

Policy Report

ADDRESSING DIGITAL PROTECTIONISM IN ASEAN: TOWARDS BETTER REGIONAL GOVERNANCE IN THE DIGITAL AGE

Kaewkamol Pitakdumrongkit
March 2018

Table of Contents

Introduction	1
Regional Governance Frameworks Regarding Digital Economy and E-Commerce	3
Digital Protectionism in ASEAN	4
Addressing Digital Protectionism: Policy Recommendations	6
Southeast Asian governments should together come up with an agreed definition of “digital protectionism”	6
Southeast Asian policymakers should find ways to quantify the market-distorting effects of government policies on the region’s digital economy and E-Commerce	6
Southeast Asian officials should provide a policy discussion platform for ASEAN members to clarify their policies and exchange views on regulatory measures pertaining to digital economy and E-commerce	6
Southeast Asian authorities should finalise the new ASEAN Framework on E-Commerce	7
Southeast Asian governments should enhance their officials’ rule-making capacities in both CLMV and non-CLMV states via Initiative for ASEAN Integration (IAI) and other schemes	8
Concluding Remarks: How to Rally a Political Will?	9
About the Author	10
About The Centre for Multilateralism Studies	10
About the S. Rajaratnam School of International Studies	11

Executive Summary

This policy report examines the issue of digital protectionism in Southeast Asia. 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.” The report aims at addressing digital protectionism in ASEAN by offering feasible policy recommendations for Southeast Asian authorities to help them better tackle the problem. It begins by discussing regional architectures governing digital economy and E-Commerce, and demonstrating that certain digital protectionist measures in Southeast Asia are still intact. It then provides some practical policy recommendations that ASEAN rulemakers could adopt to further address digital protectionism and advance the region’s digital economy and E-Commerce. The report concludes with discussions about political elements that could facilitate the implementation of the proposed recommendations.

Introduction

Nowadays, more trade is turning digital. Southeast Asia is no exception. ASEAN economies are increasingly digitalised as reflected by the fact that the regional online market is now among the fastest growing in the world. Active mobile subscriptions are over 700 million, which is larger than the region’s entire population. If ASEAN is a single economy, it would be the world’s third-biggest in terms the number of mobile users.¹ Furthermore, as a 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.”²

Southeast Asia’s digital economy holds great potential to expand further. Illustratively, the Internet user base is predicted to jump from 260 million in 2016 to 480 million by 2020, which is equivalent to a 84.6 per cent increase from the 2016 baseline. Online consumption is projected to rise to US\$200 billion by 2020. By 2025, 51 per cent of the Internet users will go online for shopping and making purchases.³ 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.⁴ Furthermore, the region can rank among world’s top five digital economies by 2025.⁵

Such market potential notwithstanding, evidence points out that there exists digital protectionism in Southeast Asia. “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.”⁶ According to the Office of the U.S. Trade Representative (USTR), digital protectionism encompasses restrictions on cross-national data flows, digital technology and products,

¹ Deloitte Southeast Asia. “Advancing the ASEAN Economic Community: The Digital Economy and the Free Flow of Data.” US-ASEAN Business Council, The United States of America. 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>

² 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.

³ East-West Center. “ASEAN Matters for America.” East-West Center, Washington, D.C., The United States of America, 2017, p. 26.

⁴ Temasek Holdings and Google (2016). “e-economy SEA: Unlocking the \$200 billion digital opportunity in Southeast Asia”. May 24, 2016.

⁵ Ong, Keng Yong. “ASEAN into the Future: Need For Leadership.” RSIS Commentary No. 148, August 7, 2017.

⁶ 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.

Internet services, and other related issues such as electronic authentication and signatures, Internet domain names, and e-payment systems.⁷

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

Second, digital protectionism erodes ASEAN members' efforts to deepen regional economic integration. The ASEAN Vision 2025 aims to establish the ASEAN Economic Community (AEC) by 2025. According to the AEC Blueprint 2025, AEC 2025 consists of five characteristics: "(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."⁸

A closer examination of this Blueprint reveals that Southeast Asian nations 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 [information and communication technology or] ICT to enable an innovative, inclusive and integrated ASEAN.⁹

To accomplish "A Highly Integrated and Cohesive Economy", ASEAN members agreed to promote financial integration via expanding "digital payment services" and "enhancing technical countermeasures against threats of digital fraud".¹⁰ The goal of "Enhanced Connectivity and Sectoral Cooperation" can be obtained by leveraging ICT for developmental purposes and promoting E-Commerce in the region.

