

# DIGITAL TRADE AND THE TPP

## HOW ASIA-PACIFIC BENEFITS



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## WHAT IS THE TRANS-PACIFIC PARTNERSHIP (TPP)?

The Trans-Pacific Partnership (TPP) trade agreement will be one of the most consequential trade agreements in twenty years. The TPP is deeper and broader than other agreements, containing 30 chapters that bind 12 member countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam) together in ways that are often covered in less depth or are even carved out completely. The agreement spans three continents across the Pacific with members at diverse levels of current economic development. Together, TPP members account for 40 per cent of global trade.

## WHY DOES THE TPP INCLUDE RULES FOR DIGITAL TRADE AND E-COMMERCE?

As the digital economy has grown rapidly around the world, so has the importance of digital trade. New digital trade platforms like Rakuten Ichiba and Google AdWords enable startups and small businesses to reach global audiences in ways never seen before. Up to this point, companies have largely been able to create, market and launch digital trade platforms and services without too many restrictions, but governments are increasingly beginning to think about how to regulate digital trade and e-commerce in the future.

Governments of course have the right to regulate and to ensure that, for example, public health is not harmed by trade. But there is a risk that new regulations could be incompatible across and between countries. International trade institutions like the World Trade Organization and APEC have made only limited progress on sorting out new regulatory frameworks to help guide government policies. Most other trade agreements have also made modest headway.

The TPP, by contrast, takes digital trade and e-commerce quite seriously. As an important growth sector for all TPP members, the agreement helps create a platform for the future.

## The Importance of the Digital Economy

It is difficult to disaggregate and measure the complete impact of the digital economy because it is now embedded in almost every facet of the economy, in the same way that one would struggle to quantify the impact of electricity – it is used in almost every function in the modern world.

Estimates of the direct impact of the Internet vary from 3.5 – 6% of GDP in Asia. Most growth in global productivity over past 20 years has come from ICT investment, and in the development and expansion of new skills and jobs that harness and build on these technologies. The flow of data across borders now drives global economic growth more than the flow of goods<sup>1</sup>.

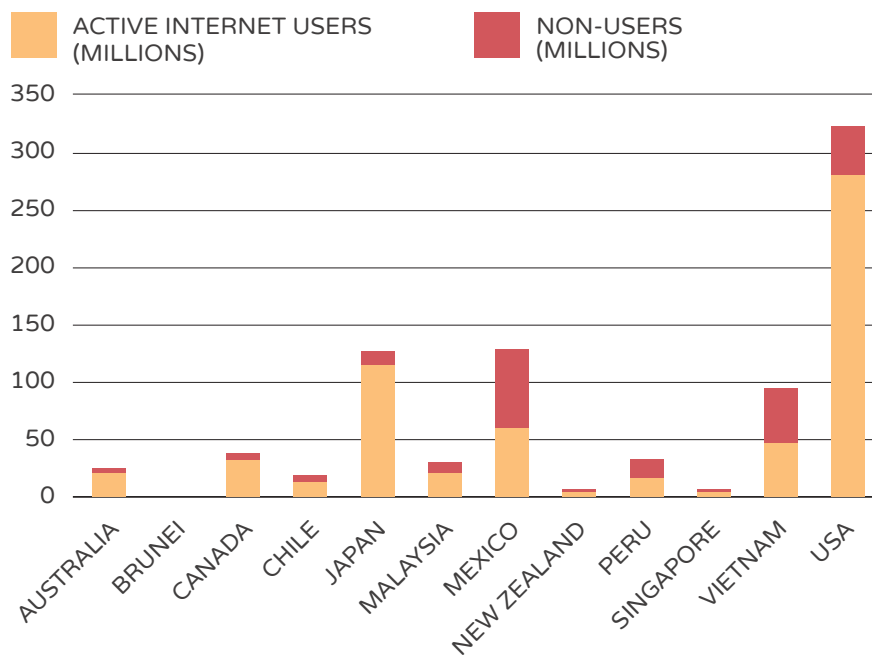
E-Commerce is already an essential part of TPP economies, and one of the areas most likely to grow strongly over the coming decades. Platforms like Alibaba, Amazon and eBay are letting even the smallest companies find their first customer in distant or overseas markets. Social networks are changing the media and marketing industry. Affordable smartphones are dramatically changing services like banking. And SMEs that use the Internet are 50% more likely to sell outside their region.

Mobile video, games and shopping are proving particularly popular in Asian emerging markets, where up to 60% of online consumers are using mobile devices to purchase goods and services.

