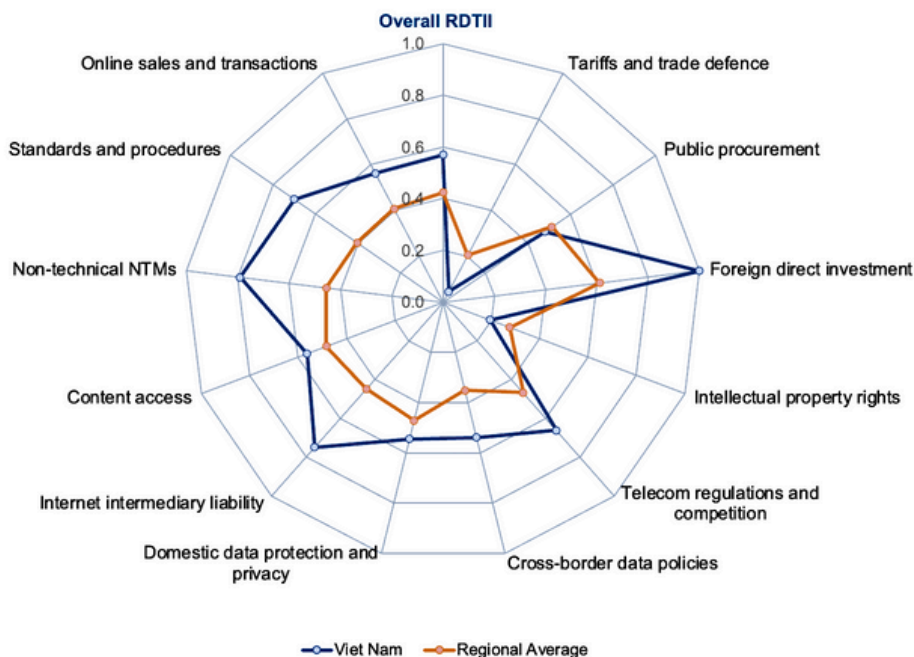
Intermediaries are subject to demanding requirements and high liability. Ministry of Information and Communications Decree on the Management, Provision, Use of Internet Services and Internet Content Online No.72/2013/ND-CP (2013) amended by Decree on the Management, Provision, Use of Internet Services and Internet Content Online No.27/2018/ND-CP (2018) requires the elimination or prevention of information that opposes social order or threatens national security. It requires website owners to remove illegal content within three hours of its detection or receipt of a request from a competent authority via email, text message, or phone call. The Decree also holds cybercafé owners responsible if customers are caught surfing “bad” websites.

In addition, the Cybersecurity Law No.24/2018/HQ14 (2019) requires user information authentication during registration and data sharing to enhance network security. Decree No.27/2018/ND-CP extends these provisions by mandating user data verification by social network service providers. Personal information collection and time restrictions are also implemented in online gaming services, especially for users under 18 years old. Decree No.27/2018/ND-CP extends these provisions by mandating user data verification by social network service providers. Personal information collection and time restrictions are also implemented in online gaming services, especially for users under 18 years old.

⁵ The Circular on Providing the List of Cyberinformation Security Products imported under permits and the order, procedures and dossiers for grant of permits for import of cyberinformation security products.

⁶ The Decree No.72/2013/ND-CP adds the products subjected to export licenses under the Decree on the Sale and Provision of Civil Cryptography Products and Services and the Exportation or Importation of Civil Cryptography Products No.58/2016/ND-CP (2016).

Figure 20: Comparison between Viet Nam's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

VIET NAM'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Viet Nam actively engages in digital trade negotiations at various levels. Bilaterally, it has initiated discussions with Singapore on a potential digital economy agreement. Regionally, Viet Nam is actively involved in ASEAN, which includes negotiations related to digital trade among member economies. For example, the economy ratified Regional Comprehensive Economic Partnership (RCEP) in 2022 and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2019. Viet Nam has established preferential trade agreements (PTAs) with the Republic of Korea since 2015 and the European Union since 2020 where both agreements include an e-commerce chapter.

HONG KONG, CHINA

REGIONAL DIGITAL TRADE INTEGRATION INDEX
(RDTII) 2.0 ECONOMY PROFILE 2024

HONG KONG, CHINA

Hong Kong, China is among the economies with low regulatory compliance costs for cross-border digital trade. Based on the RDTII 2023 scores, its compliance costs are significantly lower than the group average in several areas, notably tariffs and trade defence, public procurement, and cross-border data policies. However, the economy has relatively complex rules compared to the group average for non-technical non-tariff measures (NTMs), content access, and foreign direct investment.

Among 12 policy areas, the highest compliance costs for Hong Kong, China are in regulations related to foreign direct investment, non-technical NTMs, and content access. In contrast, the lowest compliance costs are in those related to tariffs and trade defence, public procurement, and cross-border data policies.

