

주요 디지털통상협정 내 제도적 장치 및 분쟁해결제도 비교 분석 및 한국에의 시사점

고보민

가톨릭대학교 국제학부 조교수

Institutional Arrangements and Dispute Settlement Mechanism in Major Digital Trade Agreements: A Comparative Analysis and Its Implications for Korea

Bomin Ko^a

^aDepartment of International Studies, Catholic University of Korea, South Korea

Received 10 October 2022, Revised 23 October 2022, Accepted 30 October 2022

Abstract

This study first classifies and organizes provisions on institutional arrangements (or IAs) and dispute settlement mechanism(or DSM) in a digital trade agreement. Then it conducts a case study on seven major digital trade agreements: the CPTPP, the USJDTA, the USMCA, the ASDEA, the RCEP, the KSDPA, and the DEPA. And it finally derives implications for Korea to improve implementation of DTAs by communicating better and resolving disputes efficiently with the help of IAs and DSM-related provisions. IAs of a digital trade agreement can be defined as a set of agreements on the division of the respective responsibilities of agencies involved in implementing and enforcing the agreement, including committees, working groups, or contact points. DSM of a digital trade agreement includes consultation, mediation, arbitration, and establishment of a panel. Comparing six FTAs with an e-commerce chapter, the CPTPP, the USMCA, and the RCEP contain the most advanced type of IA provisions while the CPTPP, the USMCA, the RCEP, and the KSDPA have that of DSM provisions. Korea is its initial stage as it has only signed the KSDPA with Singapore as well as it is about to launch a new digital trade negotiation for the DEPA, the CPTPP, and even the IPEF, it is necessary to engage in negotiations with a clearer position on behalf of Korean digital companies. As provisions on IAs and DSM are important policy tools that can reflect industry concerns and convey proposals in inter-governmental dialogue, a Korean draft of the IAs and DSM-related provision should be prepared in advance.

Keywords: Digital Trade Agreement, Institutional Arrangements, Dispute Settlement Mechanism, Digital Trade Policy, Digital Trade Negotiation

JEL Classifications: F13, F53, F55

^a First Author, E-mail: bomingo@catholic.ac.kr

© 2022 The Korea Trade Research Institute. All rights reserved.

I. Introduction

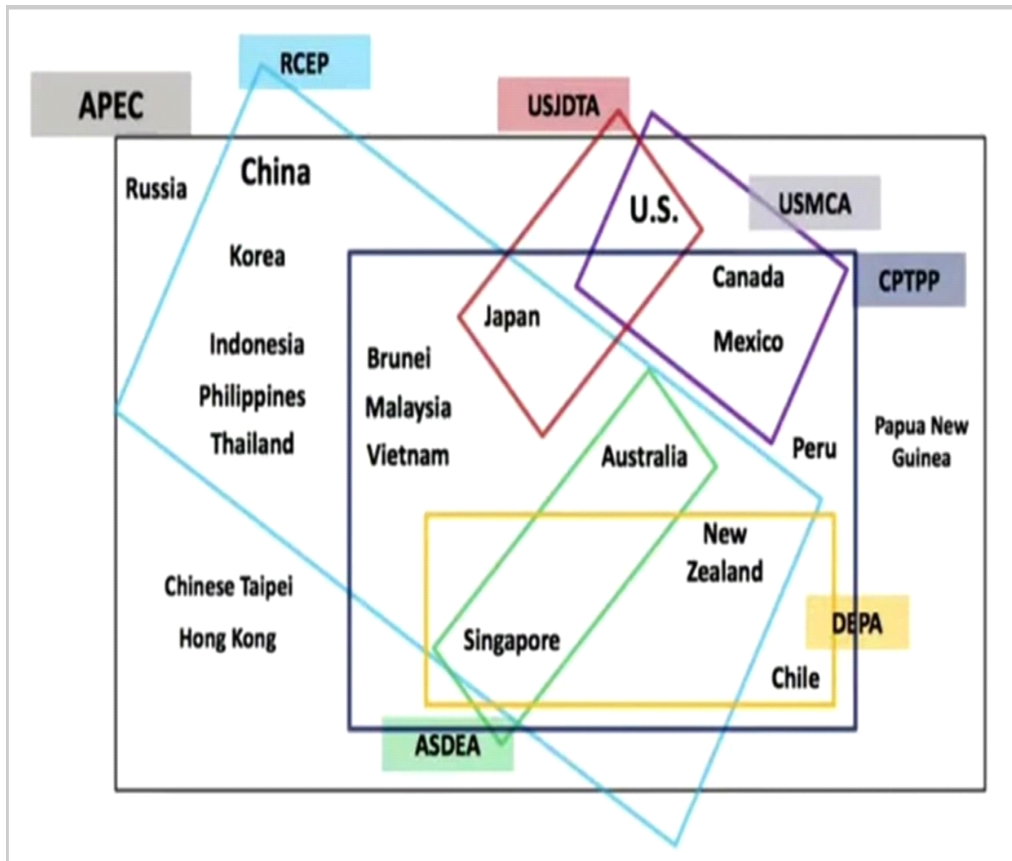
From 1998, the WTO e-commerce negotiations is on the way, having six sections categorize digital trade rules as follows: enabling electronic commerce; openness and electronic commerce; trust and electronic commerce; cross-cutting issues; telecommunications; and market access. (Ko, 2021) With slow progress at the WTO on e-commerce, however, articles related to digital trade are increasingly featured in regional trade agreements (or RTAs) such as Free Trade Agreements (or FTAs). In a typical DTA, there are facilitation measure for digital trade including transparency measures, formalities facilitation measures, paperless trade measures, cross-border paperless trade measures, transit facilitation measures, and institutional arrangement and cooperation measures. (UNESCAP, 2017) Among the provisions, the crucial but inattentive part is those on IAs and the DSM which secure accountability and feasibility of a Digital Trade Agreement (or DTA). (Lee et al, 2021, 135) The detailed topics covered by a DTA are meaningful and necessary for free and fair trade of countries participating in digital trade. More important, however, is how much each country that established the digital trade rule is interested in sustainable implementation of the norm. In this context, this study attempts to focus on provisions of institutional arrangements (or IAs) and dispute settlement mechanism (or DSM) in major DTAs.

