

Possibility of CPTPP-EU Collaboration in Digital Trade: Analysis from the Stages of Development of Digital Trade Rules

By Shota Watanabe



Author Shota Watanabe

This article examines the possibility of collaboration between the CPTPP countries and the EU in the field of digital trade. In the author's view, digital trade rules are divided into three stages of development, and the possibility of such collaboration can be examined stage by stage.

Development Stages of Digital Trade Rules

1. Rules to facilitate electronic trade in goods and services

Digital trade rules can be broadly divided into three stages of development. The first stage involves rules to remove or reduce various barriers to goods or services transactions. In the case of cross-border transactions of goods and services, for example, the validity of electronic contracts under domestic law and the establishment of electronic signatures and authentication systems to prevent fraud are necessary. These are the first stages of the development of digital trade rules. For example, the text of the World Trade Organization (WTO) Agreement on Electronic Commerce, Interim Arrangements of which were agreed on in March 2026 at the 14th Ministerial Conference of the WTO, and the electronic commerce chapter of early Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPAs) stipulate these rules. The provisions of this stage are the most fundamental of digital trade rules and have been stipulated in many later FTA/EPAs including the CPTPP.

2. Rules to facilitate free flow of data

The next step is to create rules that do not presuppose transactions of goods and services, and specifically to promote free flow of data. Companies that operate internationally can more efficiently expand overseas businesses by digitizing internal information flows, such as human resources, accounting, manufacturing, and logistics. For example, having a centralized database of human resources data at the headquarters enables the optimal distribution of such resources globally. Similarly, the optimal distribution of value chains such as research, development, and production globally requires the free flow of data related to these processes. In these cases, internal data flows, with which transactions do not occur with entities outside the company, shall be promoted. In other words, these regulations are separate from transactions of goods and services and are intended for the promotion of transfers of data themselves.

There are at least two types of such articles: CPTPP-type and EU-type. CPTPP-type articles are often included in FTAs/EPAs led by Japan and the United States. They consist of three articles: prohibition of data localization, prohibition of restrictions on cross-border data transfers, and prohibition of mandatory source code disclosure. However, restrictions on cross-border transfers or localization requirements may be imposed for purposes such as national security or the protection of personal data. Furthermore, requests for the disclosure of source code, for example, may be necessary in the context of AI safety assessments. To ensure the authority to implement such legitimate measures based on public policy objectives, these provisions contain general exceptions and national security exceptions. General exceptions are set out as exceptions applicable to individual articles and as general exceptions applicable to the CPTPP as a whole. As exceptions to the individual articles, Articles 14.11 and 14.13 set out exceptions with the same content, stipulating that parties can maintain restrictive measures otherwise contrary to the obligations "to achieve a legitimate public policy objective, provided that the measure: (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective." This exception is known as the Legitimate Public Policy Objective (LPPO) exception. In addition to the LPPO exception, there are exceptions for FTAs/EPAs as a whole. For example, GATT Articles 20 and 21 apply to the CPTPP *mutatis mutandis*.

EU-type articles have their origins in the model provisions formulated by the EU in 2017. In the EU, the protection of personal data is guaranteed as a fundamental right in the EU Charter of Fundamental Rights, and it would not be appropriate to restrict this by a trade agreement, which is basically aimed at economic interests. Therefore, in my view, the model provisions are considered to have been developed in order to facilitate the FTA negotiations avoiding discussions between DG Trade and Justice of the European Commission, and subsequent litigation in the Court of Justice of the European Union (CJEU) regarding possible conflicts with EU legal order.

This EU model consists of two articles. The first Article is devoted to ensuring the free transfer of data flows, and this is ensured by a qualified list of four acts that impede data transfer. An act that impedes data transfer is, for example, data localization. Article B

recognizes that the protection of personal data and privacy is a fundamental right, and therefore high standards in this regard contribute to trust in the digital economy and to the development of trade. Article B then clarifies that each party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards. In this way, the agreement provides for virtually unlimited policy discretion over data protection as a fundamental right. However, some FTAs concluded by the EU have narrowed policy discretion. For example, in the Japan-EU EPA, the number of prohibited measures has been expanded from four to six. A particularly significant change is the removal of discretionary provisions; the phrase "each party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy" has been amended to read "Each Party recognises the right of the other Party to determine the appropriate level of protection of personal data and privacy, to be provided for by their respective measures."

