

ADDRESSING DIGITAL PROTECTIONISM IN ASEAN

TOWARDS BETTER REGIONAL GOVERNANCE IN THE DIGITAL AGE

Policy Report
March 2018

Kaewkamol Pitakdumrongkit

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TABLE OF CONTENTS

Executive Summary	1
Introduction	2
Regional Governance Frameworks for the Digital Economy and E-Commerce	5
Digital Protectionism in ASEAN	6
Addressing Digital Protectionism: Policy Recommendations	9
ASEAN governments should together come up with an agreed definition of “digital protectionism”	9
Policymakers in ASEAN should find ways to quantify the market-distorting effects of government policies on the region’s digital economy and e-commerce ⁷	10
ASEAN should provide a policy discussion platform for members to clarify their policies and exchange views on regulatory measures pertaining to digital economy and e-commerce	10
ASEAN governments should finalise the new ASEAN Framework on E-Commerce	11
ASEAN governments should enhance their officials’ rule-making capacities in both CLMV and non-CLMV states via the Initiative for ASEAN Integration (IAI) and other schemes	12
Concluding Remarks: How to Rally a Political Will?	14
About the Author	15
About the Centre for Multilateralism Studies	15
About the S. Rajaratnam School of International Studies	16

Executive Summary

This policy report examines the issue of digital protectionism in the ASEAN countries. Digital Protectionism refers to “barriers and impediments to digital trade [including] localization barriers, data privacy and protection, intellectual property-related issues, and online censorship, as well as impediments to digitally enabled trade.”¹ It notes that although regional architectures governing the digital economy exist, protectionist measures are still intact. The report thus offers policy recommendations for ASEAN governments to more effectively tackle digital protectionism. It suggests that ASEAN governments consider taking the following steps: (i) come up with an agreed definition of “digital protectionism”; (ii) find ways to quantify the market-distorting effects of government policies on the region’s digital economy and e-commerce; (iii) provide a policy discussion platform for ASEAN members to clarify their policies and exchange views on regulatory measures pertaining to the digital economy and e-commerce; (iv) finalise the new ASEAN Framework on E-Commerce; and (v) enhance their officials’ rule-making capacities in Cambodia, Laos, Myanmar and Vietnam (the CLMV states) as well as the non-CLMV states through the Initiative for ASEAN Integration (IAI) and other schemes.

¹ United States International Trade Commission (USITC). “USITC Digital Trade in the U.S. and Global Economies, Part 1.” Investigation No. 332-531, Publication 4415, July 2013. p. xxi.

Introduction

Across the world, trade is increasingly being conducted electronically today. Southeast Asia is no exception. The ASEAN economies are increasingly digitised, as reflected by the fact that the regional online market is now among the fastest growing in the world. Active mobile subscriptions number over 700 million, which is larger than the region's entire population. If ASEAN was a single economy, it would be the world's third largest in terms of the number of mobile users.² Furthermore, as former ASEAN Secretary-General Ambassador Ong Keng Yong highlighted, "[c]urrently, the ASEAN digital economy generates approximately US\$150 billion in revenues per year. According to an American global consulting firm, connectivity and online services account for around 40 per cent of overall revenues in ASEAN digital economy."³

ASEAN's digital economy holds great potential for expansion. Illustratively, the Internet user base is predicted to jump from 260 million in 2016 to 480 million by 2020, which is equivalent to a nearly 85 per cent increase. Online consumption is projected to rise to US\$200 billion by 2020. By 2025, 51 per cent of Internet users will go online for shopping.⁴ Moreover, the size of the region's digital economy and e-commerce market is estimated to grow by 2025 to US\$200 billion and US\$88 billion, respectively.⁵ The region could rank among the world's top five digital economies by 2025.⁶

Such market potential notwithstanding, evidence points to the existence of digital protectionism in the ASEAN countries. "Digital protectionism" refers to "barriers and impediments to digital trade [including] localization barriers, data privacy and protection, intellectual property-related issues, and online censorship, as well as impediments to digitally enabled trade."⁷ According to the Office of the US Trade Representative (USTR), digital protectionism encompasses restrictions on cross-national data flows, digital technology and products, Internet services, and other related issues such as electronic

