



Trade Hot Topics

Capacity-Building in Digital Economy Agreements – the Missing Link?

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Introduction

In a global economy that is becoming significantly more digital, digital trade regulation is an increasingly prominent feature of trade agreements. Digital Economy Agreements (DEAs),² which foster co-operation with regard to regulating various aspects of digital trade, typically seek to establish common rules, standards and norms to govern digital trade and to enable interoperability between the digital ecosystems of different countries. Some agreements also address issues such as data protection, privacy and storage across countries, all of which are imperative to the overall governance of cross-border digital trade flows. Above all, they seek to establish a mutually acceptable and yet easily malleable ecosystem for harmonisation, interoperability and mutual recognition of regulatory requirements and frameworks across partners.

DEAs can facilitate new and deeper forms of economic co-operation across the Commonwealth. Participation in these agreements can support inclusive economic growth, enhance productivity, promote innovation, reduce trade transaction costs and improve market access in both developed and

developing Commonwealth countries. In addition, DEAs have the potential to be more effective as the number of participants increase, and cover a wider geography, consumer market and supplier network.

However, even the most well-considered and informed regulation is only as good as the ability of the least common denominator to comply with it (Bajaj, 2021). Therefore, as digital technologies provide tools for more inclusive trade, across geographies and jurisdictions, it is more important than ever to ensure that all economies have the capacity to participate in digital trade, to draft and implement the necessary legal and regulatory frameworks and take part in and comply fully and effectively with the provisions of DEAs with a larger number of trading partners.

The question, therefore, is not whether DEAs are the appropriate instrument to address capacity-building for digital trade. It is, in fact, why should they not be?

Against the backdrop of Covid-19, driven by the accelerated pace of adoption of digital technologies in economic activity, in 2020 global e-commerce accounted for 19 per cent of all retail sales (UNCTAD, 2021b). During the same period, even as trade in

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² For the purposes of this issue of *Trade Hot Topics*, the expression “digital economy agreement,” unless referring to a specific DEA (such as the Australia–Singapore DEA), refers to all types of economic co-operation agreement addressing aspects of the digital economy or digital trade, including digital trade agreements (which have a narrower scope than DEAs), the more recent and more ambitious DEAs and chapters in regional trade agreements (RTAs) that cover e-commerce and digital trade.

services declined by nearly 30 per cent as a result of Covid-related restrictions (WTO, 2021), digitally deliverable services increased to reach 64 per cent of total services exports (UNCTAD, 2021c). On the one hand, digital technologies provided newer models of trade, increasing the “scale, scope and speed of trade.”³ On the other, with the growing role of digital platforms in e-commerce, supply chains have been restructured, with an increasing number of smaller packages crossing borders every day.⁴ This creates new challenges in the regulation of digital trade. It also necessitates co-operation through DEAs.

A total of 375 regional trade agreements (RTAs) had been notified to the World Trade Organization (WTO) by the last quarter of 2021. Of these, 113 contain provisions discussing e-commerce.⁵ More recent DEAs, such as the Digital Economy Partnership Agreement (DEPA) and the Australia–Singapore DEA, are more comprehensive in their coverage, addressing issues pertaining to digital trade in general, including digitalisation of trade in services and of trade-related processes. To date, among Commonwealth countries, DEAs have largely remained the preserve of developed countries, such as Australia, New Zealand and the UK. Only a few developing members, such as Brunei Darussalam, Malaysia and Singapore, are party to existing or planned agreements addressing digital trade.

This may indicate two-fold capacity issues among developing countries. On the one hand, with limited digital connectivity, shortcomings in digital infrastructure, low levels of digital capacity and skills, and underdeveloped regulatory environments, many Commonwealth developing countries and least developed members are poorly positioned to benefit from the opportunities presented by digital trade, and to harness the gains available through it. This limits their motivation to participate in DEAs. If unaddressed, these constraints risk widening existing digital divides and, in the process, further marginalising these countries in an increasingly digitalised global economy. On the other hand, regulatory and institutional frameworks in a number of developing countries are unprepared to effectively regulate digital trade, and to comply with the requirements and provisions of DEAs. Therefore, it is critical to ensure that DEAs, and therefore the digital economy, can be more inclusive.

To this end, it is imperative to build capacity to engage in digital trade in developing countries, so they can be better positioned to benefit fully from the opportunities presented by DEAs, and therefore have the motivation to participate in them. In addition, capacity-building is required to ensure participating economies can comply with and implement their commitments within such DEAs, so that even the lowest common denominator can participate effectively. Such capacity-building support would also include co-operation to develop the necessary digital infrastructure and foundational digital systems (such as digital identities or systems for processing digital payments and facilitating digital trade), build digital skills and create an enabling environment for developing Commonwealth countries to adopt and absorb digital technologies and engage effectively in digital trade.

This issue of *Commonwealth Trade Hot Topics* argues that, to encourage the participation of developing countries in DEAs, there is need for co-operation among trading partners on capacity-building for digital trade, tailored to the specific needs of individual developing countries, and to make such capacity-building an inherent part of DEAs. This will ensure that all parties to an agreement have the capacity to comply with the regulations, rules and commitments contained therein, and to benefit optimally from their participation.

Capacity constraints regarding digital trade in the Commonwealth

Commonwealth digital trade expanded steadily over the decade preceding Covid-19, with information and communication technology (ICT) goods trade increasing by US\$25 billion and trade flows (exports and imports) of ICT services by almost \$81 billion. Trade in digitally deliverable services increased by 44.8 per cent between 2011 and 2019. In fact, over 50 per cent of the total trade in services by Commonwealth member countries was delivered digitally by 2018 (Commonwealth Secretariat, 2021).

