

**National Interest Analysis [2020] ATNIA 8  
with attachments**

**Australia-Singapore Digital Economy Agreement  
(Adelaide and Singapore, 6 August 2020)  
[2020] ATNIF 11**

Attachments:

**Attachment I    Regulation Impact Statement**

**Attachment II    Consultation**

**Attachment III    Key outcomes**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### Australia-Singapore Digital Economy Agreement

(Adelaide and Singapore, 6 August 2020)

[2020] ATNIF 11

#### Nature and timing of the proposed treaty action

1. The proposed treaty action is to bring into force the *Australia-Singapore Digital Economy Agreement* (DEA) signed on 6 August 2020 at Adelaide, Australia and Singapore. Once in force, the DEA will amend the *Singapore-Australia Free Trade Agreement* (SAFTA), signed on 17 February 2003 in Singapore.<sup>1</sup>
2. Article 5 (Entry into Force) of the DEA provides that the DEA will enter into force on the date of the latest note of an exchange of notes confirming that each party has completed its respective domestic requirements for entry into force.
3. It is proposed that Australia provide such notification as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT). Legislative action is not necessary for Australia to bring the DEA into force.

#### Overview and national interest summary

4. The DEA will bring both commercial and strategic benefits. It will improve modern digital trade rules to support Australian commercial interests in Singapore and promote cross-border digital trade. The increased regulatory certainty it provides will enhance business conditions for Australian goods exporters, services suppliers and investors operating in the digital economy. It will also provide a formal framework for cooperation to support new opportunities in the digital economy between Australia and Singapore, including in the adoption of emerging technologies, and in building and maintaining trust in digital trade. The proposed treaty action will not change market access arrangements for goods, services and investment between Australia and Singapore.
5. From a strategic outlook, entry into force of the DEA will complement Australia's broader advocacy for ambitious digital trade rules. The Government considers Singapore to be a partner of choice for developing norms in digital trade rules which can then be promulgated to other trading partners in the Indo-Pacific region, which has seen a concerning growth in trade-restrictive digital policies in recent years.<sup>2</sup>

#### Reasons for Australia to take the proposed treaty action

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<sup>1</sup> The *Agreement to Amend the SAFTA* entered into force on 1 December 2017.

<sup>2</sup> Meltzer and Lovelock (2018), Brookings, *Regulating for a digital economy: Understanding the importance of cross-border data flows in Asia*, [https://www.brookings.edu/wp-content/uploads/2018/03/digital-economy\\_meltzer\\_lovelock\\_working-paper.pdf](https://www.brookings.edu/wp-content/uploads/2018/03/digital-economy_meltzer_lovelock_working-paper.pdf), accessed 25 June 2020.

6. Singapore is Australia's largest trade and investment partner in ASEAN,<sup>3</sup> and our fifth largest two-way trading partner overall (2018-19 FY).<sup>4</sup> It is also one of the few countries with which Australia has a Comprehensive Strategic Partnership (CSP). On 23 March 2020, Prime Ministers Scott Morrison and Lee Hsieng Loong announced the establishment of a new 'digital economy' pillar under the CSP.<sup>5</sup>
7. The DEA will strengthen this economic and strategic partnership and provide a strong basis for deepening the bilateral trade and investment relationship. It will contribute to the achievement of key Foreign Policy White Paper objectives, advancing Australia's strategic interests with a key partner in South East Asia and the Indo-Pacific region. The DEA will increase business certainty and address the contemporary needs of Australian businesses, investors and consumers transacting in the digital economy across borders with Singapore – a dynamic business hub situated in a region critical to Australia's future economic prospects. Further regional economic integration will enhance the competitive advantage for Australian businesses and investors.
8. The DEA will build on the digital trade arrangements between Australia and Singapore under the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), signed on 8 March 2018 in Santiago, and upgrade SAFTA. It will establish cutting-edge global benchmarks for trade rules, address a range of barriers to digital trade and build an environment in which Australian businesses, investors and consumers can capitalise on the digital economy.
9. Entry into force of the DEA will complement Australia's advocacy for ambitious digital trade rules in multilateral and plurilateral fora. This includes Australia's chairing role in the World Trade Organization (WTO) Joint Statement Initiative on Electronic Commerce, and support for G20, OECD and APEC initiatives, including those concerning online safety, data flows, and privacy.
10. The multilateral negotiations underway in the WTO to liberalise rules for digital trade are progressing positively, but to multi-year timeframes. Meanwhile, Australia and Singapore are both participating in the ongoing finalisation of the *Regional Comprehensive Economic Partnership* (RCEP), however that agreement is not expected to enhance the standard of digital trade rules between Australia and Singapore beyond that contained in SAFTA and the CPTPP. A bilateral agreement through the DEA therefore provides the best prospect for delivering ambitious digital trade rules with Singapore in the near term.

## Obligations in detail

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<sup>3</sup> Department of Foreign Affairs and Trade (DFAT), *Singapore country brief*,

<https://www.dfat.gov.au/geo/singapore/Pages/singapore-country-brief>, accessed 13 July 2020.

<sup>4</sup> DFAT, *Trade and Investment at a Glance 2020*, <https://www.dfat.gov.au/about-us/publications/trade-investment/trade-at-a-glance/Pages/trade-at-a-glance>, accessed 13 July 2020.

<sup>5</sup> 'Digital economy' will represent the fifth pillar of the CSP, adding to the existing pillars of economics, trade and investment; defence and security; innovation and science; and people to people links.

11. The DEA comprises a preamble, six articles and two annexes. Annex A to the DEA contains a comprehensive Digital Economy Chapter which will replace the existing Chapter 14 (Electronic Commerce) of SAFTA by way of amendment. Annex B to the DEA contains further targeted amendments to SAFTA in the preamble, Chapter 9 (Financial Services), and Annex 9-B (Specific Commitments) to Chapter 9 (Financial Services), in order to give effect to the contents of Annex A of the DEA (ie. the Digital Economy Chapter).
12. For the purposes of this National Interest Assessment (NIA), a reference to the DEA includes the contents of its annexes, which would operate as provisions of an amended SAFTA following the DEA's entry into force. SAFTA will provide the broader legal architecture for the operation of provisions contained in the annexes to the DEA.
13. The proposed treaty action will not affect existing market access arrangements for goods, services and investment between Australia and Singapore, including those contained in SAFTA and CPTPP.
14. The outcomes and impacts of the DEA are set out in detail in **Attachment I** (Regulation Impact Statement) and summarised in **Attachment III** (Key Outcomes) to this NIA.

*Cross-border data flows and location of computing facilities*

15. Article 23 (Cross-Border Transfer of Information by Electronic Means) prevents the restriction of transfer of cross-border information by electronic means. Article 24 (Location of Computing Facilities) and Article 25 (Location of Computing Facilities for Financial Services) prevent Australia or Singapore from requiring a covered person (or financial person) to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory. These rules will assist Australian businesses to remain competitive by ensuring ongoing access to data, and limiting the circumstances in which businesses may be subjected to costly localisation requirements.
16. These rules will impose new restrictions on Australia's policy flexibility to impose certain measures to restrict data flows or require data localisation with respect to financial services. However, the Government considers these restrictions are outweighed by the benefits outlined above because:
  - Australia is already subject to commitments under existing agreements with Singapore (through SAFTA and CPTPP) which restrict this flexibility with regard to all other sectors, and Australia's regulatory settings on data are applied consistently across sectors;
  - exceptions contained in the DEA, and in SAFTA more broadly, specifically preserve Australia's ability to regulate key areas of public interest including privacy and the handling of credit information; and therefore;

- Australia’s ability to take measures for essential security of prudential reasons (for financial regulations), or for the protection of privacy, will not be affected by the proposed treaty action.
17. Overall, the commitments on cross-border data flows and data localisation in the DEA will not affect Australia’s regulatory framework under the *Privacy Act 1988*. This includes requirements surrounding the cross-border transfer and disclosure of personal information outside of Australia and the handling of credit information.

