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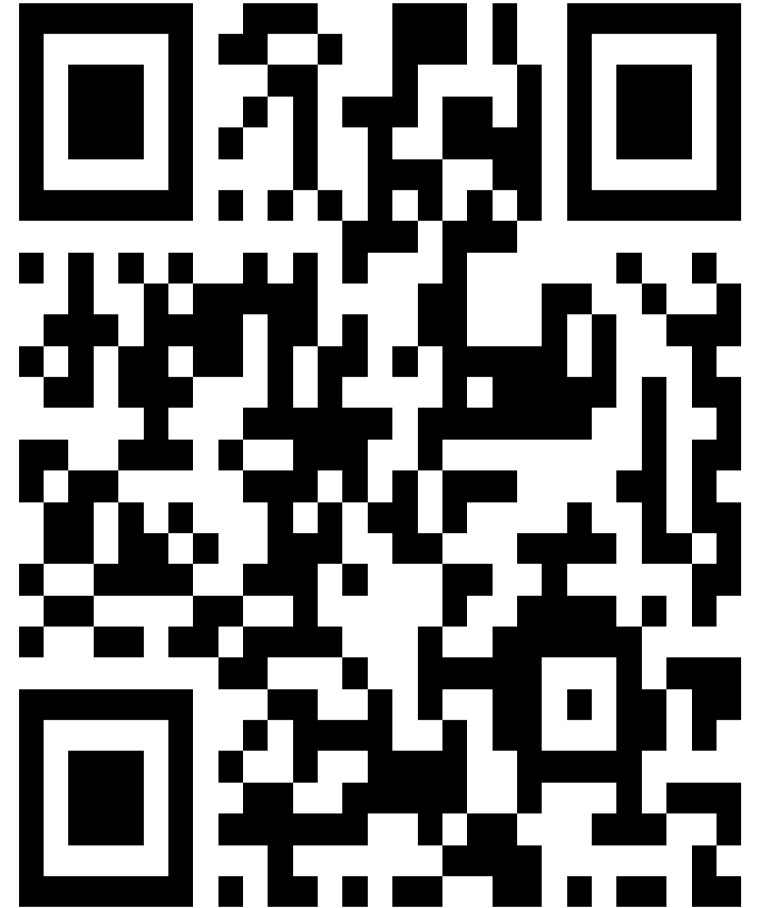
Session 5

What it means for the Pacific Islands Countries

What It Means for the Pacific Island Countries

1. PICs are uniquely positioned to leverage digital trade for economic development, especially through sectors like tourism and e-commerce.

2. However, PICs face significant challenges in integrating into global digital trade, including limited digital infrastructure, low levels of digital literacy, and fragmented regulatory frameworks.

3. Opportunities exist to build digital capacity, particularly in areas like fintech, where small-scale innovations can have outsized impacts.

