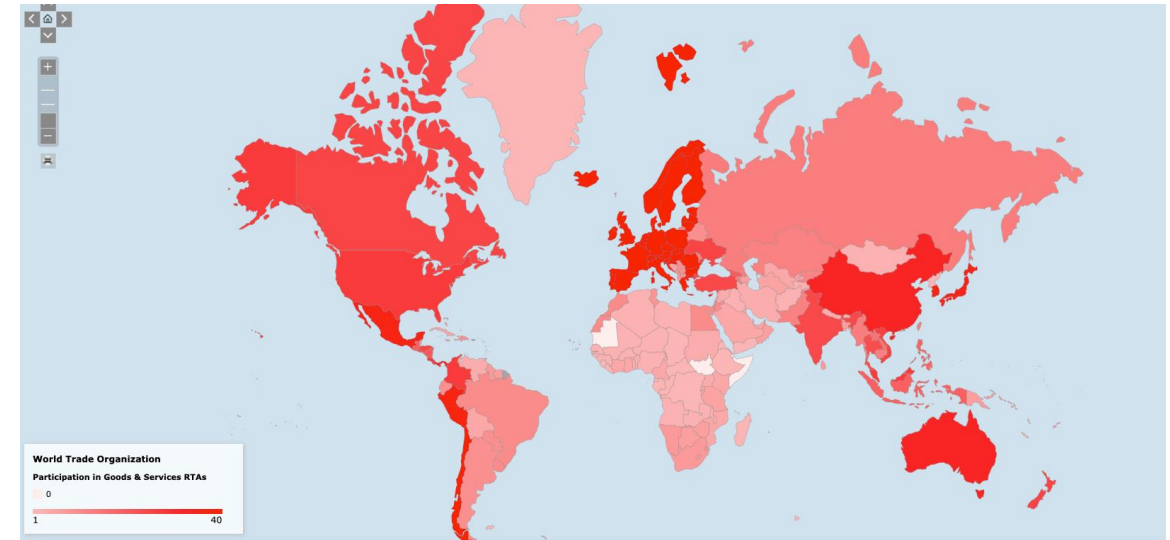
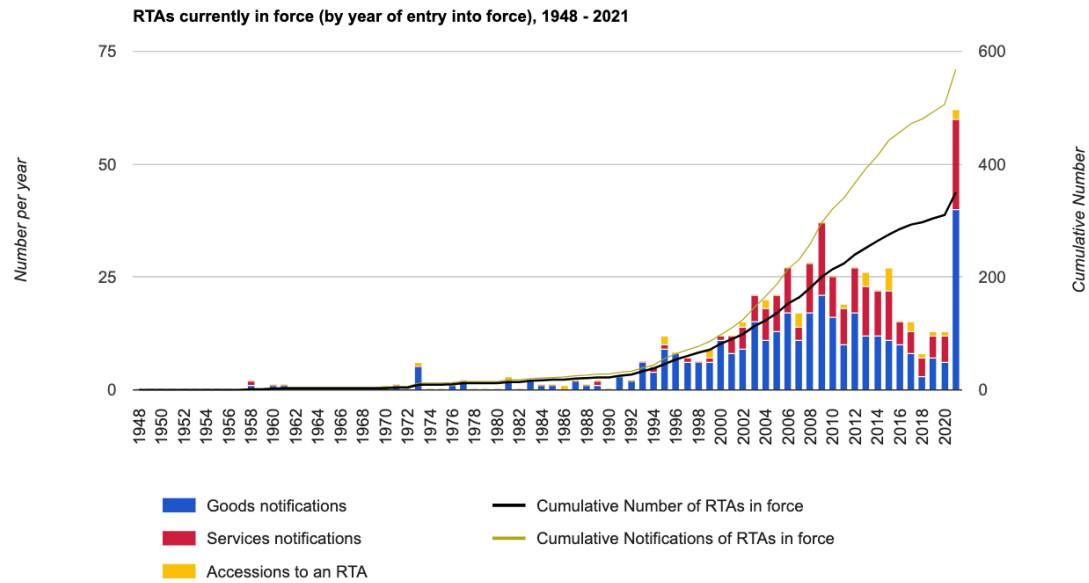




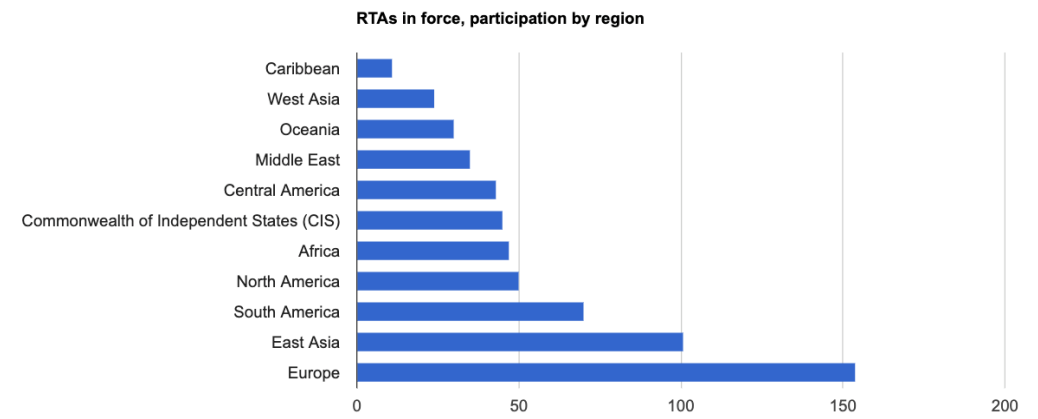
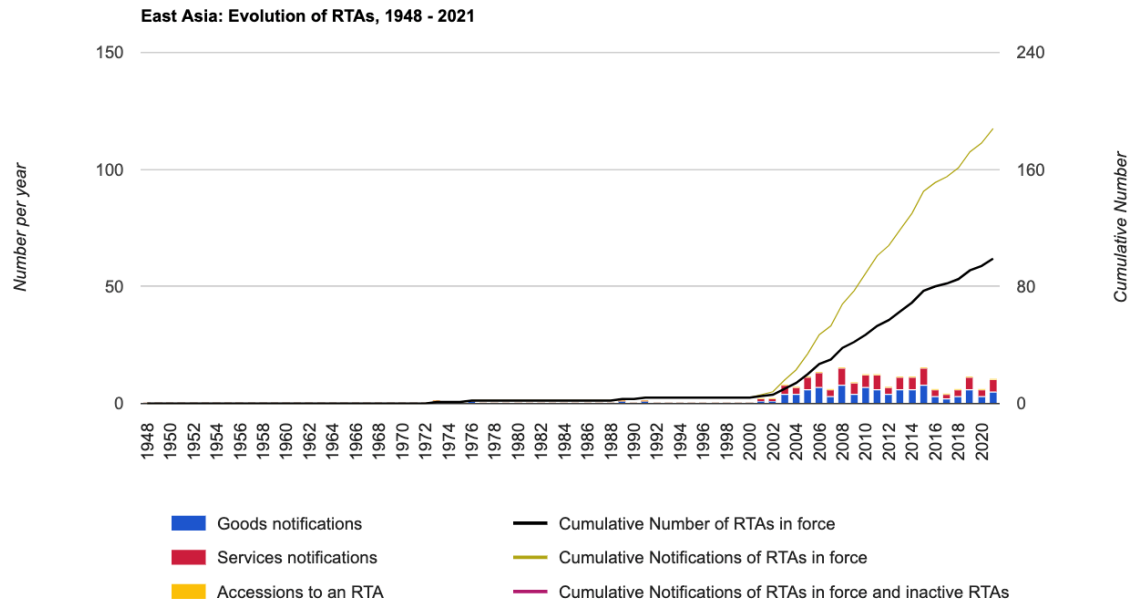
# Session 7: CARTIF Priority Chapters – Digital Trade/E-commerce

