U.S. Options to Engage on Digital Trade and Economic Issues in the Asia-Pacific

NIGEL CORY | FEBRUARY 2022

There are many ways the United States can rejoin trading partners in shaping digital trade in the Asia-Pacific. But in choosing its path, the administration should not allow misguided opposition deter it from insisting on binding rules for data flows and other key digital economy issues.

KEY TAKEAWAYS

- The United States faces the choice of being a rule maker or a rule taker on digital trade and economic policy in the Asia-Pacific, which is perhaps the most consequential region for U.S. economic, security, and political interests.
- There are multiple ways to reengage, such as regional and bilateral agreements and cooperation. However, only one criterion will prove the United States is genuinely committed—willingness to negotiate binding digital trade rules.
- Lacking Trade Promotion Authority, the administration could enact digital trade commitments via executive agreements. But it should develop a mechanism to ensure Congress has clear oversight of U.S. digital trade strategy.
- Digital trade agreements are not a "race to the bottom," as ideological opponents argue. Instead, current digital trade and economy agreements build up regulatory alignment on new digital and data-policy issues.
- Australia, Chile, New Zealand, and Singapore—three key players in new digital trade initiatives—are not scofflaws on labor, consumer rights, or regulation. Nor have trade agreements stopped them from enacting their own digital and data regulations.
- The administration and Congress hopefully will seize the opportunity of having likeminded, value-sharing trading partners enthusiastically signaling their willingness to work with the United States on new, meaningful, and binding commitments.

OVERVIEW

The United States can be a rule maker or a rule taker on digital economic and trade policy in the Asia-Pacific, which is perhaps the most consequential and dynamic region for U.S. economic, security, and political interests. While the United States has been largely absent from genuine trade and economic engagement in the Asia-Pacific in recent years, there is potential for the Biden administration to re-engage in a meaningful way. 2021 was a year of review for U.S. trade policy.[1] Hopefully, 2022 will be a year of action.

In August 2021, United States Trade Representative (USTR) Katherine Tai said digital trade was an area in which the United States is "actively working on with our partners to establish rules and have conversations that we need to establish mutually beneficial relationships and to figure out the best ways to create rules for our economic activity."[2] The Biden administration and USTR Tai are still reviewing what to do to rebalance U.S. trade policy to focus more on worker issues (as opposed to focusing only on consumer issues via lower prices). This is a worthy goal, but it's unclear how digital issues (and Congress's role) fits into their strategy given the likelihood that action will be based around executive trade agreements.

Regional engagement is competitive. If the United States wants to put its stamp on the Asia-Pacific's economic architecture, it needs to come to the table in a clear and meaningful way.

U.S. engagement is clearly in its interest given the broad economic importance of data and digital services. Cross-border data flows enable growth in all industries, including retail, mining, manufacturing, and agriculture.[3] U.S. census data (on software expenditures) shows that consumer services, transport equipment and services, trade and distribution services, the arts, entertainment, recreation services, and many other "non tech" sectors are increasingly data intensive.[4] Digital agreements are critical to helping more people and firms engage in trade given that the Internet reduces or removes the impact that geography has on trade. Individuals, startups, and small and medium-sized enterprises are disproportionately impacted by the growing wave of digital protectionism, as they don't have the resources or expertise to overcome these barriers.[5]

Regional engagement, and efforts to shape economic and trade rules, is competitive. If the United States wants to put its stamp on the Asia-Pacific's economic architecture (through its goal for a worker-centric and inclusive trade policy), it needs to come to the table in a clear and meaningful way. U.S. trading partners are not waiting—they realize the critical interests at stake and they're moving on. Australia, Chile, New Zealand, Singapore, and South Korea are enacting new digital trade and economy agreements among themselves (as is the United Kingdom with many of these same countries).[6] Many of these same U.S. partners have joined the Regional Comprehensive Economic Partnership (RCEP), which involves China. Although RCEP's e-commerce rules are largely meaningless at this time, the broader agreement provides a framework for closer economic integration that does not include the United States and could well proceed according to China's preferences.[7] Whatever the Biden administration does will inevitably be compared to both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the clear and direct steps Russia and China are taking to create a protectionist and state-controlled Internet.[8]

This policy briefing provides a summary and review of the sliding scale of options for the United States—from the most comprehensive and meaningful (first tier) to the less significant and easy-to-execute (second and third tiers)—as way of background for U.S. policymakers and congressional staff interested in options for U.S. digital engagement in the Asia-Pacific. It concludes with an analysis of key conclusions for the Biden administration on the available options, Congress's role, and the politics of digital agreements, including a rebuttal of criticism from leading public advocacy groups of digital trade agreements.