4. Regional cooperation and alignment with global digital trade standards are crucial for overcoming these challenges and maximizing the benefits of digital trade.
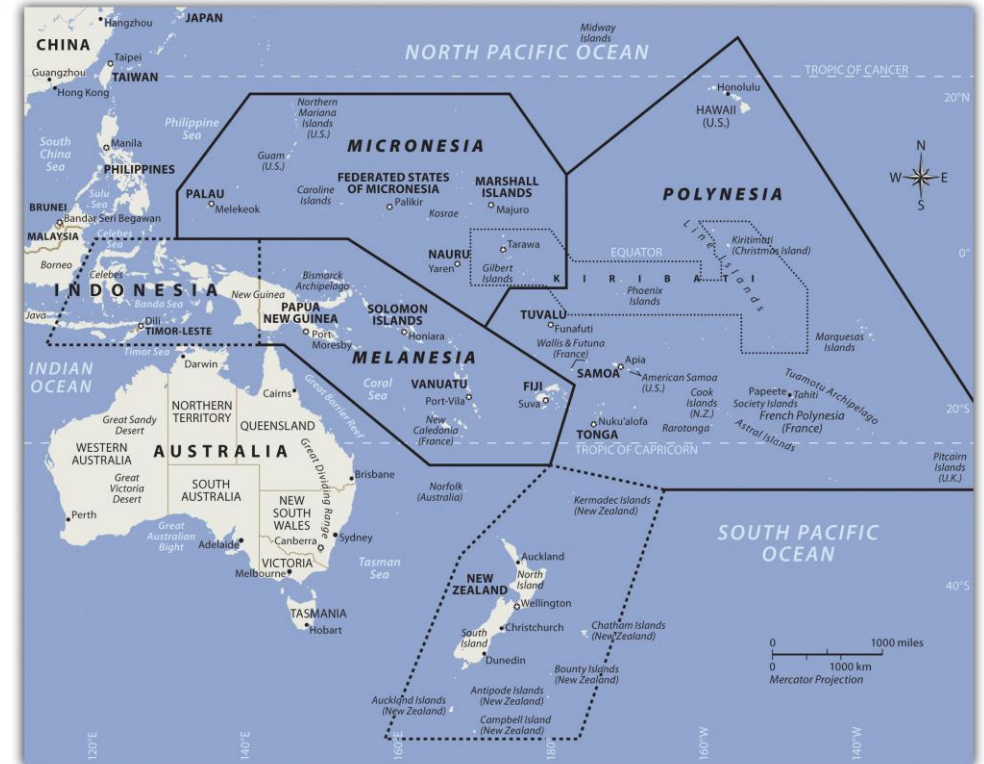
What It Means for PACER Plus Agreements

PACER Plus currently lacks comprehensive digital trade provisions, limiting its ability to address the growing importance of the digital economy.

Expanding PACER Plus to include digital trade could enhance its relevance, providing member countries with the tools needed to engage in the global digital marketplace.

Supplementary agreements focused on digital trade could address key areas like cross-border data flows, digital payments, and cybersecurity.

Incorporating digital trade provisions would support the economic diversification of Pacific Island countries, enabling them to tap into new markets and industries.

How to Get Ready for Future Digital Trade Agreements

- Pacific Island countries should prioritize capacity building, particularly in digital literacy and skills development, to prepare for future digital trade agreements.

- Developing robust legal frameworks that support digital trade, including laws on data protection, cybersecurity, and e-commerce, is essential.

- Investing in digital infrastructure, such as broadband connectivity and secure payment systems, will provide the foundation for successful digital trade integration.

- Regional cooperation and public-private partnerships can help address common challenges, share best practices, and leverage resources effectively.

Technical Assistance and Capacity Building

Technical assistance from international organizations is crucial for building the capacity of Pacific Island countries to implement digital trade agreements.

Capacity building should focus on key areas such as regulatory alignment, digital infrastructure development, and the creation of supportive legal environments.

Regional initiatives, like the Pacific E-commerce Initiative (PECI), can play a pivotal role in coordinating technical assistance and fostering collaboration among member states.

Leveraging partnerships with developed economies and international bodies can provide the necessary expertise and resources to overcome digital trade challenges.

Conclusions

1. Governments increasingly using digital trade agreements as one mechanism to tackle newer issues.

2. Digital trade, including digitally delivered services, makes up a growing share of overall trade flows in the region.

3. Past commitments failed to capture many digital services or provide consistent rules of managing trade in services.

4. A variety of trade arrangements, including stand-alone digital-only agreements, are one way forward.

5. As these approaches apply only to members, they also can discriminate against non-members by providing less access and fewer consistent rules.

6. Digital trade does not recognize geographic boundaries: a global agreement would be clearly the best solution to future challenges.