**Henry Gao**  
Professor of Law  
Singapore Management University

# Rise of RTAs



# East Asia



# E-commerce

Figure 1: Evolution of RTAs with e-commerce provisions

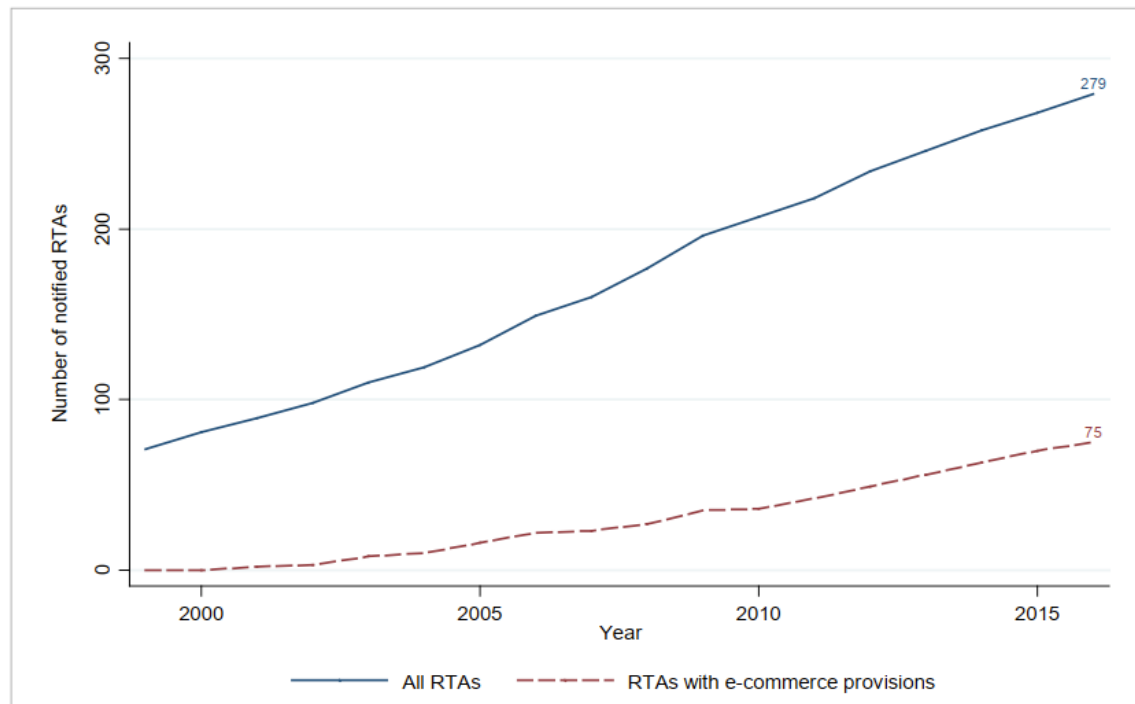
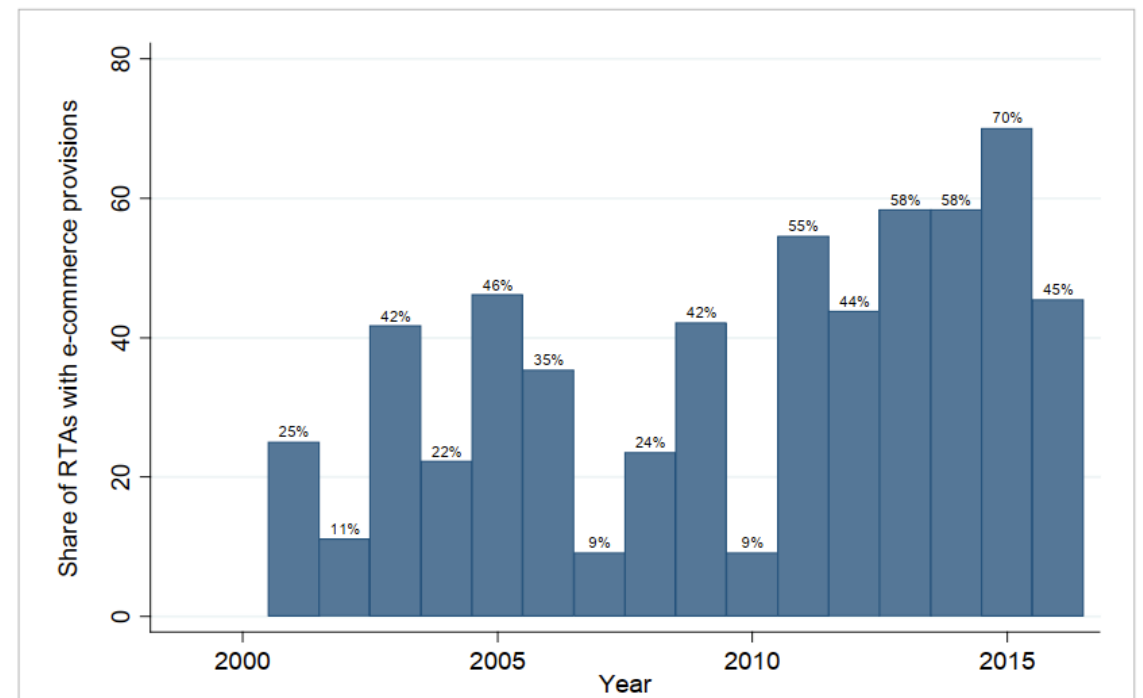


Figure 2: Percentage of RTAs with e-commerce provisions



# Number of e-commerce provisions

Figure 3: Evolution of the number of e-commerce provisions in RTAs

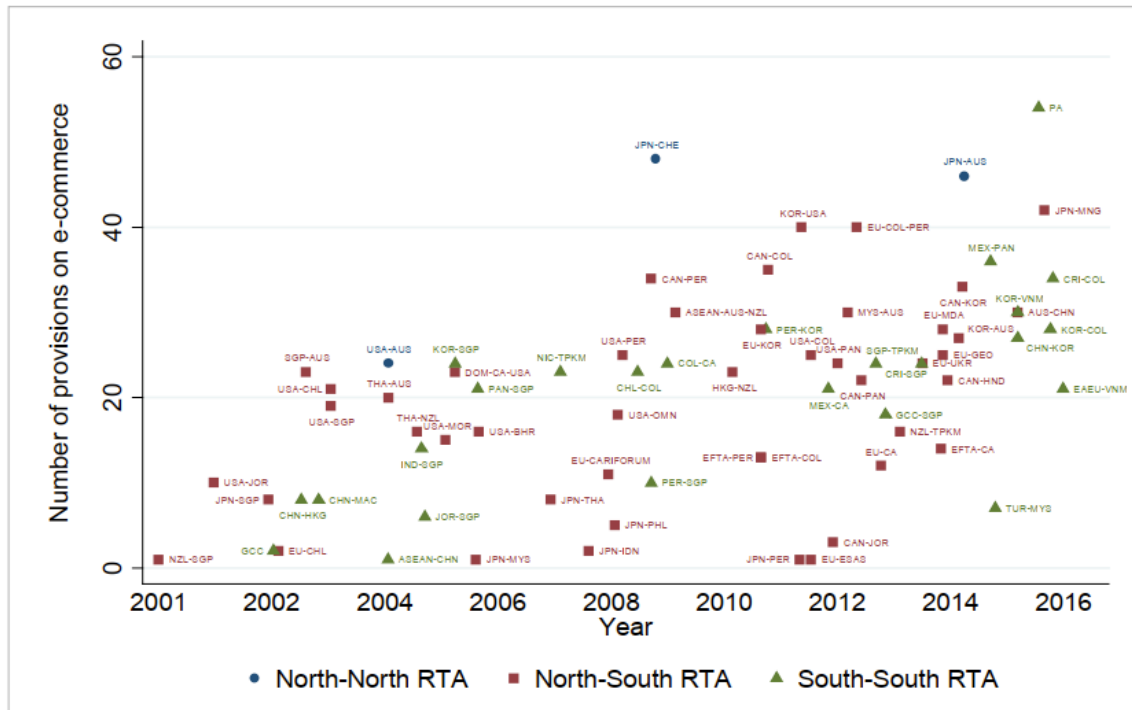
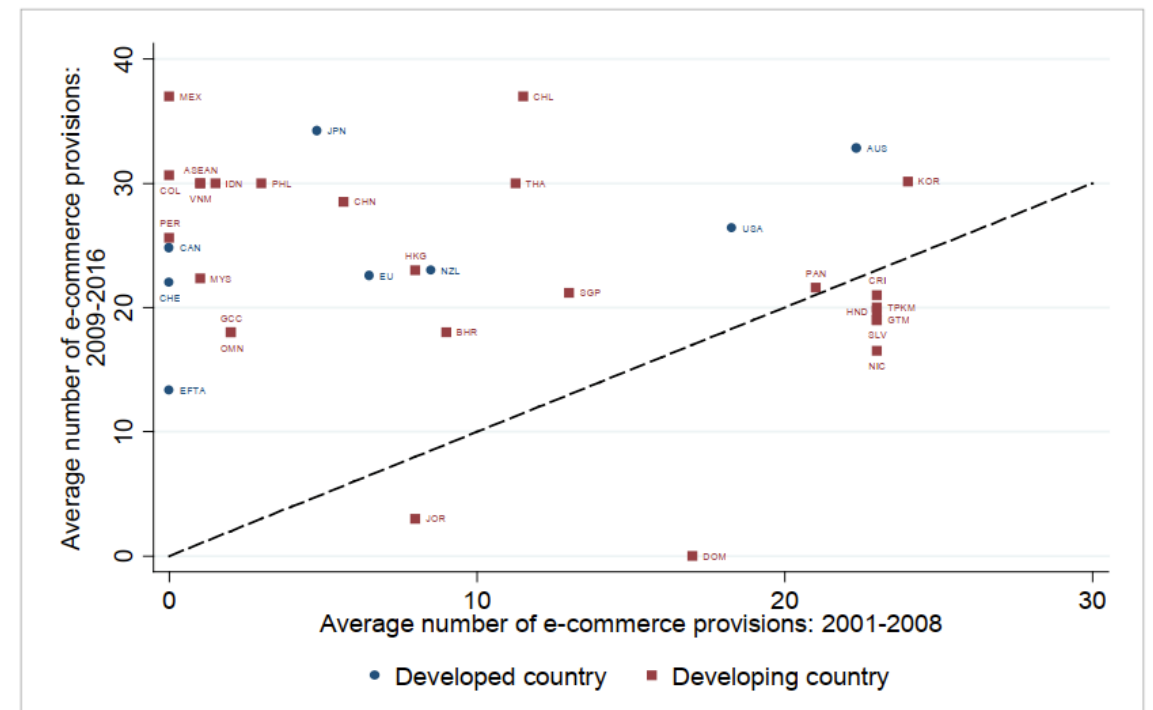