FIRST-TIER OPTIONS

A Comprehensive Regional Trade Agreement? (Unlikely and Slow)

The United States could launch a new comprehensive trade initiative that would cover all issues—agriculture, services, investment, intellectual property, and digital trade. This would provide the largest potential economic impact in opening new and meaningful market access that is legally enforceable. The ability to make tradeoffs in one area for commitments in another lends itself to win-win outcomes for the countries involved. Its comprehensive nature also lends itself to using preferential U.S. market access to get trading partners to make commitments on labor, the environment, currency, and other trade-related issues that these other partners may otherwise not make. Comprehensive trade negotiations also provide a broad basis for congressional engagement, given Congress's role in approving negotiated changes in U.S. law and the U.S. tariff schedule and the fact it would deal with agricultural, manufacturing, and other interests (thus directly drawing more members into those issues).

The easiest way for the United States to do this would be to re-join the CPTPP. However, it appears unlikely that the Biden administration would choose this option (at least in the near term) due to residual political opposition to the CPTPP. However, no matter what the Biden administration choses to do, it will inevitably be measured against the CPTPP, which is (rightly) seen as the benchmark for genuine trade and economic engagement in the region. Meanwhile, while the United States sits on the sidelines of the CPTPP, Ecuador, Taiwan, and the United Kingdom have applied to join.[9] So has China.[10] China is making a canny (and cynical) strategic decision in applying to CPTPP and other regional digital initiatives even though it's extremely unlikely it would make the types of reforms necessary to genuinely live up to the agreements' digital (and other) commitments.

A Regional Digital Economy Agreement? (Viable and Valuable)

The United States could launch a regional digital economy agreement to address data and digital trade issues with multiple trading partners. It could be based on the United States-Mexico-Canada (USMCA) trade agreement's digital chapter and associated provisions, which have already been subject to congressional oversight.[11] It could likewise include provisions from more recent digital economy and trade agreements in the region (discussed below). More and more countries are pursing digital-only trade agreements as they recognize that digital trade, and the flow of data and digital services involved, are increasingly important to all sectors of the economy and are increasingly the target of growing digital protectionism, especially in China, India, and elsewhere. Digital-only agreements build on their traditional trade policy analog—the hugely successful Information Technology Agreements, which eliminated tariffs on hundreds of Information Communication Technology products.[12]

A regional digital trade agreement would allow the Biden administration to make its impact on a broad range of digital trade and economic issues. Ideally it would include binding rules on data flows, but also flexible mechanisms for cooperation on related issues (similar to the modular approach of the Digital Economy Partnership Agreement, see below). This would lend itself to Biden administration and congressional priorities on data privacy and cybersecurity, digital development, the deployment of safe and secure ICT infrastructure, inclusive/equitable trade outcomes for U.S. workers, and digital outcomes that support democratic processes (as opposed to those that support digital authoritarianism).

Thankfully, the Biden administration (the White House) was reportedly considering a regional digital economy initiative (at least it was in November 2021).[13] USTR Tai has had numerous opportunities to support such an initiative, but thus far has not. A regional digital trade agreement has broad congressional support, such as from House Foreign Affairs Asia and the Pacific subcommittee Chair Ami Bera (D-CA).[14] Rejoining the CPTPP is likely "too high a hurdle," but Bera makes the realistic assessment that a digital trade deal is "gettable."[15]

A regional digital trade agreement would allow the Biden administration to make its impact on a broad range of digital trade and economic issues.