Each government guarantees the execution power of the agreement, with the help of provisions on IAs or DSM. The Digital Economic Partnership Agreement (or the DEPA), for example, has four modules concerning agreement structure and accountability such as joint committee and

contact points, and dispute settlement. (The DEPA, 2021) Provisions on joint committee and contact points establish a joint committee of government representatives of each party while those on dispute settlement provide an effective, efficient, and transparent process for consultations and settlement of disputes among the signing parties. Even though IAs in a DTA can be interpreted as bureaucracies or new form of governmental regulations for domestic trade stakeholders such as domestic firms, the signing countries can not only delegate the authority to modify and create rules but also monitor compliance with the agreement. (Lee et al, 2021) For example, The European Union (or the EU) is a highly institutionalized customs union with a bureaucratic entity, 'the European Commission' that monitors policy implementation as the commission publishes annual implementation reports and can file lawsuits against a state that violates its treaty obligations. Moreover, DSM in a digital trade agreement play a vital role in providing information about state behavior and coordinating informal enforcement of trade rules.

As shown in Fig. 1, there are six major DTAs within the Asia-pacific region where Singapore plays a key role in establishing common international digital trade rules. The newly agreed the Korea-Singapore Digital Partnership Agreement (or the KSDPA) is anticipated to bring stronger digital trade cooperation with Singapore and New Southern countries as Singapore is Korea's 11th largest trading partner, and the DPA together with the precious bilateral FTA will further boost digital trade between the two countries. (MOTIE, 2021) Singapore is playing a leading role in inking digital trade agreements as it already signed the DEPA in June 2020 and the Singapore-Australia Digital Economy Agreement (or the ASDEA) in

Fig. 1. Mapping of Major Digital Trade Agreements



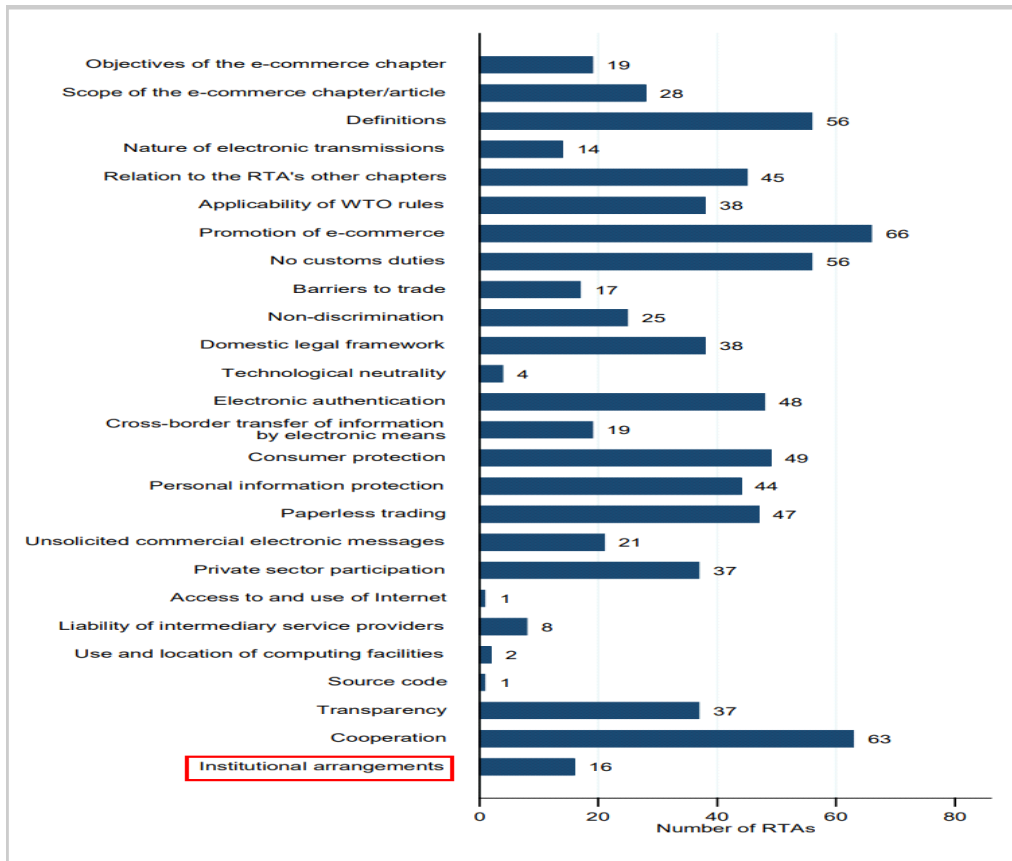
Source: Kim (2021)

August 2020. If ratified within the year of 2022, the KSDPA is expected to support Korea's bid to join Singapore and ten other nations in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (or the CPTPP). Since Korea initiated the process to join the DEPA on October 5, 2021, it anticipates the establishment of global trade rules between like-minded countries such as Singapore and enhances cooperation in new trade issues including advanced digital technologies such as AI and FinTech.