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. It is mainly because MSMEs constitute the backbones of Southeast Asian economies. These entities account for about 96 per cent of all enterprises in the region, contribute to more than half of the countries' domestic employment and about one-thirds of ASEAN's exports to the world. Furthermore, MSMEs help augment Southeast Asia's growth and prosperity by generating between 30 and over 50 per cent of the region's GDP.¹¹ Thus, ASEAN parties agreed to promote these firms' involvement by taking advantage on E-commerce which "has significantly lowered barriers to entry and operating costs for businesses, and is particularly beneficial for MSMEs."¹²

Digital impediments could jeopardize the AEC 2025's elements 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 these enterprises' participation in the regional economies. Thus, such barriers could ultimately hinder ASEAN's economic integration project.

⁷ The Office of the U.S. Trade Representative (USTR). "Fact Sheet: Key Barriers to Digital Trade." March 2017.

⁸ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 1.

⁹ Ibid, p. 23.

¹⁰ Ibid, p. 9.

¹¹ Asian Development Bank. *Asian development outlook 2014 update: Asia in global value chains*. September 2014.

¹² ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 24.

Finally, digital protectionism can prevent Singapore from reaching its goal of advancing digital economy and E-Commerce under its 2018 ASEAN Chairmanship. Realizing the significance of digital economy to ASEAN economies, Singapore identified this subject matter as one of the cooperation areas it wants to push forward 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.”¹³ Specifically, the state wants to work on streamlining E-Commerce governance rules, galvanizing the region’s digital connectivity, and reducing entry barriers and related costs.¹⁴ Accomplishing these objectives requires digital protectionism to be effectively tackled. Otherwise, tariffs and non-tariff barriers restricting the development of digital economy and E-Commerce can crush Singapore’s goodwill and aspirations to foster regional cooperation.

Against this backdrop, this policy report aims at addressing the issue of digital protectionism in ASEAN by offering feasible policy recommendations for Southeast Asian authorities to help them better tackle the problem. This paper is organized as follows. Part II discusses regional architectures governing digital economy and E-Commerce. Part III demonstrates that despite such regional frameworks, certain digital protectionist measures are still intact in Southeast Asia. Part IV provides some policy recommendations that ASEAN rulemakers could adopt to further address the issue of digital protectionism as well as advance the region’s digital economy and E-Commerce. The final Part V concludes with discussions about political elements that could facilitate the implementation of the proposed recommendations.

Regional Governance Frameworks Regarding Digital Economy and E-Commerce

Recognising that digital economy and E-Commerce are salient drivers of regional trade and development, Southeast Asian nations have joined force 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 liberalization and trade facilitation of ICT products and services, and creating e-society and e-government.¹⁵ The previous AEC Blueprint contained a pillar called “Competitive Economic Region” which identified E-Commerce among the areas of collaboration by focusing on developing policy and legal infrastructures for E-Commerce and online trade in goods within ASEAN.¹⁶

The AEC Blueprint 2025 adopted in 2015 contains plans to further foster the region’s E-commerce through several strategic actions such as harmonizing consumer rights and protection laws and legal frameworks for online dispute settlement, and creating user-friendly e-identification and authorization programmes. These measures were made operationalized by 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 digital economy, CSAP lists several policy actions such as harmonizing legal frameworks for online dispute settlement, and creating an inter-operable, secure and reliable electronic identification and authorization mechanisms.¹⁷

Moreover, ASEAN ICT Master Plan 2020 contains measures such as promoting the growth of digital economy and forming a model cloud-computing platform for both private and public users. Masterplan on ASEAN Connectivity 2025 puts digital innovation as among its strategic areas in order to achieve a seamlessly connected ASEAN. The Masterplan contains several projects aimed at enhancing the usage of digital technologies by MSMEs, creating the

¹³ Theseira, Sabrina. "Singapore to lead e-commerce push in region as Asean chair." *The Strait Times*, May 5, 2017.