A regional digital trade agreement would most likely be an executive agreement. Obviously, congressional approval would be required for anything that required changes to U.S. law, such as market-access concessions (e.g., tariff reductions, changes to procurement or service market access schedules, etc.). Exceptions are where Congress has delegated the authority (such as the application of Section 301 tariffs). Trade executive agreements are a critical (and often overlooked) U.S. trade tool. The United States has hundreds of them that vary in depth and breadth in terms of issues and binding commitments.[16] For example, the United States has more than 100 with Japan and nearly the same number with the European Union. In some instances, these executive trade agreements expand U.S. FTAs, elaborate on them, clarify them, and update them. In many cases, they solve narrow and immediate problems for specific U.S. industries. While a regional digital economy may be a single-issue agreement, it holds economy-wide implications and thus deserves congressional input and oversight.

Digital trade (executive) agreements provide a procedural advantage relative to agreements containing market-access provisions, but they are also limited by a key flaw (what's the incentive for trading partners to negotiate when market access isn't on the table?); and they create a challenge: how to create a meaningful mechanism for congressional oversight. Congress's most recent experience of being excluded from the U.S.-Japan Digital Trade Agreement makes this a critical component for any potential Biden administration digital trade agenda.[17] At the moment there aren't formal statutory consultative or congressional approval requirements, at least not beyond what would typically be required of USTR as far as making Congress aware of ongoing engagements.

It's a matter for the Biden administration and interested members of Congress to come up with a new mechanism outside of formal Trade Promotion Authority (TPA) that provides for direct engagement and oversight for such a major executive trade agreement, including mandated reporting requirements (in-person testimony and written reports). TPA allowed Congress to clearly express its priorities on trade and its approval/disapproval of trade agreements. The challenge is whether members of Congress interested in digital trade can work with each other and the administration to come up with another way for them to do this outside of TPA.

USTR Tai has made clear that broad-based congressional support is important to any new initiatives; however, there haven't been any announcements as to what this may look like. As it stands, many congressional staff are unclear where U.S. digital trade policy is going and what Congress's role in it is. The Biden administration would need to include both formal and informal mechanisms for congressional oversight and review, but given USTR Tai and her staff's experience (Chief of Staff Nora Todd, USTR General Counsel Greta Peisch, and Deputy USTR Jayme White) on the hill this should be eminently achievable. Related, but separate, it was interesting to see USTR propose only minor changes to the Industry Trade Advisory Committees (ITAC), which provide detailed policy and technical advice, information, and recommendations to USTR on U.S. trade policy.[18] Besides Congressional engagement, ITACs are another key part of USTR outreach and engagement.

For the United States, engagement on digital trade and economic issues should be a priority. Digital trade and economy agreements are relatively quickly achieved relative to comprehensive, traditional trade agreements. Multiple U.S. trading partners have made it abundantly clear that they'll accept the United States in whatever form it would like to participate, but they'd obviously prefer it to be via a mechanism that can build off existing agreements and doesn't take a long time to bring to life. These trading partners realize the direct benefits of having the United States involved, but also the strategic impact of U.S. involvement in terms of creating a large initiative that creates clearer economic incentives for participation by other countries sitting on the sidelines, like Indonesia and Thailand.

SECOND-TIER OPTIONS

Bilateral Digital Trade Agreements? (Possible, But Less Consequential)

The United States could negotiate new bilateral digital trade agreements with key trading partners in the region. This could happen in two ways: by creating new, standalone bilateral digital trade agreements via executive agreements; or via updated bilateral FTAs.

A new, standalone digital trade (executive) agreement would look much like the U.S.-Japan Digital Trade Agreement.[19] However, this agreement is less meaningful than other countries' digital trade agreements as it lacks a genuine dispute-settlement mechanism, so it's not legally binding and enforceable. A major point of congressional criticism was that Trade Promotion Authority was in effect when this agreement was negotiated and signed, yet the Trump administration chose to use a mechanism that essentially avoided congressional oversight.[20]

The United States could also negotiate bilateral digital trade updates to existing U.S. FTAs (the United States could also pursue comprehensive updates across all issues, but this seems unlikely). This is similar to what Australia and Singapore did in their new Digital Economy Agreement (DEA), which was essentially a traditional trade (treaty) negotiation (with parliamentary oversight and approval).[21] It reaffirms and builds upon their respective existing commitments under CPTPP and the Singapore-Australia FTA with new, binding provisions on data flows, protection for source code, and open government data.[22] However, it also breaks new ground in including rules and cooperation on new issues like fintech and regtech, submarine data cables, and several memoranda of understanding (MOUs) that act as vehicles for regulatory cooperation on data innovation, AI, e-invoicing, personal data protection, and digital identity. If the United States did this (such as in its FTAs with Singapore and Korea), there's the potential to make the new commitments subject to the dispute settlement chapter of the existing agreement (thus making it a meaningful, enforceable agreement).