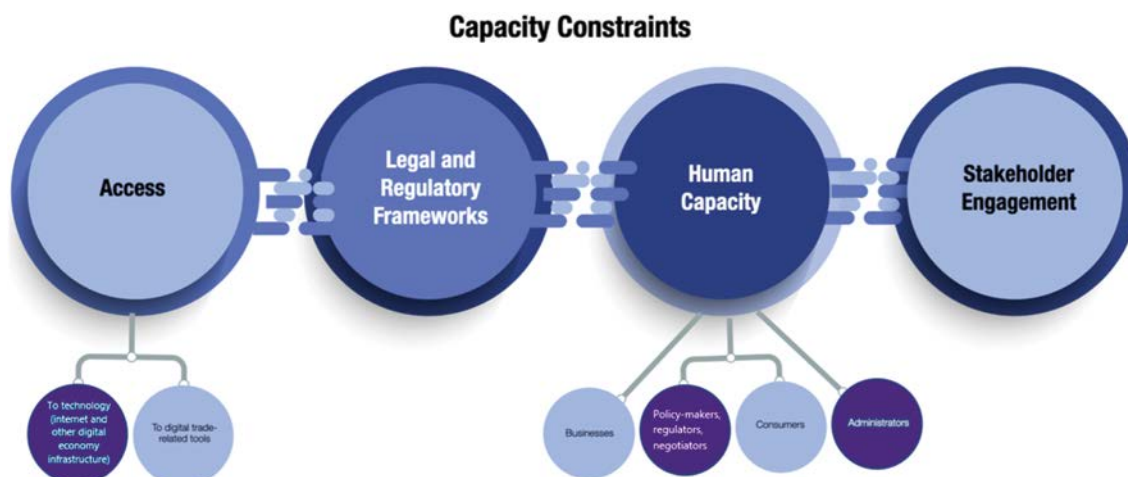
However, largely because of capacity constraints in some members, this increase in digitally enabled trade flows remained restricted to a few (developed, and some developing) Commonwealth countries. The Commonwealth Secretariat (2021)

3 <https://www.oecd.org/trade/topics/digital-trade/>

4 Ibid.

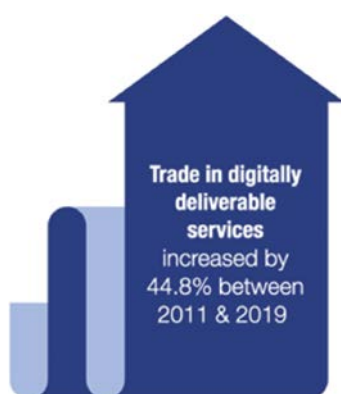
5 <http://rtais.wto.org/UI/PublicSearchByCrResult.aspx>

Figure 1: Digital economy capacity constraints



Source: Author's elaboration.

notes that, regionally, this trend was dominated by Asian Commonwealth member countries, especially in trade in ICT goods – whereas the contribution of African member countries to this trade flow declined by 2.2 per cent in 2019. This is also a consequence of the slow pace of adoption of digital technologies in several African least developed countries (LDCs), including in sub-Saharan Africa, leaving the majority of LDCs and small island developing states (SIDS) at the periphery of this growth. This is concerning, as the increase in digital trade, and the digitalisation of the provision of services, has made trade more inclusive⁶ and created new opportunities and engagement models for micro, small and medium-sized enterprises (MSMEs) and women and youth-owned businesses, including those in developing countries, LDCs and SIDS.



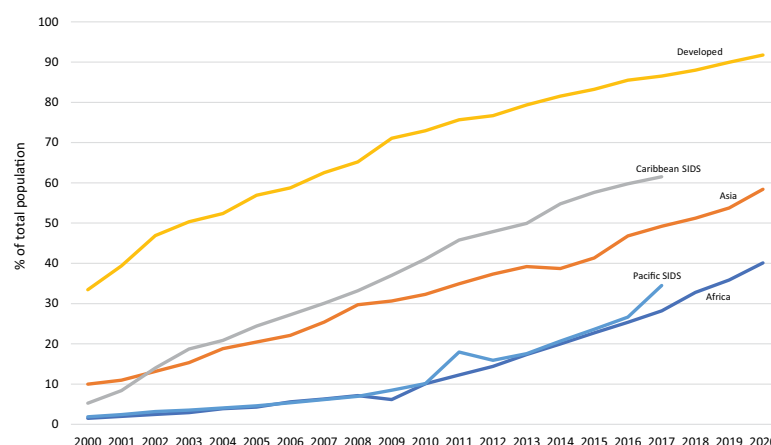
As Covid-19 has underscored, it is more critical than before to address the capacity constraints

facing Commonwealth developing countries. If this does not happen, the digital divide is set to grow wider and faster. In addition, as global value chains are restructured with the increasing use of digital technologies in economic activity, it also becomes essential to ensure effective inclusion of all member countries in the digital economy. This will help enable the smooth and secure movement of goods, the flow of services and exchange of data among trading economies and, therefore, economically optimal and viable value chains.

Capacity-building for the digital economy has four key components: *access*, *human capacity*, *regulatory frameworks* and *stakeholder engagement* (summarised in Figure 1). For example, access to digital infrastructure and internet services requires an ecosystem, both technological as well as regulatory, for e-commerce platforms, internet banking and e-payment solutions, logistics and delivery networks, and human resources skilled in the use of technology and devices and in the development of locally customised software solutions and support. Further, consumer confidence in the system is critical for stakeholder participation and to ensure it is developed and sustained. This requires effective and implementable regulatory frameworks, including for the protection of financial transactions, data and cybersecurity, complete with easy-to-access dispute resolution mechanisms, which can cover cross-jurisdictional issues, backed by regulatory co-operation agreements among trading partners.

6 <https://www.oecd.org/trade/topics/digital-trade/>

Figure 2: Individuals using the internet in the Commonwealth, by region, 2000–2020 (%)



Notes: The internet usage figures are calculated as simple averages across countries in each grouping. Data for Caribbean and Pacific SIDS from 2018–2020 is excluded due to limited country coverage.