#### *Open Government Data*

18. Article 27 (Open Government Data) contains a new commitment to facilitate access to publicly available, non-proprietary, anonymised government information. This will support the broader use of this information for economic, social and research benefits.
19. This obligation is consistent with, and supports, the Australian Government’s Public Data Policy Statement.<sup>6</sup>
20. For Australia, this commitment only applies to the central level of government (the Commonwealth) and not to state, territory or local governments.

#### *Source Code*

21. Article 28 (Source Code) contains a commitment for Parties not to require access to, or transfer of, software source code as a condition for the import, distribution, sale or use of software. For the first time in an Australian trade agreement, this rule applies commitments to both mass-market software and bespoke/custom software.
22. This rule will impose new restrictions on Australia’s ability to require the transfer of software source code as a condition of import, distribution, sale or use with respect to bespoke and custom software. Australia already has similar commitments with Singapore with respect to all other (ie. mass-market) software. Exceptions to this rule ensure that Australia’s regulatory framework will remain unaffected by the DEA. These exceptions will cover existing and future measures on access to source code for the purposes of a specific examination, investigation or judicial proceeding (for example, for the purposes of an investigation by competition regulators into anti-competitive business practices) or for reasons of national security.
23. The DEA will also extend the rule to the application of algorithms in the event that Australia and Singapore enter into future commitments in other international agreements to extend the source code rule to algorithms.

#### *Business and Consumer Trust in Digital Trade*

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<sup>6</sup> Department of the Prime Minister and Cabinet (2015), *Australian Government Public Data Policy Statement*, <https://www.pmc.gov.au/resource-centre/public-data/australian-government-public-data-policy-statement>, accessed 16 July 2020.

24. Multiple articles in the DEA include provisions to enhance business and consumer trust in the digital economy. Article 15 (Online Consumer Protection) promotes improved enforcement and compliance obligations for online consumer protection to enhance certainty and trust for Australian businesses and consumers engaged in online commerce for Singaporean goods and services. These provisions will lock in a minimum standard of protection against misleading and deceptive conduct similar to that applying to domestic commerce in Australia, and vice-versa.
25. Article 18 (Creating a Safe Online Environment) provides a new commitment to cooperate on cross-border efforts to create a safe online environment. This cooperation is important for protecting individuals against harmful online experiences and maintaining trust in the digital economy.
26. Further outcomes include enhanced commitments to discourage unsolicited commercial electronic messages (spam) under Article 19 (Unsolicited Commercial Electronic Messages), and to cooperate on interoperable systems for the protection of personal information online under Article 17 (Personal Information Protection).

#### *Connectivity*

27. Article 22 (Submarine Telecommunications Cable Systems) includes commitments to facilitate the installation, maintenance, and repair of submarine data cables, and on the prevention of cable disruptions. This includes commitments to:
  - make regulatory requirements, criteria and procedures concerning permits for the installation, maintenance and repair of submarine cables publicly available;
  - administer these requirements in a reasonable, objective and impartial way; and
  - ensure any fees charged by its relevant bodies to obtain, maintain or renew such permits are reasonable, transparent and limited to the approximate cost of administering the permits.

#### *Relationship with other agreements and institutional architecture*

28. The DEA is consistent with and complementary to Australia's existing international law obligations, including those under the WTO Agreement and the CPTPP. The DEA will co-exist with Australia and Singapore's rights and obligations in other agreements to which they are also party, including the CPTPP.
29. The legal and institutional aspects of the DEA are governed by the existing legal and institutional architecture of SAFTA, in particular the following chapters:

- a. Objectives and General Definitions (Chapter 1) of SAFTA outlining agreement-wide definitions and interpretations that apply across SAFTA;
- b. Dispute Settlement (Chapter 16) of SAFTA which contains the dispute settlement mechanism to resolve disputes; and
- c. Final Provisions (Chapter 17) of SAFTA which outlines general exceptions, and administers procedures for the ongoing implementation, operation and review of SAFTA, as well as amendment and termination procedures.

### **Implementation**

30. No legislative changes are required in order to implement the obligations in the DEA.<sup>7</sup>

### **Costs**

31. There are no costs or losses of tariff revenue for Australia associated with the entry into force of the DEA.
32. Given the benefits delivered by the DEA, including in the area of digital trade facilitation, this Agreement is expected to generate a net gain for the Australian economy.

### **Regulatory Impact Analysis**

33. A Regulation Impact Statement, as required by the Office of Best Practice Regulation, is attached to this NIA (**Attachment I**).

### **Future Treaty Action**

34. Article 6 (Amendments) of the DEA provides that the Parties may agree in writing to amend the DEA.
35. Article 11 (Amendments) of Chapter 17 (Final Provisions) will continue to provide that the Parties may agree in writing to amend SAFTA – including SAFTA amendments effected by the DEA.
36. Either amendment action by Australia will be subject to Australia's domestic treaty-making requirements including tabling and consideration by the JSCOT.

### **Termination**

37. Article 54 of the *Vienna Convention on the Law of Treaties* allows either Party to terminate the DEA at any time with the consent of the other Party.

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<sup>7</sup> This assessment is based on consultations with relevant Australian Government agencies, legal advice and discussions with Singaporean counterparts in negotiations. The Office of International Law (OIL) within the Attorney-General's Department formally determined that no legislative changes are required in Australia for domestic implementation of the DEA. The Government cannot make definitive statements about the DEA's impact on Singaporean domestic law.

38. Article 12 (Entry into Force, Duration and Termination) of Chapter 17 (Final Provisions) of SAFTA will continue to allow either Party to terminate SAFTA – including the amendments effected by the DEA – by giving the other Party six months’ advance notice in writing.
39. Either termination action by Australia would be subject to Australia’s domestic treaty making requirements, including tabling and consideration by JSCOT.

**Contact details**

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**ATTACHMENT I – REGULATION IMPACT STATEMENT**

**SECOND PASS FINAL ASSESSMENT REGULATION IMPACT  
STATEMENT**

**AUSTRALIA-SINGAPORE DIGITAL ECONOMY AGREEMENT**

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## INTRODUCTION

1. This Second Pass Final Assessment Regulation Impact Statement (RIS) relates to the *Australia-Singapore Digital Economy Agreement* (DEA), which will amend the *Singapore-Australia Free Trade Agreement* (SAFTA) to replace the Electronic Commerce chapter with a new Digital Economy chapter.
2. An early assessment RIS on the DEA was completed in October 2019 (Reference Number 25709) prior to the conclusion of negotiations. A draft First Pass Final Assessment RIS was then submitted to the Office of Best Practice Regulation (OBPR) on 11 May 2020, following the announcement of conclusion of negotiations on the DEA by the Prime Ministers of Australia and Singapore on 23 March 2020.
3. The Government is now seeking to sign the DEA in accordance with Australia's domestic treaty-making processes. Upon signing of the DEA, this Second Pass Final Assessment RIS will be tabled in Parliament with the DEA treaty for consideration of endorsement for ratification and entry into force.