7. PICs can learn from the progress but also mistakes made by other developing states.
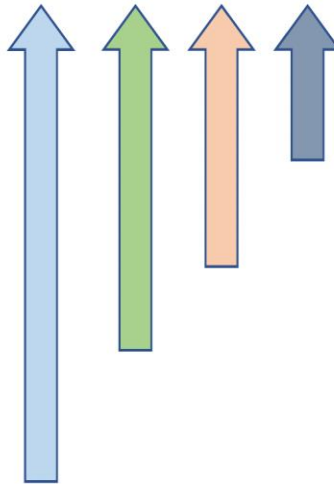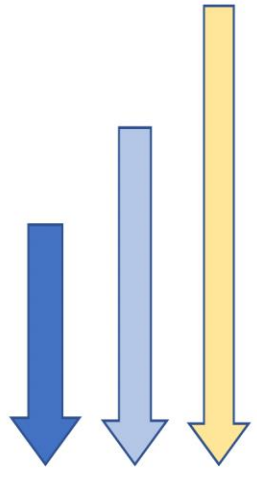
Trade agreements are structured in a hierarchical manner with distinct levels:

1. Chapters

2. Articles

3. Topics

4. Provisions

Hierarchy and Relationship

Chapters contain **several** Articles.

Articles address various Topics relevant to the chapter.

Topics are discussed and regulated through Provisions within the articles.

Example: Chapter 7: Digital Trade -> Article 7.1: Cross-Border Data Flows -> Topic: Data Localization.

Provision: The actual legal commitments, rules, obligations, or rights articulated within an article (Enforceable elements of the agreement)

Example: 'Each party shall allow the cross-border transfer of information by electronic means..."

FOUR BROAD CATEGORIES (NOT OFFICIAL)

Business-Focus: These provisions focus on business operations, investment, and infrastructure, essential for businesses to thrive in the digital economy.

Consumer Focus: These provisions are designed to protect consumer rights and ensure a safe, fair, and secure environment for consumers.

Cross-Border Trade: These provisions facilitate the seamless flow of digital goods, services, and talent across borders.

Cooperation: These provisions emphasize the importance of international collaboration to address shared challenges and opportunities in the digital economy.

RCEP Agreement (EIF 2022)

CHAPTERS

1. Initial Provisions and General Definitions

2. Trade in Goods

3. Rules of Origin

4. Customs Procedures and Trade Facilitation

5. Sanitary and Phytosanitary Measures

6. Standards, Technical Regulations, and Conformity Assessment Procedures

7. Trade Remedies

8. Trade in Services

9. Investment

10. Intellectual Property

11. Electronic Commerce

12. Competition

13. Small and Medium Enterprises

…

18. Final Provisions

ARTICLES

12.5 Paperless Trading
12.6 Electronic Authentication and Electronic Signature
12.7 Online Consumer Protection
Source Code
12. 8 Protection of Personal Information
12.9 Unsolicited Commercial Electronic Messages
12.10 Domestic Regulatory Framework
12.11 Customs Duties
12.12 Transparency
12.13 Cybersecurity
12.14 Location of Computing Facilities
12.15 Cross-Border Transfer of Information by Electronic Means
12.16 Dialogue on E-commerce
12.17 Dispute Settlement

ASEAN Digital Economy Framework Agreement (DEFA) Structure

Chapters, Articles, and Provisions

Chapter 1: General Definitions and Initial Provisions

This chapter typically lays out the foundational definitions and scope of the agreement, ensuring that all parties have a common understanding of the terms and provisions.

Chapter 2: Digital Trade

Focuses on facilitating digital trade by setting standards and guidelines for electronic transactions and contracts.

- Paperless Trading
- Standards and Conformity Assessment for Digital Trade
- Domestic Electronic Transactions Framework
- Electronic Invoicing
- Electronic Contract

Chapter 3: Cross-Border E-Commerce

Addresses the specific needs of cross-border e-commerce, ensuring that products and services can flow seamlessly across borders.

- Express Shipments
- Customs Duties
- Non-Discriminatory Treatment of Digital Products

Chapter 4: Digital ID and Authentication

Focuses on the use of digital identities and authentication methods to support secure and reliable digital transactions.