¹⁴ Heng, Janice. "Economic Priority for 'Pore as ASEAN Chair." *The Strait Times*, January 18, 2018.

¹⁵ ASEAN. e-ASEAN Framework Agreement. November 24, 2000.

¹⁶ ASEAN Secretariat. ASEAN Economic Community (AEC) Blueprint. Jakarta, Indonesia, January 2008.

¹⁷ 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 digital financial inclusion framework, developing an ASEAN open data network, and designing a region-wide digital data governance framework.¹⁸ In addition, 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, modernize legal frameworks on payment systems, logistics, and competition as well as a plan to craft a new ASEAN Agreement on E-Commerce.¹⁹

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 localization, government procurement policies, license requirements, local content rules, intellectual property (IP) matters, and taxation laws.

Some ASEAN members impose rules to force data localization. For example, the Regulation 82/2012 by Indonesia's Ministry of Communication and Informatics contains a data localization clause. The Regulation's Article 17.2 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."²⁰ Moreover, the text does not define what "public service" encompasses, creating uncertainties among potential international investors planning to provide e-services in the country.

Also, Vietnam's Government Decree No. 72/2013/ND-CP issued in 2013 comprises rules regarding the management and utilization of Internet services and online information. This document mandates every companies or organisations that have established social networks to 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."²¹ Furthermore, Malaysia's Personal Data Protection Act 2010 enforced in 2013 compels data users to seek approvals from its authorities before moving personal data out of Malaysia's territories. The Act's Section 129 writes "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."²²

Particular 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 public ministries and agencies to use cloud service to cut ICT operation costs and reduce database fragmentation. In short, it encourages all government units to utilize "Government Cloud" which is "a public service cloud infrastructure provisioned by the DICT for use by government agencies"²³ Such measure can be viewed as a trade-distorting barrier as it lessens foreign entities' opportunities to supply cloud services to the Filipino public sector. Furthermore, the officials sometimes mandate ICT operators to acquire a Value-Added Telecommunications Service License, which is open for Filipino companies only.²⁴

¹⁸ ASEAN Secretariat. Master Plan on ASEAN Connectivity 2025. Jakarta, Indonesia, August 2016.

¹⁹ ASEAN Secretariat. "ASEAN Economic Integration Brief." No. 2, November 2017.

²⁰ 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

²¹ Socialist Republic of Vietnam. The Government Decree No. 72/2013/ND-CP on the management, provision and use of Internet services and online information, July 15, 2013, p. 20.

²² Government of Malaysia. Laws of Malaysia. Act 709 - Personal Data Protection Act 2010, p. 49.

²³ The Department of Information and Communications Technology (DICT). Department Circular 2017/002. The Government of the Philippines, January 18, 2017, p. 4.

²⁴ Information Technology Industry Council (ITIC). "USTR Request for Public Comments to Compile the National Trade Estimate Report (NTE) on Foreign Trade Barriers." Information Technology Industry Council is a Washington, D.C., The United States of America, October 27, 2016.

Local content requirements can serve as impediments to digital economy and E-Commerce. Indonesia's Minister of Communication and Information Technology's Regulation 27/2015 outlining 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 1st January 2017 onwards, for these equipment to be sold in the Indonesian market, they must have at least 30 per cent of local parts and components in both in hardware and software.²⁵ 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 in 2016 to 30 per cent in 2017.

Intellectual property right (IPR) regimes in some ASEAN economies turn out to impede innovations. 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, its patent registration system tends to encounter the issue of backlogs. Illustratively, as of May 2016 the Department of Intellectual Property possessed more than 38,000 pending applications.²⁶ 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 markets. Also, all patent litigations in Thailand is conducted in a Thai language. While a party can request the proceedings to be in other languages such as English, such petition is extremely rare.²⁷ Moreover, Thailand's and Vietnam's "takedown authorities" which have power to remove infringed contents from online portals upon the rights holders' notification were reported to be inadequate.²⁸ These elements could discourage the development of Southeast Asian innovation firms, 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 its proposed tax legislative amendments which would require foreign E-commerce companies to pay value-added tax (VAT) under certain conditions.²⁹ 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 finalized.³⁰ These taxation policies will tempt particular firms to go offline and jeopardize their efforts to leverage digital economy for future growth and development.

