
Biden's One Tech-Trade Policy Shot Trials and Tribulations of a U.S.-Led Digital Trade Agreement in the Indo-Pacific

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Introduction

When the Biden administration assumed office in January 2021, talks of a U.S.-led digital trade agreement dominated foreign policy discussions regarding the Indo-Pacific region. After all, the “China challenge” loomed large, with many from the Atlantic Council¹ to *The New York Times*² wondering if U.S.-China relations will escalate to the “next Cold War.” Following the controversial U.S. withdrawal from the Trans-Pacific Partnership (TPP) in 2017, lawmakers from both the

¹ Hung Tran, “Is the US-China strategic competition a cold war?” Atlantic Council, April 21, 2021, <https://www.atlanticcouncil.org/blogs/new-atlanticist/is-the-us-china-strategic-competition-a-cold-war/>.

² David E. Sanger, “Washington Hears Echoes of the '50s and Worries: Is This a Cold War With China?” *The New York Times*, last updated November 16, 2021, <https://www.nytimes.com/2021/10/17/us/politics/china-new-cold-war.html>.

political right³ and left⁴ have agreed that the U.S. must re-assert itself as a leader in the region, especially on issues of trade. Since rejoining the current TPP seems not only politically unfeasible but also retrogressive for the U.S., it does not appear that President Joe Biden and his team are considering it as an option. What they *are* considering, however, is pursuing a digital trade agreement (DTA) with like-minded partners that both allows the U.S. to re-emerge as a leader in the Indo-Pacific and elevates the standards for global trade agreements as society continues to adapt to the digital age.

As cliché as it sounds, DTAs will be the trade agreements of the future. In her statement released at the G7 Trade Ministers Meeting, U.S. Trade Representative (USTR) Katherine Tai indicated that the ministers “clearly expressed our shared values and opposition to models of digital authoritarianism and digital protectionism.”⁵ Like free trade agreements (FTAs), DTAs enact rules and regulations for international commerce but focus on the digital realm. In addition to developing norms for cybersecurity and internet sovereignty, DTAs set standards for electronic transactions across currencies and for general data usage, storage, and transfer. They can even set universal privacy laws. Most importantly, however, DTAs promote principles of openness, inclusiveness, transparency, and fairness by endorsing international common standards.

³ “Senators Write To Biden Calling For Increased Digital Trade In The Indo-Pacific,” Chuck Grassley, November 8, 2021, <https://www.grassley.senate.gov/news/news-releases/senators-write-to-biden-calling-for-increased-digital-trade-in-the-indo-pacific>.

⁴ “Building a Stronger, Fairer Economy,” Democratic National Committee, accessed November 28, 2021, <https://democrats.org/where-we-stand/party-platform/building-a-stronger-fairer-economy/>.

⁵ “Statement from Ambassador Katherine Tai on the G7 Trade Ministers Meeting,” Office of the USTR, October 22, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/statement-ambassador-katherine-tai-g7-trade-ministers-meeting>.

Although U.S. leaders are contemplating leading a DTA with Asian partners and allies, such an agreement has yet to be formally negotiated.⁶ Policymaking in the U.S. is complicated and bureaucratic, which presents many challenges for the Biden administration as it considers such a deal. Furthermore, Biden's commitment to transforming foreign policy into a tool that uplifts the middle class may further hinder its ability to embrace free trade.

This paper aims to evaluate the feasibility of the U.S. pursuing a DTA in the Indo-Pacific and conduct a thorough analysis of various domestic hurdles the Biden administration will face when doing so. First, it will provide an overview of digital trade, its importance to the Asia-Pacific region, and DTAs that are currently in place. Second, it will address the saliency and severity of three obstacles: maintaining worker-centric messaging consistent with the White House's "foreign policy for the middle class"; overcoming bureaucratic challenges for signing such an agreement; and weathering the political divide within the U.S. This study will conclude with implications for U.S.-Asia relations moving forward.

Background

To understand the challenges President Biden faces to pass a DTA with American partners in Asia, one must first gain a firm understanding of the region's current trade situation. This section will set the stage by discussing the idea of digital trade agreements in more

⁶ Peter Martin, Eric Martin, and Saleha Mohsin, "Biden Team Weighs Digital Trade Deal to Counter China in Asia," *Bloomberg*, last updated July 13, 2021, <https://www.bloomberg.com/news/articles/2021-07-12/biden-team-weighs-digital-trade-deal-to-counter-china-in-asia>.

detail, current DTA frameworks established by similar agreements around the world, and the importance of U.S. leadership in the Indo-Pacific region.

What is the Current State of Trade and Digital Trade?

While Biden's digital trade agreement would be the first of its scale in the Asia-Pacific region, the concept of digital trade (and subsequent digital trade agreements) in general is neither novel nor unique. In July 2013, the U.S. International Trade Commission (USITC) published its first report on digital trade, entitled *Digital Trade in the U.S. and Global Economies, Part 1*, at the request of the U.S. Senate Committee on Finance. The second installment, *Digital Trade in the U.S. and Global Economies, Part 2*, was released in August 2014. Together, these documents presented findings on an investigation that sought to better understand the role of digital trade in both domestic and international economies. The overarching message of both publications was clear: digital trade—products and services delivered via the internet—benefits both producers and consumers, and it's not only growing; it's here to stay.

