

Photo: ASEAN Secretariat

MANILA · 14 NOVEMBER 2026

Congratulations to ASEAN. Now... *about the US trade agreement.*

Malaysia, Cambodia and Indonesia signed DEFA having already undertaken, in their Agreements on Reciprocal Trade (ARTs) with the United States, to consult or inform Washington before entering into a new digital trade agreement.



ISN'T THERE SOMEBODY YOU FORGOT TO ASK?

Agreements on Reciprocal Trade (ARTs) require some ASEAN member states to *contact the US.*

Malaysia
CONSULT
SIGNED 26 OCT 2025

Cambodia
CONSULT
SIGNED 26 OCT 2025

Indonesia
COMMUNICATE
SIGNED 19 FEB 2026

Thailand
FRAMEWORK ONLY
26 OCT 2025

Viet Nam
FRAMEWORK ONLY
26 OCT 2025

Brunei
NO AGREEMENT

Lao PDR
NO AGREEMENT

Myanmar
NO AGREEMENT

Philippines
NO AGREEMENT

Singapore
NO AGREEMENT

Timor-Leste
NO AGREEMENT

MUST CONSULT
MUST COMMUNICATE
NO SIGNED TEXT

The obligation binds Malaysia and Cambodia, which signed on 26 October 2025, and Indonesia, which signed on 19 February 2026. Thailand and Viet Nam concluded framework joint statements on the same October date but have no signed text. None of the three signed agreements has yet entered into force.

Article 3.3 ART in the *three agreements*

AGREEMENT ON RECIPROCAL TRADE

United States · Malaysia

Article 3.3: Digital Trade Agreements

Malaysia shall **consult** with the United States before entering into a new digital trade agreement with another country that jeopardizes essential U.S. interests.

Signed 26 Oct 2025 · p. 4

AGREEMENT ON RECIPROCAL TRADE

United States · Cambodia

Article 3.3: Digital Trade Agreements

Cambodia shall **consult** with the United States before entering into a new digital trade agreement with another country that jeopardizes essential U.S. interests.

Signed 26 Oct 2025

AGREEMENT ON RECIPROCAL TRADE

United States · Indonesia

Article 3.3: Digital Trade Agreements

Indonesia shall **communicate** with the United States before entering into a new digital trade agreement with another country that jeopardizes essential U.S. interests.