However, a country-by-country approach would not fundamentally change the calculation for U.S. firms and trade and economic architecture in the Asia-Pacific. Negotiating new bilateral digital trade agreements would be time consuming and not very impactful. Spending valuable months or years negotiating a new agreement with Australia, Singapore, or New Zealand would not lead to new and meaningful digital trade market access as the parties are already on the same page as it relates to digital trade. For example, Australia has been advocating for an updated bilateral digital FTA with the United States for some time (using the Australia-Singapore DEA as a template). Such an agreement has some bipartisan congressional support, such as from Rep. Mike Gallagher (R-WI) and Rep. Joe Courtney (D-CT) (Co-Chairs of the Congressional Friends of Australia Caucus).[23]

The Biden administration should not prioritize bilateral digital trade agreements. It would be far better for the administration and Congress to devote their limited time and resources for U.S. digital trade policy on regional initiatives as time is of the essence and there are several trading partners and existing initiatives standing by for U.S. re-engagement. An initiative that includes Australia, Chile, New Zealand, Singapore, Japan, South Korea, among others would have a meaningful impact in terms of providing both certainty and market access for U.S. firms. It'd also represent a major regional initiative that would potentially attract other countries, such as those that may be interested, but are sitting on the sidelines (such as Colombia and the Philippines); and those that have some digital protectionist policies in place, but may be persuadable with the right partners and agreement (such as Indonesia). It'd also send a clear signal that the United States is genuinely engaged and embedded in regional economic arrangements (rather than taking a piecemeal, bilateral approach).

The Indo-Pacific Economic Framework? (Unclear and Likely Lackluster)

The United States could pursue a regional economic initiative that is based on cooperation, information sharing, and voluntary regulatory and policy alignment on digital and other economic issues.

As Singapore's Deputy Prime Minister Heng Swee Keat pointed out, if the United States isn't prepared to join the CPTPP "then it must have an equally substantial alternative."[24] Thus, it's important that any regional initiative contain binding commitments on data and digital trade rules rather than just act as something akin to a EU-U.S. Trade and Technology Council (TTC) or a regional Trade and Investment Framework Agreement (TIFA, see below).[25] Without doubt, the TTC (and TIFAs) are valuable vehicles for EU-U.S. collaboration, but they were not designed to create new legal commitments (negotiations over a new Privacy Shield agreement are taking place separate to the TTC). U.S. goals for the Asia-Pacific are (and should be) different to those in the Transatlantic relationship. The United States needs to put new and more-advanced rules at the heart of its approach.

The Biden administration appears focused on this outcome. In October, President Biden announced the Indo-Pacific Trade and Economic Framework at the East Asia Summit, but there are few specific details thus far about its legal structure and its agenda, besides mentions of the digital economy, supply chain resiliency, infrastructure, export controls, clean energy, worker rights, anti-corruption, tax issues, and trade facilitation.[26] An anonymous U.S. official stressed that the initiative "is not a trade deal."[27] The Biden administration's effort to ensure it's not seen as a trade agreement raises concerns that it won't be meaningful given it wouldn't (presumably) include binding, enforceable commitments on data and digital trade. The lack of binding rules also raises questions about the value and durability of any such agreement for U.S. firms and workers.

Even though it's not a trade agreement, it seems as if the Pacific Trade and Economic Framework will still take most of the Biden administration's first term to bring to life. The United States is preparing details to share with partners, with the goal of launching it early in 2022. Secretary Raimondo described the framework as a series of partnerships that would function like a coalition of democracies.[28] The Department of Commerce will reportedly co-lead the initiative. It's likely, but unclear if USTR is to be the other lead agency.[29] The Department of Commerce stated it'll work on it in close consultation with Congress.[30] Thus, all the signs point towards the Biden administration aiming for an executive agreement (so it raises the same challenge about oversight).