The endurance of digital trade should come as no surprise, given the vast expansion of electronic commerce in the last two decades. With increased technological advancement, internet usage, and online accessibility, the shift from brick-and-mortar stores to online shopping has been occurring at a steady pace, with blog posts such as “7 Reasons to Take Your Brick-and-mortar Store Online”⁷ and “From Brick And Mortar To Click And Order: Transitioning To eCommerce”⁸ flooding the internet. In the U.S. alone, e-commerce has

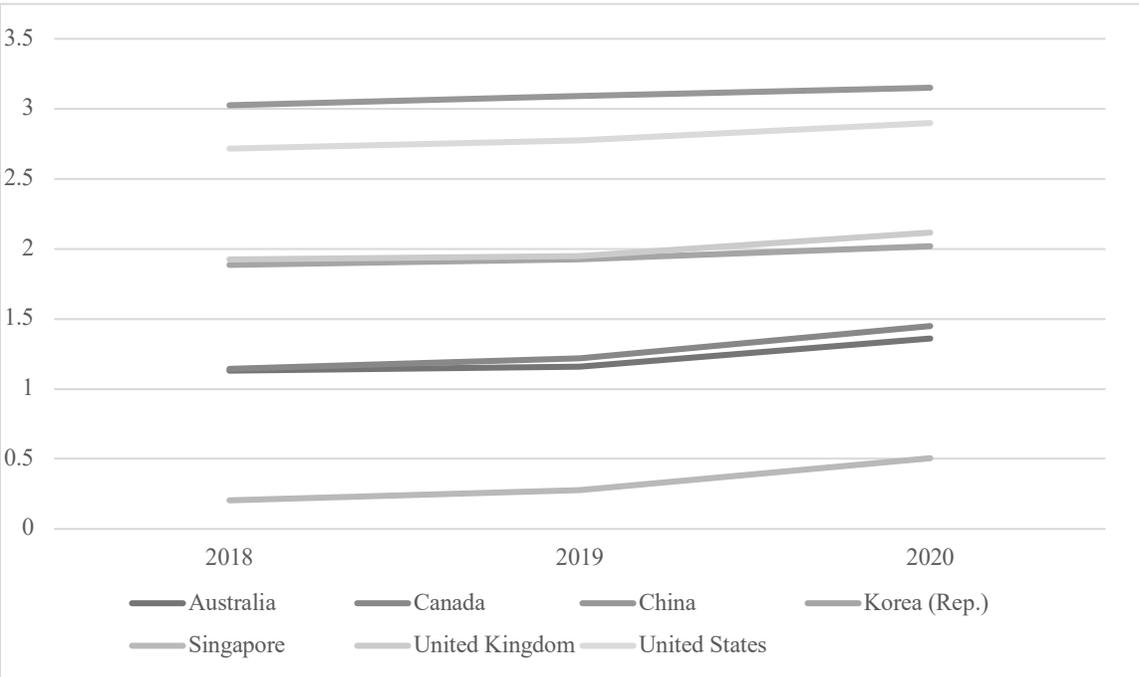
⁷ Jennifer Benjamin, “7 Reasons to Take Your Brick-and-mortar Store Online,” Lightspeed, March 18, 2021, <https://www.lightspeedhq.com/blog/7-reasons-take-to-take-your-brick-mortar-store-online/>.

⁸ Square Contributor, “From Brick And Mortar To Click And Order: Transitioning To eCommerce,” *Forbes*, November 18, 2020, <https://www.forbes.com/sites/square/2020/11/18/from-brick-and-mortar-to-click-and-order-transitioning-to-ecommerce/?sh=2c9316885067>.

comprised a growing share of total retail sales, from only 7% in 2011 to 10% in 2021.⁹ Perhaps fueled by the recent COVID-19 pandemic, online retail sales around the world have markedly increased in the last year (see **Figure 1**). E-commerce has not been the only component of the U.S.'s increasing digital economy; infrastructure (hardware, software, and structures) and priced digital services (cloud, telecommunications, internet and data, and digital intermediary services) have also comprised a large portion of digital economic growth (see **Figure 2**).

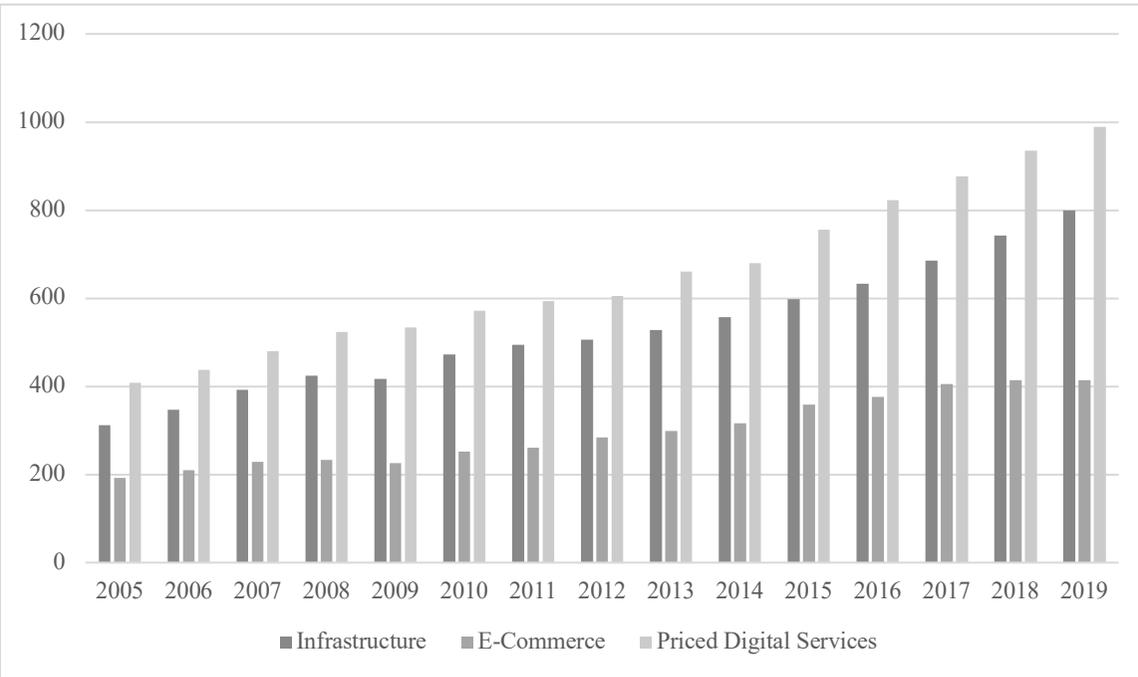
⁹ U.S. Census Bureau, "Quarterly E-Commerce Report Historical Data," U.S. Department of Commerce, accessed December 8, 2021, https://www.census.gov/retail/ecommerce/historic_releases.html.