- Digital Identities
- Electronic Authentication and Electronic Signatures

Chapter 5: Electronic Payments

Dedicated to the facilitation and regulation of electronic payment systems, ensuring they are secure and accessible for cross-border digital trade.

- Electronic Payments

Chapter 6: Talent Mobility and Cooperation

Emphasizes the importance of enabling the mobility of digital talent across borders and fostering cooperation on talent development.

- Scope of Digital Talent for Mobility
- Mobility Support
- Mutual Qualification Recognition
- Talent Cooperation

Chapter 7: Cooperation on Emerging Technologies

Addresses the need for cooperation on the development and regulation of emerging technologies, such as AI.

- Artificial Intelligence
- Cooperation on Emerging Topics

Chapter 8: Data Protection and Privacy

Focuses on ensuring the protection of personal data and privacy in digital trade.

- Personal Information Protection
- Source Code
- Cross-Border Transfer of Information by Electronic Means
- Location of Computing Facilities

Chapter 9: Online Safety and Cybersecurity

Dedicated to ensuring that digital trade is conducted in a secure and safe online environment.
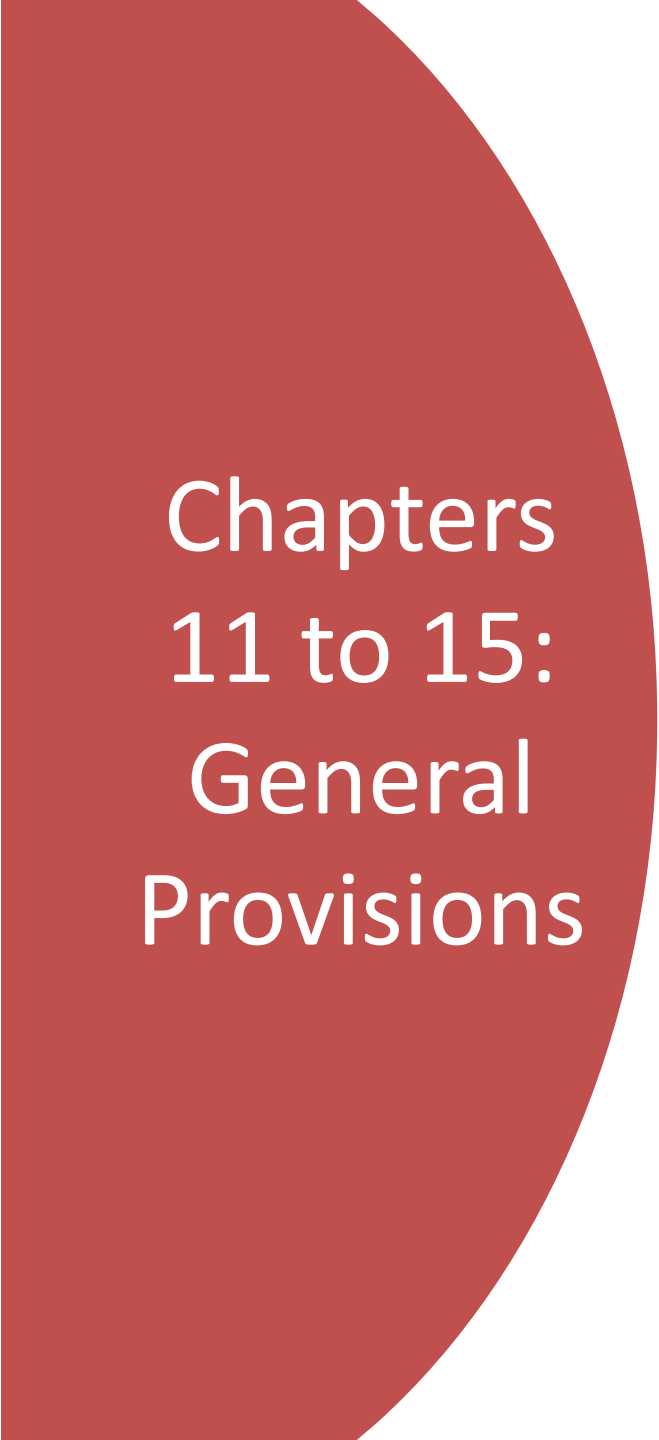
- International Standard Legal Framework
- Online Consumer Protection
- Cybersecurity Cooperation