In December 2021, Korea and Singapore announced conclusion of Korea's first

'independent' or digitally trade-focused agreement, the KSDPA, after conducting 10 rounds of negotiations from June 2020. (MOTIE, 2021) The two countries signed the agreement in addition to their bilateral FTA, enforced from 2006. As shown in Figure 2, digital trade agreements, in the form of an FTA with an e-commerce chapter or an independent digital trade agreement (or DTA), contain various types of provisions on trade rules for cross-border trade, regulating the facilitation of e-commerce, the revitalization of digital businesses, the removal of tariffs and non-discrimination for digital products as

Fig. 2. Coverage of Issues in Regional Trade Agreements



Note: Based on computations from WTO RTA database, 25 main types of provisions related to e-commerce have been identified from the WTO analysis covering the 275 RTAs which are currently into force and notified to the WTO between 1957 and May 2017.

Source: Monteiro and Teh (2017)

well as forming international trade rules for consumer protection and cybersecurity. (OECD, 2021) A prominent feature of deeper DTAs is the creation of specific mechanisms for IAs and DSM which are crucial in discussing and overseeing the implementation of obligations and commitments agreed in the agreement. This study first discuss provisions on IAs and DSM in the context of provisions within a digital trade agreement. Then it conducts a case study on seven major digital trade agreements: the CPTPP, the

US-Japan Digital Trade Agreement (or the USJDTA), the US-Mexico-Canada Agreement (or the USMCA), the ASDEA, the DEPA, the Regional Comprehensive Economic Partnership (or the RCEP), and the KSDPA. And it finally derives implications for Korea to improve implementation of DTAs by communicating better and resolving disputes efficiently with the help of IAs and DSM-related provisions.

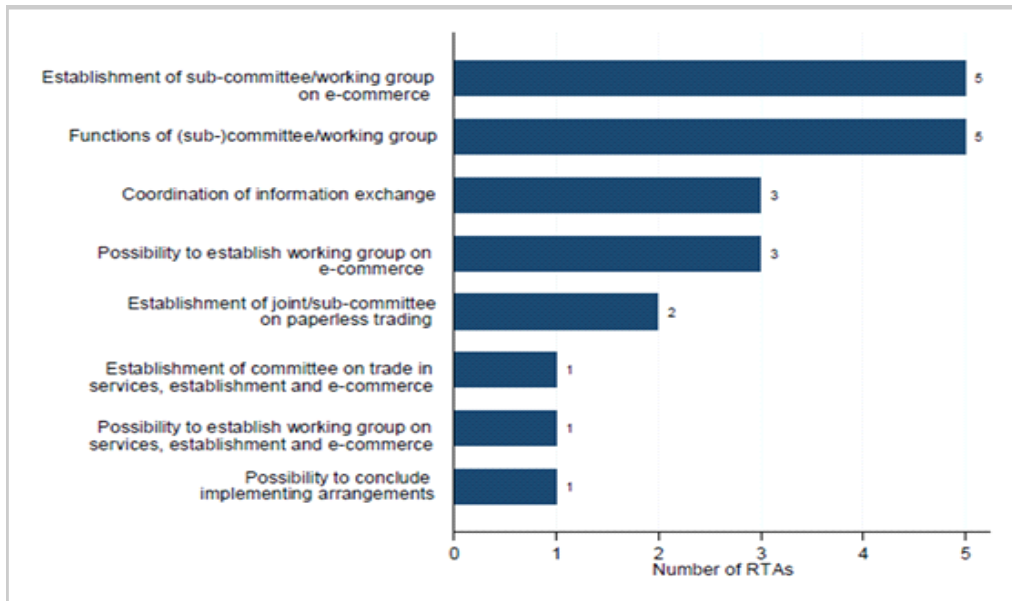
II. Theoretical Background

1. Institutional Arrangements (IAs)

IAs of a digital trade agreement can be defined as a set of agreements on the division of the respective responsibilities of agencies involved in implementing and enforcing the agreement. Institutional coordination is to promote regulatory cooperation and effectively monitor the implementation of a digital trade agreement. (Mitchell and Mishra, 2020) Given the nature of the digital economy, institutional coordination should be understood broadly and includes not only intergovernmental collaboration for a harmonized regulation for digital trade but also the form of multi-stakeholder, transnational and private-public collaboration. The types of IAs which facilitate regular communication or administrative interactions between the parties can be stipulated as simple as stipulating provisions on amendment, entry into force, and termination but can be as very detailed as establishing a joint-committee or working group on e-commerce. The level of institutional engagement includes coordination of information exchange, establishment of dialogue, or contact point, establishment of joint committee, sub-committee on e-commerce or working group. Within provisions related to joint committee, there are also regulations of specialized committees and sub-committees on when, where and how often to convene the meeting. One important function of the committees is to review, within two, three or five years of the first committee meeting, the implementation of their respective digital trade chapter and report to the FTA's main institutional body. There are other functions such as exchanging information on cooperation activities, discussing any matter of common interest and considering matters related to the

chapter's implementation, determining and organizing cooperation activities, inviting international donor institutions, private sector entities and non-governmental organizations to assist with the development and implementation of cooperation activities. There are also provisions stipulating procedures for the modification of schedules as well as provisions on future negotiations.