Figure 5: Evolution of the average number of e-commerce provisions by country



# Typology of e- commerce provisions

Trade facilitation

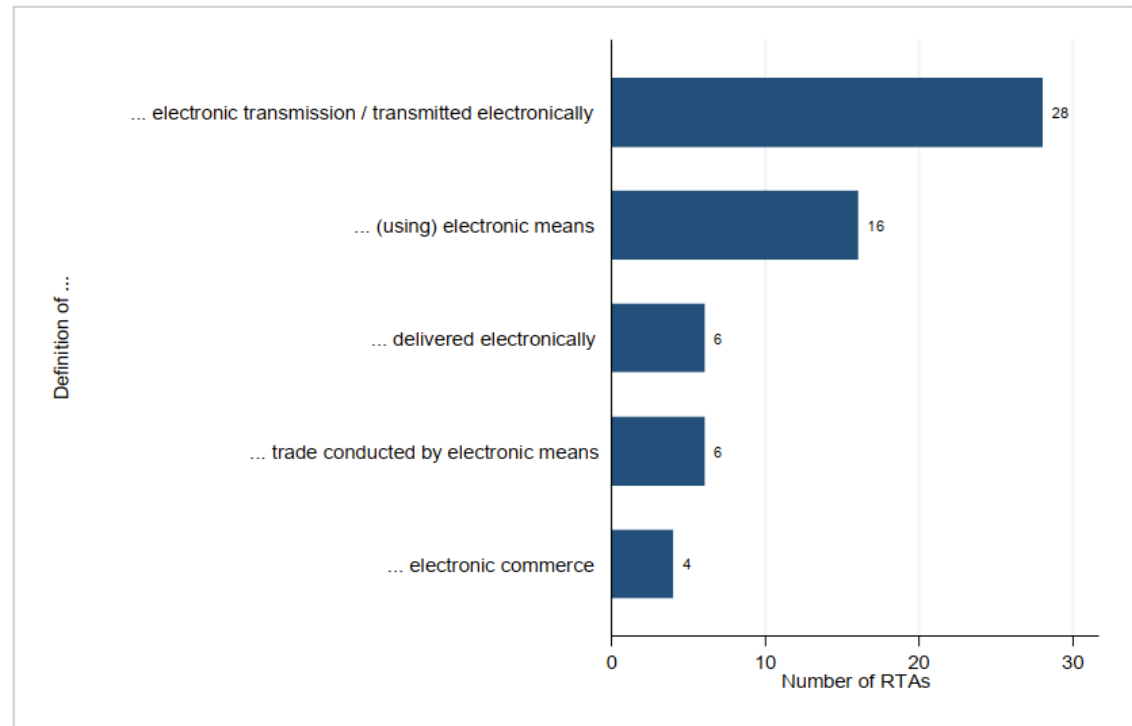
Regulatory burden

Consumer protection

Regulatory autonomy

# Definitons

Figure 13: Provisions on definition of e-commerce



**digital product** means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;<sup>2, 3</sup>

<sup>3</sup> The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

# Customs duties

Figure 25: Scope of e-commerce subject to the practice of no customs duties

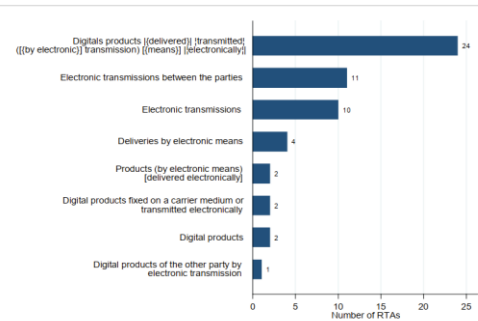


Figure 22: Types of provisions related to customs duties

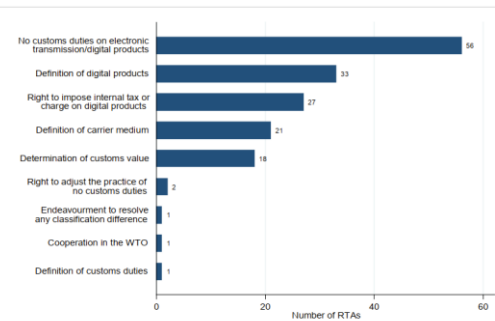
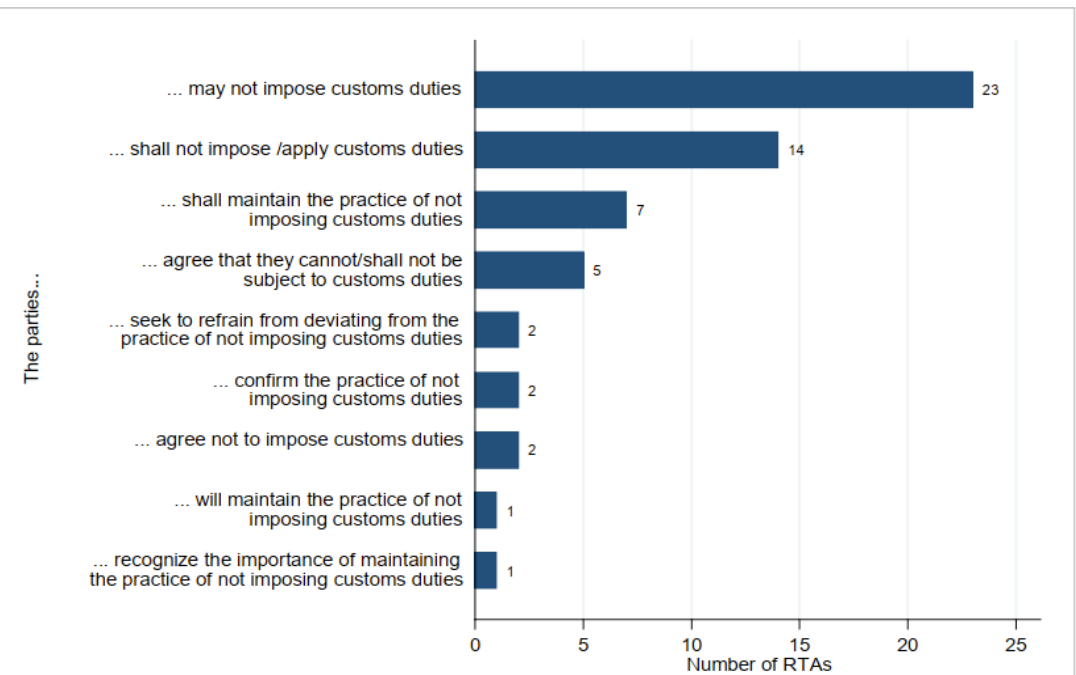