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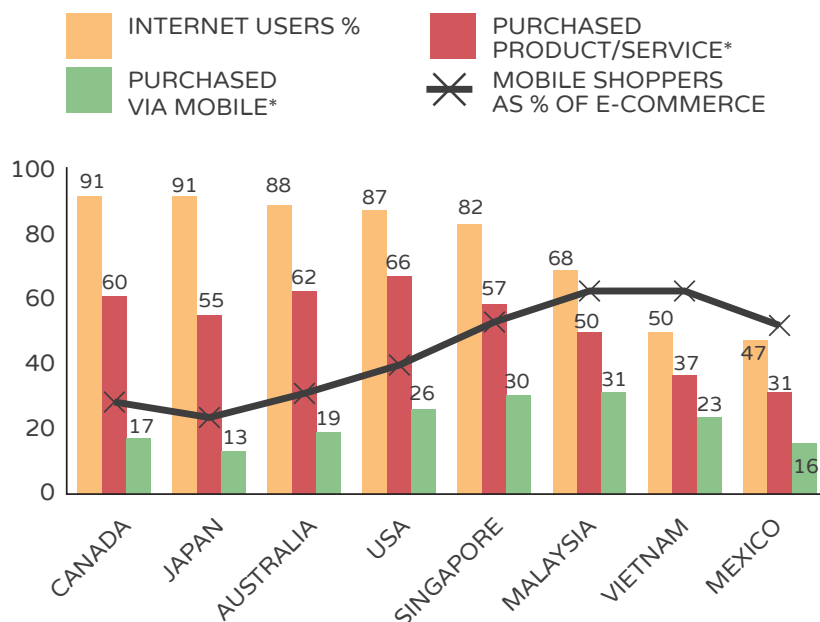
<sup>1</sup> [www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows](http://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows)

## Internet users by country



Source: We Are Social Survey 2016

## E-Commerce via computer and mobile as a proportion of Internet Users



\*in the past 30 days the % of Internet users who...  
Source: We Are Social Survey 2016

# WHAT THE TPP DOES FOR DIGITAL TRADE

ENSURES  
TECHNOLOGY  
CHOICE

CONSUMER  
PROTECTION

IMPROVED  
CYBERSECURITY

STREAMLINED  
TESTING

PROTECTS  
SOURCE CODE

FASTER, SIMPLER  
CUSTOMS

# WHAT THE TPP HELPS PREVENT

DATA  
LOCALISATION

FORCED  
DISCLOSURES  
& IP TRANSFERS

ARBITRARY  
REGULATION  
CHANGES

CUSTOMS DUTIES  
FOR DIGITAL  
PRODUCTS

TARIFFS ON  
ICT PRODUCTS

FUTURE  
DISCRIMINATION

## Current Regulatory Gaps

Just as different standards for products across countries can impede trade, inconsistent digital rules can also make life difficult for digital products and services. Inconsistencies or significant variations between digital regulations can have an especially damaging effect on the users of digital trading platforms. These users -- including startups, small businesses, and app developers around the world -- depend on consistent and interoperable regulatory frameworks to ensure that they can use trading platforms to reach customers across borders. They do not have the resources to deal with different regulatory regimes - and are the first to fall when country-specific rules and regulations are introduced.

There are controls and sanctions on certain content to protect users around the world. For example, appropriate intermediary liability protections can encourage Internet services to remove problematic content upon notice without risking liability. Current rules are broadly similar across the TPP area, although some updates may be needed in countries that have not developed modernised regulatory frameworks.

The chart below shows the TPP is more comprehensive and consequential than others.



Economic Partnership/FTA	Entered into force	Stated Duty-free moratorium	Cross-border trade in services Chapter	Negative-list approach	Digital carve-outs	Balanced Copyright	Intermediary liability protections
Singapore-Australia	2003	YES	NO	NO	N/A	NO	NO
USA-Singapore	2004	YES	YES	YES	YES	PARTIAL	YES
Korea-ASEAN	2007	YES	YES	YES	MINOR <sup>†</sup>	NO	NO
Japan-ASEAN	2008	NO	NO	NO	N/A	NO	NO
USA-Peru	2009	YES	YES	YES	YES	PARTIAL	YES
China-ASEAN	2010	NO	YES	NO	N/A	NO	NO
China-Korea	2015	YES	YES	NO*	MINOR <sup>‡</sup>	MINOR	NO
China-Hong Kong	2016	NO	YES	NO	YES	NO	NO
TPP	?	YES	YES	YES	MINOR <sup>‡</sup>	YES	YES

\* However, planned MFN negotiations in two years are to proceed on negative list approach

† Online airline ticket reservation websites are not covered by agreement.