## PROBLEM IDENTIFICATION

4. The growth of the digital economy presents unprecedented opportunities for Australian businesses, as well as new challenges. According to the Export Council of Australia, Australia's digital exports were worth around \$6 billion in 2017, equivalent to Australia's 4th largest export sector, and this figure is set to grow.<sup>8</sup>
5. Trade is not limited to tangible goods, and there is a notable surge in growth of global data flows corresponding with increasing cross-border bandwidth. Data flows are intrinsic to trade in virtual goods and services, and increasingly enable our other goods and services exports, and the movement of finance, people and ideas. Virtually every cross-border transaction has a digital element. Australian investors send large volumes of data internationally in their daily operations. Domestically, data flows drive productivity improvements as traditional sectors adopt and respond to digital technologies.
6. Industry has cited a range of barriers to engaging in the global digital economy, including data localisation requirements, restrictions on cross-border data transfers, and threats to data security. For example, data localisation and data flow requirements can inhibit the ability of Australian financial services suppliers to operate in foreign markets. Requirements to provide source code as a condition of entering a foreign market can raise intellectual property concerns and restrict the ability of Australian software exporters to operate internationally. The lack of widespread and interoperable electronic signature, electronic invoicing and electronic payments systems creates inefficiencies and raises costs.

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<sup>8</sup> Export Council of Australia (2019), *From Resource Boom to Digital Boom: Capturing Australia's Digital Trade Opportunity at Home and Abroad*, <https://www.export.org.au/publications/from-resource-boom-to-digital-boom-capturing-australias-digital-trade-opportunity-at-home-and-abroad>, accessed 25 June 2020.

7. The Government is working to address and reduce such barriers in our free trade agreements (FTAs) to provide greater certainty for Australian exporters in preventing the potential future imposition of unnecessary localisation requirements and other trade barriers, and to support the growth of opportunity in the digital economy.

8. Multilateral discussions to set global digital trade rules are taking place through the WTO Joint Statement Initiative on E-Commerce, with a majority of WTO members now participating in these discussions. However, these discussions are at an early stage, and are expected to take place over a multi-year timeframe. The Government considers Australia can continue to set digital trade norms bilaterally and regionally in a way that supports these multilateral discussions.

9. Singapore is Australia's largest trade and investment partner in ASEAN,<sup>9</sup> and our fifth largest two-way trading partner overall (2018-19 FY).<sup>10</sup> As two vibrant and open economies, we share an ambitious vision for improved economic integration between our countries. Australia and Singapore already share digital trade arrangements in the region under the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP) and SAFTA. However, the Government considered there was scope to do more to reduce barriers to digital trade and build an environment in which Australian businesses are able to participate and benefit more fully from the digitisation of the economy.

10. The Government considers Singapore to be a partner of choice for developing norms in digital trade rules. In addition to addressing specific digital trade barriers, the DEA presented an opportunity to agree new benchmark commitments on digital trade that can be used as a model to promulgate to other trading partners in the Indo-Pacific region, which has seen a concerning growth in trade-restrictive digital policies in recent years.<sup>11</sup> The DEA enhances the existing digital trade arrangements between Australia and Singapore under CPTPP and SAFTA, providing modernised trade rules that reduce barriers and assist businesses and consumers to engage with and benefit from digital trade and the digital economy.

11. These outcomes are further enhanced by a suite of seven Memoranda of Understanding (MoUs), signed separately to this agreement but under its auspices, that set out practical means of deeper cooperation between Australian and Singaporean government agencies. These MoUs foster cooperation in data innovation, artificial intelligence, trade facilitation, electronic invoicing, electronic certification of agricultural goods trade, personal data protection and digital identity.

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<sup>9</sup> Department of Foreign Affairs and Trade (DFAT), *Singapore country brief*, <https://www.dfat.gov.au/geo/singapore/Pages/singapore-country-brief>, accessed 13 July 2020.

<sup>10</sup> DFAT, *Trade and Investment at a Glance 2020*, <https://www.dfat.gov.au/about-us/publications/trade-investment/trade-at-a-glance/Pages/trade-at-a-glance>, accessed 13 July 2020.

<sup>11</sup> Meltzer and Lovelock (2018), Brookings, *Regulating for a digital economy: Understanding the importance of cross-border data flows in Asia*, [https://www.brookings.edu/wp-content/uploads/2018/03/digital-economy\\_meltzer\\_lovelock\\_working-paper.pdf](https://www.brookings.edu/wp-content/uploads/2018/03/digital-economy_meltzer_lovelock_working-paper.pdf), accessed 25 June 2020.

## OBJECTIVES OF GOVERNMENT ACTION

12. The Government's objective was to conclude a high-quality bilateral agreement with Singapore that would secure enhanced benchmark commitments on digital trade and provide a platform for cooperation to drive further liberalisation of the digital economy in the Indo-Pacific region and the multilateral trading system. Pursuing these outcomes through a DEA which builds on existing SAFTA architecture offered a reliable prospect of delivering valuable normative and cooperative outcomes on international digital trade in the near-term.

13. The DEA builds on the digital trade arrangements between Australia and Singapore under the CPTPP and upgrades SAFTA through the inclusion of a new Digital Economy chapter. This chapter delivers a range of new and enhanced trade rules and a comprehensive framework for bilateral cooperation to help businesses and consumers capitalise on the digital economy, a fast-growing and rapidly evolving area. The new chapter reflects the rapid expansion of the digital economy since SAFTA came into force. The SAFTA E-Commerce Chapter was a product of its time and was written with a narrower view of e-commerce, whereas the DEA further recognises the economic opportunities and wider access to goods and services brought about by the digital economy, particularly through cross-border data flows and other digital technologies. As outlined in the *Problem Identification* section, the Government considered there was value in going beyond CPTPP commitments with a more ambitious bilateral partner such as Singapore, with the intention of also creating more momentum on digital trade with other regional partners.

14. Within this context, the Government sought and was successful in securing the following objectives:

- upgraded rules to facilitate the transfer of data between Australia and Singapore for business purposes, ensuring Australian businesses will not be forced to build data storage centres, or to use local computing facilities, in Singapore;
  - this rule extends to the financial sector (a first with Singapore) and to goods exporters (a first in Australia's trade agreement practice);
- improved protections for source code, where access to or disclosure of software source code is no longer required to be provided to Singapore as a condition for the import, distribution, sale or use of software;
- new commitments on e-invoicing and e-payment frameworks, to ensure these are implemented in a way that is compatible and based on international frameworks;
- commitments for effective protection of consumers engaged in online commerce and to maintain measures to reduce unsolicited commercial

electronic messages (spam);

- cooperation in personal information protection;
- a new commitment to cooperate in creating and promoting a safe online environment to protect users of the digital economy from harmful online experiences;
- a new commitment to improve the accessibility of publicly available, anonymised government information;
- enhanced transparency between Australia and Singapore on regulatory measures concerning the digital economy, including publication of these measures online;
- collaboration on the development of key standards to support digital trade, including in emerging technologies;
- collaboration between FinTech and RegTech enterprises and industry bodies to explore business opportunities for Australian and Singaporean enterprises, and to develop standards for open banking;
- commitments to facilitate submarine cable installation, maintenance and repair, and the prevention of cable disruptions; and
- cooperation between Australia and Singapore that reflects the broader digital economy agenda, including joint regional capacity building in digital trade, online copyright issues, small and medium enterprises (SMEs), and cybersecurity.