Figure 23: Provisions on the practice of no customs duties



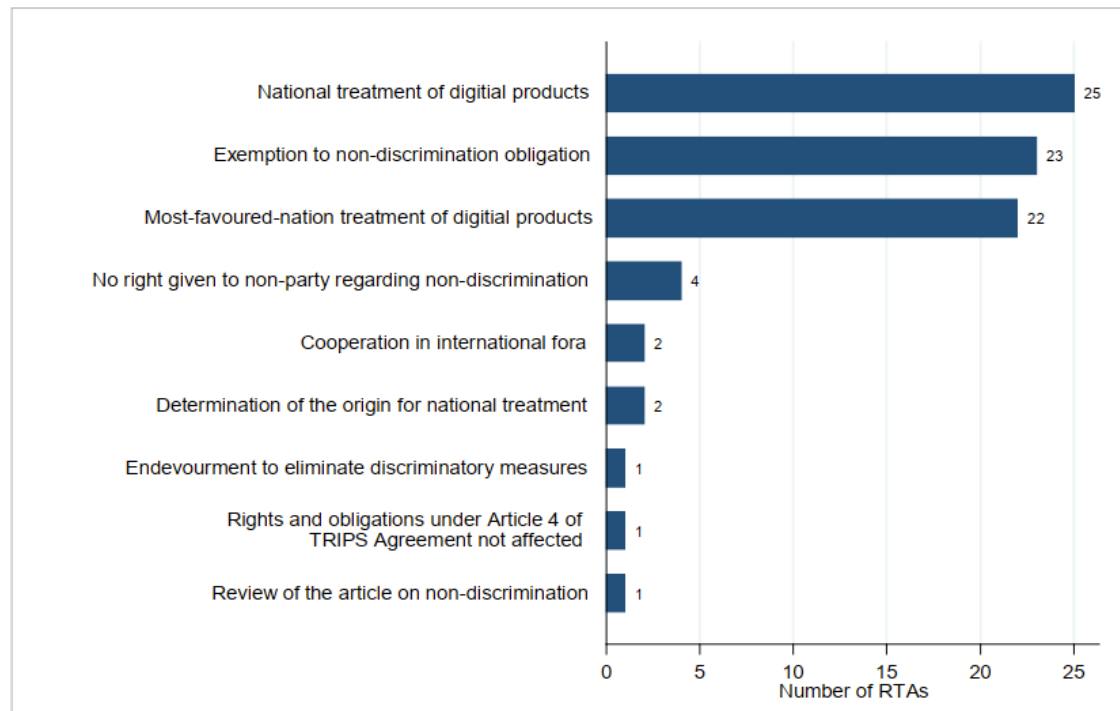
## Article 14.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.



# Non-discrimination

Figure 29: Types of provisions on non-discrimination of digital products

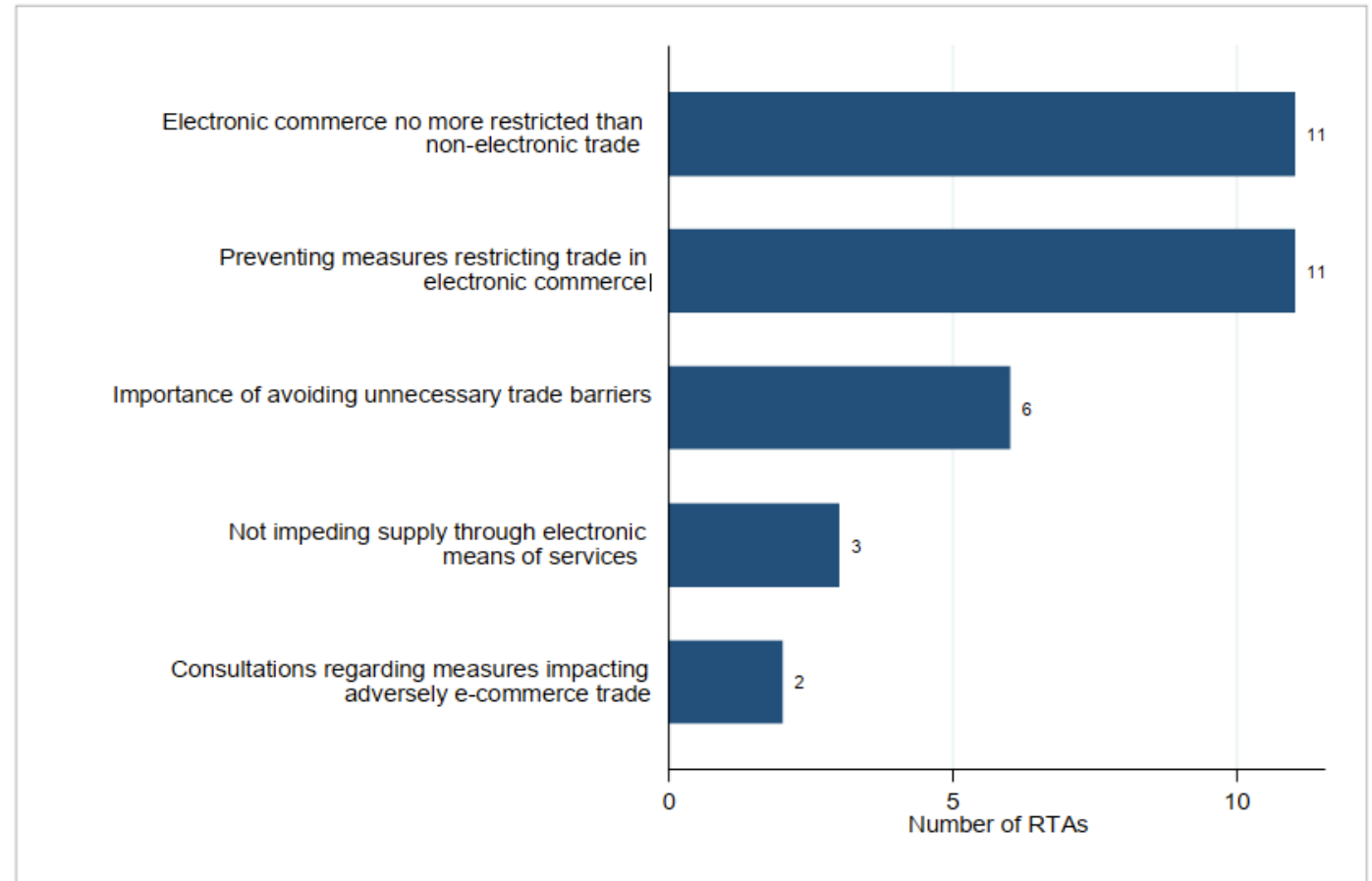


## Article 14.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.<sup>4</sup>
2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 18 (Intellectual Property).
3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. This Article shall not apply to broadcasting.

# Barriers to trade

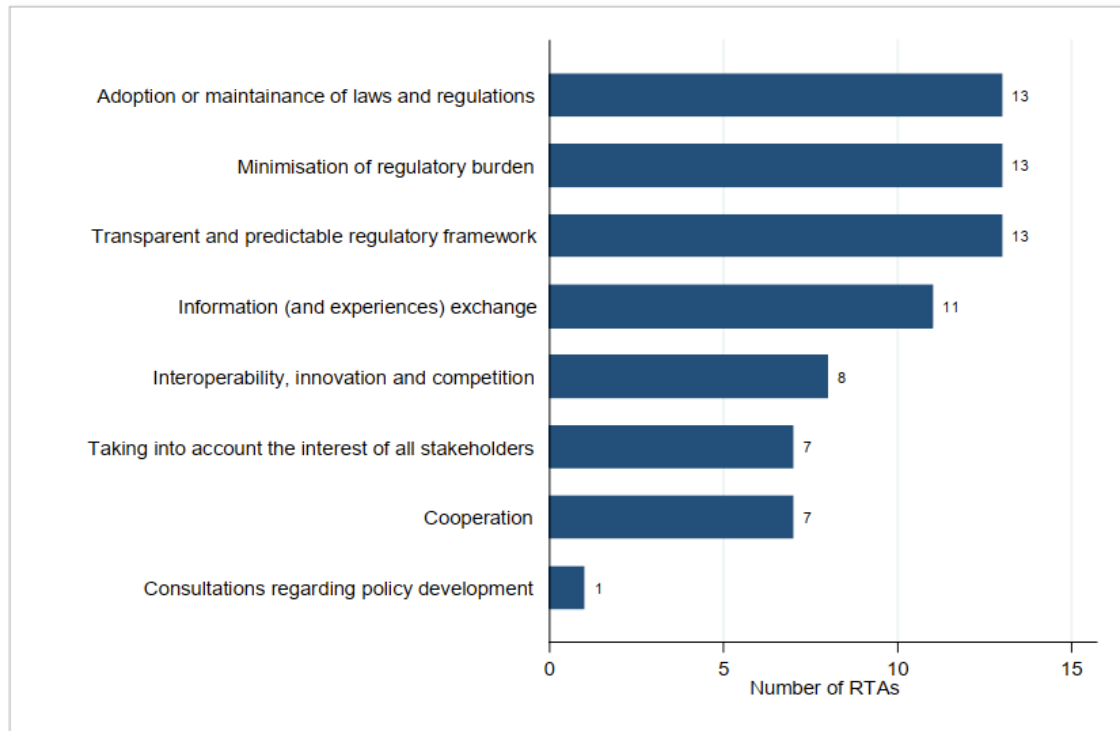
Figure 27: Types of provisions related to trade barriers