² Deloitte Southeast Asia. "Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data." US-ASEAN Business Council, USA. Accessed on January 30, 2018 from <https://www2.deloitte.com/content/dam/Deloitte/sg/Documents/about-deloitte/sea-about-aec-digital-economy-free-flow-of-data-2016.pdf>

³ Ong, Keng Yong. "Harnessing ASEAN's Potential in Digital Revolution." In *Advancing ASEAN in the Digital Age*. CIMB ASEAN Research Institute (CARI), 48-50, November 14, 2017, p.48.

⁴ East-West Center. "ASEAN Matters for America." East-West Center, Washington, D.CUSA, 2017, p. 26.

⁵ Temasek Holdings and Google. "e-economy SEA: Unlocking the \$200 billion digital opportunity in Southeast Asia". May 24, 2016.

⁶ Ong, Keng Yong. "ASEAN into the Future: Need for Leadership." RSIS Commentary No. 148, August 7, 2017.

⁷ See footnote 1.

authentication and signatures, Internet domain names, and e-payment systems.⁸

Digital protectionism is a policy-relevant topic and deserves closer examination for the following reasons. First, protectionist barriers can disrupt the expansion of ASEAN's digital markets, preventing the region from realising its full potential mentioned above. For example, certain rules and regulations blocking data flows and exchanges among regional economies undercut the ability of businesses that run operations in multiple nations to share information with their overseas branches

Second, digital protectionism erodes ASEAN members' efforts at deepening regional economic integration. Although the ASEAN Economic Community (AEC) was officially established in 2015, regional integration is still a work-in-progress. ASEAN governments aim to deepen their economic ties, as reflected by their adoption of AEC Blueprint 2025, which envisages the organisation as: (i) A Highly Integrated and Cohesive Economy; (ii) A Competitive, Innovative, and Dynamic ASEAN; (iii) Enhanced Connectivity and Sectoral Cooperation; (iv) A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN; and (v) A Global ASEAN.⁹

A closer examination of this Blueprint reveals that the ASEAN countries recognised the important roles of digital economy and e-commerce in reaching their regional integration goals. For example, the document highlights that

The AEC 2025 vision will . . . aspire to propel ASEAN towards a digitally-enabled economy that is secure, sustainable and transformative, and to further leverage ICT [information and communication technology] to enable an innovative, inclusive and integrated ASEAN.¹⁰

To accomplish "A Highly Integrated and Cohesive Economy", ASEAN members agreed to promote financial integration by expanding "digital payment services" and "enhancing technical countermeasures against threats of digital fraud".¹¹ The goal of "Enhanced Connectivity and Sectoral Cooperation" is expected to be attained by leveraging ICT for developmental purposes and promoting e-commerce in the region.

⁸ The Office of the U.S. Trade Representative (USTR). "Fact Sheet: Key Barriers to Digital Trade." March 2017.

⁹ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 1.

¹⁰ Ibid, p. 23.

¹¹ Ibid, p. 9.

Concerning the objective of “A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN”, the Blueprint plans to boost the participation of Micro, Small, and Medium Enterprises (MSMEs) in the region’s economy. This is mainly because MSMEs constitute the backbone of the ASEAN economies. These entities account for about 96 per cent of all enterprises in the region, contribute to more than half of each country’s domestic employment, and about one-thirds of ASEAN’s exports to the world. Furthermore, MSMEs help augment ASEAN’s growth and prosperity by generating between 30 and over 50 per cent of the region’s GDP.¹² Thus, the ASEAN governments agreed to promote these firms’ involvement in the regional economies by taking advantage of e-commerce, which “has significantly lowered barriers to entry and operating costs for businesses, and is particularly beneficial for MSMEs.”¹³

Digital impediments could jeopardise the attainment of the AEC 2025’s goals listed above. For example, some regulations could block the development of cross-border e-payment systems while others could heighten the MSMEs’ costs of doing business, reducing their participation in the regional economies. Such barriers could ultimately hinder ASEAN’s economic integration project.