15. The DEA includes exceptions which allow Australia to continue to enforce its privacy framework, which protects personal information from unlawful disclosure.

16. The *Benefits and Impacts Analysis* section details further the above summarised outcomes of the DEA, and how these rules strengthen Australia's digital trade future, and our digital economy relationship with Singapore.

#### **OPTIONS THAT MAY ACHIEVE THESE OBJECTIVES**

17. This RIS considers two options: no action, and entering into the negotiated bilateral DEA treaty.

18. When the Government was considering whether to enter into negotiations on the DEA in November 2019, the early assessment RIS at the time considered a further two options for achieving the objectives: a regional plurilateral agreement, and multilateral negotiations. These options are no longer considered feasible within the

same short-term timeframe under consideration. Entering into the bilateral DEA would support these alternatives as longer-term options for the Government, as the DEA would set down benchmark digital trade rules for advocacy by Australia and Singapore with other trading partners.

### ***No action***

19. Not signing the DEA would mean missing an opportunity for Australian exporters and investors to secure new benchmark commitments on digital trade opportunities with Singapore, such as the extension of CPTPP disciplines on data flows and localisation requirements to the financial services sector. This would also mean missing an opportunity for Australia to take a leadership role in establishing benchmark commitments on digital trade relevant to our region. A decision not to proceed with treaty action at this point, without good reason, may also negatively affect Australia's bilateral relationship with Singapore.

### ***Bilateral DEA agreement***

20. As outlined in the *Problem Identification* section of this RIS, the Government considers it is important to create an enabling environment for businesses and consumers to engage in cross-border digital trade and remain at the forefront of this fast evolving space.

21. Accordingly, the Government views the DEA as one component of a broader joint effort with Singapore to promulgate benchmark digital trade rules that can be adopted in our broader region. A bilateral DEA will give effect to the new 'digital economy' fifth pillar of the *Australia-Singapore Comprehensive Strategic Partnership (CSP)*.<sup>12</sup> The CSP provides a framework and profile for ongoing bilateral digital cooperation under the DEA, and Singapore is one of the few countries with which Australia has a CSP.

22. The DEA will complement Australia's collaborative work with Singapore as demonstrated in the ongoing WTO Joint Statement Initiative on E-Commerce negotiations which Australia chairs and for which Singapore and Japan are co-convenors, and in regional fora such as the Asia-Pacific Economic Cooperation (APEC). Australia is interested in working with likeminded partners such as Singapore to advocate modern digital trade norms as a platform to drive further liberalisation of the digital economy in the Indo-Pacific region.

23. Singapore's location within ASEAN is significant, as a region where a growing middle class, youthful populations, and easy accessibility to devices are key factors driving a rapid and extraordinary digital transformation. In 2019, Google, Temasek and Bain reported that South East Asia's internet economy had grown to US\$100 billion for the first time and is expected to triple by 2025, led by rapid

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<sup>12</sup> 'Digital economy' will represent the fifth pillar of the CSP, adding to the existing pillars of economics, trade and investment; defence and security; innovation and science; and people to people links.

developments in digital economy industries such as e-commerce and online media.<sup>13</sup> Within this emerging regional phenomenon, Singapore is regarded as a highly developed economy and major regional centre for doing business in Asia. As two vibrant and open economies, we share an ambitious vision for improved economic integration between our countries.

24. Given the clear alignment of objectives on digital trade, there was strong political commitment between Australia and Singapore at the leader level to pursue a high quality bilateral agreement covering digital trade rules and to deepen cooperation on digital economy issues. Entering into the DEA will positively enhance Australia's bilateral relationship with Singapore.

## **BENEFITS AND IMPACT ANALYSIS**

25. The DEA includes commitments across a comprehensive range of Australia's digital trade with Singapore, as detailed in this section.

26. The Government has assessed that entering into the DEA will not change the regulatory burden for businesses and individuals operating in Australia or Singapore.<sup>14</sup> Australian businesses and individuals operating in Singapore will benefit from increased certainty that Singapore will not impose future digital trade measures which are inconsistent with the commitments set by the DEA. Likewise, the enhanced certainty for Singaporean businesses and individuals with respect to future Australian measures will enhance Australia's position as an attractive destination for digital business and investment.

### ***Cross-border data flows and location of computing facilities***

27. The DEA provides upgraded rules to facilitate the transfer of data between Australia and Singapore for business purposes, ensuring Australian businesses will not be forced to build data storage centres, or use local computing centres, in Singapore. Significantly, this provision extends to the financial sector (a first for Singapore) and goods exporters (a first in Australian trade practice).

28. Both SAFTA and the CPTPP exclude financial services from commitments not to impose restrictive measures on cross-border data flows or data localisation. As an innovative exporter of financial services, Australia stands to gain from the expansion of trade rules which facilitate the transfer of information across borders and limit localisation requirements. The extension of this rule to goods exporters will

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<sup>13</sup> Google & Temasek / Bain (2019), *e-Economy SEA: Swipe up and to the right: Southeast Asia's \$100 billion Internet economy*, [http://think.storage.googleapis.com/docs/e-Economy\\_SEA\\_2019\\_report.pdf](http://think.storage.googleapis.com/docs/e-Economy_SEA_2019_report.pdf), accessed 3 March 2020.

<sup>14</sup> This assessment is based on consultations with relevant Australian Government agencies, legal advice and discussions with Singaporean counterparts in negotiations. The Office of International Law (OIL) within the Attorney-General's Department formally determined that no legislative changes are required in Australia for domestic implementation of the DEA. The Government cannot make definitive statements about the DEA's impact on Singaporean domestic law.

support the integration of data into exporters' supply chains – which assists exporters to collect insights on their markets and remain competitive.

29. Agencies and industry were broadly supportive of the inclusion of these rules. Australian industry views unnecessary data flow restrictions and localisation requirements as serious barriers to trade, and not necessarily effective in ensuring data security. Greater certainty on the ability to transfer and store data and have access to data will assist Australian businesses across sectors to stay competitive by gaining access to useful market intelligence, identifying growth opportunities, designing innovative goods and services, improving pricing, and operating more efficiently.

30. Importantly, the *Privacy Act 1988* protects personal information collected for inclusion in a record or publication, and still applies when Australian data is transferred into another country. The commitments on cross-border data flows and location of computing facilities in the DEA will not affect Australia's regulatory framework under the *Privacy Act 1988*. This includes requirements surrounding the cross-border transfer and disclosure of personal information outside of Australia<sup>15</sup> and the handling of credit information.

31. These rules will impose new restrictions on Australia's policy flexibility to impose certain measures to restrict data flows with respect to financial services and imported goods. However, the Government considers these restrictions are outweighed by the benefits outlined above, including because:

- Australia is already subject to commitments under existing agreements with Singapore which restrict this flexibility with regard to all other sectors, and Australia's regulatory settings on data are applied consistently across sectors; and
- exceptions contained in the DEA specifically preserve Australia's ability to regulate key areas of public interest including privacy and the handling of credit information.

### ***Improved protections for source code***

32. The DEA improves rules on the protection of source code from unnecessary disclosure requirements as a condition for the import, distribution, sale or use of software. This rule is informed and strongly supported by advice received from industry that forced technology transfer requirements threaten export markets. The provision also commits Australia to apply this rule to algorithms expressed in source code only if Australia makes such a commitment in another international agreement (or an amendment thereto) which enters into force after the DEA.