FIGURE 1: Online Retail Sales (log \$B), Selected Economies, 2018-2020



Source: UNCTAD, based on national statistics offices. See Appendix, Table 1 & Table 2.

FIGURE 2: Digital Economy Value Added by Component (\$B).
2005-2019
 (Chained 2012 dollars)



Source: Bureau of Economic Analysis. See Appendix, Table 3.

These trends show no indication of slowing down, but problems with online cross-border trade have begun to arise. As identified in USITC's second report, barriers to international digital trade include localization requirements, market access limitations, data privacy and protection requirements, uncertain legal liability,

ensorship, and customs requirements.¹⁰ With a variety of market sizes, currencies, political regimes, legal frameworks, and even cultural norms involved in today's complex digital trade arena, governments of all sizes must now contend with new rules and regulations that deal with online transactions and find new ways to protect their citizens and economies. Furthermore, the development of new and emerging technologies—such as artificial intelligence, blockchain, the internet of things, and even digital currencies such as Bitcoin—has opened an entirely new playing field for new legislation.

Digital trade agreements will set the standards for the future of e-commerce. At the most basic level, they define key terms such as data usage, digital content provider, and personal information; authenticate electronic signatures and payments; resolve customs and duties issues across currencies; and protect consumer rights. As promoters of openness and inclusivity, DTAs emphasize the importance of free-flowing data across borders and often commit governments to complete transparency regarding data usage, storage, and transfer. Some agreements¹¹ also include provisions encouraging signatory countries to exchange information on policies and enforcement, cooperate on enhancing cybersecurity and security in electronic communications, and share ideas on optimizing digital tools for government utilization. In this way, DTAs are crucial for promoting free trade and democratic ideals in the digital space, and the first agreements signed would likely be used as templates for subsequent deals.

Why a DTA in the Indo-Pacific, and Why Now?

The Indo-Pacific region is perhaps the most important to U.S. foreign policy in the near future, as it not only comprises the most

¹⁰ “Chapter 4: Barriers to International Digital Trade and Their Economic Effects,” *Digital Trade: Part 2*, USITC, August 2014, pp 77-108.

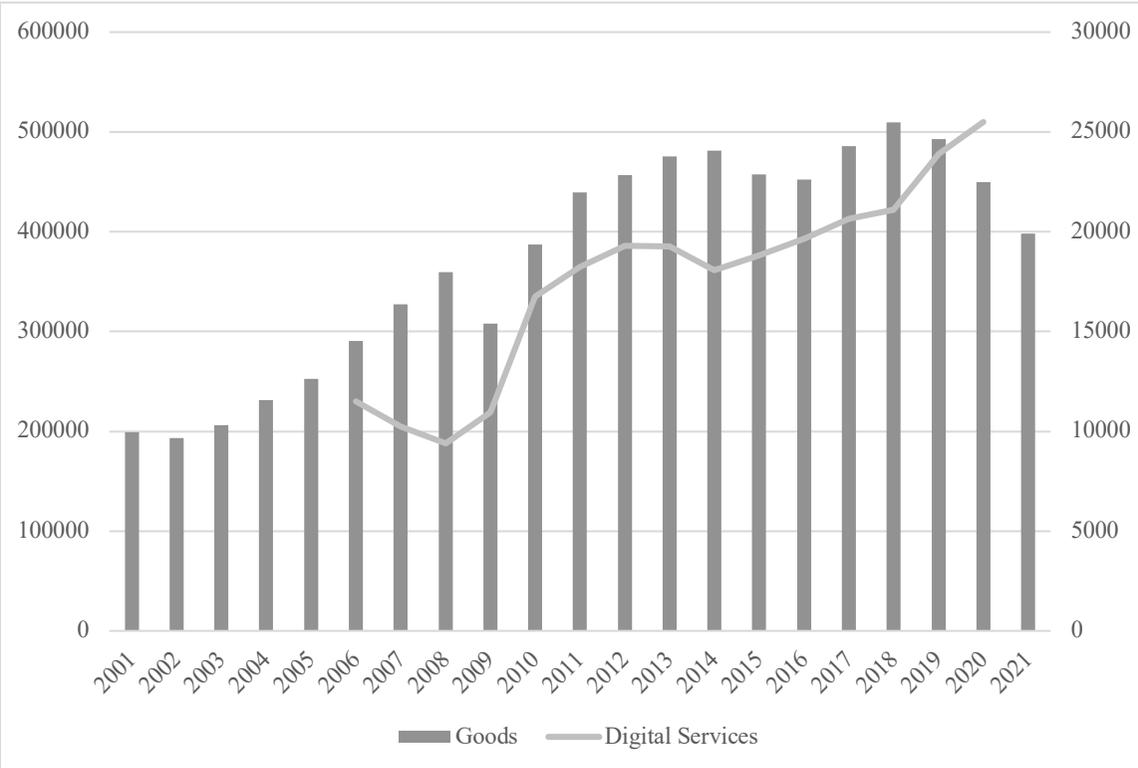
¹¹ Both DTAs the U.S. has signed include such cooperation agreements.

populous region on earth, but also has a growing middle class of nearly 3 billion people.¹² In fact, Asia alone could account for more than half of global consumption growth in the next decade.¹³ U.S. trade with Asian countries has already grown over the last two decades, and it shows no signs of stopping. Naturally, digital trade—especially the exporting of digital services—with these same countries has also increased and will continue to grow (see **Figure 3**).

¹² Oliver Tonby et al., *Asia's future is now*, McKinsey Global Institute, July 2019, pp 15.

¹³ Ibid.