Finally, digital protectionism can stymie Singapore’s goal of advancing the region’s digital economy and e-commerce under its 2018 ASEAN chairmanship. Realising the significance of the digital economy to the ASEAN countries, Singapore identified this subject as one of the cooperation areas it wants to push under its ASEAN chairmanship. According to Prime Minister Lee Hsien Loong, Singapore has “identified e-commerce and other initiatives relating to the digital economy as a potential key priority.”¹⁴ Specifically, the state wants to work on streamlining e-commerce governance rules, galvanising the region’s digital connectivity, and reducing entry barriers and related costs.¹⁵ Accomplishing these objectives requires digital protectionism to be effectively tackled. Otherwise, tariffs and non-tariff barriers restricting the development of the digital economy and e-commerce can crush Singapore’s goodwill and aspirations to foster regional cooperation.

Against this backdrop, this policy report aims to address the issue of digital protectionism in ASEAN by offering feasible policy recommendations to help ASEAN governments better tackle the problem. This paper is organised

¹² Asian Development Bank. Asian development outlook 2014 update: Asia in global value chains. September 2014.

¹³ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 24.

¹⁴ Theseira, Sabrina. “Singapore to lead e-commerce push in region as Asean chair.” The Strait Times, May 5, 2017.

¹⁵ Heng, Janice. “Economic Priority for S’pore as ASEAN Chair.” The Strait Times, January 18, 2018.

as follows. Part II discusses regional architectures governing the digital economy and e-commerce. Part III demonstrates that despite such regional frameworks, certain digital protectionist measures are still intact in ASEAN. Part IV provides some policy recommendations that ASEAN rule-makers could adopt to further address the issue of digital protectionism as well as advance the region's digital economy and e-commerce. Finally, Part V concludes with a discussion of the political elements that could facilitate the implementation of the proposed recommendations.

Regional Governance Frameworks for the Digital Economy and E-Commerce

Recognising that the digital economy and e-commerce are salient drivers of regional trade and development, the ASEAN countries have joined forces to advance collaboration in these areas through several initiatives. For example, the 2000 e-ASEAN Agreement aims at boosting the expansion of e-commerce, accelerating trade liberalisation and trade facilitation of ICT products and services, and creating e-society and e-government.¹⁶ The previous AEC Blueprint contained a pillar called “Competitive Economic Region”, which identified e-commerce among the areas for collaboration by focusing on developing policy and legal infrastructures for e-commerce and online trade in goods within ASEAN.¹⁷

The AEC Blueprint 2025, adopted in 2015, contains plans for further fostering the region's e-commerce through several strategic actions such as harmonising consumer rights and protection laws and legal frameworks for online dispute settlement, and creating user-friendly e-identification and authorisation programmes. These measures were operationalised through the AEC 2025 Consolidated Strategic Action Plan (CSAP) endorsed in February 2017. CSAP consists of key action lines to be implemented to fulfill the AEC 2025's objectives. Regarding specific measures to move forward the digital economy, CSAP lists several policy actions such as harmonising legal frameworks for online dispute settlement, and creating inter-operable, secure, and reliable electronic identification and authorisation mechanisms.¹⁸

Moreover, the ASEAN ICT Master Plan 2020 contains measures such as promoting the growth of the digital economy and forming a model cloud-computing platform for both private and public users. The Masterplan on

¹⁶ ASEAN Secretariat. e-ASEAN Framework Agreement. November 24, 2000.

¹⁷ ASEAN Secretariat. ASEAN Economic Community (AEC) Blueprint. Jakarta, Indonesia, January 2008.

¹⁸ ASEAN Economic Ministers' Meeting. ASEAN Economic Community 2025 Consolidated Strategic Action Plan 1. The ASEAN Economic Community (AEC). February 6, 2017, p. 29-30.