Source: Commonwealth Secretariat calculations (using International Telecommunication Union data) <https://www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>



Over 50 per cent of the total trade in services by Commonwealth member countries was being delivered digitally by 2018

Capacity constraints in these areas have collectively acted as key reasons for the “adoption challenge” facing developing countries in the Commonwealth.⁷

To begin with, *accessing both technology and technological tools* for the digital economy remains challenging for several member countries. Even though the increase in the percentage of individuals using the internet across the Commonwealth over the past two decades has been impressive, the disparity among regions remains evident (Figure 2). The percentage of individuals using the internet in developed member countries like Canada (96 per cent), the UK (94 per cent) and New Zealand (90 per cent) is noticeably and significantly higher than for some developing member countries, such as South Africa (68 per cent), India (41 per cent) and Sri Lanka (35 per cent). Similarly, Commonwealth LDCs such as Bangladesh (12.9 per cent), Kiribati (14.5 per cent), Malawi (15 per cent) and Papua New Guinea (11 per cent) are still at the far end of the divide.⁸

While the proportion of individuals in Commonwealth member countries using the internet has

nearly doubled over the past decade, and there has been a threefold increase in these numbers for African Commonwealth members, taking the figure to 32 per cent of the population, a large share of individuals in these countries still do not have access to the internet (Commonwealth Secretariat, 2021). As a matter of fact, among low-income Commonwealth nations, only 18 per cent of the population has access to the internet. Between 2018 and 2020, Bangladesh (13 per cent), India (20 per cent), Pakistan (17 per cent), Kenya (22 per cent) and Zambia (16 per cent) continued to have among the lowest shares of internet access across Commonwealth member countries.⁹ For countries like India, a key player in the global e-commerce and digital services market, and Kenya, a pioneer in mobile payment solutions in Africa, these numbers are particularly noteworthy.

Against the backdrop of these low levels of internet access, it has been estimated that achieving 50 per cent internet penetration across the Commonwealth will contribute to a combined increase of the national income of member countries from US\$74 billion to \$263 billion (Commonwealth Secretariat, 2020).

Another key aspect of the missing capacity link is *human resource capacity*, or skills and training, for all stakeholders – consumers, businesses, policy-makers and regulators, as well as administrators. Inadequate skills among consumers and businesses affects their ability to participate effectively in the digital economy and to optimise its benefits. In turn, inadequate regulatory and administrative

7 <https://unctad.org/topic/ecommerce-and-digital-economy/etrade-readiness-assessments-of-LDCs>

8 <https://www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>

9 Ibid.

capacity affects the ability of economies to effectively regulate their space and foster robust regulatory frameworks, undermining the confidence of consumers and trading partners and diminishing the competitiveness of businesses. This also makes it more difficult for countries to cooperate on harmonisation, mutual recognition and interoperability of systems as part of DEAs. Collectively, these factors hamper the use of digital technologies in economic activity, including in the case of e-commerce transactions.

The impact of these challenges is most acute in Commonwealth LDCs. In Solomon Islands, for example, mobile cellular telephone usage increased, backed by the liberalisation of the telecommunications sector in 2009, from 20 per cent in 2010 to 78 per cent in 2017. The economy is also part of the Better Than Cash Alliance,¹⁰ with a commitment to convert 80 per cent of transactions to digital mediums by 2020, and several e-governance initiatives have been initiated. However, e-commerce transactions are still restricted to consumer and seller interactions primarily through social media platforms, and have not yet fully extended to online purchases and payments (UNCTAD, 2018a).

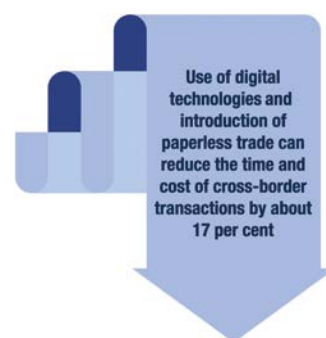
In Zambia, where MSMEs are rapidly adopting digital technology in commerce and driving economic growth, strong *regulatory frameworks* have been developed for digital trade but *implementation* at the national level remains limited, owing largely to restricted inter-ministerial co-ordination (a result of, among other things, limited awareness and understanding of the nuances of e-commerce, and poor trust and information-sharing) (UNCTAD, 2021b). Similarly, in Malawi, a lack of consumer confidence in digital technologies and a shortage of the skills necessary to effectively use them in trade serve as constraints to further engagement in the digital economy (UNCTAD, 2019a). In both countries, there is a need for more effective public-private dialogue to improve the regulatory and institutional capacity for e-commerce, as well as to increase awareness and understanding of the use of technology in trade.

Similarly, Tanzania's promising prospects for MSME-led growth via integration into the digital economy are restricted by the lack of a regulatory framework for e-commerce and high prices for mobile and broadband internet networks and services. These

challenges are accompanied by low levels of consumer awareness and, therefore, weak confidence in engaging in the digital economy (UNCTAD, 2020). In Kiribati, limited access to the internet has been identified as a cause of the deficit in digital skills and literacy. In addition, the absence of a clear e-commerce policy or regulatory framework has made it more difficult for businesses to go digital (UNCTAD, 2019b). The World Bank (2021) cites inadequate legal and regulatory frameworks, as well as weak institutional mechanisms and administrative capacity, as one of the key reasons for the limited participation of low-income economies in digital trade.

Even for emerging economies like India, there is a need to enhance digital literacy and skills, and to design a more digitally informed trade policy to improve the competitiveness of digital businesses, raise value-added in digital services and increase participation in e-commerce (Banga, 2018).

The World Bank (2021) places emphasis on data as a critical component in the digital economy, noting that, despite the significance of effective data regulation, legal and regulatory frameworks remain inadequate in low-income countries, with prominent gaps in the necessary safeguards and inadequately established practices on data-sharing. It also underscores the lack of systems in these countries to ensure interoperability of frameworks, and insufficient data-related infrastructure such as for co-location of data, cloud computing facilities, etc.