Only 16 FTAs contain specific institutional arrangements related to e-commerce. (Monteiro and Teh, 2017) The most detailed provisions on institutional arrangements are found in the FTA between Japan and Mongolia, which establishes a sub-committee on e-commerce composed of representatives of the parties' government. The sub-committee is in charge of reviewing and monitoring the implementation and operation of the chapter on e-commerce and seeking new opportunities to further enhance trade in digital products. A committee is also established under the FTA between the EU and the Republic of Korea to supervise and assess the implementation of the chapter on trade in services, establishment and e-commerce. The FTA between Japan and Singapore establishes also a dedicated joint committee on paperless trading. Other institutional arrangements include the establishment of a working group under the FTAs signed by China with Hong Kong (China) and Macao (China) to act as a communication channel as well as a consultation and coordination mechanism for cooperation in e-commerce, with a view to promoting cooperation and joint development in e-commerce. The FTA between the EU, Colombia and Peru also foresees the possibility to establish a working group in charge of various tasks, including discussing regulatory issues concerning trade in services, establishment and e-commerce. Similarly, both FTAs negotiated by Colombia with

Fig. 3. Types of Provisions on Institutional Arrangements

Source: Monteiro and Teh (2017)

Canada and Costa Rica explains that to achieve the objectives of the e-commerce chapter, the parties may work together through various means, including a working group of experts. Meanwhile the FTA between the US and Singapore establishes a joint committee in charge of reviewing and considering specific matters related to the operation and implementation of the FTA in the light of its objectives, such as those related to e-commerce. A different arrangement established in the FTAs to which the EFTA states are a party with Central America, Colombia and Peru consists in identifying the respective authorities responsible for the coordination of the effective exchange of information. More recently, the FTA between the EAEU and Viet Nam includes in the e-commerce chapter a provision specifying that the competent authorities of the parties may conclude implementing arrangements on

any matter within the scope of the e-commerce chapter and take all necessary actions to apply them within a jointly determined reasonable period of time.

2. Dispute Settlement Mechanism (DSM)

Among the provisions of a digital trade agreement, provisions related to dispute settlement are more in the nature of setting or supporting rules. (Brown and Stern, 2011). Provisions on consultation, mediation, arbitration, and dispute settlement generally spell out a process for dispute settlement, although in some cases it is no more than an undertaking to hold consultations on any disagreement. In most FTAs including those with a e-commerce chapter, a formally complete process is laid out very much along the same lines as in the WTO although it is,

Table 1. DSM Application to Digital Trade Agreements (unit: case)

	All period (2000 – 2020)	First decade (2000–2010)	Second decade (2011–2020)
Total # of DTAs	113 (100%)	57 (100%)	56 (100%)
DSM not included	45 (39.82%)	28 (49.12%)	17 (30.36%)
DSM included	58 (60.18%)	29 (50.88%)	39 (69.64%)

Source: Lee et al, 2021.

in some cases, no more than an undertaking to hold consultations on any disagreement. FTA parties to a dispute usually to the body established under the regional or bilateral trade agreement or have the option of taking any dispute to the WTO or, implying that the parties believe that their agreements are consistent with their rights and obligations under the WTO. In theory, there should be no conflict between the different DSM bodies even though different tribunals may sometimes make different judgments. A key feature of many DTAs is the possibility to hold consultations among parties when their views on the agreement's interpretation, implementation and enforcement (by the other party) differ. Depending on their location in the agreement, some provisions are covered by specific consultation procedures in which the parties shall make all possible efforts, through dialogue, consultations and cooperation, to resolve any matter that may arise relating to their respective digital trade chapter. While consultations procedures are essential to resolve amicably any dispute that might arise between parties, DTAs often provide for dispute settlement procedures to allow the parties to the agreement to detect, prove and retaliate against violations of the terms of the agreement in a specified framework. Importantly, the dispute settlement procedures may differ between DTAs. Some dispute settlement procedures explicitly rule out the suspension

of trade concessions in case of non-compliance.

DSM in some digital trade agreements is relatively informal and only require states to conduct good faith negotiations to resolve their trade disputes while DSM in others allows members to refer disputes to the International Chamber of Commerce (or the ICC) or the International Court of Justice (or the ICJ). They usually allow an individual or panel to hear arguments from affected parties and then issue some form of opinion, and DSM used varies in the selection of individuals or panels, as well as the legal status of the opinion. Some DSM only allows the individual or panel to make nonbinding recommendations; others allow legally binding rulings. The latter sometimes have implementation procedures to ensure the disputants adopt the decision in a reasonable period of time. To improve the efficiency of dispute settlement, there is a strict time limit in a digital trade agreement, taking no more than certain number of days from the initial consultation request to the issuance of a final panel. (Wang, 2019) Some agreements such as the DEPA contains detailed rules of procedure for mediation such as initiation of proceedings, mediator selection, rules governing mediation procedures, implementation of a mutually agreed solution, confidentiality, and costs.

The number of DTAs that include the provisions of DSM is increasing. (Lee et al,

Table 2. Literature Review on Major Keyword

Keyword	Author	Main Points
IAs in FTAs/DTAs	Kobayashi (2008)	This paper conducts a comparative analysis on the institutional mechanisms of Japan' s RTAs and attempts to clarify how they should be designed in the future.
	Hamanaka (2019)	This paper presents that major provisions of a digital trade agreement are categorized as WTO-plus rules, WTO-extra innovative rules, WTO-extra capacity building rules, and WTO-extra institution building rules including electronic transaction legislation, E-signature legislation, electronic authentication legislations, online consumer protection legislation, personal data protection legislation, and measures regarding unsolicited messages.
	Mitchell and Mishra (2020)	It analyzes five pillars of digital trade integration including institutional coordination such as the exchange of information and monitoring of the implementation of trade agreements, and tackles FTA' s contribution to the pillars.
DSMs in FTAs/DTAs	Brown and Stern (2011)	Among with other provisions of regional and bilateral trade agreements, this paper analyzes those related to dispute settlement.
	Peng (2014)	Regarding the issue of e-commerce, this paper attempts to develop criteria with which to measure the panel and Appellate Body reports of the WTO for the extent of their judicial activism.
	Lee (2016)	Regarding FTAs of US with Korea, Peru, Panama and Colombia, this paper analyzes dispute settlement mechanisms (state-to-state dispute settlement proceedings, investor-state dispute settlement proceedings, and Joint Committees) of the four FTAs in a comparative manner.
	Wang (2018)	Focusing on CPTPP and CETA, this paper particularly analyzes DSM with a categorization of both state-to-state and investor-state types .
IAs & DSMs in FTAs/DTAs	Falls (2020)	Focusing on delegating the administrative functions of FTA dispute settlement to a third-party arbitral institution, this paper analyzes both the factors impelling states to consider contracting out the administrative function of FTA dispute settlement and the potential benefits states can reap by pursuing this strategy.
	Chaudhry et al (2016)	This paper analyzes in detail on provisions of IAs and DSM in regional trade agreements, concerning degree of legalism.
	Monteiro and Teh (2017)	Published by the WTO, this paper is the most comprehensive research on analyzing all the provisions on e-commerce in FTAs including those of IAs and DSM.