FIGURE 3: U.S. Exports of Goods and Digital Services to Asia (\$M), 2001-2021



Sources: U.S. Census Bureau and Bureau of Economic Analysis. See Appendix, Table 4.

Note: Data for digital services only available 2006-2020.

Given increased trade between the U.S. and Asian countries over the last two decades, these countries have attempted to standardize trade practices and promote open and inclusive trade through an FTA. The Trans-Pacific Partnership, or TPP, was a proposed FTA involving 12 countries in the Asia-Pacific region: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New

Zealand, Peru, Singapore, the United States, and Vietnam. Signed by trade ministers of these respective countries on February 4, 2016, the TPP sought to establish new rules and norms in the region beyond those enforced by the World Trade Organization, all the while liberalizing trade and investment.¹⁴ The USITC,¹⁵ Peterson Institute for International Economics,¹⁶ and World Bank¹⁷ all found that the agreement would lead to net economic gains for signatory countries. Simultaneously, by serving as a leader in this trade deal, the U.S. hoped the TPP would decrease signatory countries' reliance on trade with China, both an economic and geopolitical competitor. At the 2011 APEC Summit in Honolulu, then-President Obama lauded the TPP as "a model not only for the Asia Pacific but for future trade agreements"; all he needed was for Congress to ratify it.¹⁸

Unfortunately for the TPP, such an opportunity never arose. On his first day in office, then-President Donald Trump signed an executive order removing the U.S. from the TPP,¹⁹ and the U.S.

¹⁴ Ian F. Fergusson et al., *The Trans-Pacific Partnership (TPP): In Brief*, Congressional Research Service, February 9, 2016.

¹⁵ *Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, USITC, May 2016.

¹⁶ Peter A. Petri and Michael G. Plummer, *The Economic Effects of the Trans-Pacific Partnership: New Estimates* (working paper), Peterson Institute for International Economics, January 2016.

¹⁷ "Chapter 4: Potential Macroeconomic Implications of the Trans-Pacific Partnership" in *Global Economic Prospects, January 2016: Spillovers amid Weak Growth* (Washington, D.C.: World Bank Publications, 2016), 219-255.

¹⁸ Barack Obama, "Remarks by the President in the Meeting with Trans-Pacific Partnership," Obama White House Archives, November 12, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/11/12/remarks-president-meeting-trans-pacific-partnership>.

¹⁹ Mireya Solís, "Trump withdrawing from the Trans-Pacific Partnership," The Brookings Institution, March 24, 2017,

officially withdrew from the agreement it had so proudly championed on January 30, 2017.²⁰ Although Trump acted on what he claimed were the interests of American workers, insisting that “a lot of companies [will] come back to our country,”²¹ his abandonment of the region left a leadership void that many feared China would be eager to fill. Mike Froman, the USTR under President Obama, called Trump’s move “geostrategically damaging,” and the late Senator John McCain deemed it “a serious mistake.”²²

With the U.S. absent, the remaining 11 countries re-negotiated and successfully signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on March 8, 2018. Two-thirds of the CPTPP’s 30 chapters were pulled from the original TPP, though 22 provisions were suspended or changed, ultimately excluding issues that only the U.S. prioritized. Despite these alterations, the sections on e-commerce remained untouched, affirming acceptance for data protection, free cross-border information flow, and other elements of digital trade.²³

Now that Biden is in office, the U.S. has an opportunity to reclaim its leadership position in the Indo-Pacific. Since harnessing the political will to join the CPTPP will be challenging domestically,

<https://www.brookings.edu/blog/unpacked/2017/03/24/trump-withdrawing-from-the-trans-pacific-partnership/>.

²⁰ Pagán, María L. Pagán, *María L. Pagán to Trans-Pacific Partnership Depositary*, January 30, 2017, letter, Executive Office of the President, Office of the United States Trade Representative, Washington, D.C. (accessed December 7, 2021)

²¹ Peter Baker, “Trump Abandons Trans-Pacific Partnership, Obama’s Signature Trade Deal,” *The New York Times*, January 23, 2017, <https://www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html>.

²² *Ibid.*

²³ Matthew P. Goodman, “From TPP to CPTPP,” CSIS, March 8, 2018, <https://www.csis.org/analysis/tpp-cptpp>.

negotiating a DTA with similar, if not the same, partner countries would be an effective and feasible way to slowly re-insert the U.S. into Asian trade matters. At a time when many are debating about the future of U.S.-China relations, stepping up to lead a DTA in the region would be both strategically and economically beneficial to the U.S. After all, the U.S. must assure its Asian allies and partners that it will not abandon them yet again.

What DTA Frameworks Already Exist?

Luckily for the Biden administration, even though DTAs are a generally newer concept, a few models of DTAs already exist. Some of these involve the U.S., such as the U.S.-Japan DTA and chapter 19 of the U.S. Mexico Canada Agreement (USMCA), and others include various Indo-Pacific countries, such as Singapore, Australia, and Chile. These agreements can be prototypes for a U.S.-led DTA in the Asia-Pacific and have all been signed within the last two years.

Though many bilateral FTAs the U.S. has signed include chapters on electronic commerce, Washington's only explicit DTA is with Japan.²⁴ The two countries signed the U.S.-Japan Digital Trade Agreement on October 7, 2019, and it went into effect on January 1, 2020. As two developed economies and digitally advanced countries, the U.S. and Japan agreed on many major provisions to drive economic prosperity, promote fair and balanced trade, and set standards in digital trade. Some of these provisions include the prohibition of customs duties to digital products distributed electronically, protection of cross-border data flow and non-discriminatory treatment of digital products, acceptance of electronic authentication and electronic signatures, promotion of open access to

²⁴ There are electronic commerce chapters in U.S. FTAs with Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman, Panama, and Peru. CAFTA-DR also includes a similar chapter. (<https://ustr.gov/issue-areas/services-investment/telecom-e-commerce/e-commerce-fta-chapters>)

government-generated public data, and guarantee of enforceable consumer protections, such as personal privacy.²⁵ Since they are close Pacific allies and global leaders in innovation, it comes as no surprise that the U.S. signed its first agreement of this kind with Japan.