In addition, other regulations could constrain the advancement of digital economy and e-trade in Southeast Asia. For example, Indonesia's Financial Services Authority (OJK) in 2015 announced that foreign businesses would be required to seek local partners before investing in local start-ups in the country.³¹ To foreign enterprises, seeking indigenous companies to form joint ventures is time-consuming and might delay capital injections vital for the start-ups to continue their operations.³² Also, evidence indicates that customs duties hamper cross-

²⁵ Indonesia Investment. "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?>

²⁶ 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

²⁷ Indananda, Nandana and Rungpry, Siraprapha. "Patent litigation in Thailand: overview", Tilleke & Gibbins. March 1, 2017.

²⁸ United States International Trade Commission (USITC). "Digital Trade in the U.S. and Global Economies, Part 1." Investigation No. 332-531, USITC Publication 4415, July 2013

²⁹ KPMG (2018). "Proposed e-commerce law – second draft released." *Tax & Legal News Flash*, Issue 33, January 22, 2018.

³⁰ Wirdana, Ardi. "Business cries foul over plans for Indonesia e-commerce tax." *Asian Nikkei Weekly*, November 19, 2017.

³¹ Diela, Tabita. "OJK: Foreign Venture Capitalists Will Need Local Partners to Enter Market." *Jakarta Globe*, December 30, 2015.

³² Nurahmatsyah, Adimas. "Would protectionism hurt the promising growth of Indonesia's digital economy and creative industry?" *Jakarta Post*, January 18, 2016.

border E-Commerce. One study found that ASEAN's cross-border delivery logistics was very costly. For instance, a consumer purchasing a dress online must pay duties of more than 30 per cent of its value for the good to be delivered in Indonesia, Thailand, and Vietnam.³³ Such taxes add costs to businesses especially Southeast Asian MSMEs, rendering them less likely to participate in the region's E-Commerce. As MSMEs are backbones of ASEAN's economies, the AEC 2025's goal of an "inclusive region" may be unattained.

Addressing Digital Protectionism: Policy Recommendations

As demonstrated above, digital protectionism still persists in Southeast Asia. To more effectively address the issue, ASEAN policymakers should do the followings.

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

A working definition is the first important step for effective rule-making. Such definition would ensure that the authorities have the same understandings of the concepts when discussing digital barriers and related matters, hence lessening a chance of future misunderstandings and disputes among them. The definition also helps the public officials develop indicators to identify digital barriers, which in turn enabling them to distinguish market-distorting measures from the non-trade-distorting ones.

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

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

This begs a 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 Organisation (WTO) are collaborating in a project on cross-border digital trade measurement. ASEAN participants could utilize this measurement approach for their own quantification project. Another option is to tap on Southeast Asia's Track II networks for ideas about the methodologies. This can be done by commissioning certain thinktanks or academic institutions to develop measurement schemes for ASEAN.

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

³³ 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>

A platform should be set up for ASEAN officials to update and/or clarify their domestic policies to the other parties on a regular basis. Such mechanism not only helps address digital protectionism but also augments the future development of regional governance architectures for the following reasons. First, it promulgates transparency in the system. It is due to the fact that such venue provides a channel of communication in which Southeast Asian 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, in a case that a country's domestic rules and regulations turn out to restrict the functioning of the region's digital economy and E-Commerce, the forum not only allows the other parties to voice their concerns but also permits the former to clarify why it implements such practices. The information revealed during these interactions create better understandings of the regional states' policies and reduce the likelihood of trade disputes or retaliations. Suppose that this mechanism does not exist, ASEAN participants 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 policies. Southeast Asia would witness a surge of digital protectionism, pulverizing the growth and development of the region's digital economy.