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<sup>15</sup> The *Privacy Act 1988* requires that before an entity discloses personal information to an overseas recipient, the entity must take reasonable steps to ensure that the overseas recipient does not breach the Privacy Act's *Australian Privacy Principles* in relation to the information. The Privacy Act also provides that an entity that discloses personal information to an overseas recipient is accountable for any acts or practices of the overseas recipient in relation to the information that would breach the *Australian Privacy Principles*.

33. The rules on source code improve business certainty through the recognition and protection of intellectual property where the integrity and ownership of source code is crucial to a business's competitiveness in local and global markets. For the first time in Australian trade practice, this rule also extends to bespoke and custom software (a key export sector for Australian SMEs), as well as mass market software. Australian software developers will benefit from the increased certainty that their intellectual property will be protected from unnecessary transfer or disclosure requirements as a condition of operating in Singapore.

34. This rule will impose new restrictions on Australia's ability to require the transfer of software source code as a condition of import, distribution, sale or use of bespoke and custom software. However, the Government considers that this restriction is outweighed by the benefits outlined above. Exceptions to this rule ensure that Australia's regulatory framework will remain unaffected by the DEA. These exceptions will cover existing and future measures on access to source code for the purposes of a specific examination, investigation or judicial proceeding (for example, for the purposes of an investigation by competition regulators into anti-competitive business practices) or for reasons of national security.

### ***Digital trade facilitation***

35. The DEA includes new commitments on e-invoicing and e-payment frameworks, to ensure Australian and Singaporean systems are implemented in a way that is compatible and based on international frameworks. The DEA also retains the existing SAFTA-level commitments to recognise use of e-authentication and e-signatures. The DEA also contains a commitment to endeavour to cooperate on developing a digital 'single window' for paperless trading for trade in goods at the border and to support efficiency in express shipments of goods.

36. E-invoicing can reduce the impact of a routine regulatory burden on business (in particular small business) and reduce delays in cash flow. Australian businesses will benefit from commitments to align our e-invoicing practices on a common set of standards and to promote interoperable e-invoicing systems with Singapore and other trading partners. This commitment expands on similar cooperation already underway with New Zealand to implement consistent cross-border e-invoicing frameworks, and so does not restrict Australia's options in this area any further, except to extend the obligation to another international partner. This will support future opportunities for Australian business to conduct cross-border trade by e-invoicing between Australia and Singapore. The broader benefit lies in the growth of common format e-invoicing as a normal way of doing business internationally.

37. The new rules on e-payments commit Australia and Singapore to:

- make regulations on e-payments publicly available, and to finalise regulatory decisions on e-payments in a timely manner;

- not arbitrarily discriminate between financial institutions and non-financial institutions in terms of access to e-payments infrastructure and services;
- adopt international standards for e-payment systems to enable interoperability; and
- facilitate the use of open platforms, including application programming interfaces (APIs), to facilitate innovation and competition.

38. Australian businesses and consumers transacting between Australia and Singapore will benefit from increased certainty that emerging payments systems will not be unduly discriminated against and can operate under transparent conditions that support innovative, safe and secure payments systems. While the new e-payments rules will restrict Australia's ability to diverge from the commitments outlined above, the Government considers these restrictions are outweighed by the benefits which include:

- the export potential for the Australian FinTech sector in developing innovative payments technology; and
- for Australian businesses and consumers in general in terms of access to competitive payments options when transacting with Singapore online.

### ***Business and consumer trust in digital trade***

39. The DEA includes a commitment to ensure that cross-border online commerce with Singapore is subject to consumer protection standards similar to those which apply to Australian domestic trade. Improved enforcement and compliance obligations for online consumer protection will enhance certainty and trust for Australian businesses and consumers engaged in online commerce for Singaporean goods and services. These provisions will lock in a minimum standard of protection against misleading and deceptive conduct similar to that applying to domestic commerce in Australia, and vice-versa.

40. The DEA also contains a new commitment to cooperate on cross-border efforts to create a safe online environment – assisting to protect individuals against harmful online experiences and maintaining trust in the digital economy. Further outcomes include commitments to discourage unsolicited commercial electronic messages (spam) at a level consistent with Australia's best existing trade agreement practice, and to cooperate on interoperable systems for the protection of personal information online. These commitments do not further restrict the existing policy flexibility available to Australia.

### ***Open Government Data***

41. This provision is a new commitment to endeavour to improve the accessibility of publicly available, anonymised government information, for the purposes of

economic, social and research benefit. Sharing and analysing data can improve governments' ability to make better-informed policy decisions on complex issues, and to derive further value from their vast data holdings where it is appropriate to do so. Academics and research institutions also benefit from more efficient access to open government data. Across a variety of sectors, open access to government data has been demonstrated to lead to the development of new and customised products and services. This commitment only applies to information which the Australian Government has already chosen to release.

42. This obligation is consistent with, and supports, the Australian Government's Public Data Policy Statement.

43. For Australia, this commitment only applies to the central level of government (the Commonwealth) and not to state, territory or local governments.

### ***Transparency***

44. Attracting business to markets, and ensuring they remain, requires certainty and transparency about the regulatory environment and policies to support the digital economy. Recognising this, the DEA contains a provision on enhanced transparency between Australia and Singapore, to make available measures related to the digital economy, including online, and to the extent possible, provide advance publication and the opportunity to comment. This provision is consistent with Australia's existing trade practice and aims to improve visibility and provide greater confidence to Australian individuals and businesses seeking to trade and invest in Singapore in the knowledge that they can access and ascertain in advance the regulatory requirements which will apply to them. This provision will not impose new restrictions on Australia's policy flexibility.

### ***Submarine data cables***

45. The growth and stability of the digital economy relies on reliable cross-border physical infrastructure, including submarine data cable systems. The DEA's new benchmark rules commit Australia and Singapore to facilitate the timely and efficient installation, maintenance and repair of these systems by:

- allowing for a choice of service supplier from Singapore, Australia or elsewhere;
- making publicly available all requirements for permits relating to installation, maintenance and repair, and informing applicants of decisions within a reasonable period of time;
- providing that such permits are of sufficient duration to undertake the necessary installation, maintenance or repair activity; and

- that fees charged for such permits are reasonable, transparent and limited to the approximate cost of services rendered.

46. Australia and Singapore developed these DEA commitments with a view to advocating new benchmarks for supporting connectivity throughout the Indo-Pacific region.

47. These commitments on submarine cables are the highest standard secured by Australia to date. Whereas previous agreements applied only to public telecommunications service suppliers, these provisions will operate to benefit all submarine telecommunication cable systems – which extends the benefits to all sectors (including the technology sector). The DEA also includes a commitment to reduce the risks of damage to submarine cables.

48. Singapore is a regional hub for submarine cable networks. The DEA's transparency and proportionality commitments regarding the regulation of submarine cable activities will provide certainty for Australian investors and operators of cable networks in Singaporean waters that they can efficiently install, maintain and repair their assets. These commitments also provide increased certainty in the ongoing stability and resilience of the region's submarine cable network in the region to support the connectivity needs of business and consumers.

49. Australia does not maintain a permit system for the activities covered by this provision. While this commitment does impose restrictions on Australia's future flexibility to withhold information on regulatory requirements for submarine cables, provide for permits of a shorter duration than required for an envisaged permit activity, and charge fees higher than the service cost, these restrictions are considered to be outweighed by the considerable benefits outlined above.