‡ Only online sale of alcohol to Korea is exempt.

# Malaysia, Brunei and Vietnam have longer implementation timelines

## TPP SERVICES

The TPP uses a “negative list approach” to services, which basically means that all services sectors are open to TPP service providers unless otherwise noted in the agreement. In practice, most TPP countries provided very few exceptions, so nearly all services can be delivered by TPP firms into other TPP markets.

Many such services will be provided via the internet, including things like human resources, legal services, accounting, logistics, management, financial services, insurance, design, health care, travel and tourism and so forth. Do note, however, that some TPP countries may have specific licensing requirements that will still apply.

## Making Digital Trade Easier

The TPP contains important liberalising measures that will make digital trade easier across some of the world’s largest markets, and set the pace for future digital trade regulations around the region.

## No customs duties on digital products

The TPP has a complete ban on customs duties on video games, music, software and other digital products – meaning creative industries get a fair opportunity to compete in local markets (Ch14.3). This does not preclude governments from applying local consumption or sales taxes, but these cannot discriminate against international designers or developers.

## Non-discrimination against digital products

Digital products will be treated the same as non-digital products (Ch14.4). For example, under the TPP, an mp3 downloaded legally from a foreign or domestic website will have to be treated the same as a CD purchased in a shop.

## Future developments automatically opened

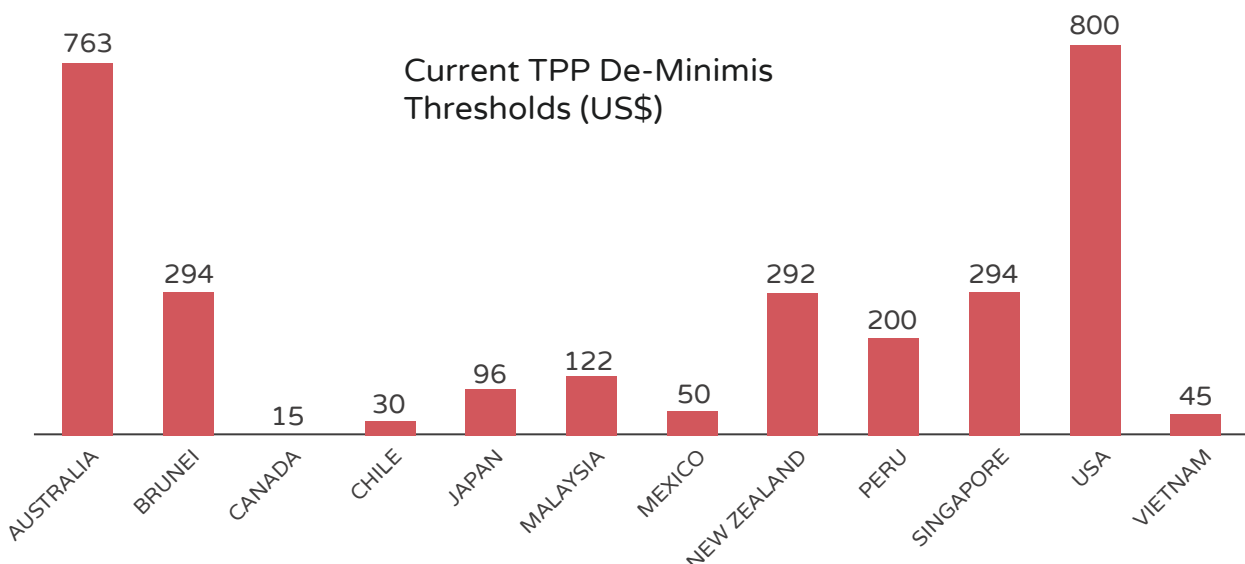
The TPP uses negative-list scheduling. This is an especially important technical detail in the fast-changing digital economy, since a negative list can help future-proof the agreement. New sectors are automatically opened to TPP competition unless TPP countries explicitly decide to close them to other members. This helps prevent future discrimination and keeps the agreement from becoming quickly irrelevant. (Ch10.7)

## Customs, express shipments and electronic forms good for e-commerce

As e-commerce continues to grow, cross-border shipments will become increasingly important. Border delays and expensive international shipments, however, impede the industry and make life difficult and expensive for customers and firms. The TPP contains some important changes for e-commerce deliveries.