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There is clear congressional support for the administration to use its Indo-Pacific Economic Framework to set global standards on digital trade, such as a December 17, 2020, letter from a bipartisan group of senators (including Senators Chris Coons (D-Del.), Jeanne Shaheen (D-N.H.), Jeff Merkley (D-Ore.), John Cornyn (R-Texas), Todd Young (R-Ind.), and Tom Carper (D-Del.)).[31] However, it's still unclear whether the Biden administration can overcome its reluctance to directly deal with digital trade issues as part of its framework. As Wendy Cutler at the Asia Society points out, for the U.S. Indo-Pacific strategy to be successful, it needs a strong economic component.[32] And without binding and enforceable rules, it's uncertain how the Indo-Pacific Trade and Economic Framework will provide clear and meaningful benefits to U.S. firms and workers and would support broader U.S. initiatives for a free, open, and secure Internet.

Build on and Reform APEC? (A Long-Term Play)

The United States should continue to support the Asia-Pacific Economic Cooperation (APEC) and its work on data and digital trade and economic issues as it supports U.S. interests to develop an open global digital economy in the long term. APEC plays a supporting, rather than leading, role in U.S. digital trade engagement in the region.

While U.S. policymakers don't pay much attention to APEC, it has a valuable role to play. On digital issues, it has been difficult to make real progress on digital and data issues since China and Russia (both digital protectionists) are members. APEC also tends to be slow and non-binding as it's a consensus-based organization. However, this is also what makes APEC useful for the United States in the long term. Even with China and Russia, the United States (and likeminded countries) can use APEC to host constructive debates and exchanges of information and best practices on digital issues of interest to policymakers from around the region. Such proactive engagement (and perseverance) helps policymakers from a diverse set of countries understand why they should address digital issues in a way that supports digital trade and an open Internet. Ideally, it'll lead to the development of common principles and approaches and acts as a foundation for these countries to include binding digital trade rules in trade agreements.

For example, the United States has been central to the APEC "Pathfinder Initiative" for digital services and standards, which is a long-term initiative to build consensus among many countries in the region about how best to support digital trade.[33] APEC pathfinder initiatives allow APEC members to work together on particular issues with the aim of attracting more members or developing APEC-wide consensus on issues.[34] For example, the digital services pathfinder includes building blocks on the free flow of data, countering data localization, cooperation on data privacy, and using a risked-based approach to cybersecurity. U. S. effort to building consensus at APEC complements efforts at the G7 and Organization for Cooperation and Economic Development (OECD) on data, digital trade, and related issues. Similarly, the U.S. Department of Commerce is leading a long-term effort to reform APEC's Cross-Border Privacy Rules (CBPR) system (a legal and auditable framework that countries and firms adopt to ensure privacy-respecting data transfers), and to potentially take it out of APEC so it can become a global data transfer mechanism.[35]

THIRD-TIER OPTION

Bilateral Trade and Investment Frameworks? (Tactically Useful, No Strategic Impact)

The United States could focus on using bilateral trade and investment frameworks (TIFAs) to address digital and data related issues. USTR Tai seems to be prioritizing the use of TIFAs in the Asia-Pacific. For example, in September 2020, Tai stated that the agency was "intensifying" work under TIFAs.[36] The United States has TIFAs with a number of countries in the Indo-Pacific, including India, Indonesia, Malaysia, Taiwan, and Vietnam.

TIFAs are a useful mechanism to discuss trade barriers on a bilateral basis (not within the context of formal trade negotiations). For example, USTR has effectively used TIFAs (in combination with other carrots and sticks, such as tariff-free market access under the Generalized System of Preferences) with Indonesia and Vietnam to encourage them to reconsider, remove, or at least revise, seriously problematic policies (such as data localization) that act as a barrier to digital trade.[37] Similarly, the Biden administration is using the U.S.-India Trade Policy Forum (equivalent to a TIFA) to address a broad range of trade issues, including digital issues. Indicative of how the Biden administration may use TIFAs, Malaysia and the United States released a joint statement that they plan to sign an agreement by early 2022 toward improving transparency, resilience, and security in the semiconductor and manufacturing sector supply chains.[38]

However, TIFAs are not a substitute for new, strong digital trade rules at the regional level, particularly when other trading partners are moving ahead in developing new binding commitments. The United States should use TIFAs to reinforce a broader and more ambitious agenda on digital trade and economic issues.