The role of digital technologies in trade also extends to trade-related processes, where they can help facilitate trade (including through automation and digitisation of processes), eliminate the need for physical paperwork and, therefore, reduce red tape and potential corruption as well as the cost and time involved in these processes. It has been estimated that the use of digital technologies, and the introduction of paperless trade, can reduce the time and cost of cross-border transactions

10 <https://www.betterthancash.org>

by about 17 per cent relative to a non-digital implementation of (both binding and non-binding) WTO Trade Facilitation Agreement¹¹ measures, which would decrease trade costs by only 4–9 per cent (UNESCAP, 2021). However, insufficient access to technological tools, as well as a shortage of skills and technical know-how to use these and to effectively implement automated trade-related processes and paperless transit, acts as an impediment to the growth of digital trade in some member countries.

To this end, building capacity to plug gaps in these areas is critical. It is also necessary to increase public–private dialogue and effective stakeholder engagement to develop best practices and allow stakeholders to take ownership of the digital economy, and of the process of arriving at and implementing digital trade regulations. It is only when sufficient capacity is created, and developing countries, LDCs and SIDS have the requisite digital regulatory frameworks in place domestically, that they will be better positioned to benefit from participating in DEAs and be incentivised to engage in discussions and negotiations around these. This is true at the bilateral, regional and multilateral level. In fact, it is one of the reasons why several developing countries have chosen not to engage in the ongoing negotiations for the Joint Statement Initiative (JSI) on e-commerce at the WTO, indicating that such engagement will be beneficial to their development objectives only once they have developed sufficient regulatory and institutional capacity and secured their policy space (Durant, 2021).

However, addressing these capacity constraints is conventionally viewed as the subject of domestic (infrastructure, institutional and structural) reform and development policies. The question is: where do DEAs and co-operation with trading partners fit in? The following sections argue that there is a definite role for DEAs to provide for structured capacity-building for participating economies.

A case for capacity-building for participation in DEAs

As digital technologies become increasingly intertwined with trade, and with global economic opportunities, they provide more inclusive access, and newer models in trade. This is especially the case for MSMEs and niche service providers, which are increasingly seen as drivers of economic growth

in developing countries, to engage more effectively in the global economy. Consequentially, global trade has the opportunity to be more inclusive than ever before.

However, the digital economy comes with its own specific challenges and requirements, for both developing and developed countries. As transactions and data traverse borders more fluidly and facelessly than before, issues such as data security, consumer protection, cybersecurity and digital financial services regulation have come to the forefront of regulatory co-operation, and these are now key issues in DEAs. The regulatory issues are a work in progress even in developed economies that are already participating in DEAs. Meanwhile, several developing economies still lack the necessary domestic legal and regulatory frameworks to adequately address them.

In addition, effective implementation of digitally enabled trade and transit protocols, such as paperless trade, automated transit procedures, vetting of e-signatures and secure e-payment solutions, requires interoperability of systems on both sides of the transaction. This is still a work in progress in several developing economies.

Simultaneously, as constraints around access, human capacity, and regulatory and institutional frameworks prevent several developing countries from integrating into the digital economy, they see little opportunity to harness the benefits of participating in DEAs. In the same vein, their domestic regulatory and institutional frameworks do not fully accommodate issues pertaining to the digitalisation of trade and trade-related processes. This poses challenges regarding their ability to negotiate, participate in and comply with the standards and regulations set forth in DEAs.

In such a scenario, as economies use DEAs to create safe, malleable ecosystems of co-operation for harmonised, interoperable, mutually recognisable regulatory frameworks for the digital economy, the lack of capacity in many developing economies to participate in these risks leaving them, and their businesses, out of a large part of global trade. For participating economies, the absence of several developing economy partners from these ecosystems risks restricting the breadth of trade and transactions, and limiting potential suppliers and consumers of goods and services, in the digital economy.

Conscious efforts to prepare and incentivise developing economies to participate in these agreements, is therefore, a win-win outcome.

However, participation in such agreements requires preparatory work by developing economies to identify the potential economic and social impacts of such participation, and to build capacity to ensure they can optimise the benefits and minimise potential trade diversion effects.¹² To this end, it is necessary to ensure that Commonwealth economies have the capacity to participate effectively in digital trade and to comply with the commitments within such agreements. In this regard, the Commonwealth Connectivity Agenda also recognises the urgency of adopting digital technologies in trade, and adapting to their use, by all Commonwealth member countries, to ensure sustainable and inclusive development (Commonwealth Secretariat, 2021). This will require bridging the digital divide on both access to technology and technological tools in trade, as well as building capacity to effectively use them, accounting for unique circumstances and limitations. Domestic capacity also needs to be enhanced for the necessary legal, regulatory and institutional frameworks underpinning digital trade and transactions, data security and online consumer protection. In addition, it will be necessary to build capacity among regulators and administrators to effectively negotiate and implement the provisions of DEAs with trade partners.

While some developed Commonwealth members, such as Australia, New Zealand and the UK, have successfully negotiated DEAs, both with other Commonwealth countries and with economies outside the Commonwealth,¹³ for many developing Commonwealth countries, such capacity-building and preparation remains a work in progress (discussed in the following sections), preventing them from participating in DEAs.

Are DEAs the appropriate instrument for capacity-building?

DEAs address a niche area of trade, and yet one that has a reverberating impact. Digital technologies are reshaping economic activity across the globe. Yet the digital divide means that, while some economies are harnessing the full benefit of participating in the digital economy, others are still building the necessary capacity, and playing catch-up. Simultaneously, as technology evolves with trade, and faster than trade regulation, regulating the digital economy is a work in progress, even for economies participating in more than one DEA. Newer technologies are emerging, and interacting with value chains, to make the task of regulating digital trade more challenging.