ASEAN Connectivity 2025 puts digital innovation among its strategic areas for achieving a seamlessly connected ASEAN. The Masterplan contains several projects aimed at enhancing the use of digital technologies by MSMEs, creating an ASEAN digital financial inclusion framework, developing an ASEAN open data network, and designing a region-wide digital data governance framework.¹⁹ In addition, the ASEAN Work Programme on Electronic Commerce (AWPEC) 2017-2025, endorsed at the 49th ASEAN Economic Ministers' Meeting in September 2017, comprises various initiatives to ease e-commerce activities across ASEAN economies, modernise legal frameworks on payment systems, logistics, and competition, as well as a plan to craft a new ASEAN Agreement on E-Commerce.²⁰

Digital Protectionism in ASEAN

Despite such regional efforts, regulatory elements restricting digital economy and e-trade persist. These impediments come in many forms such as data localisation, government procurement policies, licence requirements, local content rules, intellectual property matters, and taxation laws.

Some ASEAN members impose rules to force data localisation:

- (i) Regulation 82/2012 by Indonesia's Ministry of Communication and Informatics contains a data localisation clause. Article 17.2 of the regulation posits that "Electronic System Operator for the public service is obligated to put the data center and disaster recovery center in Indonesian territory for the purpose of law enforcement, protection, and enforcement of national sovereignty to the data of its citizens."²¹ The text does not define what "public service" encompasses, creating uncertainties among potential international investors planning to provide e-services in the country.
- (ii) Vietnam's Government Decree No. 72/2013/ND-CP issued in 2013 comprises rules regarding the management and utilisation of Internet services and online information. This document mandates that every company or organisation that has established social networks should locate "at least one server system in Vietnam serving the inspection, supervision, storage, and provision of information at the request of competent state management agencies."²²

¹⁹ ASEAN Secretariat. Master Plan on ASEAN Connectivity 2025. Jakarta, Indonesia, August 2016.

²⁰ ASEAN Secretariat. "ASEAN Economic Integration Brief." No. 2, Jakarta, Indonesia, November 2017.

²¹ Republic of Indonesia. Regulation of the Government of the Republic of Indonesia. Number 82 of 2012 concerning Electronic System and Transaction Operation, October 12, 2012.

²² Socialist Republic of Vietnam. Government Decree No. 72/2013/ND-CP on the management, provision and use of Internet services and online information, July 15, 2013, p. 20.

(iii) Malaysia's Personal Data Protection Act 2010 enforced in 2013 compels data users to seek approvals from the authorities before moving personal data out of Malaysian territory. The Act's Section 129 states: "A data user shall not transfer any personal data of a data subject to a place outside Malaysia unless to such place as specified by the Minister, upon the recommendation of the Commissioner, by notification published in the Gazette."²³

In some ASEAN countries, government procurement rules and licensing requirements were devised in a way that could discriminate against foreign products and companies, undermining the development of the region's digital trade and economy. For instance, the Philippines' Department of Information and Communications Technology (DICT) issued a circular in January 2017 urging all government ministries and agencies to use cloud services to cut ICT operation costs and reduce database fragmentation. In particular, it encourages all government units to utilise "Government Cloud", which is "a public service cloud infrastructure provisioned by the DICT for use by government agencies".²⁴ This measure is effectively a trade-distorting barrier as it limits opportunities for foreign entities to supply cloud services to the public sector. Furthermore, Philippine government officials sometimes require ICT operators to acquire a Value-Added Telecommunications Service Licence, which is open only to Filipino companies.²⁵

Local content requirements can serve as impediments to the digital economy and e-commerce. Regulation 27/2015 by Indonesia's Minister of Communication and Informatics, which outlines the technical requirements for Long-Term Evolution (LTE) technology-based telecommunication devices, is a case in point. A close look at this law reveals that the government imposes local content requirement rules on several LTE products such as laptop computers and smartphones. From 1 January 2017 onwards, for these equipment to be sold in the Indonesian market, they must have at least 30 per cent local parts and components in both hardware and software.²⁶ This regulation is more stringent than previous provisions as it elevates the minimum local content threshold in terms of total goods values from 20 per cent the year before to 30 per cent.

²³ Government of Malaysia. Laws of Malaysia. Act 709 - Personal Data Protection Act 2010, p. 49.