Source: Author's analysis

2021, 133-134) Of the 113 DTAs between 2020 and 2021, 58 (60.18%) includes DSM provisions, compared to 29 (50.88%) in the first decade as well as 39 (69.64%) in the second decade. For example, the DTAs with DSM provisions include the CPTPP, EU-Japan EPA, and the DEPA. Some DTAs such as China-Australia FTA, Korea-China FTA, and or the the Regional Comprehensive Economic Partnership (or RCEP) explicitly excludes the

DSM provisions within the e-commerce chapter. Besides, current digital trade agreements can be divided as three types such as US-type, EU-type, and Other-type. (Lee et al, 2021, 135-136) The US type contains deep and regulatory digital trade rules, and dispute settlement provisions do apply in some US-led FTAs such as US-Australia FTA and US-Korea FTA. The EU type includes general cooperation pledges on

Table 3. Comparative Analysis on IAs of Major FTAs with an E-commerce Chapter

	Amendment, Entry into Force, and Termination	Coordination of information exchange	Establishment of dialogue or contact point	Establishment of Joint committee, sub-committee on e-commerce or working group
CPTPP(2019)				Article 27.1: Establishment of the Trans-Pacific Partnership Commission Article 27.2: Functions of the Commission
Chp.14. E-commerce	n/a	n/a	Article 27.5: Contact Points	
USJDTA(2020)	Art. 22 Amendment, Entry into Force, and Termination	n/a	n/a	n/a
USMCA(2020)				Art. 30.1: Establishment of the Free Trade Commission /Article 30.6: The Secretariat Art. 30.2: Functions of the Commission
Chp.19 Digital Trade	n/a	n/a	Art. 30.5: Agreement Coordinator and Contact Points	
ASDEA(2020)	Art. 11 Amendments Art. 12 Entry into Force, Duration and Termination (in Chp. 17 of Singapore–Australia FTA, enforced in 2003 and amended in 2017)	n/a	Art. 35 Stakeholder Engagement (a Digital Economy Dialogue) Art. 6 Contact Point (in Chp. 17 of Singapore–Australia FTA first enter into force in 2003 and amended in 2017)	n/a
RCEP(2022)				Art. 18.2: Establishment of the RCEP Joint Committee Art. 18.3: Functions of the RCEP Joint Committee Art. 18.6: Subsidiary Bodies of the RCEP Joint Committee (Committee on the Business Environment)
Chp.12. E-commerce			Art. 12.16: Dialogue on Electronic Commerce Art. 18.8: Contact Point Art. 19.20: Contact Point	
KSDPA(2022s)	Art. 5 Entry into Force Art. 6 Amendments	Art. 14.4: Information Sharing (free, publicly accessible website)	Art. 14.34: Stakeholder Engagement (a Digital Economy Dialogue)	n/a

Source: Author's analysis

e-commerce and information technology. Lastly, the Other-type usually do not let DSM applied to their digital trade provisions or chapters.

3. Literature Review

Most of the literature on the provisions of

IAs or DSM in FTAs or DTAs are focusing a comparative study on FTAs ratified by one country such as Japan and the US. (Table 2) There is lack of the literature on those two types of provisions in DTAs which conducts a comparative case study. Moreover there is no standard method for categorizing as well

as measuring their level of institutionalization. As the DEPA has major IA provisions such as those on joint committee, contact points, and DSM, there are minor IA provisions such as those on transparency or cooperation. This study focus only on major provisions related to IAs and DSM in FTAs with an e-commerce chapter as well as DTAs. Next, this study conducts a case study of the provisions on IAs and DSM in seven most developed DTAs among which six have its own e-commerce chapter or have a chapter which modifies the e-commerce chapter of an original FTA such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (or CPTPP), the US-Japan Digital Trade Agreement (or USJDTA), the US-Mexico-Canada Agreement (ro the USMCA), the ASDEA, the RCEP and the KSDPA while only the DEPA is an independent form of a DTA.

III. Case Study

1. Institutional Arrangements (IAs) in FTAs

Comparing six FTAs with an e-commerce chapter, the CPTPP, the USMCA, and the RCEP contain the most advanced type of IA provisions since they have detailed provisions on establishment of special commission in chapter 27 of the CPTPP, chapter 30 of the USMCA, and chapter 18 of the RCEP respectively. After the establishment of the commission or the joint committee, the function of the committee as well as its subsidiary bodies are agreed in detail which can be an only and effective government channel between the FTA partner countries which embraces the voices of domestic trade stake-holders. Each FTA has its own chapter

of administrative and institutional provisions to oversee the implementation and operation of the Agreement. Surprisingly, only the RCEP has a Committee on the Business Environment, a subsidiary body to cover work on e-commerce.

2. Dispute Settlement Mechanism (DSM) in FTAs

Comparing six FTAs, the CPTPP, the USMCA, the RCEP, and the KSDPA contain the most advanced type of DSM provisions since they have detailed provisions on establishment of a panel in chapter 28 of the CPTPP, chapter 31 of the USMCA, chapter 19 of the RCEP, and chapter 20 of the KSDPA respectively. Detailed procedure regarding to the establishment and the role of a Panel are stipulated, followed by implementation of the Panel's final report as well as compensation and suspension of concessions which contribute to trust of the FTA's judicial system. Each FTA has its own chapter of DSM to effectively settle issues between the parties. Similar to the case of IA provisions, the USJDTA have the least contents regarding DSM provisions as it has only provisions on consultation in its original FTA.