Table 21: Hong Kong, China's RDTII overall score and pillars' scores

Hong Kong, China	Index score (0: low compliance costs, 1: high compliance costs)	Difference from regional average (%)
Overall score	0.263	-38%
Pillar 1: Tariffs and trade defence	0.000	-100%
Pillar 2: Public procurement	0.000	-100%
Pillar 3: Foreign direct investment	0.678	11%
Pillar 4: Intellectual property rights	0.125	-55%
Pillar 5: Telecom regulations and competition	0.294	-37%
Pillar 6: Cross-border data policies	0.000	-100%
Pillar 7: Domestic data protection and privacy	0.227	-52%
Pillar 8: Internet intermediary liability	0.375	-16%
Pillar 9: Content access	0.542	12%
Pillar 10: Non-technical NTMs	0.583	28%
Pillar 11: Standards and procedures	0.150	-63%
Pillar 12: Online sales and transactions	0.188	-54%

Source: ESCAP calculation, data as of August 2023.

NEW POLICY MEASURES AND PROPOSALS

Hong Kong, China, made efforts to improve the policy environment for copyright protection. In December 2022, the economy adopted the Copyright (Amendment) Ordinance, providing the new 'safe harbour' provisions for online service providers (OSPs) to address online piracy.¹ The provisions limit OSPs' potential liability for infringements occurring on their service platforms if certain conditions are fulfilled, which include taking reasonable steps to limit or stop the infringement after the receipt of a valid notice of alleged infringement issued by the copyright owner or upon becoming aware of the infringement by themselves.

In 2022, Hong Kong, China, announced plans to introduce a cybersecurity law. The Hong Kong Law Reform Commission released a consultation paper in July 2022 proposing the new cybercrime offences.² In August 2022, the Guidance Note on Data Security Measures for Information and Communications Technology was published to provide recommendations for cybersecurity rules. The regulation on the transfer of personal data outside of Hong Kong, China under Section 33 of the Personal Data (Privacy) Ordinance is currently awaiting enforcement.

EXAMPLES OF POLICIES SUPPORTING HONG KONG, CHINA'S DIGITAL TRADE INTEGRATION

TARIFFS AND TRADE DEFENCE

Hong Kong, China, is a signatory to the 1996 WTO Information Technology Agreement (ITA) and its ITA II expansion, which requires participants to completely eliminate duties on the covered ICT products.³ In fact, the effective tariff on ICT goods imported from ESCAP countries is 0%, with 100% of ICT goods tariff lines incurring zero-tariff rate. Furthermore, Hong Kong, China, does not implement any trade defence measures on ICT goods.

¹ "Digital Business in Hong Kong: Overview", Thomas Reuters, accessed 29 October 2023. Available at [https://uk.practicallaw.thomsonreuters.com/6-622-8758?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/6-622-8758?transitionType=Default&contextData=(sc.Default)&firstPage=true).

² "Hong Kong: Updates to cybercrime and cybersecurity laws", Global Compliance News, accessed 29 October 2023. Available at https://www.globalcompliancencews.com/2022/09/14/https-insightplus-bakermckenzie-com-bm-data-technology-hong-kong-updates-to-cybercrime-and-cybersecurity-laws_09092022/.

³ "Information Technology Agreement", WTO, accessed 2 November 2023. Available at https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm.

PUBLIC PROCUREMENT

Hong Kong, China, is a signatory to the WTO Government Procurement Agreement (GPA), and implements no limitations on foreign participation in public procurements. Equal opportunities are provided to both domestic and foreign suppliers and service providers participating or competing in public procurement. Moreover, there is no requirement in place for surrendering patents, source codes, trade secrets, or decryption to participate in public procurement.

CROSS-BORDER DATA POLICIES

Personal data can be transferred freely across borders in Hong Kong, China. There are neither limitations on cross-border data transfer nor local data storage requirements. Although the Personal Data (Privacy) Ordinance, which was passed in 1995, includes a restriction on the cross-border transfer of personal data in Section 33, this section has not yet been enforced.

EXAMPLES OF POLICY CHALLENGES TO HONG KONG, CHINA'S DIGITAL TRADE INTEGRATION

FOREIGN DIRECT INVESTMENT

The Communications Authority Ordinance (2012), and Broadcasting Ordinance (2000) restrict non-resident voting control to a maximum of 49 per cent for free-to-air television, including those using digital signals for transmission. Moreover, majority of the directors and principal officers of broadcasting companies operating in the economy must be individuals who ordinarily reside in Hong Kong, China. They should also have maintained the residency for at least one continuous period of not less than seven years.

