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Regional mapping: Digital provisions play a key role in Asia Pacific agreements

Henry S. GAO
Singapore Management University, henrygao@smu.edu.sg

REGIONAL MAPPING

Digital provisions play a key role in Asia Pacific agreements

HENRY GAO

IT HAS become more commonplace for trade agreements in the Asia Pacific to include a variety of digital trade provisions. To understand the salient features of these agreements, it is helpful to map out their main baseline features. Doing so also indicates where digital trade agreements may be going or need to go. This mapping covers all free trade agreements (FTAs) with chapters on e-commerce or digital trade since 2000 by the main players in the region—China, South Korea, Japan, India, Australia, New Zealand, Singapore, Vietnam and Malaysia.

It also covers the mega-FTAs in the region—the Regional Comprehensive Economic Partnership, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the United States–Mexico–Canada Agreement, and the EU–Canada Comprehensive Economic and Trade Agreement (CETA)—as well as two standalone digital trade agreements, the Digital Economy Partnership Agreement (DEPA), bringing together Singapore, New Zealand and Chile and the Singapore–Australia Digital Economy Agreement (SADEA). Using the CPTPP as the baseline, digital trade provisions in these trade agreements can be grouped into four categories.

First, there are six provisions that are designed to facilitate digital trade including the elimination of customs duties on electronic transmissions, non-discriminatory treatment of digital products, domestic electronic transaction frameworks, electronic authentication, electronic signatures and paperless trading provisions. These provisions are intended to open and align the regulatory environment to enable digital trade to function.

Second, there are five provisions that minimise commercial and regulatory burdens for digital services trade providers. These include access to and use of the internet for electronic commerce, free flow of data, prohibition of data localisation requirements, prohibition on forced transfer of source codes and open government data. By removing these obstacles, digital services will be able to flow more freely across countries.

Third, three provisions protect the interests of consumers, including online consumer protection, privacy and personal information protection and protection against unsolicited commercial electronic messages. By addressing the main concerns of consumers, these provisions enhance the trust of consumers in digital services trade and boost the take-up rate of digital services.

The last category includes four provisions that preserve the regulatory autonomy of governments, such as those on cybersecurity, exceptions and cooperation. These help governments to reserve the space necessary to address various social policy objectives and ensure national security and safety requirements.

The first type of provisions is the most popular with more than three-quarters of FTAs including at least two from this category. They are intended to lay down the infrastructure or regulatory alignments necessary to facilitate digital trade and do not prescribe a specific regulatory approach on sensitive issues. As such, they face the least resistance from governments.

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PICTURE: REUTERS / KHAM

East Asian leaders meet virtually for the 4th Regional Comprehensive Economic Partnership Summit as part of the 37th ASEAN Summit in Hanoi, (2020).

At the same time, despite these provisions helping developing countries to foster their digital services trade, implementation problems are likely. Implementing these provisions may require additional investment into hardware and software, a challenge for some developing countries. Having sufficient facilities could also be an issue. Instead, the statutory requirements on documentary formalities may need to be modified to consider new ways of contracting and approval.

The second type of provisions facilitate digital services trade by removing or attempting to minimise regulatory barriers that block or impede digital trade flow. As with earlier generations of trade agreements, it is often perceived that the primary beneficiaries of such measures will tend to be overseas services suppliers coming from the larger more developed economies.

Many developing countries are thus reluctant to agree to these provisions. The issue is not just economic as it once again involves a lack of capacity that regulators must grapple with.

But without these policies in place, foreign digital platforms will be hesitant to enter the local market, due to compliance costs, regulatory ambiguity and—in some cases—increased cybersecurity risks. Developing countries will therefore need to understand the benefits as well as the challenges arising from these provisions, at least as a welcoming signal to foreign digital firms.

The third type of provisions do not directly contribute to the development of digital services trade. They make indirect contributions to digital trade by fostering a trustworthy environment that eases concern among consumers. But developing countries often lack the domestic laws and regulations that would enable them to deal with many of the issues in this category.

The fourth type of provisions boost the power of governments vis-a-vis digital firms and so do not appear to be facilitative in nature. Yet, such provisions provide governments the manoeuvring space necessary to keep digital services in check. This is crucial for many developing countries as the bulk of digital services trade is provided by foreign suppliers. This also explains the popularity of these provisions, with more than 70 per cent of the surveyed FTAs including at least one provision in this category.

To foster the development of this sector, developing countries in Asia will need to enhance the provisions in the second and third categories. Given the complexity of digital trade, it is unrealistic to assume that the mere inclusion of these provisions will boost trade. Instead, this needs to be coupled with the build-up of digital trade infrastructure and a regulatory environment that strikes a balance between risk control and market liberalisation.

It is partially in response to these challenges that the more recent standalone SADEA and DEPA agreements have emerged. The former introduces innovative memorandum of understanding applications as an appendix chapter to directly bring private sector proof points into the agreement, while the latter focuses almost exclusively on digital trade facilitation with a series of modular frameworks that are intended to be recrafted as digital trade channels flourish.

While both agreements challenge whether the existing multilateral trade agreement structure and process is fit-for-purpose in the emerging digital trade era, they also retain the overall traditional structure bridge to existing frameworks and processes. Both agreements also introduce a far more interesting focus on soft initiatives such as the use of regulatory sandboxes, digital identities and the enablement of artificial intelligence. As such, they raise interesting, if confronting, questions about both the viability and direction of the multilateral trade agreement process going forward. EAFQ

Henry Gao is Associate Professor of Law at Singapore Management University.

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Addressing the digital divide in ASEAN

GIULIA AJMONE MARSAN

THE economic dynamism of ASEAN is well-known and in recent years the region has seen the emergence of some of the fastest growing digital economies in the world. The COVID-19 pandemic accelerated this trend, with 60 million new digital consumers since the pandemic started and the internet economy on track to account for US$360 billion by 2025.

The acceleration of the digital economy coupled with needs spurred by COVID-19 restrictions have catalysed digital-enabled innovation and entrepreneurship in the region. This is reflected in several indicators. According to Bloomberg, Southeast Asian tech start-ups raised approximately US$8.2 billion in 2020, outperforming most other emerging markets, though this has slowed in 2022 in line with global trends. In 2021, there were more than 30 ASEAN unicorns—start-ups with a value of US$1 billion or more—and that number is growing fast.

Thanks to this dynamism, investors are looking beyond traditional start-up destinations such as Singapore—a long-standing global innovation hotspot—and Indonesia—a destination favoured because of its large market size—to reach countries such as Malaysia and Vietnam. At the same time, a growing tech-savvy cohort of millennial and Gen Z consumers is becoming an essential driver of this digital acceleration, creating a positive outlook for innovation in the digital economy.

Pandemic-induced challenges have accelerated innovation in specific sectors. Agritech, healthtech and edtech—innovation sectors generated by combining digital technologies with agriculture and food, healthcare, and education—have witnessed significant developments. In Singapore new policy initiatives, research and development (R&D) investments and regulations to help boost lab-grown meat production and urban, sustainable agriculture have allowed the city-state to attract leading start-ups in this area.

In other ASEAN countries, mobile applications which provide connections to medical providers flourished during lockdowns. One of a growing number of healthcare network platforms in the region, the Indonesian company Halodoc connected patients across the archipelago to doctors and provided home delivery of medicine while the country experienced the