3. IAs and DSM in the DEPA

Enforced on January 2021, the DEPA is the most advanced form of DTA in terms of the number and scope of provisions on both IAs and DSM. First, it has Module 12, an independent module concerning IAs such as joint committee and contact points. (the DEPA, 2021 an Fig. 4) The three countries agreed to establish a Joint Committee consisting of government representatives of each party. The Committee will consider any matter relating to the implementation or

Table 4. Comparative Analysis on DSM of Major FTAs with an E-commerce Chapter

	Consultation	Good office, conciliation, or mediation	General Dispute Settlement Mechanism
CPTPP(2019) Chp.14. E-commerce	Art. 28.5: Consultations	Art. 28.6: Good Offices, Conciliation and Mediation	Art. 28.7: Establishment of a Panel Art. 28.9: Composition of Panels Art. 28.12: Function of Panels Art. 28.19: Implementation of Final Report Art. 28.20: Non-Implementation – Compensation and Suspension of Benefits Art. 14.18: Dispute Settlement
USJDTA(2020)	Art.6 Consultation (in Trade Agreement between the US and Japan)	n/a	n/a
USMCA(2020) Chp.19 Digital Trade	Art. 31.4: Consultations	Art. 31.5: Good Offices, Conciliation, and Mediation	Art. 31.6: Establishment of a Panel Art. 31.9: Panel Composition Art. 31.13: Function of Panels Art. 31.18: Implementation of Final Report Art. 31.19: Non-Implementation – Suspension of Benefits
ASDEA(2020)	Art. 2 Consultations (in Chp.16 of Singapore–Austra lia FTA first enter into force in 2003 and amended in 2017)	Art. 3 Good Offices, Conciliation or Mediation (in Chp.16 of Singapore–Austra lia FTA, enforced in 2003 and amended in 2017)	n/a
RCEP(2022) Chp.12. E-commerce	n/a	n/a	Art. 12.17: Settlement of Disputes Art. 19.6: Consultations Art. 19.7: Good Offices, Conciliation, or Mediation Art. 19.8: Request for Establishment of a Panel Art. 19.12: Functions of Panels Art. 19.15: Implementation of the Final Report Art. 19.17: Compensation and Suspension of Concessions or Other Obligations Art. 20.4 Consultations Art. 20.5: Good Offices, Conciliation, or Mediation Art. 20.6: Request for an Arbitral Panel Art. 20.9: Proceedings of Arbitral Panels Art. 20.13: Implementation of the Final Report Art. 20.14: Non-Implementation – Compensation and Suspension of Benefits (of Korea–Singapore FTA)
KSDPA(2022s)	n/a	n/a	

Source: Author's analysis

operation of this Agreement, consider any proposal to amend or modify this Agreement, consider ways to further enhance digital

economy partnership between the Parties, develop arrangements for implementing this Agreement, and establish the Rules of

Table 5. Comparative Analysis on IAs of Major DTAs

	Amendment, Entry into Force, and Termination	Coordination of information exchange	Establishment of dialogue, or contact point	Establishment of Joint committee, sub-committee on e-commerce or working group
DEPA(2021)	Art. 16.2: Entry into Force Art. 16.3: Amendments Art. 16.5: Withdrawal	n/a	Module 12 Joint Committee and Contact Points	

Source: Author's analysis

Table 6. Comparative Analysis on DSM of Major DTAs

	Consultation	Good office, conciliation, or mediation	Arbitration	(Simple) Dispute Settlement
DEPA(2021)		Art. 14.4: Good Offices and Conciliation Art. 14.5: Mediation	Art. 14.6: Arbitration	
MODULE 14 DISPUTE SETTLEMENT	Art. 14C.1: Consultations	ANNEX 14-B - Mediation Mechanism	Annex 14-C - Arbitration mechanism	