The TPP will help ensure that border processing will be quick, transparent, and predictable at every point of entry. It specifies that all countries must eventually use electronic customs forms, reducing the scope for corruption, helping to protect the environment and making customs more efficient (Ch5 and 14.9).

The TPP says that countries must set up a de minimis threshold (the value at which duties apply and one has to do a lot more paperwork) but does not dictate the threshold (Ch5.7). The cost of enforcing and collecting customs paperwork can outweigh the benefit of the duties. Some governments may look to raise their levels to a more efficient value, as America recently tripled its de minimis level.



## Consultations with stakeholders on regulations and standards

The TPP recognizes the growing importance of non-tariff barriers to trade. One important area for regulatory coherence across TPP is to create meaningful communication channels between regulators and manufacturers to encourage the development of new standards (Ch8.7, Ch25 and 26). This is especially valuable in the ICT sector with short product cycles and new technologies.

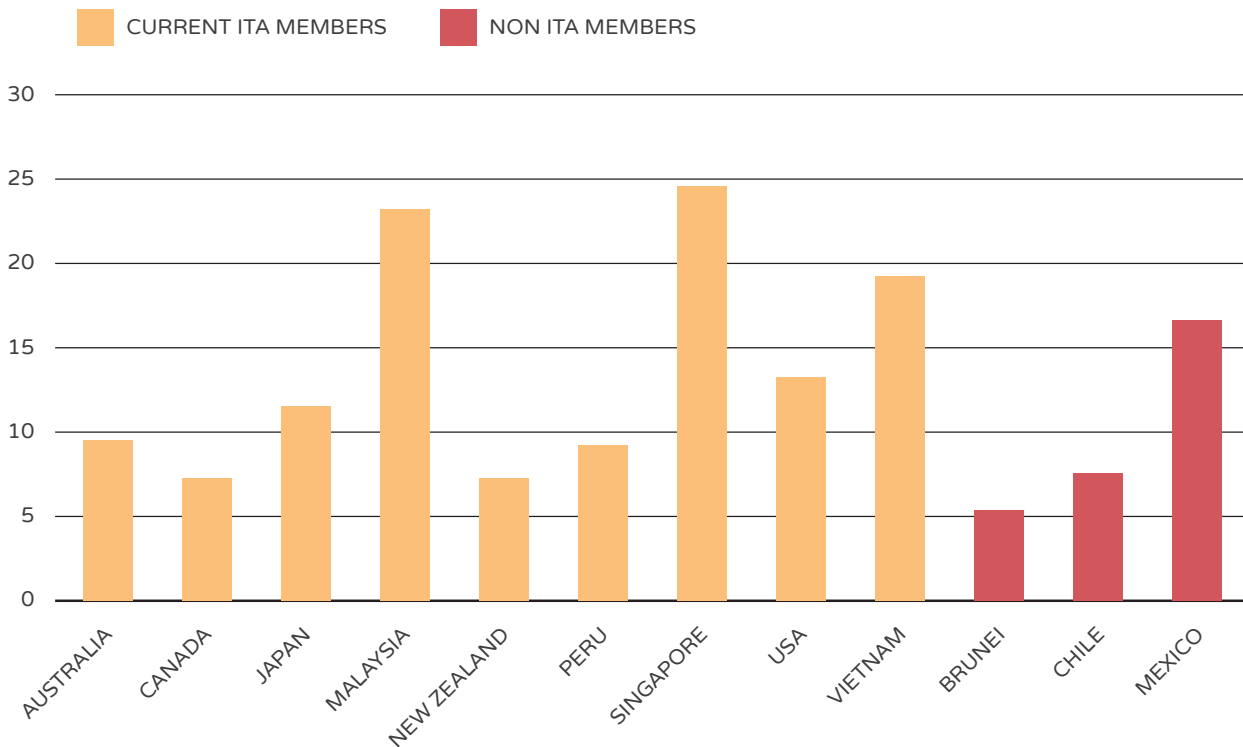
## Accept product testing results from other TPP members

Companies can spend significant amounts of time and money testing and retesting products for every single market. The TPP notes that duplicative conformity assessments are unnecessary. The agreement requires “national treatment” to other member’s testing and the use of certification-qualified assessors. (Ch8.6)

## Removal of tariffs on ICT goods

A digital economy requires digital devices. TPP members have agreed to remove export-tariffs on all ICT products, and Brunei, Chile and Mexico have agreed to join the WTO’s Information Technology Agreement (ITA), which will remove all ICT product import tariffs within seven years (Ch2.17). Given the high value of ICT imports, these significant savings will make digital devices more affordable, spurring growth in the digital economy across the TPP and beyond.