Source: Computations based on WTO RTA database

# Regulatory framework

Figure 32: Types of provisions related to domestic regulatory framework

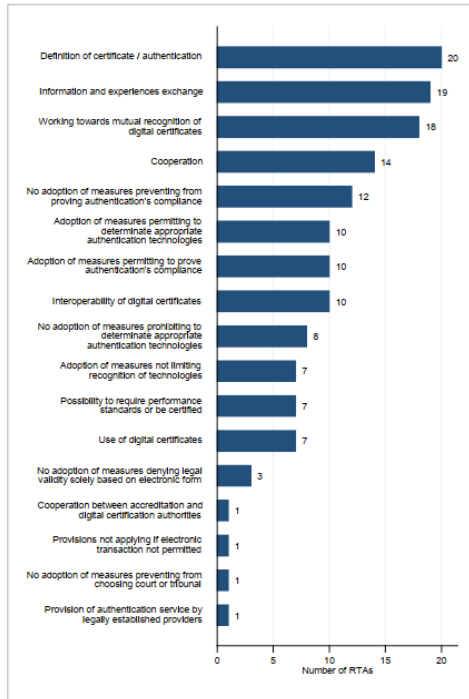


## Article 14.5: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York November 23, 2005.
2. Each Party shall endeavour to:
  - (a) avoid any unnecessary regulatory burden on electronic transactions; and
  - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

# Electronic authentication and signatures

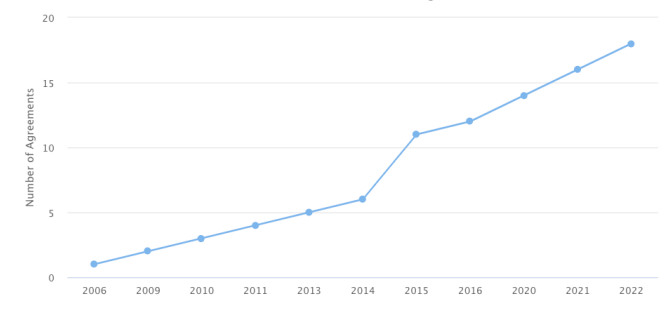
Figure 36: Types of provisions related to electronic authentication



## Article 14.6: Electronic Authentication and Electronic Signatures

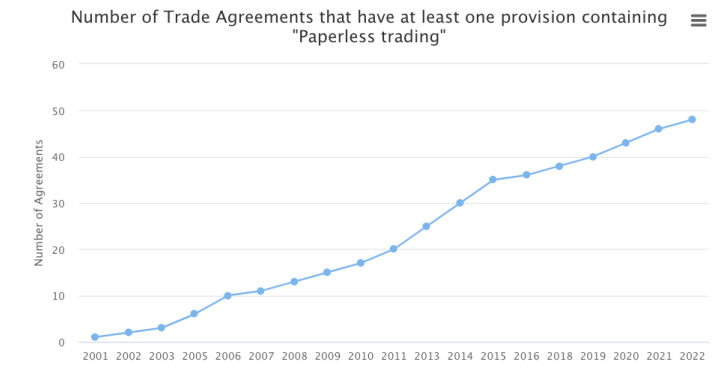
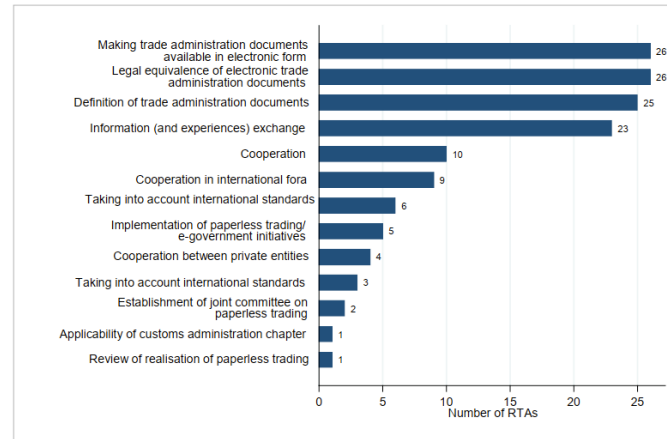
1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. No Party shall adopt or maintain measures for electronic authentication that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
  - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.
4. The Parties shall encourage the use of interoperable electronic authentication.

Number of Trade Agreements that have at least one provision containing "Electronic authentication and signatures"



# Paperless trading

Figure 46: Types of provisions related to paperless trading



## Article 14.9: Paperless Trading

Each Party shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

# Technological neutrality

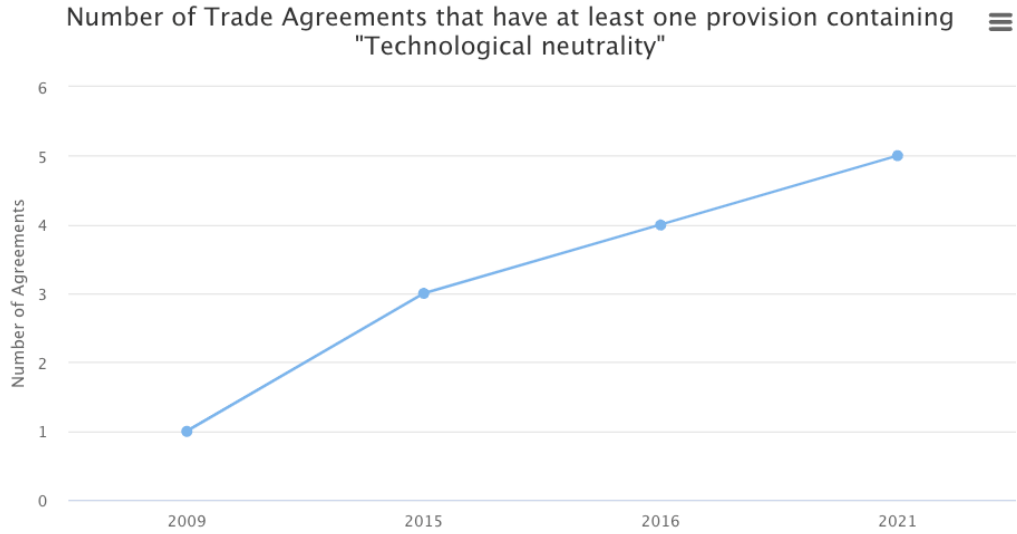
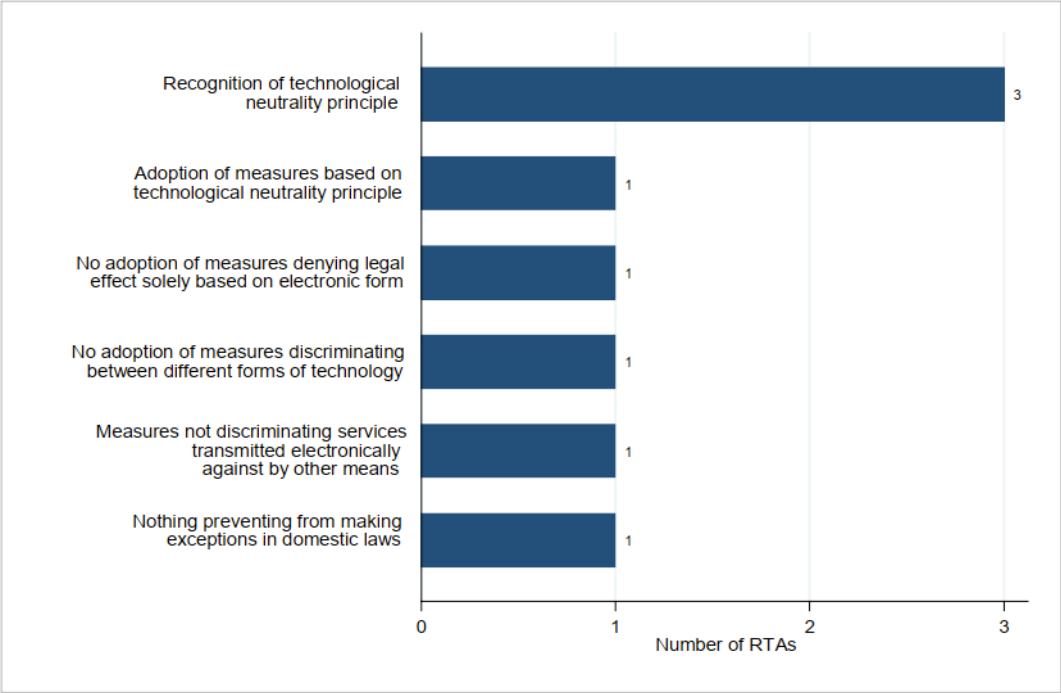