During negotiations for the USMCA (United States-Mexico-Canada Agreement), parties proactively included a chapter on digital trade. Thus, when the complex trade deal between the U.S., Mexico, and Canada was signed on December 10, 2019 (and made effective on July 1, 2020), it not only replaced the North American Free Trade Agreement (NAFTA) as the trademark FTA in North America but also set new standards for e-commerce in the region. Like the U.S.-Japan DTA, this chapter established definitions for key terms (algorithm, digital product, electronic authentication, etc.), prohibited customs duties and barriers to business-related, cross-border information transfer, enacted personal information and online consumer protections, emphasized the importance of internet access and usage, and recognized the significance of open government data, among other provisions.²⁶ The USTR Office has touted both aforementioned agreements as the “most comprehensive and high-standard trade agreement[s] addressing digital trade barriers ever negotiated.”²⁷

The U.S. is not the only country to have successfully laid the groundwork for digital trade provisions. The Australia-Singapore Digital Economy Agreement, signed digitally on August 6, 2020, was

²⁵ “FACT SHEET on U.S.-Japan Digital Trade Agreement,” Office of the USTR Archives, accessed December 7, 2021, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/october/fact-sheet-us-japan-digital-trade-agreement>.

²⁶ Chapter 19 of the USMCA, signed by the U.S., Mexico, and Canada in Mexico City, Mexico on November 30, 2018, revised December 10, 2019, effective July 1, 2020, <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>.

²⁷ “FACT SHEET,” USTR, December 7, 2021.

enacted four months later on December 8.²⁸ The Digital Economy Partnership Agreement, a partnership between New Zealand, Chile, and Singapore, was signed virtually on June 12, 2020, and became effective on January 7, 2021. The CPTPP and Regional Comprehensive Economic Partnership (RCEP) also include chapters on e-commerce. Most recently, on December 9, 2021, the U.K. and Singapore entered into a Digital Economy Agreement, the first-ever digitally focused trade agreement signed by a European country.²⁹ These agreements are similar to the DTAs the U.S. has entered, and they offer hope for future collaboration on a DTA for Indo-Pacific countries. With the demand for more defined digital trade standards, the opportunity to succeed in Asia, and these four strong examples of existing DTAs, the U.S. should feel confident that it can devise another agreement with Asian trade partners, some of whom the U.S. already has FTAs with.³⁰

Challenges to the DTA

No trade agreement has ever been ratified without obstacles and pursuing a DTA in the Indo-Pacific will be no exception. This section will discuss challenges that the Biden administration will undoubtedly face throughout this process: 1) aligning DTA priorities with that of his worker-centric foreign policy promise to the American people, 2) overcoming bureaucratic challenges of the complex U.S.

²⁸ “Australia-Singapore Digital Economy Agreement,” Australian Government Department of Foreign Affairs and Trade, accessed December 11, 2021, <https://www.dfat.gov.au/trade/services-and-digital-trade/australia-and-singapore-digital-economy-agreement>.

²⁹ “UK agrees world's most comprehensive digital trade deal with Singapore,” Gov.uk, December 9, 2021, <https://www.gov.uk/government/news/uk-agrees-worlds-most-comprehensive-digital-trade-deal-with-singapore>.

³⁰ The U.S. has FTAs with Australia, Canada, Chile, Korea, Mexico, Peru, and Singapore. (<https://ustr.gov/trade-agreements/free-trade-agreements>)

policymaking system, and 3) gaining the support of both Democrats and Republicans amidst divided domestic politics.

Challenge 1: Biden's Worker-Centric Foreign Policy

A key promise of Joe Biden's on the campaign trail was to ensure workers had a seat at the table during trade negotiations; in other words, he believes in a trade policy that puts American workers first. More broadly, he campaigned on the idea of a "foreign policy for the middle class," a strategy that seeks to support the upward economic and social mobility of middle-class Americans.³¹ In June 2021, USTR Katherine Tai promised a "more inclusive process," the lifting of "people that have been systematically excluded or overlooked," and foreign and trade policy that "work for the middle class."³² Indeed, aside from recovering the economy from the ongoing COVID-19 pandemic, implementing a worker-centric trade policy seems to be the number one priority for the administration's trade agenda, as outlined in the president's 2021 trade report.³³

News that the White House might consider negotiating a DTA—essentially a free trade deal for the digital realm—may be controversial with union leaders and environmentalists, who have argued that trade liberalization leads to the exporting of jobs overseas (or, in this case, the loss of jobs to automation), sub-standard working conditions and low wages, and a lack of environmental protections.

³¹ "The Power of America's Example: The Biden Plan for Leading the Democratic World to Meet the Challenges of the 21st Century," Biden Harris 2020, accessed December 10, 2021, <https://joebiden.com/americanleadership/>.

³² "U.S. Trade Representative Katherine Tai Outlines Biden-Harris Administration's Historic 'Worker-Centered Trade Policy,'" Office of the USTR, June 10, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/us-trade-representative-katherine-tai-outlines-biden-harris-administrations-historic-worker-centered>.

³³ "Fact Sheet: 2021 President's Trade Agenda and 2020 Annual Report," Office of the USTR, accessed December 9, 2021.

Furthermore, many have lamented that FTAs notoriously prioritize powerful corporate interests at the expense of working people, sometimes even behind closed doors.³⁴ At a time when “Big Tech” has come under congressional scrutiny for antitrust violations, some might warn that a DTA will only serve to strengthen the likes of Google, Amazon, and Facebook, companies that thrive on free flows of information and the tracking and/or collection of data.³⁵ Most challenging for Biden, however, would be pursuing this multilateral agreement alongside his promise to refrain from signing trade deals until his administration invests in American workers and communities at home.³⁶ With one year in office and only a scaled-back version of his original infrastructure bill to show for his American-centric agenda, acting too quickly to negotiate a DTA with Asian countries might signal a de-prioritization of the American workers to whom he made his promise.