For both developing and developed countries looking to participate in DEAs, formulating the appropriate regulations for the sector continues to progress. To this end, and to ensure effective regulatory co-operation, it will be necessary to ensure that the DEAs themselves provide tools for capacity-building for participating economies, and frameworks for collaboration in this regard.

The nature of digital trade, and of the data flows on which digital trade is built, necessitates co-operation on the development of the necessary institutional and regulatory frameworks that support harmonisation, mutual recognition and interoperability of systems, across jurisdictions and at a multilateral level (Bajaj, 2021). Furthermore, as data flows across multiple geographies with each transaction in sophisticated “data value chains” (UNCTAD, 2021a) and with the evolution of more sophisticated technologies, accountability at each step becomes more critical. It also requires collaboration on the “development of data infrastructures” (World Bank, 2021) to ensure that such infrastructure can support interoperability. In

12 The concerns for developing countries regarding participation in digital trade include the short-term impact of growing digitalisation and automation in trade disrupting opportunities for more traditional sectors, as well as the as yet unclear impact of digital trade on issues concerning competition policy. They also include concerns regarding a reduction in competitiveness of domestic firms in developing countries, especially small and nascent enterprises, as a result of opening up markets to foreign firms that already have expertise in the use of digital technologies. In addition, participation in DEAs without sufficient preparatory work risks restricting the policy space for governments, widening existing gaps in the legal and regulatory frameworks of participating economies, as well as reducing (potential) revenues from tariffs or taxes on digital transactions (a subject still under discussion even in multilateral fora such as the WTO), which, as countries like India and South Africa have argued with respect to the ongoing discussions on the customs moratorium on e-transmissions at the WTO, are anticipated to be useful in the development of digital infrastructure and capacity-building for the digital economy (WTO, 2020). Similarly, it has been argued that, with increasing regulation on data security, there is a growing concern that the countries that will benefit from the rules on free flow of data built into such agreements will be those with the “first mover advantage,” stemming from the existing capacity to store and process data, as well as to develop the technological tools for the digital economy (TWN, 2021).

13 These include, for example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP), the Australia–Singapore DEA, the UK–Singapore DEA and the DEPA.

addition, value chains, which increasingly integrate digital systems and digital trade, are best optimised through the participation of as many economies as possible, across all levels of development and with varying relative comparative advantages.

The fact that the drivers of the digital economy are MSMEs, which, despite their agility and niche services, simultaneously struggle with capacity and scale constraints, makes the role of policy-makers in limiting the cost, time and complexity of doing business more critical, especially in developing countries.

To this end, as DEAs become an increasingly prominent feature of the universe of economic co-operation agreements, and the negotiations on the WTO JSI on e-commerce progress, these agreements and negotiations will have an impact on all trading economies, regardless of whether they participate in them. Their ability to leverage digital trade for sustainable development will also be affected. This is particularly true considering the heterogeneity of regulatory frameworks across the leading economies drafting rules in this space.

Simultaneously, the varying approaches, standards and requirements followed by the EU, the USA, Japan and China on the regulation of digital trade, and in particular on issues related to data security, mean that for others, especially low- and middle-income economies, trading with these countries can be cumbersome (Borchert and Winters, 2021), and could add to the cost and time of doing business. As economies engage in digital trade, it makes logical sense for trading partners to agree on the rules that will govern such trade, and to work with each other to ensure the effective implementation of the relevant regulatory frameworks for the benefit of all stakeholders on either side. Consequently, while the benefits of digital transformation are expected to be substantial for all participating economies, to actualise these benefits, it is necessary to have the right mix of policies, and measures, at both the domestic and international level to build the necessary capacity among economies to “deal with technological disruptions” (Durant, 2021).

This is because the interconnectedness of the digital economy, and the scope of DEAs, with the inclusion of subjects like data privacy and security, consumer protection, cybersecurity and security of digital transactions, means they can either be powerful tools for deeper economic co-operation, towards wider participation in the digital economy,

or risk leaving out a large majority of trading economies from the fold.

Therefore, ensuring that DEAs are an instrument for better economic co-operation, and foster domestic institutional and regulatory reforms as well as capacity-building for all partners for more inclusive digital trade, requires that such co-operation be built into the discussions on regulation and policy in this space. This is also reflected in the discussions on the provisions on capacity-building and technical assistance built into the WTO JSI on e-commerce.

Having said that, not many existing DEAs include provisions on co-operation among members for capacity-building. The missing capacity-building provisions in DEAs pose something of a “chicken and egg” conundrum. On the one hand, the majority of these agreements are, at present, negotiated between developed countries, or emerging economies with existing capacity, both institutional and regulatory, for digital trade. Therefore, the need for and scope of such capacity-building provisions are limited. On the other hand, developing economies are typically constrained in their participation in digital trade by inadequate infrastructure, human capacity, and institutional and regulatory capacity. Therefore, they fear that participation in agreements that regulate digital trade may result in restriction of their policy space, affect domestic competitiveness, particularly of small and nascent enterprises, and result in loss of tariff revenues from digital transactions. When considered together with the lack of sufficient capacity to harness the full benefits of such agreements, as well as to implement commitments contained therein, these factors may dissuade these countries from participating in DEAs from the outset.

Consequently, if DEAs themselves provide for capacity-building for both effective participation in digital trade and compliance with the provisions of the DEA, this could address some of the concerns of developing economies, increase their potential to harness the benefits and indicate a willingness of all participating members to make the DEA more inclusive, and to the benefit of all participating members. In addition, given the interconnectedness of the digital economy, and the scope of regulatory co-operation in DEAs, it would be only natural to incorporate provisions for capacity-building for the digital economy into agreements that seek to foster co-operation in this space.

This would also help mobilise financial and technical resources for such capacity-building (Durant, 2021). In addition, since each DEA differs in its scope and approach to digital trade, such capacity-building is best addressed within the DEA, customised to the specific circumstances of members, and in line with the tools needed to implement the commitments and requirements therein. The existence of substantive capacity-building provisions in DEAs, with built-in mechanisms for benchmarking and monitoring of outcomes, would provide the much-needed incentive for developing countries to participate. This is perhaps the most efficient way out of the chicken and egg conundrum.