## ICT Imports as % of All Goods Imports



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## Data Localisation and Cross-Border Information Transfers:

In recent years some governments have shown a new desire to keep information inside a nation's borders. Unfortunately, this trend towards localisation has a negative impact on both the privacy and security of user data, and is increasingly serving as a trade barrier for companies from all industries -- including agriculture, retail, and banking -- that use Internet technologies to store and transfer data globally. Localisation requirements impede new and growing businesses that want to compete on a global stage, disadvantage traditional companies that rely on the Internet, and make the market less attractive for foreign companies due to increased barriers to entry.

The TPP prevents countries from imposing these unnecessary localisation burdens on suppliers and customers. The TPP's prohibition on data localisation is coupled with strong protections for the movement of information, critical to cross-border commerce (14.13).

The TPP counters a trend towards requiring that data remain on shore. Localisation requirements are essentially bans on the foreign provision of data processing. The requirement to store data on servers physically inside a country fundamentally misunderstands how digital information is stored in the Internet age. It has several damaging effects, and does not improve the security of data.

An ECIPE report modelled the impacts of proposed data localisation policies in various countries. It found that the impact of Vietnam's Decree 72, if it had been fully enacted, could reduce GDP by 1.7 percentage points, or US\$1.5 billion<sup>2</sup>. Much of this impact would actually be in the manufacturing sector, as much of Vietnam's supply chains are dependent on related services like logistics, warehousing, customs compliance and finance -- all powered by the Internet.

Localisation requirements are most damaging to small and medium businesses. While a major company may have sufficient revenues and scale to justify building data centres in multiple locations, smaller firms can be shut out of the domestic and international Internet economy completely if they cannot access affordable computing and data services.

Data localisation does not prevent foreign surveillance or online privacy. Storing information in one physical location could increase vulnerability. A technique called Sharding is used to store data across a number of geographic locations, meaning different 'columns' of information are spread out, and hacking into several servers to access information is much more difficult.

Legal obligations need not, and generally do not, depend on where a server is physically placed, and should not be designed in such a way. The TPP helps ensure that information will flow in the future.

## TPP AND FINANCIAL SERVICES

While the TPP protects the flow of information across borders and prevents data localization requirements, it does not provide the same level of coverage for financial services. The definition of e-commerce coverage (Ch14.1) carves out financial institutions and cross-border financial service suppliers from the current agreement. This is likely to be a problem, particularly for companies trying to operate in e-commerce and digital trade in the future and especially if the TPP expands beyond the current 12 members.

Firms need to be paid for selling goods and services. Companies of all sorts need to access and store data in commercially sensible locations and provide adequate protection for consumer privacy.

Obstacles to payments, cross-border financial services and the movement of data related to such services will need to be addressed in future iterations of the TPP.

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<sup>2</sup>Bauer et al., The Costs of Data Localisation, ECIPE Occasional Paper: 3/2014.



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## IMPROVING ONLINE SECURITY

### Hi-Tech Authentication

The TPP allows hi-tech authentication. The principle of non-discrimination applies to authentication and online signatures, which are often more practical and more secure than physical signatures, particularly in the digital realm (Ch14.6). Suppliers are free to set the authentication method best suited to their business, provided it meets security standards.

### Consumer Protection

Surveys show that one of the key impediments to e-commerce, particularly in Asia, has been a lack of trust in online markets and payment systems. The TPP requires all members enact enforceable consumer protection laws to prevent fraudulent commercial activities.

Frameworks that provide for the protection of personal information are mandated in the TPP. While the TPP recognises that different countries will approach this challenge differently, it encourages countries to adopt mechanisms that promote compatibility and interoperability between different data protection frameworks, such as the APEC Cross Border Privacy Rules. Similarly, there are rules to prevent spam emails, and to allow individuals to opt out of such communications. (Ch14.8 and 14.14)

Annexe 8B stipulates that those designing encryption products, where information is disguised using code and only readable with a digital 'key', cannot be forced to transfer the key to other parties they work – thereby limiting the ability for data to be hacked by other suppliers in the value chain. This will increase trust in digital services and protect individual's information.

### Cyber Security

With Cyber security increasingly a topic of interest for consumers, businesses and governments around the world, the TPP makes some modest commitments towards collaborating and capacity building on cyber security issues (Ch14.16).