²⁴ The Department of Information and Communications Technology (DICT). Department Circular 2017/002. The Government of the Philippines, January 18, 2017, p. 4.

²⁵ Information Technology Industry Council (ITIC). "USTR Request for Public Comments to Compile the National Trade Estimate Report (NTE) on Foreign Trade Barriers." Washington, D.C., USA, October 27, 2016.

²⁶ Indonesia Investments. "Rising Investment in Local Content for Indonesia's 4G LTE Smartphones." October 29, 2016. Accessed on January 18, 2018, from <https://www.indonesia-investments.com/business/business-columns/rising-investment-in-local-content-indonesia-s-4g-lte-smartphones/item7316?>

Intellectual property rights (IPR) regimes in some ASEAN economies turn out to impede innovation. For instance, Thailand's Patent Act (created in 1979, and amended in 1992 and 1999) provides the framework for patent filing, cancellation, protection, and related matters. However, users who utilise its patent registration system experience massive backlogs. Illustratively, as of May 2016, the Department of Intellectual Property had more than 38,000 pending applications.²⁷ As a result, foreign stakeholders may have to wait for several years to get their patents registered, disrupting their plans to develop new products for the market. Also, all patent litigation in Thailand is conducted in the Thai language. While a party can request for the proceedings to be held in other languages such as English, such petitions are extremely rare.²⁸ Moreover, Thailand's and Vietnam's "takedown authorities", which have the power to remove infringed contents from online portals upon the rights holders' notification, were reported to be inadequate.²⁹ These elements could discourage innovation in ASEAN, undermining the future growth of the region's digital economy.

Furthermore, some pending taxation laws can harm individual states' e-commerce as well as the future development of the region's digital economy. For example, Thailand's Department of Revenues released a second draft of proposed amendments to its tax legislation which would require foreign e-commerce companies to pay value-added tax (VAT) under certain conditions.³⁰ Also, Indonesia's Finance Minister Sri Mulyani announced in November 2017 a plan to impose taxes on e-commerce transactions. The details regarding the tax rates have yet to be finalised.³¹ These taxation policies will force some firms to go offline and jeopardise their efforts to leverage the digital economy for future growth and development.

In addition, other regulations could constrain the advancement of the digital economy and e-trade in ASEAN. For example, Indonesia's Financial Services Authority (OJK) announced in 2015 that foreign businesses would be required to seek local partners before investing in start-ups in the country.³² Foreign enterprises could find it time consuming to seek local partners for joint

²⁷ Department of Intellectual Property, Kingdom of Thailand. "Overview of the Patent System and Procedure in Thailand." Accessed on January 28, 2018, from http://www.wipo.int/edocs/mdocs/aspac/en/wipo_ip_cnx_17/wipo_ip_cnx_17_1.pdf

²⁸ Indananda, Nandana and Rungpry, Siraprapha. "Patent litigation in Thailand: overview." Tilleke & Gibbins. March 1, 2017.

²⁹ USITC. op. cit.

³⁰ KPMG (2018). "Proposed e-commerce law – second draft released." Tax & Legal News Flash, Issue 33, January 22, 2018.

³¹ Wirdana, Ardi. "Business cries foul over plans for Indonesia e-commerce tax." Asian Nikkei Weekly, November 19, 2017.

³² Diela, Tabita. "OJK: Foreign Venture Capitalists Will Need Local Partners to Enter Market." Jakarta Globe, December 30, 2015.

ventures, and the process might delay capital injections vital for the start-ups to continue their operations.³³ Also, evidence indicates that customs duties hamper cross-border e-commerce. One study found that ASEAN's cross-border delivery logistics was extremely costly. For instance, a consumer purchasing a dress online must pay duties of more than 30 per cent of its value for the product to be delivered in Indonesia, Thailand, and Vietnam.³⁴ Such taxes add costs to businesses, especially MSMEs, rendering them less likely to participate in the region's e-commerce. As MSMEs are the backbones of the ASEAN economies, the AEC 2025 goal of an "inclusive region" may be unattainable.