The good news for trade deal skeptics is that formulating policy to fit the increasingly digitized age is not limited to trade deals themselves. To incorporate a DTA in Biden’s “foreign policy for the middle class,” Biden can simultaneously pursue domestic technology-related policies that benefit American workers. These can include modernizing trade adjustment assistance for those whose jobs are replaced by technological advancement, devising a new classification for gig economy workers who do not meet the current definition of “employee,” and instituting national data privacy laws to protect personal information stored online, among other tangential policies.

³⁴ Lydia DePillis, “The catch-22 of trade deals done in secret,” *The Washington Post*, May 15, 2015, <https://www.washingtonpost.com/news/wonk/wp/2015/05/15/the-catch-22-of-trade-deals-done-in-secret/>.

³⁵ Marcy Gordon, “Bills that could force Big Tech breakups unveiled in House,” *AP News*, June 11, 2021, <https://apnews.com/article/government-and-politics-joe-biden-amazoncom-inc-apple-inc-technology-4c2765b955e4c556002aebb8e48d3c21>.

³⁶ Martin et al., “Biden Team Weighs.”

Biden can also take advantage of this opportunity to promote environmentally-friendly tech standards, such as adopting a paperless society, regulating the environmental footprint of technologies, and the like. These policies will surely face opposition, but they are feasible ways for Biden to frame the DTA as an appendage of his “foreign policy for the middle class.”

Challenge 2: Practical Bureaucratic Challenges

Aside from the need to frame a DTA in the right light, the Biden administration will also face various hurdles within the bureaucratic American lawmaking system. Although agencies in the executive branch are tasked with negotiating deals with partner countries, Congress has the ultimate authority over passing legislation that would allow such deals to enter into effect. Additionally, since digital trade is a topic that involves national security concerns, more leaders than usual will be included in negotiations. Government processes are already sluggish and compromises are difficult to reach; congressional bureaucracy and additional players will surely drag the game.

Through the Commerce Clause, the U.S. Constitution grants Congress exclusive authority to levy tariffs, regulate foreign commerce, and oversee trade matters in general. However, since negotiations through the executive branch are often more efficient, Congress has (for nearly half a century) granted presidents the ability to enter into trade deals through the Trade Promotion Authority (TPA). Also known as the “fast track” authority, TPA is Congress’s way of expediting the trade negotiation process by 1) specifying U.S. policy priorities, 2) requiring executive branch consultations with Congress, 3) defining the terms under which presidents may enter into trade agreements, and 4) reaffirming the constitutional authority of Congress

to regulate trade policy.³⁷ Since TPA was first enacted in 1974, presidents from Gerald Ford to Donald Trump have used it to advance trade negotiations with limited congressional involvement. With the TPA, both the TPP and USMCA came to fruition. Unfortunately for Biden, however, the latest authorization of TPA expired on July 1, 2021, and he has shown no indication of seeking to renew it.³⁸ Republicans on the House Ways and Means Committee have urged the president to begin consultations and the renewal process,³⁹ but USTR Tai has said the administration would only do so with bipartisan support.⁴⁰ Indeed, without TPA, the Biden administration lacks not only the formal authority to negotiate effectively but also the credibility with foreign partners to do so.

Another bureaucratic hurdle that Biden will face is balancing the multiple—and perhaps contrasting—opinions of his advisors. Unlike traditional FTAs, a DTA will involve more than the Departments of State, Commerce, and Labor, as well as the USTR. Due to the cybersecurity and geopolitical dimensions of digital trade, members of the National Security Council will surely seek to participate in discussions as well. Wrought in anti-China language, the Trump administration often blurred the line between digital trade and national security, and the continuous addition of Chinese technology

³⁷ Ian F. Fergusson, “Trade Promotion Authority (TPA),” Congressional Research Service, updated December 14, 2020, <https://crsreports.congress.gov/product/pdf/IF/IF10038>.

³⁸ Eric Martin, “Biden’s Fast-Track Trade Authority Is Set to Expire This Week,” Bloomberg, June 29, 2021, <https://www.bloomberg.com/news/newsletters/2021-06-29/supply-chains-latest-biden-lets-trade-promotion-authority-lapse>.

³⁹ “Brady, Buchanan Lead Letter to Biden Calling for Renewal of Trade Promotion Authority,” House Committee on Ways and Means, August 3, 2021, <https://gop-waysandmeans.house.gov/brady-buchanan-lead-letter-to-biden-calling-for-renewal-of-trade-promotion-authority/>.

⁴⁰ Martin, “Expire.”

firms to the U.S. entity list have only served to exacerbate these multi-pronged concerns.⁴¹ Although Biden will not use the same inflammatory language, his administration has nonetheless continued many of Trump's initiatives to be "tough on China."⁴² Issues of data privacy, information security, intellectual property, and even human rights abuses will surely arise during negotiations with Asia-Pacific partners, especially because there will be no hiding the U.S.'s intention to counter China's influence in the region. In this way, Biden will need to carefully consider the input from a variety of federal agencies in addition to congressional leaders. While these views may converge on some topics, they are bound to diverge on others.

At the National Security Commission on Artificial Intelligence Global Emerging Technology Summit in July 2021, Biden's National Security Advisor Jake Sullivan committed to "build[ing] a technological future that delivers for the United States and for our fellow democracies," an indication that working alongside democratic partners is central to the administration's foreign policy, a grand strategy that undoubtedly includes digital trade.⁴³ There is no question about whether the administration possesses a promising vision or an effective arsenal of minds and tools. However, only by renewing TPA and navigating a plethora of viewpoints will Biden be successful in negotiating a DTA in the Asia-Pacific.