### ***Cooperation***

50. The DEA also includes a number of cooperation provisions which entail no regulatory impacts or binding restrictions on Australia or Singapore's freedom of action, but which instead set a shared agenda for practical collaborative initiatives to derive further benefits from the digital economy. For each of these provisions, future cooperation efforts may serve to enhance Australia's influence in developing regional and global digital trade frameworks in these areas by providing cross-border use cases developed with a like-minded partner of choice.

### ***Artificial Intelligence, Digital Identities and Data Innovation***

51. A provision encouraging cooperation on artificial intelligence (AI) sets in place a shared high-level intention to cooperate on the development of responsible AI technologies and governance policy frameworks. This cooperation may also amplify Australian interests in the global development of commercial AI technologies and frameworks as nascent international approaches emerge.

52. A provision on cooperation in digital identities provides a high-level direction for agency-level cooperation to pursue compatibility and mutual recognition of aspects of Australian and Singaporean digital identity regimes. Creating better conditions for the secure use of digital identity regimes may make it easier for Australian exporters to interact with the Singaporean government in seeking government services and vice-versa.

53. The DEA also contains a provision on cooperation in data innovation. Singaporean and Australian government, industry and university bodies are leaders in the region on data science, and will benefit from the DEA's high level commitments to cooperate on cross-border data-sharing projects. Such projects will demonstrate the benefits of cross-border data flows in producing new insights and opportunities, and that the security of existing innovative data anonymisation to ensure privacy protection continues across borders.

#### *Digital standards*

54. Standards enable businesses to digitalise using interconnected and interoperable systems and procedures, with the aim of streamlining cross-border trade. This provision provides a framework for this cooperation, which is aimed at providing new opportunities for interoperability, efficiency and innovation in emerging digital technologies, to the benefit of Australian business and consumers.

#### *FinTech and RegTech*

55. A Fintech and RegTech provision in the DEA encourages collaboration between FinTech and RegTech enterprises and industry bodies to explore business opportunities for Australian and Singaporean enterprises, and to develop standards for open banking which will support consumer choice, privacy and innovation in the financial sector.

#### *Further Cooperation*

56. The DEA includes provisions which encourage further cooperation between Australia and Singapore that reflects the broader digital economy agenda, including joint regional capacity building in digital trade, competition policy, online copyright issues, SME uptake of digital technologies, and cybersecurity. This cooperation links in to a broader framework of cooperation within the context of the CSP, including a commitment to jointly hold, as needed, a Digital Economy Dialogue to bring together government, industry and academia to develop solutions to further digital economy issues, including those not specifically identified in the DEA.

#### *Impacts on regulatory burden*

57. Existing similarities in the business, government and regulatory environments between Australia and Singapore mean that the provisions of the DEA would result in no increase in regulatory burden on Australian business or individuals.

58. Importantly, none of the provisions in the DEA affect the ability of the Government to enforce existing regulations on privacy, or require changes to Australian regulations, including the *Privacy Act 1988* and the *My Health Records Act 2012*. Accordingly, confidential business information, as well as confidential information of consumers and individuals, are protected from disclosure under Australian law.

#### ***Impact on the Australian economy***

59. The DEA will improve modern digital trade rules to support Australian commercial interests in Singapore and promote cross-border digital trade. The increased regulatory certainty it provides will enhance business conditions for Australian goods exporters, services suppliers and investors operating in the digital economy.

#### ***Impact on financial regulators***

60. The cross-border data flows and location of computing facilities rules in the DEA expand existing disciplines from SAFTA and CPTPP to cover financial services (which had been mostly carved out from the data rules in these earlier agreements). However, the commitments contained in the DEA do not restrict the ability of Australian financial regulators to perform their functions. Data transfer restrictions and localisation requirements may still be imposed under exceptions contained in the agreement, including exceptions for prudential requirements, and for credit information requirements under the *Privacy Act 1988*.

#### ***Impact on small business***

61. The impact on small business from implementation of the DEA is expected to be beneficial. The rules and cooperation commitments underpinning the DEA will benefit SMEs in particular by:

- securing commitments not to introduce unnecessary restrictions on data transfers and localisation requirements;
- raising the standard of protection from forced transfers of source code (noting that intellectual property can be an SME's most valuable asset)
- locking in commitments that regulations affecting the digital economy be transparent and readily available;
- encouraging the uptake of digital technologies to increase business efficiencies;
- securing common standards of online consumer protection; and

- encouraging international standardisation in emerging technologies to facilitate greater interoperability, collaboration and uptake.

### ***Impact on state and territory governments***

62. The obligations contained in the DEA apply to state and territory measures, except where explicitly carved out. The new commitment on open government data applies only to the central (Commonwealth) level of government, and not to sub-central levels (states and territories, and local government).

### ***Impact on Australian consumers***

63. Australian consumers will benefit from increased confidence that the DEA locks in a standard of consumer protection for online transactions with Singapore similar to that enjoyed online and offline domestically within Australia.

64. All users of the digital economy will also benefit from the DEA's new commitment to cooperate in creating and promoting a safe online environment to protect citizens, especially children and vulnerable members of the community, from harmful online experiences.

## **CONSULTATION**

### ***Business, industry and civil society***

65. Throughout negotiations, DFAT, in conjunction with other government agencies, consulted widely with industry and other key stakeholders in formulating Australia's positions. The public consultation and stakeholder engagement process on the DEA commenced in July 2019 with a comprehensive scoping study undertaken by Australian and Singaporean officials at the request of Prime Ministers Scott Morrison and Lee Hsien Loong.

66. DFAT commenced stakeholder consultations in July 2019 with a call for public submissions. Ahead of the launch of negotiations in December 2019 and throughout, DFAT received a number of public submissions and correspondence from NGOs, companies, peak industry groups and individuals on a range of issues. DFAT conducted in-person consultations with industry, peak bodies and interested stakeholders during negotiations. In general, the consultations were broadly positive with feedback supportive of the DEA, providing suggestions and outlining their interests in digital trade.

67. Industry stakeholders welcomed the DEA as forming part of a broader, reinvigorated Australian government digital trade agenda, in response to perceived inefficiencies in the current international trade system. Stakeholders noted that Singapore was more advanced than Australia in terms of digital trade facilitation and welcomed the DEA as an opportunity to formalise cooperation with Singapore to create more efficient, digitised trade facilitation processes. From a strategic outlook, stakeholders also recognised the value of the DEA in setting benchmark rules to facilitate global trade, and recommended that the Government use the DEA

opportunity to not only improve on both countries' commitments under existing FTAs such as CPTPP, but also continue to be forward-looking on digital trade rules.

68. Technology industry stakeholders' priorities included cross-border data flows, location of computing facilities, including financial services, and personal information protection, including across borders. Industry stakeholders supported disciplines to restrict governments from adopting arbitrary trade barriers in cross-border data flows and localisation, while also ensuring the protection of personal information and data security. Industry stakeholders expressed concern at the increased trend towards data flow restrictions and localisation requirements in the Indo-Pacific, and encouraged the Government to prevent such measures from becoming the regional norm. These industry views informed DFAT's approach to data flows, localisation requirements and protection of personal information.

69. Those contributors that gave permission to be identified and have their submissions made public on the DFAT website include: the Australia and New Zealand Banking Group Limited (ANZ), AustCham (Singapore), BSA The Software Alliance, Chartered Accountants Australia and New Zealand, Data Republic, Visa, and Yellow Edge.