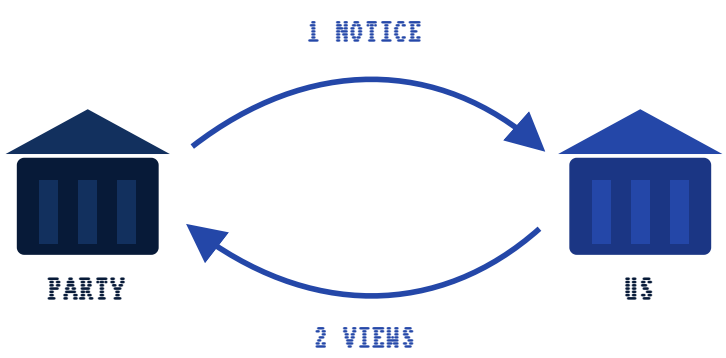
Signed 19 Feb 2026 · p. 5

What the state must do — The condition that engages the duty

Do consult and communicate even *mean something different?*

MALAYSIA · CAMBODIA

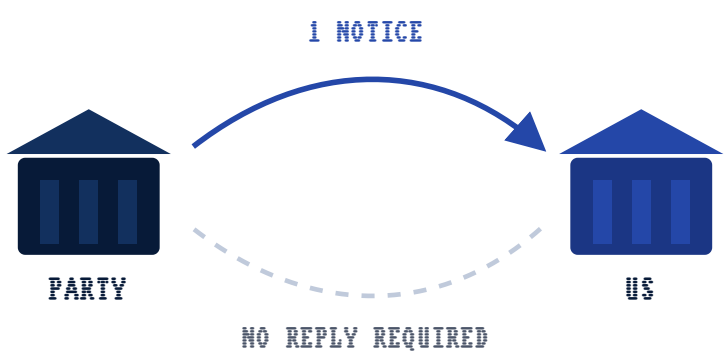
Consult



Two-way: notice, a reply, and consideration of it before signing

INDONESIA

Communicate

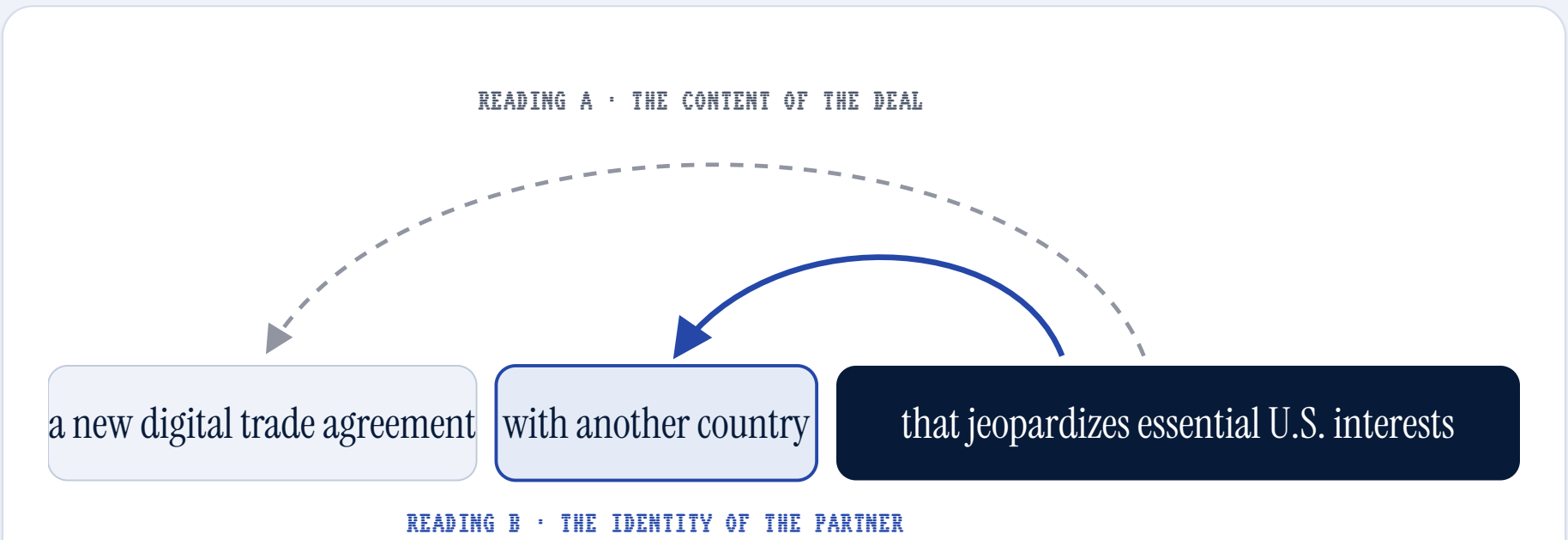


One-way: notice, and the duty is spent

To consult is to tell the United States about a new agreement and then weigh its views before signing, whereas to communicate is only to tell it, so Indonesia's softer verb asks less of Jakarta than the other two texts ask of Kuala Lumpur and Phnom Penh. Neither verb, however, gives Washington the power to stop DEFA.

Real in process, *slight in consequence.*

What must jeopardize US interests: *the agreement or the partner?*



The big question is whether Washington sees any ASEAN neighbour as a country that jeopardizes its essential interests, because only an agreement with such a country brings Article 3.3 ART into play.

Article 2.7 ART excludes ASEAN commitments. *Article 3.3 ART does not.*

MALAYSIA · ARTICLE 2.7 ART · SERVICES

An ASEAN exclusion

This Agreement incorporates, mutatis mutandis, any commitment concerning trade in services that Malaysia has made or hereafter makes in a trade agreement to any third country, jurisdiction, or economy. This Article shall not apply to any commitment to the Association of Southeast Asian Nations (ASEAN) under any ASEAN trade or investment agreement.

Signed 26 Oct 2025 · p. 3

MALAYSIA · ARTICLE 3.3 ART · DIGITAL TRADE

No ASEAN exclusion

Malaysia shall consult with the United States before entering into a new digital trade agreement with another country that jeopardizes essential U.S. interests.

NO ASEAN WORDING

Signed 26 Oct 2025 · p. 4

The drafters provided for ASEAN agreements in the services article and said nothing of them in the digital trade article. DEFA therefore cannot rely on an implied regional exception, and whether Article 3.3 ART reaches it depends on the condition read on the previous page.

DEFA beside what is *already owed to Washington*

DEFA AS REPORTED	FIT	AGREEMENTS ON RECIPROCAL TRADE
Cross-border data Transfers with exceptions for privacy, confidentiality and security, and limits on local storage	IF ASEAN BORDERS COUNT AS TRUSTED	**Trusted borders** Ensure data transfer "across trusted borders" for business MY ART, Art. 3.2(b)
Linked payments National payment systems made to work together for regional trade	WATCH THE RAILS	**US card networks** Keep allowing US networks to process domestic card transactions ID ART, Annex III Art. 2.29
Paperless trade E-invoices, e-signatures and trade documents accepted across ASEAN	IF OPEN TO US PROVIDERS	**Non-discrimination** No measures that discriminate against US digital services MY ART, Art. 3.2(a)

The DEFA text was not public at the time of writing. The left column follows the signing reports of 14 and 15 November 2026.

DEFA is signed. *Ratification is still to come.*

26 OCT 2025
Malaysia and Cambodia sign their agreements

19 FEB 2026
Indonesia signs its agreement

16 MAR 2026
Malaysia's trade minister calls its agreement "null and void"
After the US Supreme Court ruling on tariffs; no notice from either party is on the record

14 NOV 2026
DEFA signed in Manila

14 NOV 2026 TO ENTRY INTO FORCE
Consent to be bound still to come
Ratification is the act by which each state enters into DEFA

EARLY 2027
DEFA expected to enter into force

Must the consultation or communication with the US come before the DEFA signing, *or before national ratification in each member state?*

10 THE ANSWER

Compatible on paper *if someone picked up the phone*

- **A procedure, not a veto.**
  Article 3.3 ART imposes a procedure and confers no veto, so DEFA does not breach it by existing.

- **No such partner on the record.**
  The duty is engaged only by an agreement with a country that jeopardizes essential U.S. interests, and nothing on the record shows Washington treating any ASEAN member state that way.

- **Nothing in force yet.**
  None of the three agreements is in force, Malaysia's trade minister has called Malaysia's void, and DEFA's own entry into force waits on ratification.

What the record does not show is whether Kuala Lumpur, Phnom Penh and Jakarta told Washington before Manila. If they did, nobody has published it.

Did anyone call Washington *before the pens came out?*



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