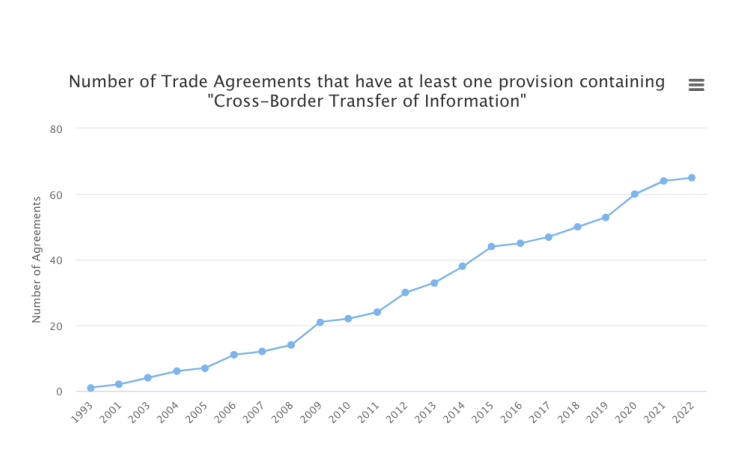
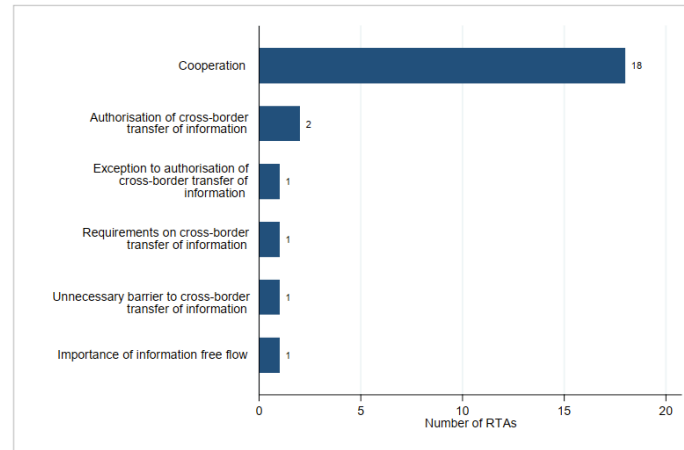
Figure 34: Types of provisions on technological neutrality





# Cross-Border Transfer of Information

Figure 40: Types of provisions related to cross-border transfer of information



## Article 14.11: Cross-Border Transfer of Information by Electronic Means

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

# Location of Computing Facilities

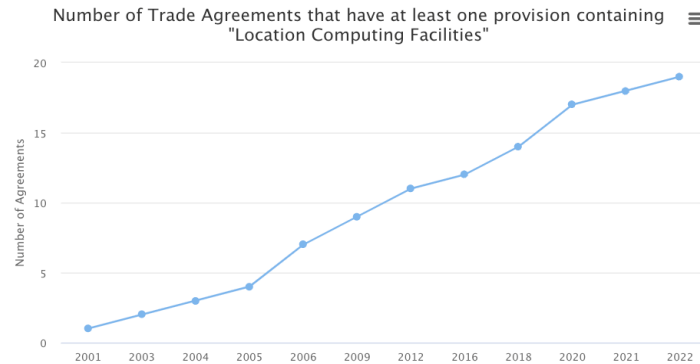
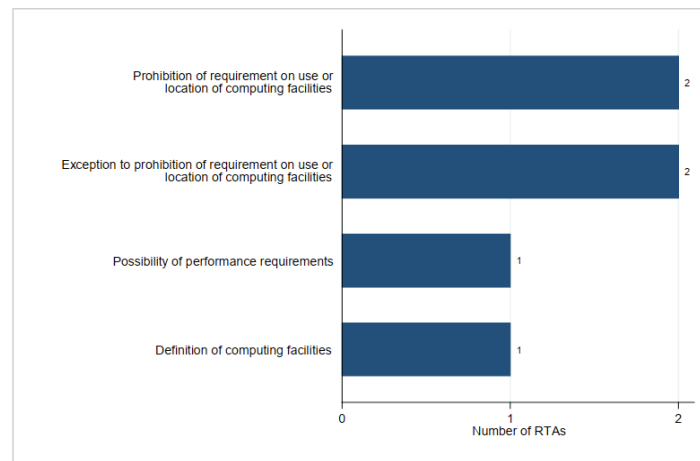


Figure 48: Types of provisions related to use and location of computing facilities



## Article 14.13: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:
  - (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
  - (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

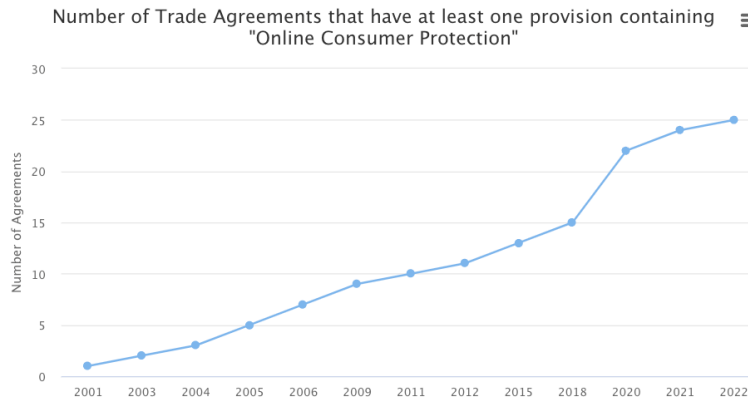
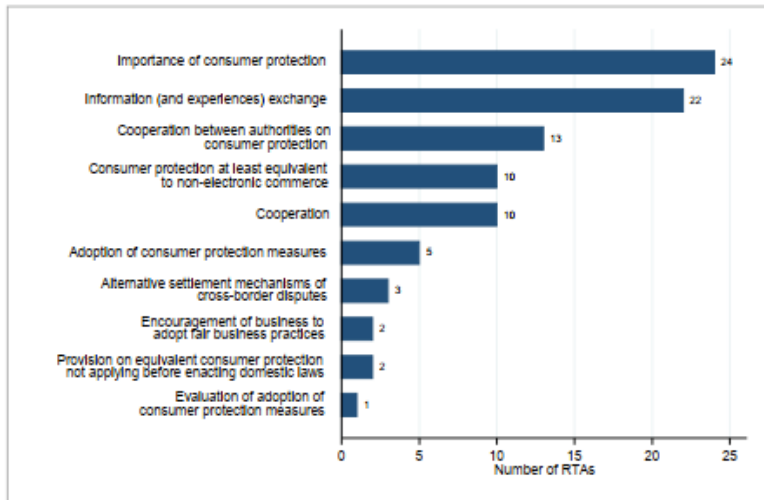


## Article 14.17: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.
2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.
3. Nothing in this Article shall preclude:
  - (a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or
  - (b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.
4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

# Online Consumer Protection

Figure 38: Types of provisions related to consumer protection



## Article 14.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 16. 6.2 (Consumer Protection) when they engage in electronic commerce.
2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.
3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 16. 6.5 and Article 16. 6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

# Personal Information Protection

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.<sup>6</sup>

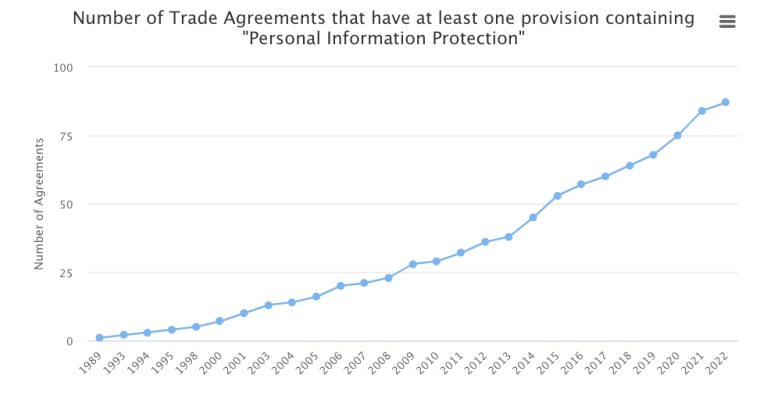
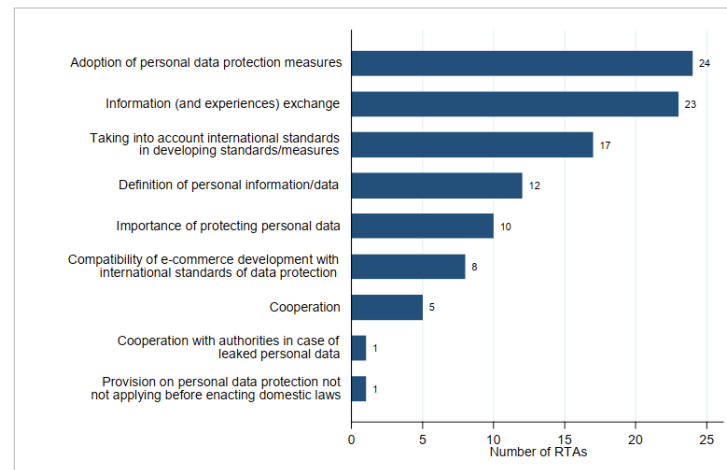
3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

- (a) individuals can pursue remedies; and
- (b) business can comply with any legal requirements.