Chapter 10: Competition Policy

Focuses on ensuring fair competition in the digital economy, particularly concerning large platform players.
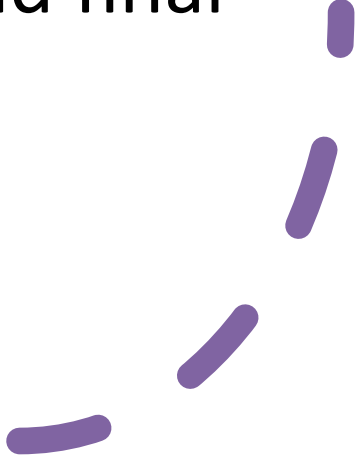
- Cooperation on Competition Policy
- Laws Governing Large Platform Players

Chapters 11 to 15: General Provisions

These chapters cover standard provisions found in most trade agreements, including exceptions, institutional provisions, dispute settlement, and final provisions.

(Proposed) Additional Articles during the First Round

Unsolicited Commercial Electronic Messages

Digital Equity and Inclusion

Open Government Data

Includes topics that may be introduced or discussed in future negotiations.

Key articles topics in DEAs

Electronic Transactions

Essence:

Enabling elecronic [paperless] transactions. [Predominantly] of a commercial nature AND *aligning* their regulation across borders.

Topics:

- Electronic transactions frameworks
- E-authentication / e-signatures
- E-contracts
- E-invoices

Digital Identities

Essence:

Introducing reliable identifiers of individuals, companies, [and things] in the metaverse.

NB: digital identities enable a number of digital processes, including electronic trust services and e-payments

Topics:

Digital Identities ([for now] individual and corporate)

Electronic Payments

Essence:

Enabling / facilitating elecronic payments within and ACROSS borders

Topics:

- Electronic payments
- [in some treaties also] Fintech

E-Trade Facilitation / Paperless Trade

Essence:

Facilitation of the cross-border trade (in goods) via digitization/ digitalization of the customs clearance and other export-import procedures.

Topics:

- Paperless trading
- Express shipments
- Single window

Digital products

Essence:

Adjusting trade rules to accommodate a sui-generis "digital products" phenomenon, belonging neither to "goods" nor to "services" categories.

Examples of digital products: an e-book, a movie transmitted electronically, electronic ticket…

Topics:

- Non-discrimination [among] digital products
- [Moratorium on] customs duties on electronic transmissions

Market access in goods and services

Essence:

Enhance market access (provided in the WTO/RTA schedules) to enable and boost digital trade

NB: these disciplines are CONTRAVERSIAL since they touch upon the extent of the "core" WTO obligations.

Topics:

- Market access in the ICT goods (WTO ITA, WTO ITA Expansion)

- [Improved] Market access in selected servicres

(might include Mode IV – movement of natural persons (e-commerce personnel))

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Emerging technologies

Essence:

Align regulatory efforts / establish cooperation related to the emerging technologies, and, in particular, Artificial Intelligence (AI)

NB: Among the emerging technologies often referred to (beyond the AI) are: Internet of Things (IoT), blockchain; quantum computing; etc.

Topics:

- Cooperation on emerging technologies topics
- AI

Emerging AI Technologies: Definitions

A **generative AI system** is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

A **non-generative AI models** perform computations based on input data (such as classifying an image or translating a text into another language).

Among the **other emerging technologies**: blockchain, IoT, etc. (scope not defined)

TYPES OF AI SYSTEMS BY PRIMARY FUNCTION

1

Automate: AI systems that perform tasks automatically without human intervention. Examples include robotic process automation (RPA) and automated customer service systems.