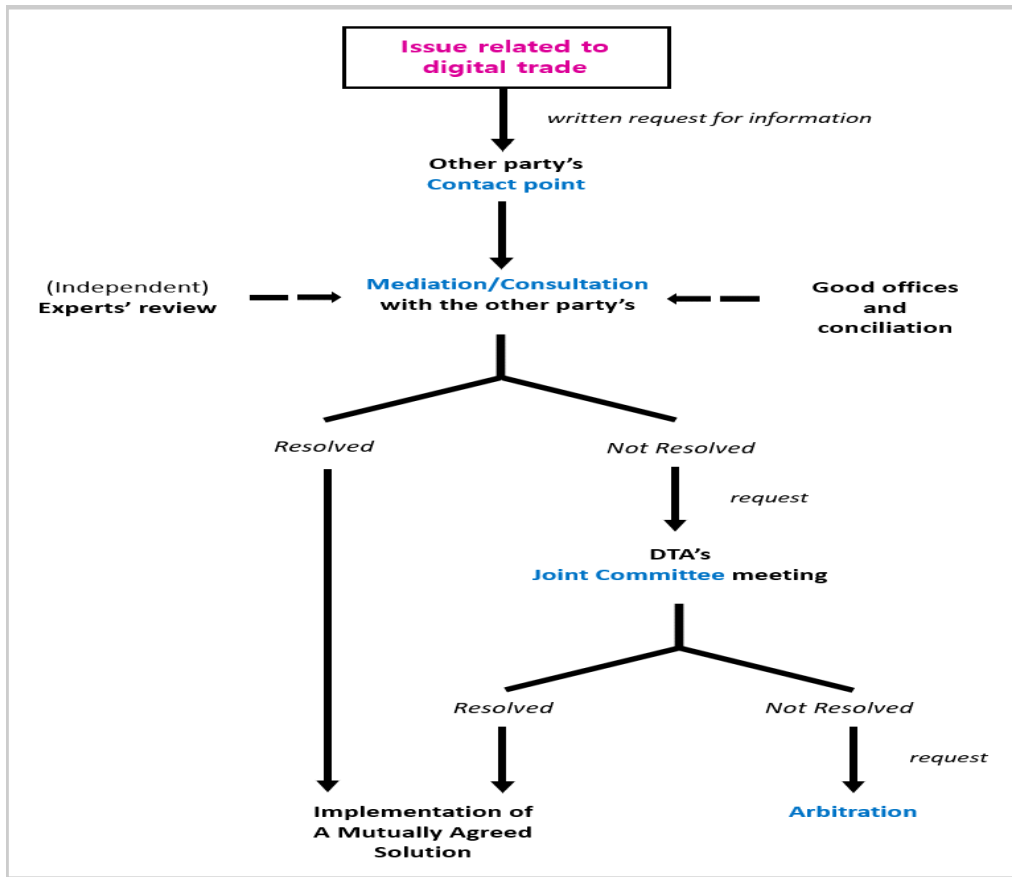
Source: Author's analysis

Procedure referred to in Module 14 on Dispute Settlement. The Committee will meet within one year of the date of entry into force of this Agreement, fulfilling its functions under Article 12.2 (Functions of the Joint Committee). The three countries also agreed to designate an overall contact point to facilitate communications. Second, the DEPA contains Module 14, a module on Dispute Settlement, containing the procedures for the settlement of disputes through mediation contained in Annex 14-B, as well as the procedures for the settlement of disputes through arbitration contained in Annex 14-C. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining party may select the forum in which to settle the dispute.

IV. Implications and Conclusion

Comparing six FTAs with an e-commerce chapter, the CPTPP, the USMCA, and the RCEP contain the most advanced type of IA provisions while the CPTPP, the USMCA, the RCEP, and the KSDPA have that of DSM provisions. When participating in FTA negotiations like DTA, a country's administration pays a close attention to its obligations, burdens, or risk of exposure to disputes. By the IA and DSM provisions in the agreement, any signing country can lower concerns about disputes in participating in DTA and make more systematic preparations for the sustainable implementation of the agreement. In other words, the implementation of the digital trade agreement can be successfully guaranteed by each provision of IAs and DSM. As of August 2022, in terms of being

Fig. 4. IAs and DSM in the DEPA



Source: Author's analysis from Monteiro and Teh(2017) and WTO(2021)

a member of a DTA, Korea is its initial stage as it has only signed the KSDPA with Singapore as well as it is about to launch a new digital trade negotiation for the DEPA, the CPTPP, and even the Indo-Pacific Economic Framework (or IPEF). (Ko, 2020 and Ko, 2022) As Singapore enjoys the status of a regional leader or initiator in terms of establishing digital trade rules, it also enjoys its experience in agreeing and dealing with IA and DSM-related regulations. For example, earlier DTAs of Singapore only included simple provisions on IAs such as contact point, but as it has signed more DTAs,

Singapore agreed to contain more advanced form of IA provisions including stakeholder engagement as well as a joint committee, working group. Even though the KSDPA does not include the highest level of IA provisions, it is waiting for its negotiation for the DEPA, a DTA with the most advanced and detailed provisions on IAs and DSM. A critical feature of the DEPA is the creation of more specific provisions on IAs and DSM to discuss and oversee the implementation of obligations and commitments laid down in the agreement. As Korea has initiated process to join the DEPA, the government has completed

the domestic procedures to initiate negotiations on Korea's accession to the agreement, including a feasibility study on May 2020, public hearing on May 2021 and report to the National Assembly on August 2021.

Moreover, Korea is the signing member of the IPEF in which digital trade is included in the theme of Pillar 1. (MOTIE, 2022) Digital trade will be discussed in the first pillar of 'fair and resilient trade' among the four pillars of IPEF as this issue is the most promising and crucial agenda in IPEF-led regional cooperation. Korea already held a meeting on April 2022 discuss public-private digital trade response measures with regard to the Indo-Pacific Economic Framework (IPEF). (MOTIE, 2022) The meeting invited the government officials and industry-academia representatives of businesses. At the meeting, the industry said, "We hope that a technology and policy cooperation network will be established to increase global competitiveness and expand regional market entry through IPEF," suggesting that the government captures new digital trade issues early and shares them to the industry. (MOTIE, 2022) KIEP, the national trade think-tank, proposed a 'Korean version of a DTA template' consisting of digital trade regulations suitable

for Korean circumstances in the direction of mitigating or resolving digital trade barriers and trade concerned faced by Korean digital companies. (Lee et al, 2021) When negotiating a digital trade agreement, it is necessary for the government to engage in the negotiation with a clearer position on behalf of Korean digital companies. (Ko, 2022) In this case, provisions on IAs and DSM can work as important policy tools that can reflect industry difficulties or concerns. Institutionally, those provisions can work as a good channel through inter-governmental dialogue. (Lee et al, 2021) by the IA and DSM-related provisions in digital trade agreements, a country can lower concerns about disputes and make more systematic preparations for the sustainable implementation of the agreement. Although this paper, for the first time in Korea, deals with the provisions of IAs and DSM of digital trade agreements including e-commerce chapters in FTAs, it lacks legal analysis on how to prepare for a 'Korean version of a DTA template' regarding the two parts of the provisions. Nevertheless, when preparing the 'Korean version of a DTA template' proposed by KIEP, it is necessary to carefully prepare a Korean draft of the IAs and DSM-related procedures in advance.