CONCLUSIONS FOR THE ADMINISTRATION

U.S. digital trade policy needs to evolve so the United States can again play a central role in digital trade and economic engagement in the Asia-Pacific. And it needs to happen fairly quickly given its trading partners and their initiatives continue to evolve. Whether it evolves depends on the Biden administration, USTR Tai, and Congress's ability to find the right set of issues, oversight mechanisms, and initiatives for a worker-centric digital trade agenda in the Asia-Pacific. This analysis leads to three key points for the Biden administration: a mix-and-match approach to U.S. digital trade and economic engagement in the Asia-Pacific must be based around a major initiative that includes binding rules; Indo-Pacific economic engagement needs a clear and robust role for Congress; and the Biden administration needs to deal with the politics of digital trade and economy agreements (instead of prevaricating and delaying action).

A Mix-and-Match Approach Must Be Premised on Binding Rules

The options above are not mutually exclusive; the United States should pursue some of them together as a package. However, if it isn't based around binding and enforceable digital trade rules, it (rightly) won't be seen as serious. There is simply no substitute for new, binding, and enforceable trade rules. Binding data and digital commitments support U.S. economic interests (in terms of U.S. firms and workers), facilitate broad-based economic inclusion and development, and promote broader development interests as they meaningfully push back on digital protectionist policies. Binding rules also push back against policies that represent digital authoritarianism, which in many cases, aims to enable state control of the Internet. Soft-law and cooperation-type frameworks are useful, but they're not truly valuable if they're not built on rules around core issues. New, binding digital trade rules provide the policy "durability" that USTR Tai has mentioned in the context of digital trade.[39]

The first best option would be for the United States to rejoin CPTPP. The next best option would be for the United States to join DEPA or launch a broader Asia-Pacific Digital Trade Agreement. The United States could explore working with DEPA members—Chile, New Zealand, and Singapore—on how to leverage it as the foundation for such an initiative.

Unfortunately, initial Biden administration announcements point toward a focus on the Indo-Pacific Economic Framework, APEC, and TIFAs, which while potentially useful, will fall far short of sending a clear signal that the United States is serious about playing a key role in shaping and building the Asia-Pacific's digital economy.

There Must Be a Clear and Robust Role for Congress

Whatever the Biden administration does, Congress should have a much clearer role in U.S. digital trade strategy. Notably, during the recent rulemaking process for the America COMPETES Act, House lawmakers included a resolution expressing their sense that USTR should work with federal agencies and like-minded trading partners to forge strong, forward-looking rules on digital trade and the digital economy as part of the administration's broader trade and economic strategy.[40] Yet, with TPA lapsed, there is no mechanism for a fast-track (up or down) congressional vote on a trade agreement. Nor are there established parameters for what a trade agreement must achieve and what consultations must take place in order for an agreement to be eligible for a vote. If the United States were to negotiate a trade agreement now, without the TPA's fast-track authority, in principle it would be subject to amendments by congressional representatives. More robust and consistent consultation with Congress, perhaps via formalized consultations with key committees and members, would go a long way toward ensuring the administration builds as much political support as possible for executive digital-trade agreements.

The Politics of Digital Agreements Require Proactive Engagement

There is cross-sectoral and bipartisan support for greater U.S. action on digital issues in the Asia-Pacific.[41] Various letters to USTR Tai should show there is also bipartisan political support. However, there's also an equally, and perhaps more influential, group of progressive representatives and organizations that oppose any-and-all U.S. action on digital trade. The November 2020 joint letter by Public Citizen and 52 other labor, civil rights, consumer, and public advocacy groups against digital trade agreements is indicative of this as it conveys the thinking that digital agreements somehow allow tech firms to avoid regulation and that firm and worker interests aren't related in terms of helping the latter export more (thus helping workers at home).[42]

For example, Public Citizen's view of digital trade is defined by their extreme, ideological opposition to corporations and private markets. In referring to World Trade Organization ecommerce negotiations, DEPA, and other initiatives, Lori Walach states: "Big Tech interests' latest ploy is to hijack trade negotiating venues to lock in binding international rules that limit governments from regulating online platforms in the public interest and from fighting corporate concentration and monopoly power."[43] Public Citizen calls these digital trade initiatives "anti-worker, anti-consumer, and anti-civil rights." Public Citizen's backgrounder on digital trade (by the Trade Justice Education Fund) claim that the digital trade framework reinforces the "original sin" of the "digital economy," that tech firms define themselves as different to traditional, brick-and-mortar competitors.[44] Public Citizen make claims about common digital trade provisions, such as anti-discrimination, that are simply untrue. Its opposition reflects the fact that it's not so much about digital trade per se, but opposition to trade itself and the role of companies in a private market and an open economy.