The Regional Comprehensive Economic Partnership Agreement (RCEP), perhaps in response to China's wishes, is based on the CPTPP model but with a significantly greater degree of policy discretion. More specifically, Article 12.15, which governs the cross-border transfer of data, provides for broader exceptions than those in the CPTPP; it includes wording allowing member states to exercise their own discretion regarding the LPPO exception, whilst excluding the application of dispute settlement procedures.

3. Rules to promote market integration of advanced technologies

The third step is to promote market integration in relation to advanced technologies. Advanced technologies include, for example, artificial intelligence (AI), fintech, and digital identity (ID), and stipulate requirements for ensuring the interoperability of domestic regulations on these technologies. Although many of these stipulate the obligation to make efforts, they are designed to promote market integration to facilitate regulatory coherence by maintaining the interoperability of the domestic regulations on such advanced technologies.

In sum, the three stages of the development are explained in the *Chart*.

Possibility of Cooperation Between CPTPP & EU at Each Stage of Development

1. Rules to facilitate electronic trade in goods and services

As most of these rules are already articulated in WTO Agreement on Electronic Commerce, Interim Arrangements of which were agreed on in March 2026 at MC14, let me explain it here briefly. Following the completion of the JSI Stabilization Text in June 2024, the General Council was requested on Feb. 18, 2025 and Dec. 16, 2025 to adopt a decision to add the Agreement on Electronic Commerce to Annex 4 of the WTO Agreement in accordance with Article 10, paragraph 9, of the Marrakech Agreement Establishing the World Trade Organization. However, the General Council was unable to reach a consensus on this request.

In response to the above, and in parallel with the inclusion in

CHART

Development stages of digital trade rules

	Overview	Example
Rules to facilitate electronic trade in goods and services	<ul style="list-style-type: none"> Rules for promoting cross-border exchange of goods and services. There is a transaction of goods and services as a prerequisite, and rules for building an institutional foundation to support this. 	<ul style="list-style-type: none"> WTO Agreement on Electronic Commerce E-Commerce chapters in early FTAs/EPAs (e.g., Japan-Switzerland EPA) CPTPP
Rules to facilitate free flow of data	<ul style="list-style-type: none"> Rules for promoting the flow of data per se, without presupposing the transaction of goods and services (e.g., building a global human resources database and using data for R&D) 	<ul style="list-style-type: none"> US type: CPTPP/USMCA EU type: Japan-EU EPA/EU-UK TCA China type: RCEP
Rules to promote market integration of advanced technologies	<ul style="list-style-type: none"> Rules to promote market integration by promoting governance interoperability in cutting-edge technology fields such as AI and digital ID (many obligations to make efforts) 	<ul style="list-style-type: none"> Digital Economy Partnership Agreement (DEPA) Australia-Singapore Digital Economy Agreement

Source: Compiled by the Author

TABLE 1

Comparison of JSI E-commerce text (WT/MIN (26)/W/26) & CPTPP

Section	Article	CPTPP
SECTION B ENABLING ELECTRONIC COMMERCE	Article 4: Electronic Transactions Framework	14.5
	Article 5: Electronic Authentication and Electronic Signatures	14.6
	Article 6: Electronic Contracts	-
	Article 7: Electronic Invoicing	-
	Article 8: Paperless Trading	14.9
	Article 9: Single Windows Data Exchange and System Interoperability	-
	Article 10: Electronic Payments	-
SECTION C OPENNESS & ELECTRONIC COMMERCE	Article 11: Customs Duties on Electronic Transmissions	14.3
	Article 12: Open Government Data	-
	Article 13: Access to and Use of the Internet for Electronic Commerce	14.10
SECTION D TRUST & ELECTRONIC COMMERCE	Article 14: Online Consumer Protection	14.7
	Article 15: Unsolicited Commercial Electronic Messages	14.14
	Article 16: Personal Data Protection	14.8
	Article 17: Cybersecurity	14.16 (Cooperation on Cybersecurity Matters)
SECTION E TRANSPARENCY, COOPERATION, & DEVELOPMENT	Article 18: Transparency	Chapter 26
	Article 19: Cooperation	14.15
	Article 20: Development	-
SECTION F TELECOMMUNICATIONS	Article 21: Telecommunications	Chapter 13
SECTION G EXCEPTIONS	Article 22: General Exceptions	Chapter 29
	Article 23: Security Exception	Chapter 29
	Article 24: Prudential Measures	Article 11.11 (Financial Chapter)
	Article 25: Personal Data Protection Exception	-
	Article 26: Indigenous Peoples	Article 29.6: Treaty of Waitangi