Addressing Digital Protectionism: Policy Recommendations

As demonstrated above, digital protectionism persists in the ASEAN countries and could affect the attainment of the goals articulated in AEC 2025. To address the issue and allow the growth of the digital economy and e-commerce, ASEAN policymakers could consider taking the following steps.

ASEAN governments should together come up with an agreed definition of "digital protectionism"

A working definition is the first important step for effective rule-making. It would ensure that the authorities have the same understanding of the concepts when discussing digital barriers and related matters, hence lessening the chance of future misunderstandings and disputes among member countries. The definition will also help ASEAN government officials develop indicators to identify digital barriers, in turn enabling them to distinguish between measures that are market distorting those that are not.

How can a common definition of digital protectionism be reached among ASEAN members? One way is to adopt the definition used by other governments or organisations, such as the United States or European Union. Doing so would likely result in a speedier adoption of an agreed definition than defining the term from scratch.

³³ Nurahmatsyah, Adimas. "Would protectionism hurt the promising growth of Indonesia's digital economy and creative industry?" Jakarta Post, January 18, 2016.

³⁴ A.T. Kearney. "The ASEAN Digital Revolution." 2015. Accessed on January 30, 2018 from <https://www.atkearney.com/documents/10192/6986374/ASEAN+Digital+Revolution.pdf/86c51659-c7fb-4bc5-b6e1-22be3d801ad2>

Policymakers in ASEAN should find ways to quantify the market-distorting effects of government policies on the region's digital economy and e-commerce

A quantification of the damage done by certain government measures to regional markets can lead to an effective separation of digital protectionism from non-protectionist policies. In other words, the quantification will facilitate ASEAN members' decisions to label certain rules and regulations as digital protectionist policies (or not). Consequently, a database of protectionist measures can be developed, which can be used by the authorities to craft plans to reduce or eliminate such policies in future.

This begs the question of methodology. How to quantify the damage generated by barriers on the region's digital markets? One way is to resort to the methodology used by other entities. For example, the Organisation for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), Universal Postal Union (UPU), and World Trade Organization (WTO) are collaborating in a project on cross-border digital trade measurement. ASEAN governments could utilise this measurement approach for their own quantification project. Another option is to tap ASEAN's Track II networks for ideas on methodologies. This can be done by commissioning certain think tanks or academic institutions to develop measurement schemes for ASEAN.

ASEAN should provide a policy discussion platform for members to clarify their policies and exchange views on regulatory measures pertaining to digital economy and e-commerce

A platform should be set up for officials from the ASEAN members countries to update and/or clarify their domestic policies to one another on a regular basis. Such a mechanism would not only help address digital protectionism but also augment the future development of regional governance architectures for the following reasons. First, it would promulgate transparency in the system as it provides a channel of communication through which the ASEAN countries can monitor one another's policies and evaluate the effects of their domestic practices on the multilateral trading system.

Also, this mechanism can ameliorate conflicts among ASEAN members by providing an informal platform to discuss their policies in a non-legalistic manner. For instance, where a country's domestic rules and regulations turn out to restrict the functioning of the region's digital economy and e-commerce, the forum would not only allow the other parties to voice their concerns but also permit the former to clarify why it had implemented such practices. The information disclosed during these interactions can create better understandings of the regional states' policies and reduce the likelihood of trade disputes or retaliations. In the absence of such a mechanism, the

ASEAN member states could end up accusing one another of employing digital protectionist measures. The parties may respond by imposing barriers to offset the effect of one another's protectionist policies. The region could witness a surge of digital protectionism, pulverising the growth and development of its digital economy.

ASEAN governments should finalise the new ASEAN Framework on E-Commerce

In November 2016, the ASEAN Coordinating Committee on Electronic Commerce (ACCEC) was created. The entity's main task is to help coordinate efforts to formulate the new ASEAN Framework on E-Commerce. At the time of this writing, the Committee is drafting the framework. In short, the document is a work-in-progress.³⁵ Such an agreement is crucial to the ASEAN economies as it will lay a solid governance foundation which can not only tackle digital protectionism but also magnify the growth of the region's digital economy for years to come.