References

- Brown, A. G., and R. M. Stern(2011), Free Trade Agreements and Governance of the Global Trading System. *World Economy*, 34(3), 331-354.
- Chase C., A. Yanovich, J. Crawford, and P. Ugaz (2016), "Mapping of dispute settlement mechanisms in regional trade agreements – innovative or variations on a theme?". In R. Acharya (Eds.), Geneva: World Trade Organization.
- Chaudhry, I. S., A. Malik and M. Z. Faridi (2016), "Mapping of dispute settlement mechanisms in regional trade agreements – innovative or variations on a theme?". In R. Acharya (Eds.), Geneva: World Trade Organization.

- Falls, S. (2020), Outsourcing FTA dispute settlement administration to third-party international arbitral institutions: Opportunities and the role of the Permanent Court of Arbitration. *The Law & Practice of International Courts and Tribunals*, 19(1), 49-78.
- Froese, M. (2019), Digital trade and dispute settlement in RTAs: An evolving standard?. *Journal of World Trade*, 53(5), 783-809.
- Gao, H. (2021), "Chapter 15. Data regulation in trade agreements: different models and options ahead", WTO Chairs Programme, Edited by Maarten Smeets, Geneva: World Trade Organization. Available from https://www.wto.org/english/res_e/publications_e/adtera_e.htm
- Hamanaka, S. (2019), The future impact of Trans-Pacific Partnership's rule-making achievements: The case study of e-commerce. *World Economy*, 42(2), 552-563.
- Kim, H (2021), "The Great Transformation and Digital Trade", Available from <https://www.youtube.com/watch?v=vMUqdbLHrUE>
- Ko, B. (2020), Major digital trade agreements and the implications for the Korea-Singapore Digital Partnership Agreement (DPA). *Journal of International Trade & Commerce*, 16(6), 229-248.
- Ko, B. (2021), A Comparative Study of Consumer Trust in Major Digital Trade Agreements. *Journal of International Trade & Commerce*, 17(3), 147-165.
- Ko, B. (2022), "Digital Trade Negotiation in Korea-China-Japan FTA: Minimax Strategy in the Process of Making Consensus", *Journal of Global Trade and Business* 18-1, pp 47-62.
- Lee, K., W. Choi, J. Park, J. Eom, M. Kang, and U. Whang (2021), "Digital Trade Policy in the Era of Digital Transformation", *Policy Analyses* 21-01, KIEP
- Mitchell, A. D. and N. Mishra (2017), Data at the docks: Modernizing international trade law for the digital economy. *Vand. Journal of Entertainment and Technology*. L., 20, 1073.
- Mitchell, A. D. and N. Mishra (2020), Digital Trade Integration in Preferential Trade Agreement. Available from <https://repository.unescap.org/handle/20.500.12870/1478?locale-attribute=es>
- Monteiro, J., and R. Teh (2017), Provisions on Electronic Commerce in Regional Trade Agreements. WTO. Available from https://www.wto.org/english/res_e/reser_e/ersd201711_e.htm
- MOTIE (2021), "Dec, 15, 2021, [press release] Korea and Singapore announce conclusion of Korea-Singapore Digital Partnership Agreement (DPA)" https://www.motie.go.kr/motie/ne/presse/press2/bbs/bbsView.do?bbs_seq_n=165010&bbs_cd_n=81¤tPage=1&search_key_n=&cate_n=&dept_v=&search_val_v=
- MOTIE (2022), "Apr, 14, 2024, [press release] Corporate-Government Committee for Digital Pillar of IPEF" Available from https://www.motie.go.kr/motie/ne/presse/press2/bbs/bbsView.do?bbs_seq_n=165504&bbs_cd_n=81
- OECD (2021), "Digital Trade Inventory", Working Party of the Trade Committee TAD/TC/WP(2020)14/FINAL, TRADE AND AGRICULTURE DIRECTORATE, TRADE COMMITTEE, Organisation for Economic Co-operation and Development.
- The ASDEA (2020), AUSTRALIA-SINGAPORE DIGITAL ECONOMY AGREEMENT. Available from <https://www.dfat.gov.au/sites/default/files/australia-singapore-digital-economy-agreement.pdf>
- The CPTPP (2019), The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Available from <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents>
- The DEPA (2021), DIGITAL ECONOMY PARTNERSHIP AGREEMENT. Available from <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/digital-economy-partnership-agreement-depa/depa-text-and-resources/#bookmark0>.

- The KSDPA(2021), KOREA-SINGAPORE DIGITAL PARTNERSHIP AGREEMENT.
https://www.fta.go.kr/webmodule/_PSD_FTA/ksdpa/1/DPA_eng.pdf
- The RCEP(2022), Regional Comprehensive Economic Partnership Agreement (RCEP). Available from
<https://rcepsec.org/legal-text/>
- The USJDTA (2020), AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND JAPAN CONCERNING DIGITAL TRADE. Available from https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf.
- The USMCA (2020), Agreement between the United States of America, the United Mexican States, and Canada. Available from <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>
- UNESCAP (2017), TRADE FACILITATION AND PAPERLESS TRADE IMPLEMENTATION – Global Trade Report 2017. Available from <https://www.unescap.org/resources/trade-facilitation-and-paperless-trade-implementation-global-reports-2017>
- UNESCAP (2022), Regional Digital Trade Integration Index Guideline. Available from
<https://repository.unescap.org/handle/20.500.12870/4153>
- Wang, H. (2019), The future of deep free trade agreements: the convergence of TPP (and CPTPP) and CETA?. *Journal of World Trade*, 53(2).
- Willemyns, I. (2021), *Digital Services in International Trade Law*, New York, NY: Cambridge University Press.
- WTO (2021), “The Evolution of Gender-related Provisions in Regional Trade Agreements”, Staff Working Paper ERSD-2021-8. 1-51.