Source: Analysis by the author

Annex 4, on March 28, 2026, a Declaration on Provisional Measures for the Agreement on Electronic Commerce was issued. This agreement is intended to put into effect among the participating countries an agreement on electronic commerce, and for example it is intended to arrange provisions (establishment of committees and other bodies, dispute settlement, etc.) that are supposed to be incorporated into the WTO agreement as an agreement outside the WTO. Participating countries are: Argentina, Australia, Bahrain, Benin, Brunei Darussalam, Burkina Faso, Cape Verde, Canada, China, Costa Rica, the EU, Gambia, Georgia, Hong Kong, Iceland, Israel, Japan, Kazakhstan, South Korea, Kuwait, Kyrgyzstan, Laos, Liechtenstein, Malaysia, Mauritius, Moldova, Mongolia, Montenegro, New Zealand, North Macedonia, Norway, Oman, Peru, the Philippines, Qatar, Singapore, Switzerland, Ukraine, United Arab Emirates, and the United Kingdom.

Except for Vietnam, Mexico, and Chile, all CPTPP members and the EU have signed the Provisional Measures for the Agreement on Electronic Commerce. In other words, collaboration has already been

established in the negotiations on the WTO JSI on e-commerce. The challenges ahead will be to encourage the three CPTPP member countries that have not yet signed on to this provisional measure agreement to participate in it, to expand the number of signatories jointly by the EU and CPTPP member countries, and to enter into Annex 4 of the WTO agreement, which has not yet been realized. Furthermore, as shown in [Table 1](#), since the JSI was agreed upon more recently, there are certain provisions that are not included in the CPTPP. Whilst updating the CPTPP to incorporate these provisions during its review is one option, bringing the CPTPP member states that remain part of the JSI on board would likely be a more direct route to rule-making.

2. Rules to facilitate free flow of data

The difficult part is the second step. As I mentioned earlier, restrictions on data transfers limit domestic policy discretion, and each country has struggled to ensure a balance between policy discretion and the free flow of data. As shown in [Table 2](#), seven

TABLE 2

List of data flow related provisions contained in FTA/EPA between CPTPP signatories & EU

CPTPP countries	Name of agreement with the EU	Presence of digital trade provisions	Articles to facilitate free flow of data	Status (■ : effective, ■ : not yet into force)
Japan	EU–Japan EPA	Yes (Electronic Commerce Chapter)	Yes (EU style) *	■ Entry into force (2019, some articles of EC Chapter 2023)
Canada	EU–Canada CETA	Yes (Electronic Commerce Chapter)	Yes (EU style)	■ Provisional entry into force (2017)
Australia	EU–Australia FTA	Yes (Digital Trade Chapter)	Yes (EU style)	■ Negotiation Concluded in March 2026 (Texts are subject to further minor modifications)
New Zealand	EU–NZ FTA	Yes (E-Commerce Chapter)	Yes (EU style)	■ Entry into force (2024)
Singapore	EU–Singapore Digital Trade Agreement	–	Yes (EU style)	■ Entry into force (2026)
Vietnam	EU–Vietnam FTA	Yes (E-commerce Chapter)	No	■ Entry into force (2020)
Malaysia	None	–	–	■ No agreement
Brunei	None	–	–	■ No agreement
Chile	EU-Chile Interim Trade Agreement	Yes (Digital Trade Chapter)	Yes (EU style)	■ Provisional entry into force (2023) *Effective until conclusion of the Advanced Framework Agreement
Peru	EU–Peru/Colombia/Ecuador FTA	Yes (E-commerce Chapter)	No	■ Entry into force (2013)
Mexico	Amended EU–Mexico Global Agreement	Yes (Digital Trade Chapter)	No (revised provisions)	■ Revised and signed (not yet into force)
United Kingdom	UK-EU Trade and Cooperation Agreement (TCA)	Yes	Yes (EU style) *	■ Entry into force (2021)

Note: * The wording of exceptions and privacy provisions is eclectic with the CPTPP.