Southeast Asian authorities 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 new ASEAN Framework on E-Commerce. In short, the document is a work-in-progress.³⁴ Such agreement is crucial to Southeast Asian economies because as it will lay 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 jeopardizing new technology and innovation and ASEAN's long-term economic growth. In contrast, if rules are crafted 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 followings. First, the officers should focus on harmonizing these rules to bolster inter-operationality of different regulations. It is because E-Commerce rules and regulations vary across Southeast Asian countries. Illustratively, UNCTAD's 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.³⁵ Therefore, rule harmonisation is more feasible than rule standardization in this context.

Finding harmonisation modalities is not an easy task. However, the authorities can adopt good practices used by other international organisations. For instance, labour law harmonisation in the EU 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."³⁶ ASEAN members could apply this approach to their own harmonisation project.

In addition, the authorities should make the Framework a "living document" by inserting into the new Framework a rule-amending clause. In short, the agreement should permit the

³⁴ Borneo Post. "New Asean e-commerce framework to benefit more local MSMEs." *Borneo Post*, November 22, 2017.

³⁵ 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.

³⁶ Hepple, Bob. *Labour Law and Global Trade*. Oxford, U.K.: Hart Publishing, 2005.

parties to update existing rules or add new ones under specific conditions. It is due to the fact that a 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 new Framework can facilitate the integration of new technologies, services, and innovation. This in turn would provide the legal environment enabling Southeast Asian businesses to operate well in the future.

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

Limited technical knowledge of rulemakers in particular ASEAN countries could account for some digital protectionism in the region. It is because knowledge constraints lessen the authorities' ability to craft legal domestic infrastructures that can actually 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 boost these officers' capacity for better rulemaking.

Such capacity building activities can be conducted under the auspices of 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.³⁷ 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' rulemaking capacity in regards to digital economy and E-Commerce.³⁸

It should be highlighted that IAI provides assistance to only CLMV countries. Reality suggests that the non-CLMV ASEAN members need additional training as well. This is partially due to the fact that digital economy has created a new trading environment which requires new ways of thinking or approaches in order to design practical rules governing the markets. For instance, one study discovered that some of the Philippines' legislations, namely Commonwealth Act No. 146 (Public Service Act), Republic Act 7925 (Public Telecommunications Policy Act), and Republic Act 3846 (Radio Control Law), have shaped the nation's market structures in 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 a fixed broadband subscription rate. The Philippines also offers more expensive e-services than its ASEAN peers. Despite the fact that its authorities recognised such challenge and had been working towards plans to address them, "uptake by government agencies in the Philippines remains slow due to legacy issues and a lack of understanding by senior government officials."³⁹ Therefore, the Southeast Asian policymakers should identify which areas and skills that non-CLMV officials need to be trained and find mechanisms to conduct such capacity building activities.

A pressing question then becomes: Where to find funding to supply the training schemes for CLMV and non-CLMV ASEAN countries? One solution is that ASEAN seeks additional technical assistance from its dialogue partners or other international organisations. Several entities have provided such assistance to Southeast Asian states. For instance, with funding support from WTO and Temasek Foundation International, S. Rajaratnam School of International Studies (RSIS) launched an annual 3-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

³⁷ ASEAN Secretariat. ASEAN Economic Community Blueprint 2025. Jakarta, Indonesia, November 2015, p. 34.

³⁸ ASEAN Secretariat. Initiative for ASEAN Integration (IAI) Work Plan III. Jakarta, Indonesia, August 2016.

³⁹ National University of Singapore and Microsoft. "A Cloud for Doing Good: A Technology Revolution for All in ASEAN A Cloud for Doing Good - A Technology for All in ASEAN", 2017, p. 20

particular concerns of developing states in the process.”⁴⁰ The programme usually trains about 50 Asian parliament members including those from ASEAN nations. Moreover, UNCTAD and 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 among others, as well as private companies that specialise in E-Commerce.”⁴¹ Therefore, ASEAN members should welcome technical assistance from these above organisations and other entities to further enhance its lawmakers’ capacity in both CLMV and non-CLMV countries.

Concluding Remarks: How to Rally a Political Will?

These recommendations cannot be materialised 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 forward 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 Southeast Asia’s digital economy, and (ii) addressing those losing out from their participation in the digital economy via trade adjustment assistance programmes.