70. Interest in the DEA by civil society groups was limited. The Australian Fair Trade and Investment Network (AFTINET) did not make a public submission on the DEA, but did note in discussions on the WTO Joint Statement Initiative on E-Commerce that many of the concerns noted in its submission on that negotiation would apply to the DEA. These concerns included: transparency in the negotiating process, the use of CPTPP text as a model, privacy and competition concerns concerning the conduct of digital platforms, regulators' access to source code for legitimate purposes, and the need to set minimum consumer protection standards.

71. Australia's High Commission in Singapore also facilitated a consultation roundtable in December 2019 with Singapore-based Australian businesses and other stakeholders to help identify Australian interests in the Singaporean market.

72. DFAT provided updates on the negotiations via its website, and consulted stakeholders and interested members of the public via group mailbox ([digitaltrade@dfat.gov.au](mailto:digitaltrade@dfat.gov.au)).

73. Public consultations and submissions were recorded and influenced the negotiators' objectives in seeking certain commitments and exceptions from Singapore, including broadening data flows and localisation rules to include financial services and the approach to personal information protection.

### ***Australian Government Agencies***

74. Australian Government departments were extensively consulted throughout the DEA negotiations via regular inter-departmental committee meetings, updates on the status of negotiations, as well as participation of relevant agencies in negotiations.

### *State and territory governments*

75. At the launch of negotiations, the Minister for Trade, Tourism and Investment wrote to state and territory premiers and chief ministers to inform them of the DEA negotiations and the Australian Government's objectives. The Minister undertook to consult state and territory governments if negotiations contemplated locking in a commitment which went beyond existing Australian trade negotiation practice in an area of state and territory competence. As the DEA negotiations did not contemplate commitments which went beyond Australian trade negotiation practice in respect of state and territory government competencies, this further consultation was not required. The new commitment in the DEA on Open Government Data is specified as applying only to the 'central level of government' (ie. the Commonwealth).

### *Consultations since the negotiations concluded*

76. DFAT has continued to consult and provide status updates to agencies, statutory authorities, stakeholders and other interested members of the public since the announcement of conclusion of negotiations on the DEA on 23 March 2020.

77. DFAT will also continue to make information on the DEA publicly available in a timely fashion on its website<sup>16</sup> and respond appropriately to enquiries sent to the dedicated DFAT group mailbox ([digitaltrade@dfat.gov.au](mailto:digitaltrade@dfat.gov.au)).

78. Major international business stakeholders across various sectors, including Rio Tinto, Microsoft Asia, Adobe, and others, have made public comments welcoming the outcomes of the negotiations.<sup>17</sup>

79. Ongoing business engagement will continue to raise awareness of the DEA commitments and to ensure stakeholders can take full advantage of the cooperation initiatives taking place under the agreement.

## **CONCLUSION**

80. From the options that have been considered, the Government considers it is in Australia's interests to sign and become a party to the DEA, given this agreement is expected to:

- provide certainty with respect to cross-border transfers, and a commitment not to require data to be stored locally – including for the financial sector;
- improve protections for software source code;

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<sup>16</sup> DFAT, *Australia-Singapore Digital Economy Agreement*, <https://www.dfat.gov.au/trade/services-and-digital-trade/Pages/australia-and-singapore-digital-economy-agreement>, accessed 25 June 2020.

<sup>17</sup> Singapore Ministry of Trade and Industry, 23 March 2020, Media Release, *Singapore Concludes Negotiations for Digital Economy Agreement with Australia*, <https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2020/03/Joint-press-release--Conclusion-of-Negotiations-for-the-SingaporeAustralia-Digital-Economy-Agreement.pdf>, accessed 23 March 2020.

- provide new commitments on the compatible implementation of e-invoicing and e-payment frameworks;
- enhance enforcement and compliance provisions that support online consumer protection and personal information protection;
- commit to improve the accessibility of publicly available, anonymised government information;
- facilitate cooperation between Australia and Singapore that reflects the broader digital economy agenda, including joint regional capacity building in digital trade, online copyright issues, SMEs, and cybersecurity; and
- complement Australia's joint leadership efforts with Singapore at the WTO and in the Indo-Pacific region to establish benchmark norms for digital trade.

81. In line with the impact analysis provided in this RIS, the Government assesses that the commitments contained in the DEA would not impose any additional regulatory burden on businesses and individuals.

## **IMPLEMENTATION AND REVIEW**

### ***Implementation***

82. In line with Australia's treaty-making processes, once agreed and signed, the text of the DEA will be tabled in Parliament. Following tabling, the Joint Standing Committee on Treaties (JSCOT) will conduct an inquiry into the Agreement and report back to Parliament.

### ***Communications Plan***

83. Engagement with stakeholders will continue after signature of the DEA to raise awareness of the Agreement and its provisions, and to ensure that businesses and consumers are well placed to access the benefits of the Agreement. In particular, DFAT will undertake proactive advocacy to lift awareness and uptake of the DEA by Australian business. Public communications efforts include the following efforts outlined below.

### ***Online material***

84. DFAT published dedicated web pages on the DEA on announcement of conclusion of negotiations on 23 March 2020, including resources such as a fact sheet and summary of key outcomes document, as well as summaries and full copies of the signed MoU texts.

85. Following eventual signing of the text, DFAT will upload the full text of the DEA onto these web pages and include the DEA on the FTA Portal upon entry into

force of the Agreement. The FTA Portal is a user-friendly Australian Government website that provides easy access to information for exporters, importers, and other stakeholders seeking to access the benefits of Australia's FTAs.

### *Social media*

86. DFAT's social media accounts are platforms for promoting increased understanding and utilisation of the DEA. Once the Agreement is officially signed, DFAT will use social media to highlight the benefits of the DEA for the Australian business community.

### *Other outreach platforms*

87. The Australian High Commission in Singapore will work with industry stakeholders to inform Australian businesses across sectors about the DEA through local business engagement channels.

88. Austrade, supported by DFAT, runs an Australia-wide outreach programme to provide practical information on how to maximise benefits from Australia's FTAs.

### *Review*

89. Review of the ongoing effectiveness of the DEA will be effected through the ongoing oversight of the bilateral Australia-Singapore relationship under the CSP, which now features a new 'digital economy' pillar.

90. The Digital Economy Dialogue mechanism included in the DEA will provide a formal channel for stakeholder input on the effectiveness of the DEA's rules and cooperation initiatives. Opportunities for ongoing stakeholder input on the DEA will be possible through DFAT's ongoing call for submissions on the Future of Digital Trade Rules which can be sent to [digitaltrade@dfat.gov.au](mailto:digitaltrade@dfat.gov.au).

## ATTACHMENT II – CONSULTATION

### Australia-Singapore Digital Economy Agreement

(Adelaide and Singapore, 6 August 2020)

[2020] ATNIF 11

## CONSULTATION

### State and Territory Governments

1. The proposed treaty action will have an impact on the States and Territories as the obligations in the DEA apply to regional-level measures, except where explicitly carved out. Prior to the launch of negotiations, the Minister for Trade, Tourism and Investment wrote to State and Territory Premiers and Chief Ministers to inform them of the DEA negotiations. The Minister further undertook to consult State and Territory leaders if negotiations contemplated commitments outside of existing Australian trade negotiation practice. This further consultation was not required during negotiations of the DEA.