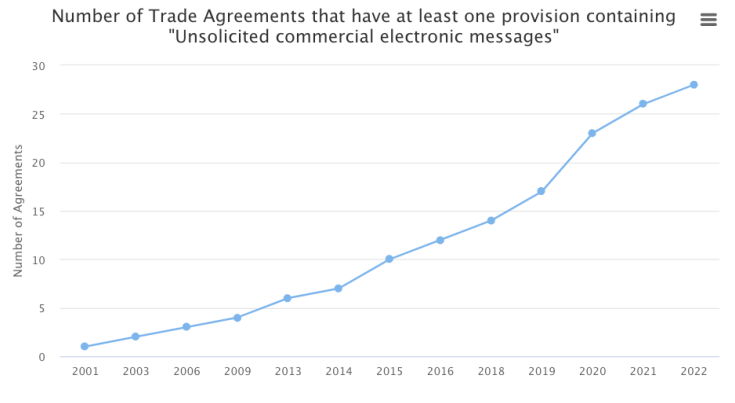
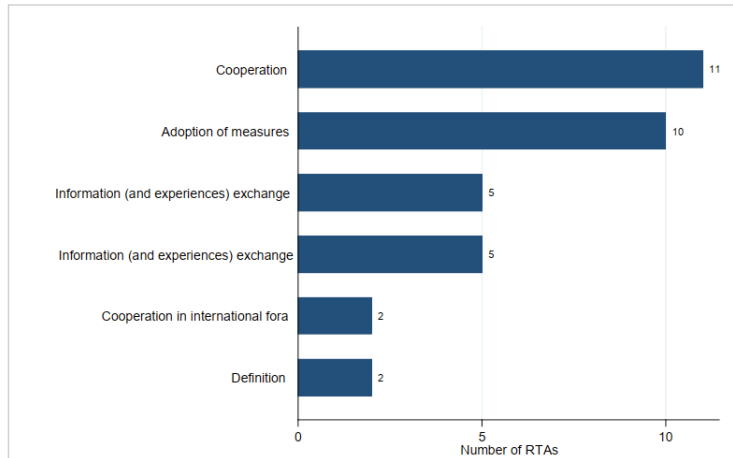
5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These

Figure 42: Types of provisions related to personal information protection



# Unsolicited commercial electronic messages

Figure 44: Types of provisions related to unsolicited commercial electronic messages



## 14.14: Unsolicited Commercial Electronic M

y shall adopt or maintain measures regarding unsolicited commercial electr  
 re suppliers of unsolicited commercial electronic messages to facilitate the a  
 reception of those messages;  
 re the consent, as specified according to the laws and regulations of each P:  
 icial electronic messages; or  
 wise provide for the minimisation of unsolicited commercial electronic mess  
 y shall provide recourse against suppliers of unsolicited commercial elector  
 asures adopted or maintained pursuant to paragraph 1.  
 s shall endeavour to cooperate in appropriate cases of mutual concern regi  
 :ommercial electronic messages.

# Cooperation

## Article 14.15: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist SMEs to overcome obstacles to its use;
- (b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
  - (i) personal information protection;
  - (ii) online consumer protection, including means for consumer redress and building consumer confidence;
  - (iii) unsolicited commercial electronic messages;
  - (iv) security in electronic communications;
  - (v) authentication; and
  - (vi) e-government;
- (c) exchange information and share views on consumer access to products and services offered online among the Parties;
- (d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and
- (e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Figure 56: Forms of e-commerce cooperation

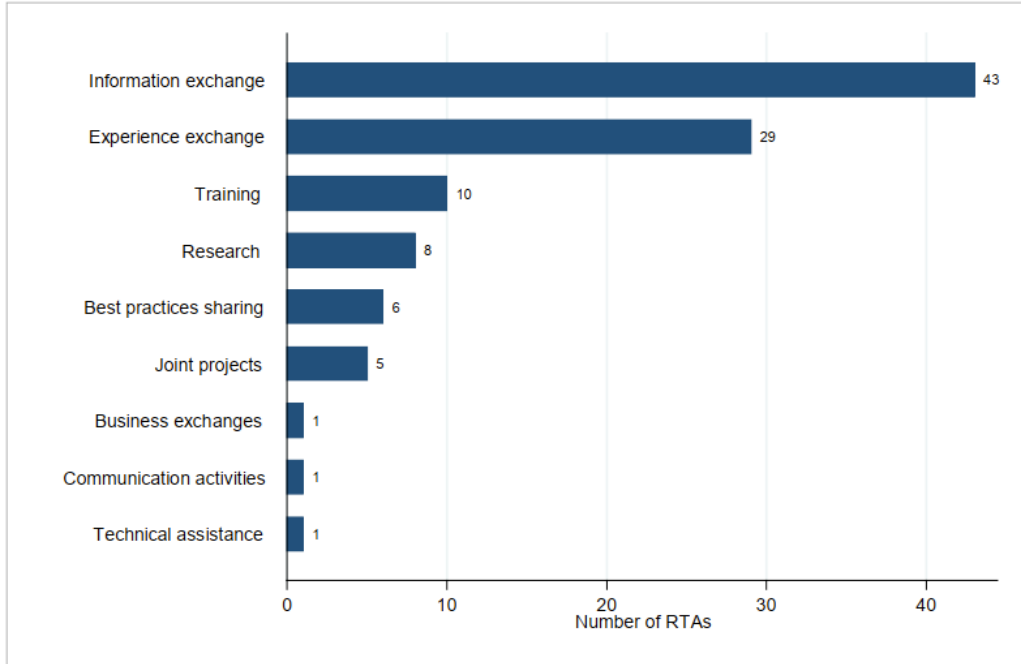
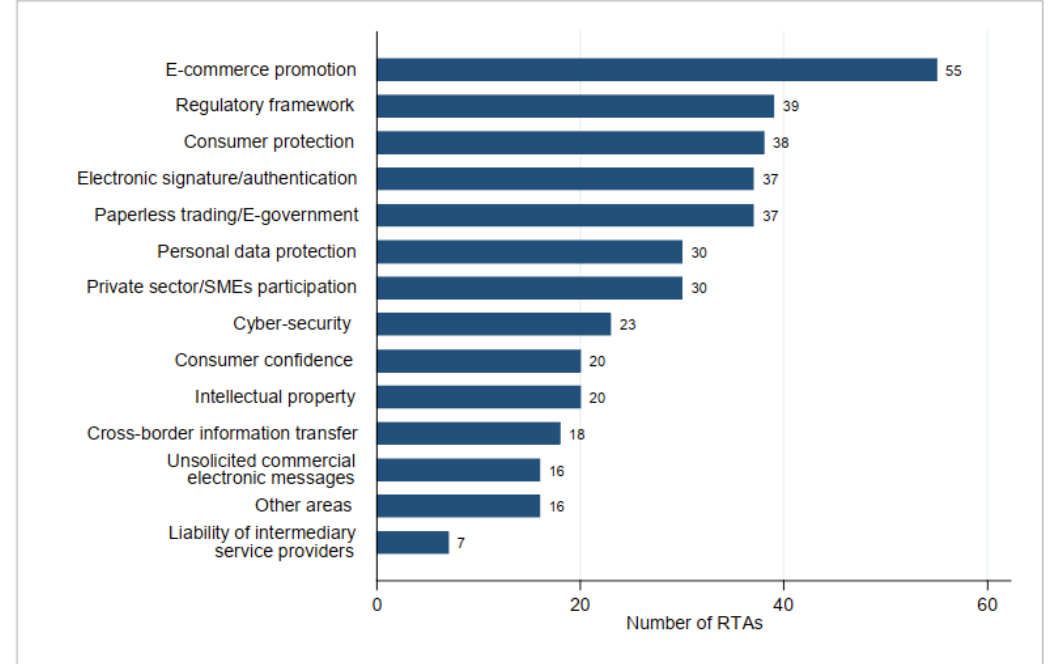
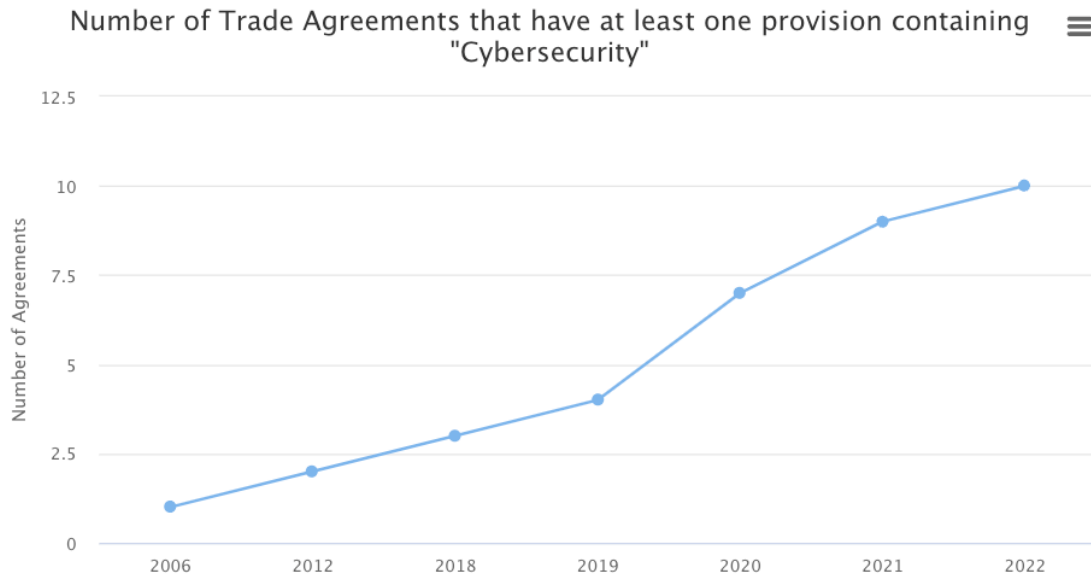


