

Another digital trade deal, what's the big deal?

Central to the EUSDTA is the EU's consistent preference for open and secure cross-border data flows, with significant caveats



As an early and leading adopter of bilateral digital economy agreements, Singapore is in the thick of the action. PHOTO: CMG

ON JUL 25, the European Union (EU) and Singapore concluded negotiations on a Digital Trade Agreement (EUSDTA).

The first of its kind for the EU, the agreement sets rules for cross-border data flows and consumer protection, among other commitments that facilitate digital trade.

For Singapore, the EUSDTA will be the latest in a string of digital trade-focused agreements it has recently concluded – with Chile, New Zealand, Australia, United Kingdom and South Korea.

The conclusion of a new digital trade deal yields optimistic forecasts about enhanced market access and gains for trade, but it also introduces greater complexity into an increasingly crowded landscape of bilateral and plurilateral digital trade agreements.

Do new digital trade deals truly produce substantive benefits for trade or are these merely symbolic gestures in an evolving trade environment?

Bilateral deals: True drivers of digital trade governance?

The EUSDTA comes after major regional agreements such as the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) that have been heralded for their potential to enhance economic integration.

However, these plurilateral agreements tend to simply consolidate existing commitments among signatories. Research by the Asia Competitiveness Institute finds that the RCEP tariff regime does not currently provide significantly more preferential treatment for Asean as compared to existing agreements such as the Asean +1 free trade agreements.

On digital trade rules, these agreements also tend to achieve only the lowest common denominator with respect to regulatory harmonisation. The RCEP, for instance, does not introduce clear commitments on ensuring cross-border data flows. The CPTPP also lacks features on e-payments, artificial intelligence and fintech found in newer digital trade deals.

As for the multilateral front, the recent publication of a stabilised text by the World Trade Organization (WTO) Joint Statement Initiative on e-commerce on Jul 26 marks a significant milestone in digital trade governance. It was the first time the multilateral trade body has managed to draft a set of digital trade rules.

However, the draft agreement reflects consensus of only about half of the 164 WTO members. The text also still needs to be formally adopted at a high-level WTO meeting, such as the upcoming 13th ministerial conference in early 2025.

The multilateral rulebook on digital trade thus lags behind both bilateral and plurilateral agreements.

Arguably, bilateral agreements like the EUSDTA are thus where the action is at.

The EUSDTA, like other digital trade deals, is expected to reduce costs and improve market access for businesses.

Central to the EUSDTA is the consistent preference of the EU for open and secure cross-border data flows, with significant caveats.

Consistent with its digital trade chapters in other agreements, the EU's textual proposal for the EUSDTA specifies that the commitment to cross-border data flows includes prohibiting data localisation requirements, such as mandates for using local computing facilities or storing and processing data in the local territory.

These provisions are among the most precise and explicit among existing digital trade deals, which by and large only invoke a recognition of signatories' own regulatory requirements with regards to data transfer or data localisation.

Further, by not precluding a signatory's right to adopt or maintain measures on the protection of personal data and privacy, this also ensures full respect for the EU's General Data Protection Regulation, which is widely regarded as one of the strictest data protection legal frameworks in the world.

Clauses such as these preserve policy space for signatories to pursue measures on the contrary based on legitimate public policy objectives, including the protection

of national security.

The flipside is that it potentially introduces ambiguity and imbalances in domestic policy space between partner economies.

As both Europe and the US deepen ties in the region as part of their respective Indo-Pacific strategies, Asean is at the centre of emerging deals.

Asean deals

Asean is also negotiating its own regional digital trade deal, the Asean Digital Economy Framework Agreement, which is poised to be the world's first regional digital economy agreement (DEA).

As an early and leading adopter of bilateral DEAs, Singapore is in the thick of the action.

It is worth watching whether these regional and extra-regional DEAs bring about real progress or lag behind their bilateral counterparts, merely becoming umbrella agreements that consolidate existing commitments.

Whether new digital trade deals improve interoperability and produce tangible benefits hinges on how effectively these deals are implemented and enforced.

Beyond high-level commitments in these agreements, achieving interoperability critically depends on the development of requisite regulatory frameworks or systems like the adoption of common certification standards or Privacy Enhancing Technologies by countries.

These align privacy standards across jurisdictions and makes it easier for businesses to operate across borders, but also often involve complex and costly technical solutions.

Success will depend on how these complementary frameworks and technologies are implemented and integrated – and this is where the real challenge for digital trade governance lies.

The writers are researchers from the Asia Competitiveness Institute, Lee Kuan Yew School of Public Policy, National University of Singapore