Admittedly, crafting the new Framework is challenging. If rules are made too strict, they risk jeopardising new technology and innovation and ASEAN's long-term economic growth. In contrast, if rules are crafted to be too lax, they cannot address protectionist measures, undermining efforts to foster the region's digital economy.

To design feasible regional governance architectures, ASEAN lawmakers should do the following. First, they should focus on harmonising the different rules and regulations prevailing in member countries to bolster their interoperability. A study by UNCTAD study revealed that e-commerce laws among ASEAN economies were diverse in many aspects, namely data privacy, consumer protection, and content regulations. As a result, these rules need to be aligned for greater regulatory coherence.³⁶ Therefore, rule harmonisation is more feasible than rule standardisation in this context.

Finding harmonisation modalities is not an easy task. However, the authorities can adopt best practices from other international organisations. For instance, labour law harmonisation in the European Union was carried out via directives, "which are binding on Member states as to the results to be achieved, but leave the choice of form and methods to national authorities."³⁷ ASEAN members could apply this approach to their own harmonisation project.

³⁵ "New Asean e-commerce framework to benefit more local MSMEs." Borneo Post, November 22, 2017.

³⁶ The United Nations Conference on Trade and Development (UNCTAD). "Review of E-commerce Legislation Harmonisation in the Association of Southeast Asian Nations." UNCTAD/DTL/STICT/2013/1, UNCTAD, Geneva, Switzerland, 2013.

³⁷ Hepple, Bob. Labour Law and Global Trade. Oxford, UK: Hart Publishing, 2005.

In addition, the authorities should make the proposed Framework a “living document” by inserting into it a rule-amending clause. In short, the agreement should permit the parties to update existing rules or add new ones under specific conditions. This is because the rapidly changing nature of e-markets can render particular governance architectures obsolete or even hamper the market’s functioning. Consequently, the rule-adjusting element embedded in the proposed Framework can facilitate the integration of new technologies, services, and innovation. This in turn would provide the legal environment enabling businesses in ASEAN to operate smoothly in the future.

ASEAN governments should enhance their officials’ rule-making capacities in both CLMV and non-CLMV states via the Initiative for ASEAN Integration (IAI) and other schemes

The limited technical knowledge of rule-makers in particular ASEAN countries could account for some of the digital protectionism in the region. Lack of such knowledge affects the authorities’ ability to craft domestic legal infrastructure that can ease the functioning of the region’s digital economy and e-commerce. Without sufficient expertise, lawmakers may write rules that turn out to obstruct business activities in the digital age. Therefore, training programmes are required to boost these officials’ capacity for better rule-making.

Such capacity building activities can be conducted under the auspices of the Initiative for ASEAN Integration (IAI) launched in 2000. This scheme is purposed to “address narrowing the development gap (NDG) by providing support to Cambodia, Lao PDR, Myanmar and Viet Nam (CLMV) to augment their capacity to implement regional agreements and accelerate the regional integration process as a whole.”³⁸ According to the IAI Workplan III, some enabling actions (e.g., developing regulatory techniques and practices, bolstering e-government strategies, fostering best practices in administration and public policy) could help augment these states’ rule-making capacity with regard to the digital economy and e-commerce.³⁹

It should be highlighted that IAI provides assistance to only the CLMV countries. Ground realities, however, suggest that even the non-CLMV members need additional training. This is partially due to the fact that the digital economy has created a new trading environment which requires new ways of thinking or approaches in order to design practical rules governing markets. For instance, one study discovered that some of the Philippines’ legislation, namely Commonwealth Act No. 146 (Public Service Act), Republic Act 7925 (Public Telecommunications Policy Act), and Republic

³⁸ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 34.

³⁹ ASEAN Secretariat. Initiative for ASEAN Integration (IAI) Work Plan III. Jakarta, Indonesia, August 2016.