DEAs and capacity-building – the current state of play

In addition to the negotiation of agreements focused on digital trade, an increasing number of RTAs in the past few years have included chapters on e-commerce or digital trade. Of the 275 RTAs notified to the WTO as of 2017, only 75 (or 27 per cent) contained specific provisions on e-commerce, and these were heterogenous in both scope and language. These include agreements between developed and developing countries, agreements involving only developed countries and agreements among developing countries (Monteiro and Teh, 2017). As of 2021, of the 375 RTAs notified to the WTO, and currently in force (for at least one party), 113 contained provisions on e-commerce.¹⁴

The discourse and negotiations on digital trade almost always include a discussion on the need for capacity-building. So much so that the ongoing discussion on the JSI on e-commerce at the WTO also addresses the significance of digital trade-related capacity-building.¹⁵ Yet there is little clarity on what such capacity-building will entail, and whether and how it should be included in specific agreements.

The more recent instruments of regulatory co-operation on digital trade include the DEPA between Singapore, New Zealand and Chile, the DEA that upgrades the existing free trade agreement (FTA) between Australia and Singapore, and the USA–Japan Digital Trade Agreement (DTA). The Comprehensive and Progressive Agreement

for Trans-Pacific Partnership (CPTPP) involving 11 countries (including six Commonwealth members)¹⁶ also has a substantive chapter on electronic commerce. These agreements have been negotiated among developed economies or advanced developing economies with existing frameworks for the regulation of digital trade. The Regional Comprehensive Economic Partnership (RCEP), with 15 members including five Commonwealth countries,¹⁷ is one of the few agreements with a substantive e-commerce chapter negotiated among a mix of developed and developing countries and LDCs.

The agreements (summarised in Table 1) are heterogenous in their approach to digital trade and e-commerce, in language, scope, depth and issues covered (López-González, 2021). On the one hand, the Japanese trust-based data flow model seeks to address privacy issues while also preventing undue restrictions on the flow of data. The US approach places emphasis on accountability in the private sector. “The US-Mexico-Canada Agreement (USMCA), the CPTPP and the DEPA demonstrate how innovative governments are uniting to modernize trade commitments and address challenges facing the global digital economy” (Fan and Gallaher, 2020). It can be argued that there is a need to ensure more such agreements include provisions to enable all participating economies to benefit from them.

Even with their progressive approach to digital trade, their coverage of a wide variety of issues, including futuristic and evolving technologies, and an openness to accepting new members, not all agreements include specific, substantive provisions on co-operation for capacity-building for developing economies in digital trade. Where such provisions do exist, they remain restricted in scope and language, with little or no provision for benchmarking and monitoring of outcomes of such capacity-building. Moreover, not many provisions include co-operation on building human capacity through training and development of requisite skills.

The Australia–Singapore DEA¹⁸ is one of the few agreements that cover capacity-building for

14 <http://rtais.wto.org/UI/PublicSearchByCrResult.aspx>

15 <https://dig.watch/events/capacity-building-e-commerce-lessons-solutions>

16 Members are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

17 Members are Australia, Brunei Darussalam, Cambodia, China, Indonesia, Japan, South Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Vietnam.

18 <https://www.dfat.gov.au/trade/services-and-digital-trade/australia-and-singapore-digital-economy-agreement>

Table 1: Capacity-building in DEAs – current state of play

Agreement	Members	Coverage	Provision on co-operation for capacity-building	Language
CPTPP	Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam	Cross-border transfer of data (with a carve-out for financial services); electronic signature; authentication of electronic transactions; online availability of import and export documentation and electronic submission of documents; preventing data localisation measures; customs duties on electronic transactions; source code protection; treatment of digital content; consumer privacy and personal data protection; management of spam; market access and cybersecurity	Article 14.16: Co-operation on Cybersecurity Matters	The Parties recognise the importance of: (a) building the capabilities of their national entities responsible for computer security incident response; and (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.
DEA	Australia, Singapore	Data transfer, including in financial services; prevention of data localisation measures; data innovation, artificial intelligence, e-invoicing, e-certification for agricultural exports and imports, trade facilitation, personal data protection and digital identity; capacity-building	Article 37: Capacity-Building	The Parties shall endeavour to cooperate on capacity building in the region on issues including: (a) digital connectivity; (b) SME digital transformation; (c) data protection regimes; and (d) mechanisms to facilitate the cross-border transfer of information.
DEPA	Chile, New Zealand, Singapore	New approaches and collaborations on digital trade issues; interoperability between different regimes and new issues brought about by digitalisation; digital invoicing, paperless trade, fintech, digital identities, digital inclusivity; open government data, trusted data flows and consumer data protection; data-driven innovation and regulatory sandboxes; small and medium enterprise cooperation; artificial intelligence	Article 2.5.4: e-Invoicing	The Parties agree to cooperate and collaborate on initiatives which promote, encourage, support or facilitate the adoption of e-invoicing by businesses. To this end, the Parties shall endeavour to: (a) promote the existence of underlying infrastructure to support e-invoicing; and (b) generate awareness of and build capacity for e-invoicing .