Figure 55: Areas of e-commerce cooperation



# Cybersecurity



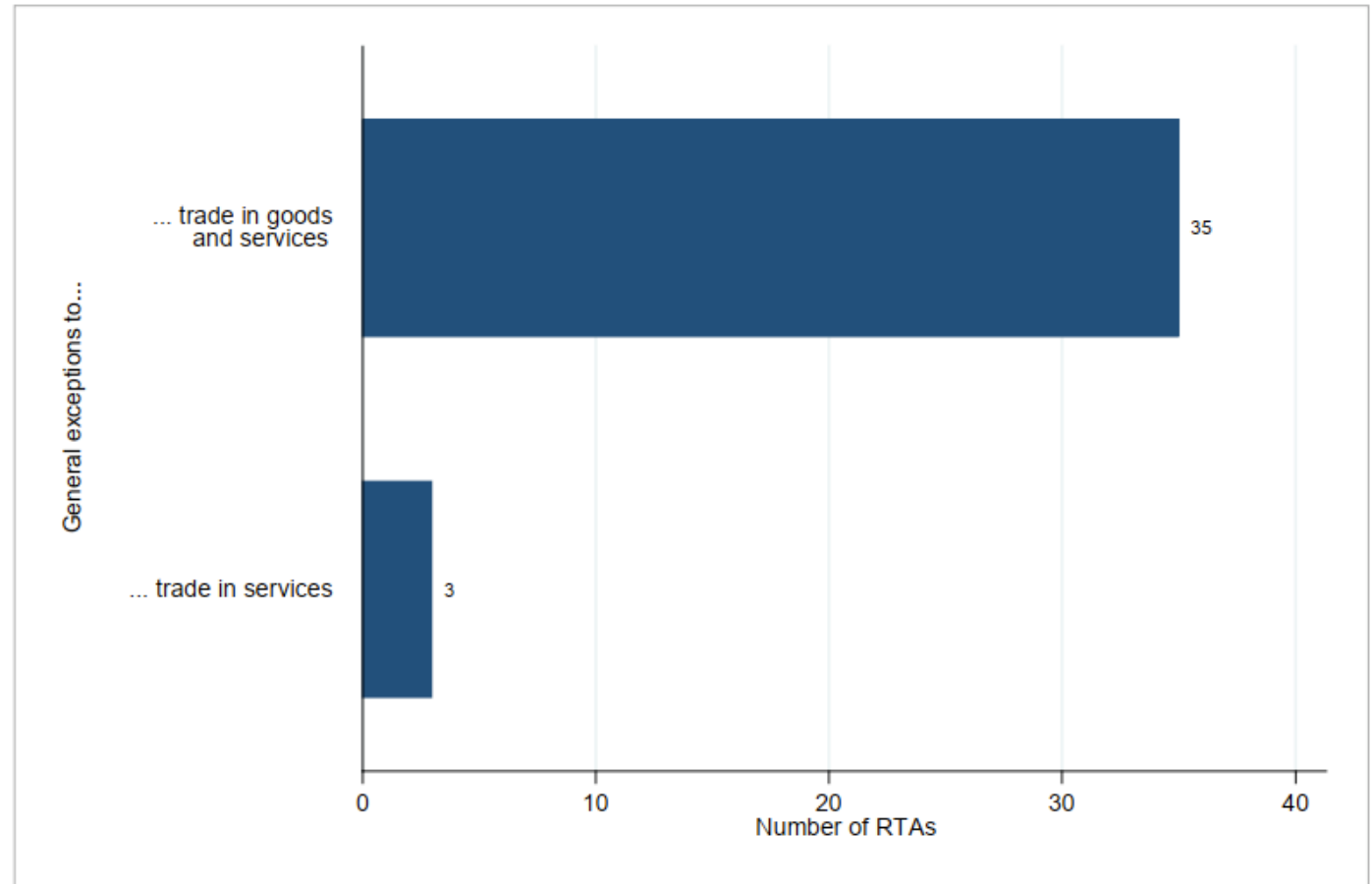
## Article 14.16: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

- (a) building the capabilities of their national entities responsible for computer security incident response; and
- (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

# Exceptions

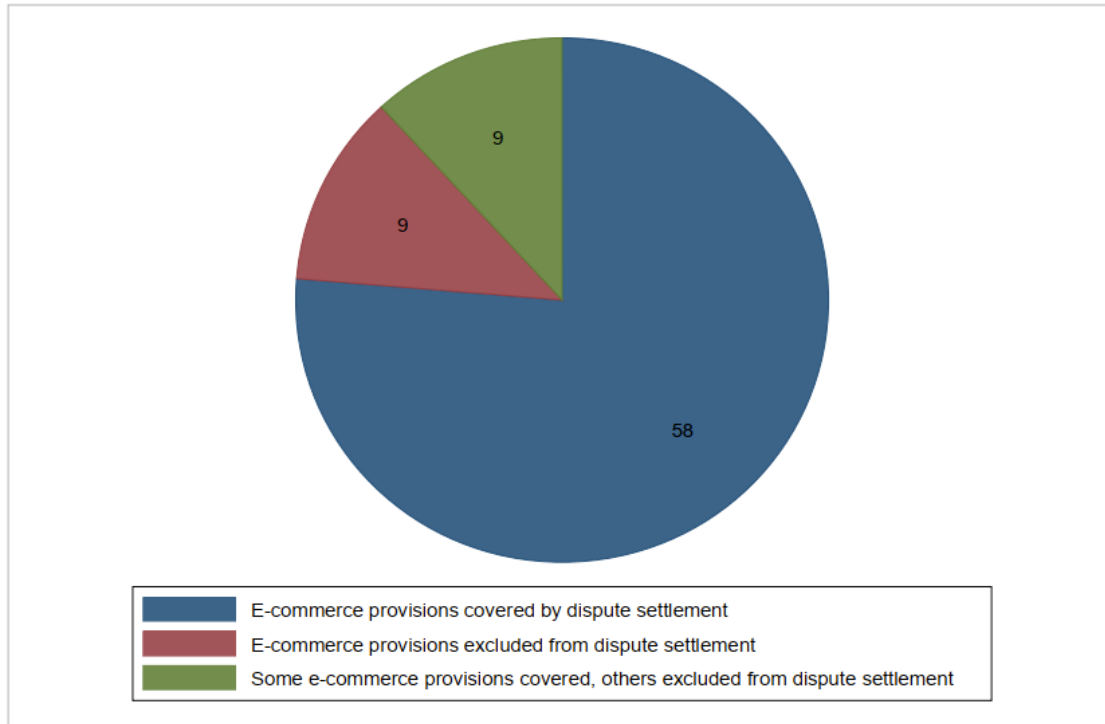
Figure 17: Scope of general exceptions provisions to e-commerce





# Dispute settlement

Figure 18: Dispute settlement coverage of e-commerce provisions in RTAs



## Article 14.18: Dispute Settlement

1. With respect to existing measures, Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this Agreement for Malaysia.
2. With respect to existing measures, Viet Nam shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) for a period of two years after the date of entry into force of this Agreement for Viet Nam.