NON-TECHNICAL NTMS

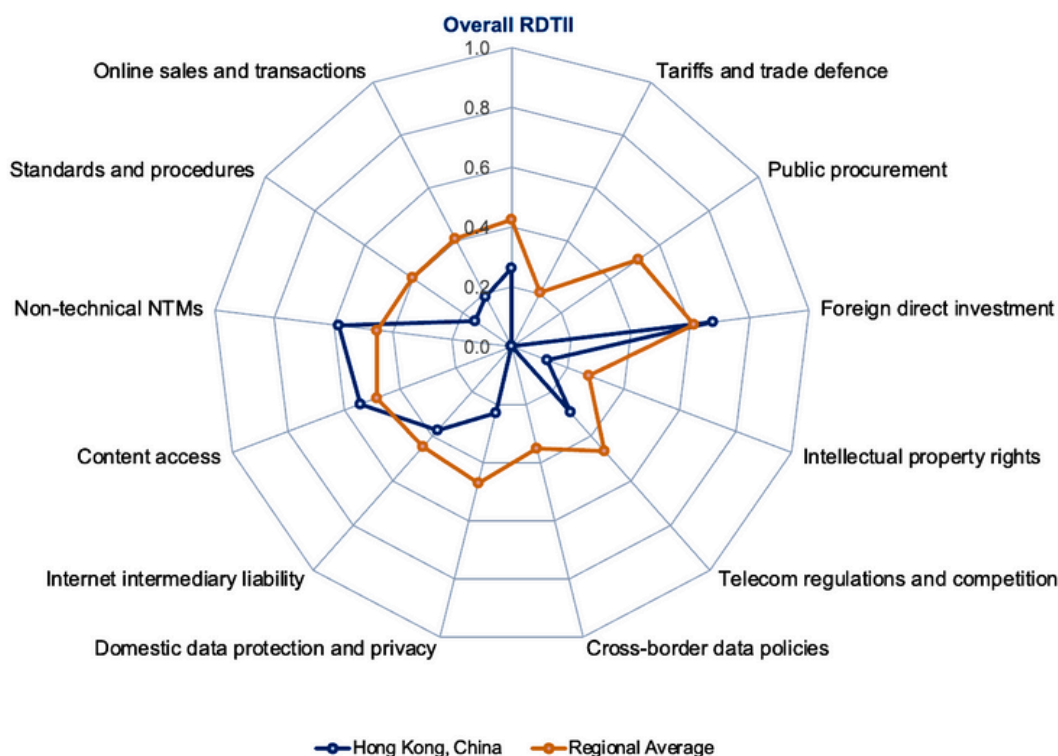
In November 2011 and May 2016, Hong Kong, China, banned the importation of radio jammers that cause radio interference to existing services and Personal Handy Phone System (PHS) radio communications apparatus operating within 1895 – 1906.1 MHz, except for re-exports. Hong Kong, China has also introduced import licensing procedures on certain ICT products. Since September 2016, licenses are mandatory for the import and export of optical disc mastering and replication equipment. As of 2018, a permit from the Environmental Protection Department is needed to import and export waste waste-regulated electrical equipment, including televisions, computers, printers, scanners, and monitors.

The Import and Export (Strategic Commodities) Regulations require licenses for ICT products such as high-performance digital computers, high-speed and high-density integrated circuits, and sophisticated communication systems when transiting through Hong Kong, China.

CONTENT ACCESS

Article 9 in the National Security Law (2020) mandates the Hong Kong Special Administrative Region to raise awareness among residents about national security in the media and the Internet. In this context, in January 2021, Hong Kong Broadband Network blocked access to HKChronicles, a website that featured the personal information of police officers.⁴ In addition, Hong Kong, China's Broadcasting Ordinance has imposed a selective licensing scheme for digital broadcasting services providers. Broadcasting licenses, including sound broadcasting, can only be held by domestic companies, and there are restrictions on foreign ownership in addition to residency requirements.⁵

Figure 21: Comparison between Hong Kong, China's RDTII scores and regional average



Source: ESCAP calculation, data as of August 2023.

⁴ "Hong Kong Internet Firm Blocked Website Over Security Law", Bloomberg, accessed 3 November 2023. Available at <https://www.bloomberg.com/news/articles/2021-01-14/hong-kong-internet-firm-blocked-website-over-new-security-law#xj4y7vzkg>.

⁵ More specifically, when applying for a non-domestic television programme services licence, the company must have at least one director or principal officer who is a resident of Hong Kong, China, and has been so resident for a continuous period of at least seven years. Regarding sound broadcasting license, "nonqualified person" who do not meets the above residency requirements cannot hold, directly or indirectly, any right, title, or interest in more than 49 per cent of the total number of voting shares in the licensee.

HONG KONG, CHINA'S PARTICIPATION IN TRADE NEGOTIATIONS INVOLVING DIGITAL TRADE

Hong Kong, China, has signed eight preferential trade agreements (PTAs), with a majority featuring specific chapters or provisions related to digital trade. These include the agreements with Australia, China, Chile, Georgia, New Zealand, and ASEAN. Notably, the Australia-Hong Kong Free Trade Agreement (FTA) and Associated Investment Agreement include binding commitments to facilitate the cross-border transfer of data. Hong Kong, China, initiated negotiations for an FTA with Peru on 30 January 2023.⁶ In addition, there is a positive response from the members of the Regional Comprehensive Economic Partnership (RCEP), including China, regarding Hong Kong, China's proposed membership in RCEP.⁷

⁶ "Trade and Industry Department: Hong Kong's Free Trade Agreement," Trade and Industry Department, accessed 6 November 2023. Available at <https://www.tid.gov.hk/english/ita/fta/index.html>

⁷ "ASIA: Hong Kong Makes Official Application to Join the RCEP", HKTDC, accessed 6 November 2023. Available at <https://research.hktdc.com/en/article/MTAwNDI3NzY4OA>



DIGITAL TRADE REGULATORY INTEGRATION INITIATIVE