First, ASEAN leaders have to raise one another’s awareness about the salience of working together to galvanize Southeast Asia’s digital economy. It 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 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 their own domestic enterprises.

Admittedly, the dynamics of TPNs sometimes render some local firms out-competed by foreign ones. They hence have to lay off their employees and unemployment results. Therefore, Southeast Asian leaders must help their shutdown 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, skill re-training courses for unemployed individuals, and job search and job-skill matching assistance to dislocated workers.

⁴⁰ 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>

⁴¹ Department of Foreign Affairs Philippines. “PHL Hosts ASEAN/UNCTAD E-Commerce Workshop.” DFA news, November 22, 2017.

About the Author

Dr Kaewkamol (Karen) Pitakdumrongkit is an Assistant Professor at the Centre for Multilateralism Studies, at S. Rajaratnam School of International Studies (RSIS) of Nanyang Technological University, Singapore. She completed her MA and PhD in Political Science at the University of California, Santa Barbara, U.S.A. Before joining RSIS, Karen assisted Kenan Institute Asia in analysing trade and industry data concerning the impact of the proposed EU-ASEAN Free Trade Agreement on Thailand's industries. Her research interests include international economic negotiations, East Asian economic governance, relationships between regional and global economic governance, ASEAN Economic Community, and political socialisation. Beside research, Karen teaches a course on the Political Economy of Southeast Asia at the RSIS International Political Economy programme.

About The Centre for Multilateralism Studies

The **Centre for Multilateralism Studies (CMS)** is a research entity within the S. Rajaratnam School of International Studies (RSIS) at Nanyang Technological University, Singapore. The CMS team conducts cutting-edge research, teaching/training, and networking on cooperative multilateralism in the Asia Pacific region. The Centre aims to contribute to international academic and public discourses on regional architecture and order in Asia Pacific. It aspires to be an international knowledge hub for multilateral and regional cooperation.

The Centre's research agenda includes international and global forms, as well as expressions of cooperative multilateralism:

- **Economic Multilateralism**

Research areas include trade, monetary, and financial integration in ASEAN, ASEAN+3, South Asia, and Central Asia; evolving linkages between various Asian sub-regions and with countries/sub-regions outside the region; and developments in the global economic architecture to ensure complementarity between global and regional initiatives.

- **Diplomatic and Security Multilateralism**

Research areas include inter-governmental and non-official arrangements such as the ASEAN Regional Forum, ASEAN+3, East Asia Summit, Shanghai Cooperation Organisation, Six-Party Talks, the Council for Security Cooperation in the Asia Pacific, and the like. Initiatives in defence diplomacy include the ASEAN Defence Ministers' Meeting (ADMM) and ADMM Plus, the Shangri-La Dialogue, and alliances.

- **International Political Economy**

The programme examines the interactions between politics and economics of particular countries, regions and the world. Drawn from both the fields of economics and politics, an international political economy perspective enhances our understanding of issues in the regional and global economy.

- **Temasek Foundation Series on Trade & Negotiations**

With a generous donation from Temasek Foundation, CMS organises two capacity-building programmes a year; an annual three-day training course for regional members of parliament and In-Country training courses for government officials. These workshops are carefully designed to help develop the human capital necessary to take full advantage of the opportunities unleashed by globalisation and international trade.

For more information about CMS, please visit www.rsis.edu.sg/research/cms.

About the S. Rajaratnam School of International Studies

The **S. Rajaratnam School of International Studies (RSIS)** is a professional graduate school of international affairs at the Nanyang Technological University, Singapore. RSIS' mission is to develop a community of scholars and policy analysts at the forefront of security studies and international affairs. Its core functions are research, graduate education and networking. It produces cutting-edge research on Asia Pacific Security, Multilateralism and Regionalism, Conflict Studies, Non-traditional Security, International Political Economy, and Country and Region Studies. RSIS' activities are aimed at assisting policymakers to develop comprehensive approaches to strategic thinking on issues related to security and stability in the Asia Pacific.

For more information about RSIS, please visit www.rsis.edu.sg.