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Leveraging Digital Economy Agreements for a durable post-Covid recovery

Moving towards a globally harmonised system of governance regulating cross-border digital flows would ensure that the digital transformation revolution would contribute to shared global prosperity in the post-pandemic world. BY SASIDARAN GOPALAN AND RAMKISHEN S RAJAN

THE exponential expansion of the intangibles-based data-driven digital economy seems to be the only bright spot in an otherwise gloomy global economic outlook.

While there was already a significant expansion of digital trade flows within and across countries pre-pandemic, the onset of Covid-19 accelerated these trends even more. Data on e-commerce trade from Statista shows that the share of digital trade in global retail trade increased sharply from 14 per cent in 2019 to about 20 per cent in 2021 and is estimated to hit around 25 per cent by 2025. The rapid adoption of digital technologies such as AI, cloud services and mobile applications has facilitated a surge in global cross-border digital trade.

To be sure, digital trade is a broad term that is generally considered to include not only cross-border exchange of goods and services online, but also that of data. The OECD Handbook on 'Measuring Digital Trade' defines it as all cross-border trade flows that are "either digitally ordered or digital intermediary platform-enabled or digitally delivered". The Australian Department of Foreign Affairs and Trade (DFAT) notes that the scope of digital trade goes beyond just online trading of goods and services to include cross-border data transmission and considers digital trade to fundamentally bank on digital technologies to enhance overall trade and productivity.

Given Singapore's exceptional global connectivity and its determined march towards a SMART nation (ie, digital economy, digital society, and digital government), it has particular interest in facilitating the creation of a borderless digital world as a means of enhancing growth and competitiveness.

Why Digital Economy Agreements matter

Even though many countries have embraced digital transformation, there are several regulatory hurdles facing the stakeholders concerning issues such as digital identities, data privacy, and the governance of AI. In the absence of global agreements, many countries have taken it upon themselves to devise their own rules and regulations that apply to cross-border digital trade in goods and services (such as imposition of taxes on digital services, levying customs duties on digital downloads, or data localisation). Such arbitrary regulations are likely to increase the costs of compliance for smaller firms in a disproportionate manner. Further, the recent ad hoc regulations intended to protect a country's digital sovereignty (largely as a fallout of the US-China trade war) have, in some cases, also given rise to "technology walls" which prevent firms from reaping the benefits of a borderless digital world.

This is where Digital Economy Agreements (DEAs) come into play to try and prevent the balkanisation of data governance, reduce barriers to digital trade in goods and services, and spur cross-border digital transactions (through paperless trading, e-invoicing, electronic payments etc). DEAs offer a platform for countries to establish international rules and standards for cooperation in areas pertaining to cross-border digital transactions with the aim of facilitating unrestricted cross-border digital trade through a transparent and trusted digital system. DEAs can also be used as policy commitments to deal with a wide spectrum of technology issues. These may entail standards to establish interoperability in areas including digital identities, the ethical use of AI, rules about data privacy, protection, and data localisation, all targeted towards promoting a safe and secure digital ecosystem.

In the absence of global agreements, many countries have taken it upon themselves to devise their own rules and regulations that apply to cross-border digital trade in goods and services. PHOTO: REUTERS

Current approaches to DEAs

Several approaches have been taken by countries towards DEAs. At the multilateral level, since January 2019, there has been an ongoing Joint Initiative (JI) negotiation on e-commerce under the auspices of the WTO, which now involves 86 countries across the world. However, as with most other multilateral trade initiatives, the e-commerce JI negotiations have hit several roadblocks. For instance, countries like China, which are part of the JI, continue to impose their own domestic requirements about data storage and disclosure. These requirements are generally inconsistent with the objectives of a multilateral DEA which aims to promote unhindered cross-border digital trade flows. More generally, the multilateral stalemate reveals an inherent conflict of interest between two sets of countries: those that advocate data sovereignty to prevent "data colonialism", versus those promoting "free cross-border flows of data with trust".

Given the markedly slow pace of progress at the multilateral level, countries have taken to bilateral and plurilateral routes to tap into the opportunities provided by DEAs. Some major FTAs concluded in recent years, such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP), have specific chapters that cover provisions on digital trade. The scope of coverage in the CPTPP is far more ambitious and comprehensive than what has been included under the RCEP. The United States-Mexico-Canada Agreement (USMCA) (which replaced Nafta) builds upon the CPTPP and goes further in expanding commitments for digital financial services. Other conventional bilateral FTAs have strengthened e-commerce chapters, including the recent Comprehensive Economic Partnership Agreement (CEPA) signed between the United Arab Emirates (UAE) and India, which came into force on May 1, 2022.

Apart from incorporating and strengthening digital chapters within conventional FTAs, countries are also bilaterally negotiating standalone DEAs with key trading partners. Singapore has been a trailblazer in this area, having already completed three bilateral agreements with South Korea, Australia, and most recently, the United Kingdom. The country is actively exploring more such DEAs with other countries and regions such as China and the EU.

In addition to these bilateral agreements, in 2020, Singapore, along with Chile and New Zealand, also created the first plurilateral standalone DEA, called the Digital Economy Partnership Agreement (DEPA). While the scope and coverage of the DEPA does not seem to be any more ambitious than the CPTPP, it has clearly caught global attention with other countries such as Canada and China looking to join the agreement. (Though China's possible accession could be challenging given its unilateral actions on digital sovereignty even leaving aside geopolitical complexities). Singapore has also actively promoted the process of digital integration within Asean, although the regional development disparities will inevitably limit the scope of intraregional digital integration.

Going forward

With Singapore's rapid strides in digitalisation, it has strong incentives in ensuring the development of forward-looking standards and establishing harmonised frameworks for the digital economy; hence its interest in creating a network of DEAs. Digital globalisation is not just for the larger companies. SMEs also stand to benefit, with some such enterprises having effectively leveraged digital technologies to establish themselves internationally, in the process of becoming what is known as micro-multinationals.

Moving towards a globally harmonised system of governance regulating cross-border digital flows would ensure that the digital transformation revolution would contribute to shared global prosperity in the post-pandemic world. However, given that a global consensus for a Digital Bretton Woods type agreement is unlikely to be reached anytime in the foreseeable future, a pragmatic approach is to negotiate bilateral and smaller plurilateral DEAs as building blocks to creating mega-regional digital agreements, if not a multilateral one.

In the interim, though, as more countries look to jump onto the DEA bandwagon as a means of facilitating seamless cross-border digital trade and promoting trust in digital systems, care must be taken to ensure a degree of standardisation among agreements. A patchwork of incompatible agreements may result in fragmenting rather than harmonising digital governance.

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