(Continued)

Table 1: Capacity-building in DEAs – current state of play (Continued)

CARIFORUM-EU EPA	EU, CARIFORUM states (a subgroup of the Organisation of African, Caribbean and Pacific States that serves as a base for economic dialogue with the EU, whose members are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago)	Includes a provision on e-commerce (Chapter 6, Title II – Investment, Trade in Services, E-commerce), which defines electronic commerce as included under provision of services and details the regulatory aspects of e-commerce among the parties. Chapter 7 of Title II covers Co-operation, including for capacity-building in ensuring compliance with regulations and standards within the EPA, as well as stakeholder engagement among service providers in the EU and participating CARIFORUM states. In addition, Article 7: Development Co-operation and Article 8: Co-operation Priorities of Title I of the EPA also address areas of co-operation for capacity-building under the agreement.	Chapter 7 of Title II: Co-operation; Article 7 of Title I: Development Co-operation; Article 8 of Title I: Co-operation Priorities	Title I: Article 7: Development cooperation (1) The Parties recognise that development cooperation is a crucial element of their Partnership and an essential factor in the realisation of the objectives of this Agreement as laid down in Article 1. This cooperation can take financial and non-financial forms. (2) Development cooperation for regional economic cooperation and integration, as provided for in the Cotonou Agreement, shall be carried out so as to maximise the expected benefits of this Agreement. Areas of cooperation and technical assistance are set out, as appropriate, in the individual Chapters of this Agreement. Cooperation shall be implemented according to the modalities provided for in this Article, shall be kept under ongoing review and shall be revised as necessary according to the provisions of Article 246 of this Agreement. (3) The European Community financing pertaining to development cooperation between CARIFORUM and the European Community supporting the implementation of this Agreement shall be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement, in particular the programming procedures of the European Development Fund (EDF), and within the framework of the relevant instruments financed by the General Budget of the European Union. In this context, supporting the implementation of this Agreement shall be one of the priorities. (4) Commensurate with their respective roles and responsibilities, the European Community and the Signatory CARIFORUM States shall take all measures necessary to ensure the effective mobilisation, provision and utilisation of resources aimed at facilitating the development cooperation activities provided for in this Agreement. (5) The Member States of the European Union collectively undertake to support, by means of their respective development policies and instruments, development cooperation activities for regional economic cooperation and integration and for the implementation of this Agreement in CARIFORUM States and at the regional level, in accordance with the complementarity and aid effectiveness principles. (6) The Parties shall cooperate to facilitate the participation of other donors willing to support the cooperation activities referred to in paragraph 5 and the efforts of the CARIFORUM States in achieving the objectives of this Agreement.
				Title I: Article 8: Cooperation priorities (1) Development cooperation as provided for in Article 7 shall be primarily focused on the following areas as further articulated in the individual Chapters of this Agreement: (i) The provision of technical assistance to build human, legal and institutional capacity in the CARIFORUM States so as to facilitate their ability to comply with the commitments set out in this Agreement; (ii) The provision of assistance for capacity and institution building for fiscal reform in order to strengthen tax administration and improve the collection of tax revenues with a view to shifting dependence from tariffs and other duties and charges to other forms of indirect taxation; (iii) The provision of support measures aimed at promoting private sector and enterprise development, in particular small economic operators, and enhancing the international competitiveness of CARIFORUM firms and diversification of the CARIFORUM economies; (iv) The diversification of CARIFORUM exports of goods and services through new investment and the development of new sectors; (v) Enhancing the technological and research capabilities of the CARIFORUM States so as to facilitate development of, and compliance with, internationally recognised sanitary and phytosanitary measures and technical standards and internationally recognised labour and environmental standards; (vi) The development of CARIFORUM innovation systems, including the development of technological capacity; (vii) Support for the development of infrastructure in CARIFORUM States necessary for the conduct of trade
				Title II: Chapter 7: Cooperation: Article 121: Cooperation (1) The Parties recognise the importance of technical cooperation and assistance in order to complement the liberalisation of services and investment, support the Signatory CARIFORUM States' efforts to strengthen their capacity in the supply of services, facilitate the implementation of commitments under this Title, and achieve the objectives of this Agreement. (2) Subject to the provisions of Article 7, the Parties agree to cooperate, including by providing support for technical assistance, training and capacity building in, inter alia, the following areas: (a) Improving the ability of service suppliers of the Signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels; (b) Improving the export capacity of service suppliers of the Signatory CARIFORUM States, with particular attention to the marketing of tourism and cultural services, the needs of small and medium-sized enterprises, franchising and the negotiation of mutual recognition agreements; (c) Facilitating interaction and dialogue between service suppliers of the EC Party and of the Signatory CARIFORUM States; (d) Addressing quality and standards needs in those sectors where the Signatory CARIFORUM States have undertaken commitments under this Agreement and with respect to their domestic and regional markets as well as trade between the Parties, and in order to ensure participation in the development and adoption of sustainable tourism standards; (e) Developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in Signatory CARIFORUM States in those sectors where they have undertaken commitments under this Agreement; and (f) Establishing mechanisms for promoting investment and joint ventures between service suppliers of the EC Party and of the Signatory CARIFORUM States, and enhancing the capacities of investment promotion agencies in Signatory CARIFORUM States.

(Continued)

Table 1: Capacity-building in DEAs – current state of play (Continued)

Agreement	Members	Coverage	Provision on co-operation for capacity-building	Language
RCEP	Australia, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, Vietnam	Customs duties for electronic transmissions; unsolicited commercial electronic messages; location of computing facilities and cross-border transfer of information by electronic means; protection of personal information; not enforceable by state-state dispute settlement	Article 12.4: Co-operation	(1) Each Party shall, where appropriate, cooperate to: <ul style="list-style-type: none"> (a) work together to assist small and medium enterprises in the use of electronic commerce; (b) identify areas for targeted cooperation between the Parties which will help Parties implement or enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance (c) share information, experiences, and best practices in addressing challenges related to the development and use of electronic commerce; (d) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and (e) actively participate in regional and multilateral fora to promote the development of electronic commerce. (2) The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international fora.
USA-Japan DTA	Japan, USA	Customs duties to digital products distributed electronically; non-discriminatory treatment of digital products; data transfers, including in financial services; electronic authentication and electronic signatures; protecting against forced disclosure of proprietary computer source code and algorithms protecting consumers' and businesses' confidential information; prohibiting data localisation measures; government-to-government collaboration on cybersecurity; protecting against forced disclosure of proprietary computer source code and algorithms; government-generated public data; unsolicited communication	None	

developing countries. It upgrades the existing FTA between a developed economy, Australia, and a developing but significantly advanced economy, Singapore, both Commonwealth member countries, by providing a more robust framework for bilateral co-operation to ensure that businesses can optimise benefits from the agreement and from digital trade. It covers newer issues in digital trade, including data transfer, data localisation and source code disclosure, as well as compatibility of e-invoicing and e-payment frameworks, and consumer safety online. It addresses the participating countries' commitment to co-operate towards capacity-building in Article 37, covering the need for collaboration on digital connectivity, digital transformation for small and medium enterprises, data protection regimes and mechanisms to facilitate the cross-border transfer of information.