Source: Analysis by the author

countries have concluded FTAs that include data flow provisions, most of which are EU-style.

In other words, in the short term it will be possible to form certain rules based on the EU-style. For example, while the basic policy in the JSI negotiations is to continue to seek high-level negotiations on data flow provisions, it is possible to use the EU-style rules as a model to gain cooperation from the EU and jointly lead negotiations.

However, if multilateral rules are formed based on EU-style rules, it may become an obstacle for the US to join the CPTPP in the future. The US originally supported the CPTPP-style free flow provisions. However, in 2023, during the administration of Joe Biden, the US announced a withdrawal on digital trade rule-making. One reason for this was to secure domestic policy space, and the US did not want to conclude an international treaty without domestic AI regulations in place, limiting the possibility of future legislation. It can be said that the US is also struggling with the balance between free flow of data and policy discretion. Although the US stance on digital trade has not been clear since the change of administration in January 2025, the Agreement Between the United States of America and the Republic of Indonesia on Reciprocal Trade signed with Indonesia in February

2026 reinstated provisions on digital trade (Article 3.2). Since these provisions also include provisions on data flows, it can be said that the US government supports the inclusion of such provisions.

3. Rules to promote market integration of advanced technologies

For countries such as Japan and Singapore, which have already advanced bilateral digital cooperation with the EU, the significance of these provisions is not significant. In particular, the OECD serves as a forum for policy coordination with the EU. However, the CPTPP includes many developing countries, and it is significant for further policy coordination between these countries and the EU. On the other hand, in the field of advanced technology, the domestic system that ensures interoperability itself is a moving target, such as the trend of the digital omnibus bill in the EU.

Recommendations for CPTPP-EU Cooperation on Digital Trade Rules

Regarding the three-stage rules, the rules in the first stage are

most likely to be realized in the short term. Specifically, the early entry into force of the JSI provisional measures and ensuring implementation should be promoted.

As for the data flow provisions in the second stage, whether or not the involvement of the US is necessary is a turning point. In the latter case, it is effective to promote consideration for future rulemaking in the JSI on free flow of data provision based on EU-type articles such as articulated in the Japan-EU EPA. However, if we need to retain the US as a like-minded country, we should refrain from such articulation, keeping away from too early a harvest, and remain with CPTPP-type articles.

Finally, the advanced technology rules should be considered after the second stage because the domestic system for ensuring interoperability itself is a moving target, such as the trend of the digital omnibus bill in the EU. However, some fields, such as digital IDs, have already been solidified, so it is possible to consider these ahead of time.

Reference Articles on Free Flow of Data

CPTPP Article 14.11: Cross-border transfer of information by electronic means

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure: (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

EU Model Article (horizontal provisions on cross-border data flows and personal data protection)

Article A: Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between the Parties by:
 - (i) requiring the use of computing facilities or network elements in the Party's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of a Party;
 - (ii) requiring the localization of data in the Party's territory for storage or processing;
 - (iii) prohibiting storage or processing in the territory of the other Party;
 - (iv) making the cross-border transfer of data contingent upon use

of computing facilities or network elements in the Parties' territory or upon localization requirements in the Parties' territory.

2. The Parties shall keep the implementation of this provision under review and assess its functioning in 3 years following the entry into force of this Agreement. A Party may at any time propose to the other Party to review the list of restrictions listed in the preceding paragraph. Such request shall be accorded sympathetic consideration.

Article B: Protection of personal data and privacy

1. Each Party recognizes that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. Each Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards.
3. For the purposes of this agreement, "personal data" means any information relating to an identified or identifiable natural person.
4. For greater certainty, the Investment Court System does not apply to the provisions in Articles A and B.

RCEP Article 12.15: Cross-border transfer of information by electronic means

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining: (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

JS

Shota Watanabe is an expert on digital and international economic law. He has been working for more than 10 years on these topics at thinktanks and has several expert committee memberships of Japanese governmental organizations. Currently, he is a chief researcher at Nomura Research Institute, Ltd.