⁴¹ Amanda Macias, "U.S. blacklists dozens of Chinese tech firms citing national security concerns," CNBC, November 24, 2021, <https://www.cnbc.com/2021/11/24/us-blacklists-dozens-of-chinese-tech-firms.html>.

⁴² Biden's diplomatic boycott of the Beijing Olympics, as well as his Summit for Democracy (to which he invited Taiwan) are great examples.

⁴³ "Remarks by National Security Advisor Jake Sullivan at the National Security Commission on Artificial Intelligence Global Emerging Technology Summit," White House, July 13, 2021, <https://www.whitehouse.gov/nsc/briefing-room/2021/07/13/remarks-by-national-security-advisor-jake-sullivan-at-the-national-security-commission-on-artificial-intelligence-global-emerging-technology-summit/>.

Challenge 3: Divided Domestic Support

The aforementioned obstacles might seem difficult to overcome, but neither will be more challenging than gaining political support from lawmakers and citizens from both ends of the political spectrum. In the last decade, trade policy has become an extremely contentious topic, and rifts have formed in both the Republican and Democratic parties. Historically, Republicans have been the party to support free trade and economic liberalization, but, with the rise in popularity of Donald Trump, a self-proclaimed protectionist, Trump's supporters have shifted the Republican platform towards one that denounces free trade and globalization. Democrats, on the other hand, had been the most vocal critics of NAFTA and even the TPP; that is until the dramatic swing of Republicans left Democrats to be sole champions of the liberal economic order. In March 2016, the Pew Research Center found that views of U.S. FTAs were more positive among Democrats than Republicans, with 60% of Democratic and Democratic-leaning respondents labeling FTAs as a good thing (vs. 30% bad thing) and 40% of Republican and Republican-leaning agreeing (vs. 52% disagreeing).⁴⁴ As recently as the 2018 midterm elections, 10% more primary-voting Democrats than Republicans said trade creates U.S. jobs, while 14% more primary-voting Republicans than Democrats said trade takes away U.S. jobs.⁴⁵ Although Biden is a more moderate politician, the pendulum does not seem to be stopping

⁴⁴ Bruce Stokes, "Republicans, especially Trump supporters, see free trade deals as bad for U.S.," Pew Research Center, March 31, 2016, <https://www.pewresearch.org/fact-tank/2016/03/31/republicans-especially-trump-supporters-see-free-trade-deals-as-bad-for-u-s/>.

⁴⁵ Elaine Kamarck and Alexander R. Podkul, "Role reversal: Democrats and Republicans express surprising views on trade, foreign policy, and immigration," The Brookings Institution, October 25, 2018, https://www.brookings.edu/blog/fixgov/2018/10/25/role-reversal-democrats-and-republicans-express-surprising-views-on-trade-foreign-policy-and-immigration/#_ftn2.

its swing; digital trade might be different from traditional FTAs, but Biden will nonetheless be required to craft a canny case in order to win over the hearts and minds of Democrats and Republicans alike.

Political divisions within parties will be equally challenging to overcome, especially since legislators typically vote together as blocks. Those on the far left, such as Representative Alexandria Ocasio-Cortez and Senator Bernie Sanders, have argued that free trade hurts workers, and Sanders has famously voted against every FTA that has come to the floor in the last 30 years (excluding a 2011 South Korea vote for which he was not present).⁴⁶ Meanwhile, the far-right—Trump supporters and congresspeople such as Senator Josh Hawley, Don Beyer, Mark Warner, and Tim Kaine—has now bought into the belief that trade is detrimental to the American economy; Hawley recently introduced the *Make in America to Sell in America Act*, which aims to “revitalize American manufacturing” by requiring the domestication of certain supply chains in order to protect American industry.⁴⁷ Though those who support free trade from both sides of the aisle still exist, they are few and far between, primarily comprising centrists such as Pat Toomey, John Kasich, Barack Obama, Hillary Clinton, and, perhaps, Joe Biden. Given its geopolitical and geostrategic advantages, a DTA in the Indo-Pacific has the potential to become a bipartisan effort, but only if the Biden administration can navigate dissent from vocal opposers of free trade, including those from his own party.

⁴⁶ Christina Wilkie, “Biden and Sanders’ fight over trade is a war for the future of the Democratic Party,” CNBC, March 9, 2020, <https://www.cnbc.com/2020/03/09/biden-vs-sanders-trade-fight-is-war-for-future-of-democratic-party.html>.

⁴⁷ “Hawley Introduces New Bill to Curb Supply Crisis, Revitalize American Manufacturing,” Josh Hawley congressional website, October 20, 2021, <https://www.hawley.senate.gov/hawley-introduces-new-bill-curb-supply-crisis-revitalize-american-manufacturing>.

No trade deal will be valid without congressional approval, and aligning the interests of a deeply divided country will be extremely difficult. Though Biden could attempt to solely unite free trade-supporting centrists from both parties to move forward with a DTA, the president is a huge fan of bipartisanship. As demonstrated by the White House's negotiation style for the latest infrastructure bill, Biden will most likely prefer to make any major decisions (like joining a DTA) with as much bipartisan support as possible, even though his party currently controls both chambers of Congress.⁴⁸ Accordingly, those in support of a DTA in the Indo-Pacific should be prepared for months of negotiations, both with domestic counterparts and international partners.

Conclusion

As this paper has demonstrated, a U.S.-led digital trade agreement in the Indo-Pacific is increasingly paramount to both keeping up with the demands of modern-day electronic commerce and ensuring such is done in a way that preserves liberal democratic values. Of course, with Biden's worker-centric narrative, various bureaucratic hurdles, and divided domestic politics, this will be no easy task. However, the U.S. is never one to shy away from a challenge, and this is certainly the time to step up once more.