Act 3846 (Radio Control Law), have shaped the nation's market structures in such a way that it is difficult to set up nation-wide broadband networks. As a result, the state ranks the second lowest in Southeast Asia in terms of fixed broadband subscription rates. In addition, e-services in the Philippines are more expensive than those in the other ASEAN countries. Despite its authorities having recognised this challenge and worked towards addressing it, "uptake by government agencies in the Philippines remains slow due to legacy issues and a lack of understanding by senior government officials."⁴⁰ Therefore, policymakers in ASEAN should identify the areas and skills that non-CLMV officials need to be trained in and find mechanisms to conduct such capacity-building activities.

A pressing question then is: Where to find funding to supply the training schemes for CLMV and non-CLMV countries? One solution is for ASEAN to seek additional technical assistance from its dialogue partners or international organisations. Several entities have provided such assistance to the ASEAN countries in the past. For instance, with funding support from the WTO and Singapore's Temasek Foundation International, the S. Rajaratnam School of International Studies (RSIS) launched an annual three-day Parliamentarian Workshop in Singapore. This workshop "equips attendees with a deeper understanding of the WTO, current and future negotiating issues in international trade, and a sustained focus on the particular concerns of developing states in the process."⁴¹ The programme usually trains about 50 Asian Parliament members, including those from the ASEAN countries. Moreover, UNCTAD and the ASEAN Secretariat co-organised the First ASEAN/UNCTAD Workshop on E-Commerce in the Philippines in November 2017. The programme was "for ASEAN Member States to share experiences on E-Commerce . . . listen to the views of experts from international organisations such as the World Bank and ADB [Asian Development Bank] among others, as well as private companies that specialise in E-Commerce."⁴²

⁴⁰ National University of Singapore and Microsoft. "A Cloud for Doing Good: A Technology Revolution for All in ASEAN", 2017, p. 20

⁴¹ RSIS. "Parliamentarian Workshop." May 4, 2015. Accessed on January 27, 2018, from <http://www.rsis.edu.sg/research/cms/research-programmes/capacity-building/temasek-foundation-series-on-trade-and-negotiations/parliamentarian-workshop/#.WmwbXKiWaK8>

⁴² Department of Foreign Affairs, Philippines. "PHL Hosts ASEAN/UNCTAD E-Commerce Workshop." DFA news, November 22, 2017.

Concluding Remarks: How to Rally a Political Will?

These recommendations cannot be realised if there is a lack of political will to turn them into action. Critics could contend that trade creates winners and losers. Thus, states are reluctant to open up their economies or participate fully in the region's digital economy because doing so can entail domestic business closures and job losses at home. This brings forth a pressing question: How can a political will among ASEAN leaders be rallied?

Political will could be garnered by: (i) raising awareness of the importance of joint efforts to enhance the growth of ASEAN's digital economy, and (ii) addressing the concerns of those losing out from their participation in the digital economy by launching trade adjustment assistance programmes.

First, ASEAN leaders must raise one another's awareness of the importance of working together to galvanise ASEAN's digital economy. This is because individual economies are now intertwined in transnational production networks (TPNs) in which production processes are separated and moved to multiple facilities across countries. Consequently, goods and services are made by several nations in supply chains.

In such an environment, no nation can single-handedly advance its economy by erecting digital barriers to block cross-border business activities without harming its companies at home. Illustratively, under TPNs, firms in the same supply chains are usually located in different countries. While some take part in producing parts and components or assembling the final goods, others are responsible for after-sales services. For these companies to efficiently function, they must share information such as product designs, inventories, marketing strategies, and logistics data across states borders. Any government's protectionist measures to impede such data flows will hurt all firms in these production chains, including its own domestic enterprises.

Admittedly, the dynamics of TPNs sometimes results in local firms being out-competed by foreign ones. These local firms will have to lay off their employees, resulting in unemployment. Therefore, ASEAN leaders must help failed firms and unemployed workers via trade adjustment assistance schemes. These packages could come in many forms, such as financial assistance for businesses to upgrade their production activities and move up the supply chains, consulting services for firms to shift their strategies and re-plug themselves into different TPNs, skills re-training courses for unemployed individuals, and job search and job-skill matching assistance for dislocated workers.

About the Author

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