## FAIR COMPETITION

### Balanced IP Protection and Technology Transfers

TPP seeks to strike a balance on intellectual property between appropriate copyright enforcement rules and the interests of users, such as news-gatherers using snippets of content,

researchers deploying text and data-mining tools, and developers of machine learning software. The TPP requires countries to adopt copyright limitations and exceptions that enable these kinds of activities. Other provisions are similar to US copyright laws, including 'safe harbour' rules that protect website owners and other Internet service providers from liability if they take action when appropriately notified of infringing material on their services (Ch18).

Currently, some companies are put off from entering certain markets as entry may mean handing over source code, proprietary algorithms or other intellectual property to a regulator or (government-backed) domestic producers, and thereby losing control over the product it designed. Under the TPP, countries will not be able to make market access contingent on forced transfers of technology, production processes or other proprietary information to domestic firms in their respective territories (Ch9.9 and Ch14.17). But note that the TPP does not prohibit governments from requiring access to source code when software is used for 'critical infrastructure'.

### Technology Choice in Government Procurement and Telecoms

The best services at the best prices require the use of the most suitable technologies. Article 13.23 covers telecommunications technologies, and prevents a TPP member state from requiring that certain technologies are used in any way that may be obstacles to trade.

The TPP government procurement (GP) chapter takes some steps to open national government procurement across all 12 member governments to digital trade and technology providers and vendors for competitive bidding. The opening of government contracts comes with some caveats, including the exclusion of all provincial and local government contracts, and thresholds apply at the federal level. The TPP GP chapter guarantees that tenders will be treated fairly and impartially, and that bidders may request explanations of award decisions. Technical specifications must focus on functional requirements rather than design or descriptive characteristics, which are based on international standards and do not create unnecessary barriers to trade (Ch15.12)

At present there are certain limitations on foreign infrastructure investment in telecoms, the backbone of the digital economy. The TPP will enable suppliers to build networks in the markets they serve—be it landing submarine cables or expanding data and voice networks—to raise infrastructure standards in member countries (Ch13).

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# TPP 10 BENEFITS OF DIGITAL TRADE: THE SHORT CHECKLIST

## 1. Non-discrimination of digital products

A digital version of a product will be treated the same as a physical product.

## 2. No customs duties on digital products

A movie downloaded from an international platform will not incur extra charges.

## 3. Cross-border data flows protected

The TPP recognises the critical role of information in global trade today, and requires governments to allow information movement. And it enables companies large and small to provide services without needing to build excess data centres.

## 4: Balanced intellectual property frameworks

Forced transfer of source code and other proprietary information will be banned, making it easier to enter new markets. There are also balanced copyright protections and intermediary liability protections to ensure artists and designers are protected while researchers, service providers, and journalists can use materials fairly.

## 5. No tariffs on ICT products

Tariffs on ICT products will be removed, making electronics cheaper and boosting demand for digital products and services.

## 6. Enhanced consumer protection

Shoppers can buy online with confidence.

## 7. Greater technology choice

Federal-level government procurement contracts will be opened to allow all firms to compete fairly, specifications will be based on function rather than specific technology, and firms will be able to build the network infrastructure they need.

## 8. Co-operation on cyber security

TPP members will take part in co-operation and capacity-building to make people safer online.

## 9. Stakeholder participation

TPP members will work with manufacturers to design market-driven, international standards that work best for consumers, companies and regulators across the region.

## 10. Better customs procedures

Customs rules will be streamlined and harmonized to make e-commerce simpler and cheaper for all.

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## ABOUT ASIAN TRADE CENTRE

The Asian Trade Centre (ATC) is the premier regional thought leader, advocate and educator for trade in Asia. We work with businesses and governments across the Asia Pacific to make better trade policy.

### Our activities include:

- Increasing capacities and knowledge of government and business leaders through training, workshops and seminars;
- Building bridges between government and business to foster the growth of trade in the region;
- Leading world-class research projects; and
- Conducting outreach to the media, business, NGOs and the interested public on trade issues.

### We provide:

- Strategic and creative thinking to complex policy and regulatory challenges;
- Solutions for both government and companies to vexing trade problems;
- Practical advice and suggestions for improving bottom line performance for companies trying to make sense of complicated trade agreements;
- Sensible knowledge and input to government officials grappling with crafting modern trade agendas for the future.
- Our three primary activities include Research, Training and Advocacy.



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