2

Detect: AI systems designed to identify patterns, objects, or anomalies within data. Examples include facial recognition systems, fraud detection systems, and medical imaging analysis.

3

Interpret: AI systems that understand and make sense of complex data. Examples include natural language processing (NLP) for understanding text and speech, sentiment analysis, and translation services.

4

Predict: AI systems that forecast future outcomes based on historical data. Examples include predictive maintenance, stock market prediction, and weather forecasting.

5

Interact: AI systems that engage in interactive communication with humans. Examples include chatbots, virtual assistants like Siri and Alexa, and interactive voice response (IVR) systems.

6

Create: AI systems that generate new content, such as text, images, music, or video. Examples include generative adversarial networks (GANs), AI art generators, and content recommendation systems.

7

Simulate: AI systems that model and replicate complex processes or environments. Examples include simulations for training purposes, virtual reality environments, and digital twins used in manufacturing and urban planning.

Business Trust (Tech Disciplines)

Essence:

Ensure protection of the proprietary technology in the case of cross-border use; safeguard the reliability of the technological solutions limiting access to data

NB: These disciplines feature an important interplay between the law and technology and need cross-sector collaboration the most.

Topics:

- Source Code
- ICT Products and use of cryptography
- Protection of [Industrial] IP rights online

Digital Trade Standards and Conformity Assessment

Essence:

Aligning technological and organizational standards applicable to the solutions / mechanisms enabling digital trade, to ensure their [potential] interoperability.

Topics:

Digital Trade Standards and Conformity Assessment

Data disciplines

Essence:

Varied rules related to treatment of data of different types (i.e. personal and non-personal) used for the purposes of commercial activities conducted nationally and across borders.

Topics:

- Privacy / Protection of Personal Information
- Cross-border transfer of information by electronic means / cross-border data flows
- Localization of computing facilities / data localization
- Data innovation

Online consumer protection

Essence:

Enhancing consumer trust in e-commerce through ensuring that the goods sold online are delivered, are meeting the quality advertised, and that the consumer redress / recourse is available in the case of a probem.

Ensuring protecion of the online contsumers on the consumers' in brick and morar level.

Topics:

- Online consumer protection
- Spam
- [Open internet access / net neutrality]

[Digital] Competition

Essence:

Ensuring competitive environment / application of the competition law in/to the digital setting, including competition between platforms.

Topics:

- Cooperation on Competition Policy
- Laws governing large platform players
- [Interactive computer services]

Government digitalization

Essence:

Making certain [anonymized] data collected / processed by the government, including statistics, acceesible to / searchable by the public (incl. private sector); digitalizing government processes to enhance their efficiency.

NB: other government data [except for the OGD], is exempted from the digital (i.e. "data-" disciplines).

Topics:

- Open Government Data (OGD)
- Digital Government
- *E-government procurement*
- *Evidence-based rulemaking*

Cross-cutting [procedural] issues

Essence:

Setting the "future agenda" including the topics which have not gained enough clarity / not received enough traction yet; ensuring that the implementation of the adopted rules is transparent; introducing clarity on the [state-to-state] dispute resolution options; encourangemet to engage in the other digital rule-making forums

Topics:

- Cooperation
- Transparency
- Dispute settlement
- Participation in the international and regional [digital] rule-making forums

Digital Equity and Inclusion

Essence:

Measures aimed at enhancement of participation of underrepresented / disadvantaged social groups / enterprises (MSMEs) in digital trade

N.B. Occassionally facilitation of digital trade for MSMEs received separate regulation

Topics:

- Digital Equity and Inclusion
- MSMEs and StartUps

Development / SDT

Essence:

"Adaptation" measures enabling the developing countries and LDCs to better understand their relevant status quo, substantively engage in the digital trade negotiations, and implement their results

N.B. In a sense, an "offensive" interest of the developing countries

Topics:

Digital divide [bridging]/ Development/ Capacity building

Session 7

Group Work