### Public Consultations

2. DFAT commenced stakeholder consultations in July 2019 with a call for public submissions. A comprehensive scoping study was also undertaken by Australian and Singaporean officials at the request of Prime Ministers Scott Morrison and Lee Hsien Loong. Following the launch of negotiations in December 2019 and throughout, DFAT received a number of public submissions and correspondence from NGOs, companies, peak industry groups and individuals on a range of issues. DFAT conducted in-person consultations with industry, peak bodies and interested stakeholders across a range of States and Territories during negotiations. Australia's High Commission in Singapore facilitated a consultation roundtable in December 2019 with Singapore-based Australian businesses and other stakeholders to identify Australian interests in the Singaporean market. In general, the consultations were broadly positive with feedback supportive of the DEA, providing suggestions and outlining their interests in digital trade.
3. Industry stakeholders welcomed the DEA as forming part of a broader, reinvigorated Australian government digital trade agenda, in response to inefficiencies in the current international trade system. Stakeholders noted that Singapore was more advanced than Australia in terms of digital trade facilitation and welcomed the DEA as an opportunity to formalise cooperation with Singapore to create more efficient, digitised trade facilitation processes. From a strategic outlook, stakeholders also recognised the value of the DEA in setting benchmark rules to facilitate global trade, and recommended that the Government use the DEA opportunity to not only improve on both countries' commitments under existing FTAs such as CPTPP, but also continue to be forward-looking on digital trade rules.

4. Technology industry stakeholders' priorities included cross-border data flows, location of computing facilities, including financial services, and personal information protection, including across borders. Industry stakeholders supported disciplines to restrict governments from adopting arbitrary trade barriers in cross-border data flows and localisation, while also ensuring the protection of personal information and data security. Industry stakeholders expressed concern at the increased trend towards data flow restrictions and localisation in the Indo-Pacific, and encouraged the Government to prevent such measures from becoming the regional norm. These industry views informed DFAT's approach to data flows and localisation and protection of personal information.
5. Interest in the DEA by civil society groups was limited. The Australian Fair Trade and Investment Network (AFTINET) did not make a public submission on the DEA, but did note in discussions on the WTO Joint Statement Initiative on E-Commerce that many of the concerns noted in their submission on that negotiation would apply to the DEA. These concerns included: transparency in the negotiating process, the use of CPTPP text as a model, privacy and competition concerns concerning the conduct of digital platforms, regulators' access to source code for legitimate purposes, and the need to set minimum consumer protection standards.
6. DFAT actively invited and considered public submissions on the DEA and on the digital economy more broadly through the DFAT website. Those contributors that gave permission to be identified and have their submissions made public on the DFAT website include:
  1. Australia and New Zealand Banking Group Limited (ANZ)
  2. AustCham (Singapore)
  3. BSA | The Software Alliance
  4. Chartered Accountants Australia and New Zealand
  5. Data Republic
  6. Visa
  7. Yellow Edge

### **Consultations since the negotiations concluded**

7. DFAT has continued to consult and provide status updates to agencies, statutory authorities, stakeholders and interested members of the public since the announcement of conclusion of negotiations of the DEA on 23 March 2020.
8. Engagement with stakeholders will continue after signature of the DEA to ensure stakeholders can take full advantage of the Agreement and the cooperation initiatives. DFAT will continue to make information on the DEA publicly available in a timely fashion on its website<sup>18</sup> and respond appropriately to enquiries sent to the dedicated DFAT group mailbox ([digitaltrade@dfat.gov.au](mailto:digitaltrade@dfat.gov.au)). Austrade also runs an Australia-wide outreach program to provide practical information on how to maximise benefits from Australia's trade agreements.

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<sup>18</sup> DFAT, *Australia-Singapore Digital Economy Agreement*, <https://www.dfat.gov.au/trade/services-and-digital-trade/Pages/australia-and-singapore-digital-economy-agreement>, accessed 15 July 2020.

9. Major international business stakeholders across various sectors, including Rio Tinto, Microsoft Asia, Adobe, and others, have made public comments welcoming the outcomes of the negotiations.<sup>19</sup>

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<sup>19</sup> Singapore Ministry of Trade and Industry, 23 March 2020, Media Release, *Singapore Concludes Negotiations for Digital Economy Agreement with Australia*, <https://www.mti.gov.sg/Newsroom/Press-Releases/2020/03/Singapore-concludes-negotiations-for-Digital-Economy-Agreement-with-Australia>, accessed 23 March 2020.

## ATTACHMENT III – KEY OUTCOMES

The Australia-Singapore Digital Economy Agreement (DEA) upgrades the Singapore-Australia Free Trade Agreement (SAFTA) through a new Digital Economy chapter, providing modernised trade rules that assist businesses and consumers to engage with and benefit from digital trade and the digital economy.

Key outcomes from the DEA:

### **Cross-border data flows and location of computing facilities**

- Allows for the transfer of data between Australia and Singapore for business purposes, including in the financial sector.
- Businesses will not be forced to build data storage centres, or use local computing centres, as a condition of conducting business.
- Access to data assists businesses to stay competitive by gaining access to useful market intelligence, identifying growth opportunities, designing innovative goods and services, improving pricing, and operating more efficiently.
- Importantly, the Privacy Act 1988 protects personal information collected for inclusion in a record or publication, and continues to apply when personal information of Australians is transferred into another country.

### **Improved protections for source code**

- Access to or disclosure of software source code will not be required to be transferred to Singapore as a condition for the import, distribution, sale or use of software – this rule covers both mass-market software and bespoke/custom software.
- Improves business certainty through the recognition and protection of intellectual property.
- Extends protection to SMEs which are significant suppliers of bespoke/custom software.
- Exceptions are provided for law enforcement and security.

### **Digital trade facilitation**

- New commitments on e-invoicing and e-payments, to ensure these are implemented in a way that is compatible and based on international frameworks.
- Also includes rules to enhance compatibility of electronic transactions frameworks, including recognition of e-authentication and signatures, to work towards a single window for paperless trading and to expedite express shipments.
- Promotes the adoption of internationally accepted standards for online payment systems, which improve the digital trade experience for businesses and support cash flow and payment security for SMEs.

### **Business and consumer trust in digital trade**

- Improved enforcement and compliance provisions on online consumer protection, personal information protection, and discouraging unsolicited commercial electronic messages (spam).

- A new commitment to cooperate in creating and promoting a safe online environment to protect citizens, especially children and vulnerable members of the community, from harmful online experiences.

### **Open Government Data**

- A new commitment to improve the accessibility of publicly available, anonymised government information, for the purpose of economic, social and research benefit.
- Sharing and analysing data can improve government's ability to make better-informed policy decisions on complex issues, for example in health, education, welfare, and the environment.
- Academics and research institutions will also be able to use government data more effectively and at lower cost.
- Across a variety of sectors, access to government data allows for the development of new and customised products and services demanded by business, government and the community.

### **Digital standards**

- Collaboration on the development of key standards to support digital trade.
- This work has already begun with a jointly commissioned study to identify priority opportunities for increased digital standardisation, reporting to Australia and Singapore in mid-2020.

### **FinTech and RegTech**

- Collaboration between FinTech and RegTech enterprises and industry bodies to explore business opportunities for Australian and Singaporean enterprises, and to develop standards for open banking.

### **Submarine data cables**

- Commitments to facilitate submarine cable installation, maintenance and repair, and the prevention of cable disruptions.

**Cooperation** between Australia and Singapore that reflects the broader digital economy agenda, including joint regional capacity building in digital trade, online copyright issues, small and medium enterprises, and cybersecurity.

### **Important information**

- None of the provisions in the DEA:
  - affect the ability of Australia to enforce existing regulations on privacy;
  - require changes to Australian regulations, including the Privacy Act and the My Health Records Act.
- Confidential business information, as well as confidential information of consumers and individuals, will remain protected from disclosure under Australian law.