Many of these opponents don't recognize the obvious overlap between company and worker interests and how traditional and digital trade expands market access and sales, thus supporting more, better paying jobs in America. The global work of American multinational companies is concentrated in the United States, not in their affiliates abroad, with 2.2 U.S. employees for every 1 foreign employee.[45] A U.S. Department of Commerce study (based on data from 164,000 workers in 2014) estimates that export-intensive industries pay higher wages on average and that the export earnings premium is larger for blue-collar workers in production and support occupations than for white-collar workers in management and professional occupations.[46] Never mind the impact the Internet and digital trade has on startups and small and medium-sized enterprises (SMEs), and their use of search, e-commerce, communication, cloud, and payment platforms, to seamlessly access customers in markets around the world. These firms need access to the Internet and global digital markets on the basis of predictable, U.S.-preferred digital rules.

The truth is large firms regularly provide superior benefits to their workers compared to small firms.[47] They're more innovative, contribute more to the economy, and have a better track record of advancing a host of progressive goals.[48] In comparison to workers at small firms, workers at big firms receive more generous fringe benefits, are more likely to get maternity/paternity leave, get more training, get access to new technologies, are provided with a cleaner, safer, and generally more pleasant work environments, and have institutionalized possibilities for workers' participation in decision making.[49] All of this aligns with U.S. Commerce Secretary Raimondo's recent statement that "The president's view, which is strongly my view, is you can have policies that are good for business and good for workers … It doesn't always have to be either/or."[50] This is an obvious reaffirmation of a basic point about economics and trade that opponents of digital trade agreements don't seem to recognize.

Beyond the economic benefits of trade to the U.S. economy, opponents also don't realize that their regulatory concerns about digital agreements are unwarranted. Australia and New Zealand are not labor, human rights, consumer rights, or regulatory scofflaws. Digital trade provisions have not stopped them from enacting new digital regulations on many of the issues opponents of digital trade are supposedly worried about. Australia and New Zealand's global leadership on digital trade hasn't stopped them from updating data privacy, cybersecurity, and other laws and regulations.[51] It has not stopped Australia from enacting regulations that impact large U.S. tech firms, such as forcing search engines to block access to copyright infringing material, competition policy, taxation, forcing platforms to pay for news content; or requiring social media companies to obtain parental consent for social media users under 16, and other issues.[52] Some of these policy proposals are misguided (such as on facial recognition and breaking end-to-end encryption), but that's a separate debate to the fact that Australia's digital trade commitments have not stopped it from trying to enact reasonable new regulations on digital issues.[53]

Beyond the economic benefits of trade to the U.S. economy, opponents also don't realize that their regulatory concerns about digital agreements are unwarranted.

Instead, Australia, New Zealand, and others' use of digital trade and economy agreements points to the fact that countries need to deepen international regulatory cooperation. These agreements aim to build better regulatory alignment and interoperability on new and existing digital policy issues—it is not some "race to the bottom" as the ideological opponents of trade portray digital trade agreements. Digital rules and cooperation are essential to building confidence among the regulatory agencies that local laws and regulations will accompany data. For example, Australian and Singaporean tax and financial regulators and customs and border protection agencies are central to the DEA as they (rightly) see these as helping (not hurting) them execute their domestic regulatory responsibilities.[54]

Ultimately, we can hope that the Biden administration and Congress seize the opportunity of having many likeminded, value-sharing trading partners enthusiastically signaling that they're willing to work cooperatively to shape digital trade and economic governance in the Asia Pacific. Moreover, the Biden administration will hopefully base its digital trade strategy on data and research, and close coordination with Congress, instead of on opponents' reliance on fear, anecdotes, and false assertions and an ideological opposition to trade, big business, and private markets.

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ENDNOTES

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