Accordingly, there are several implications to consider as discussions around a DTA proceed in Washington. First, any move by the U.S. to improve relations with countries in the Indo-Pacific will surely generate a response from China, so Biden must be prepared to play the defensive. Given increased competition between the two superpowers to gain influence in the region, opening negotiations for

⁴⁸ Laura Barrón-López and Christopher Cadelago, "Biden's obsession with scoring a bipartisan deal suddenly looks quite doable," *Politico*, July 22, 2021, <https://www.politico.com/news/2021/07/22/biden-bipartisan-infrastructure-deal-500526>.

such a deal will undoubtedly raise tensions with the Middle Kingdom even further. Nonetheless, Washington must not fear Beijing's reaction because signing a DTA will benefit all parties involved (though this of course does not include China). To be a true leader in the region, the U.S. must act proactively in the interests of the region, not fear retaliation from an authoritarian regime.

Second, those who eventually negotiate the DTA must remember the grave responsibility that comes with the privilege of doing so in such a populous region. After all, DTAs are standards-setting agreements whose provisions will bear real consequences for real people. With the backlash against "Washington elites" spotlighted by the election of Donald Trump, the U.S. must enter into negotiations with sincere humility and unfettered concern for both the Americans and non-Americans that a DTA will impact. Furthermore, when considering the terms for this DTA, the Biden administration must keep in mind that such a comprehensive agreement will later serve as templates for other multinational agreements in the future, which means the reach of a DTA in the Indo-Pacific will span far beyond the region itself.

Finally, since technological development shows no signs of waning, it would be best for the U.S. to begin negotiations on this DTA as soon as possible. In other words, it's not a matter of *if*, but *when*. Other countries, such as Singapore, have already achieved much success in signing DTAs with partners around the world; to stay in front of the curve, the U.S. must act quickly towards making a DTA in the Indo-Pacific a reality. If the Biden administration stalls further, China may elect to pursue a similar agreement with Asian allies first, establishing norms that favor autocracy and filling the region's leadership void as many feared with the U.S. withdrawal from TPP.

The challenges outlined in this paper are serious and must not be overlooked, but they are also not insurmountable. After all, these obstacles mainly concern domestic affairs, and, though the U.S. has

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been politically divided for many years, the Biden administration is working hard to overcome this division and unite the country. Progress may not happen overnight, but it should not stand as a barrier between the U.S. and negotiating a standards-setting DTA. Given the economic, political, and strategic benefits that a DTA in the Indo-Pacific will produce, it is only fair that the Biden administration gives it a shot.

Appendix

**TABLE 1: Online Retail Sales (\$B), Selected Economies, 2018-
2020**

<i>Country</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
Australia	13.5	14.4	22.9
Canada	13.9	16.5	28.1
China	1,060.4	1,233.6	1,414.3
Korea (Rep.)	76.8	84.3	104.4
Singapore	1.6	1.9	3.2
United Kingdom	84.0	89.0	130.6
United States	519.6	598.0	791.7

TABLE 2: Online Retail Sales (log \$B), Selected Economies, 2018-2020

<i>Country</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
Australia	1.13033377	1.15836249	1.35983548
Canada	1.1430148	1.21748394	1.44870632
China	3.02546972	3.09117436	3.15054154
Korea (Rep.)	1.88536122	1.92582757	2.0187005
Singapore	0.20411998	0.2787536	0.50514998
United Kingdom	1.92427929	1.94939001	2.11594318
United States	2.71566914	2.77670118	2.89856064

Source: UNCTAD, based on national statistics offices.

“Global e-commerce jumps to \$26.7 trillion, COVID-19 boosts online sales,” United Nations Conference on Trade and Development, May 3, 2021, <https://unctad.org/news/global-e-commerce-jumps-267-trillion-covid-19-boosts-online-sales>.

TABLE 3: Digital Economy Value Added by Component (\$B),
2005-2019
 (Chained 2012 dollars)

<i>Year</i>	<i>Infrastructure</i>	<i>E-Commerce</i>	<i>Priced Digital Services</i>
2005	311.3837	192.6527	408.5334
2006	346.8575	210.177	438.1569
2007	392.3432	229.4441	480.0449
2008	425.0315	232.8445	524.2281
2009	417.6562	226.3088	533.2411
2010	472.0895	252.558	571.2101
2011	493.8475	260.4973	593.1123
2012	505.8042	284.5411	605.4084
2013	528.1533	299.0736	660.8132
2014	557.4628	316.901	680.1962
2015	597.2838	358.811	755.239
2016	633.4333	376.2583	822.6575
2017	685.0404	404.7307	876.7713
2018	742.9189	413.7502	934.5955
2019	798.9925	414.7748	989.6072

Source: U.S. Bureau of Economic Analysis, "Digital Economy," U.S. Department of Commerce, June 2021. See full data set at <https://www.bea.gov/data/special-topics/digital-economy>.

TABLE 4: U.S. Exports of Goods and Digital Services to Asia
(\$M), 2001-2021

<i>Year</i>	<i>Goods*</i>	<i>Digital Services⁺</i>
2001	198,929.8	-
2002	193,493.9	-
2003	206,391.9	-
2004	231,291.7	-
2005	252,497.9	-
2006	290,765.1	11,510
2007	327,285.9	10,227
2008	359,151.2	9,393
2009	307,896.6	10,947
2010	387,360.6	16,755
2011	439,240.7	18,225
2012	456,565.8	19,309
2013	475,378.4	19,271
2014	480,976.6	18,083
2015	457,390.7	18,803
2016	452,093.3	19,633
2017	486,024.8	20,654
2018	509,619.6	21,091
2019	492,652.8	23,897
2020	449,754.5	25,497

2021	398,157.8	-
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*Source: U.S. Census Bureau, “Trade in Goods with Asia,” U.S. Department of Commerce, accessed December 6, 2021, <https://www.census.gov/foreign-trade/balance/c0016.html>.

+Source: U.S. Bureau of Economic Analysis, “U.S. Trade in ICT and Potentially ICT-Enabled Services, by Country or Affiliation,” U.S. Department of Commerce, July 2, 2021, <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4#reqid=62&step=9&isuri=1&6210=4>.

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