Chapter 12 on Electronic Commerce in the RCEP¹⁹ addresses co-operation for capacity-building in Article 12 – Co-operation, both to help MSMEs participate more effectively in e-commerce and to “enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance.” It also discusses co-operation on capacity-building and includes the exchange of experiences and best practices, as well as the establishment of accountability of businesses towards increasing consumer confidence in digital trade. Even as use of the expression “where appropriate” in the provision slightly weakens the language, the existence of the provision and its wide scope are significant, since membership of the RCEP consists of economies at various levels of development, with differing degrees of regulation of digital trade, and with wide ranging interests in the digital economy.

The Caribbean Forum (CARIFORUM)–EU Economic Partnership Agreement (EPA)²⁰ also includes a provision on e-commerce (Chapter 6, Title II – Investment, Trade in Services, E-commerce), which defines electronic commerce as included under provision of services and details the regulatory aspects of e-commerce among the parties. Chapter 7 of Title II covers Co-operation, including

for capacity-building in ensuring compliance with regulations and standards within the EPA, as well as stakeholder engagement among service providers in the EU and participating CARIFORUM states. In addition, Article 7: Development Co-operation and Article 8: Co-operation Priorities (of Title I) of the EPA address areas of co-operation for capacity-building under the agreement. The provisions on co-operation do not directly allude to co-operation for e-commerce or digital trade, or to the specific capacity-building requirements therein, but generically apply to all trade covered by the respective titles, which also includes e-commerce.

The DEPA, which builds on the work undertaken by the CPTPP, and is signed among three initial members, Singapore, New Zealand (both Commonwealth member countries, and robust economies with strong digital regulatory frameworks) and Chile,²¹ is considered one of the most comprehensive and progressive DEAs to date. However, it does not contain any substantive provisions on co-operation for capacity-building. Article 2.5 on Electronic Invoicing is the only provision that mentions co-operation among parties, to “generate awareness of and build capacity for e-invoicing.”²² Even as the composition somewhat explains the lack of capacity-building provisions in the agreement, in light of the fact that the DEPA is open to new members, and allows for the use of its provisions as a reference for other DEAs and digital trade chapters, this remains a significant missing link, and might not encourage other developing countries, and some key trading partners of the existing members, to participate.

The CPTPP, which adopts the final text of the Trans-Pacific Partnership (TPP) as its key legal instrument, addresses e-commerce in Chapter 14.²³ The agreement does not contain provisions for co-operation on capacity-building. There is a mention of national-level capacity-building on cybersecurity in Article 14.16 on Co-operation on Cybersecurity Matters, but no identification of the need for capacity-building, co-operation among members on the subject or capacity-building on other aspects of e-commerce. Considering that many of the 11 member states are developing countries, this is a notable gap.

19 <https://rcepsec.org/legal-text/>

20 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:289:0003:1955:EN:PDF>

21 Chile is one of the fastest-growing economies in Latin America, with the “most mature digital system” in the Latin America and Caribbean region, with a recent thrust in trust in digital technologies, perceived online safety and cybersecurity, as well as perceived e-commerce safety (OECD, 2020).

22 <https://www.mfat.govt.nz/assets/Trade-agreements/DEPA/DEPA-Signing-Text-11-June-2020-GMT-v3.pdf>

23 <https://ustr.gov/sites/default/files/TPP-Final-Text-Electronic-Commerce.pdf>

The USA–Japan DTA covers all measures that concern trade by electronic means. However, it does not contain any provisions on co-operation among parties for capacity-building in digital trade. This is to be expected, since both parties are advanced economies, with robust regulatory frameworks for digital trade.

The UK–Singapore DEA, substantially concluded in December 2021, also appears to discuss co-operation to strengthen capabilities on issues such as cybersecurity. Since the text of the agreement is still to be released into the public domain, it remains to be seen whether capacity-building on digital trade is included.

What would capacity-building provisions in DEAs look like?

Capacity-building in DEAs should seek to address the four key constraints that developing countries face in participating in both the digital economy and DEAs – *access, human capacity, regulatory frameworks and stakeholder engagement*. Ideally, as summarised in Figure 3, the scope of capacity-building in DEAs and digital trade chapters would aim to improve “effective” market access for participating economies, by addressing supply-side constraints and enhancing human capacity, as well as providing technical assistance for implementing and complying with the standards, regulation, and documentation and automation processes.

The first step would be to address the *digital divide* in both *infrastructure* and *technological tools for digital trade and trade-related processes*. This would include:

- Hard infrastructure to improve internet access, speed, bandwidth and stability, as well as facilities relevant to the storage and processing of data, including physical server facilities;
- Soft infrastructure, including cloud computing facilities, and virtual data storage and server facilities;
- Trade-related tools built on digital technologies, for the capture, analysis, processing and dissemination of trade-related statistics;
- Tools for administrative information and documentation including software and applications;
- Building capacity to develop infrastructure and improve connectivity to support the digitalisation of trade and trade-related processes;
- Co-operation on the automation of border and customs processes and management and digitalisation of logistical and delivery networks;

- Stable, secure e-transaction facilities and e-payment systems;
- Algorithms and tools for the monitoring of cyber security.

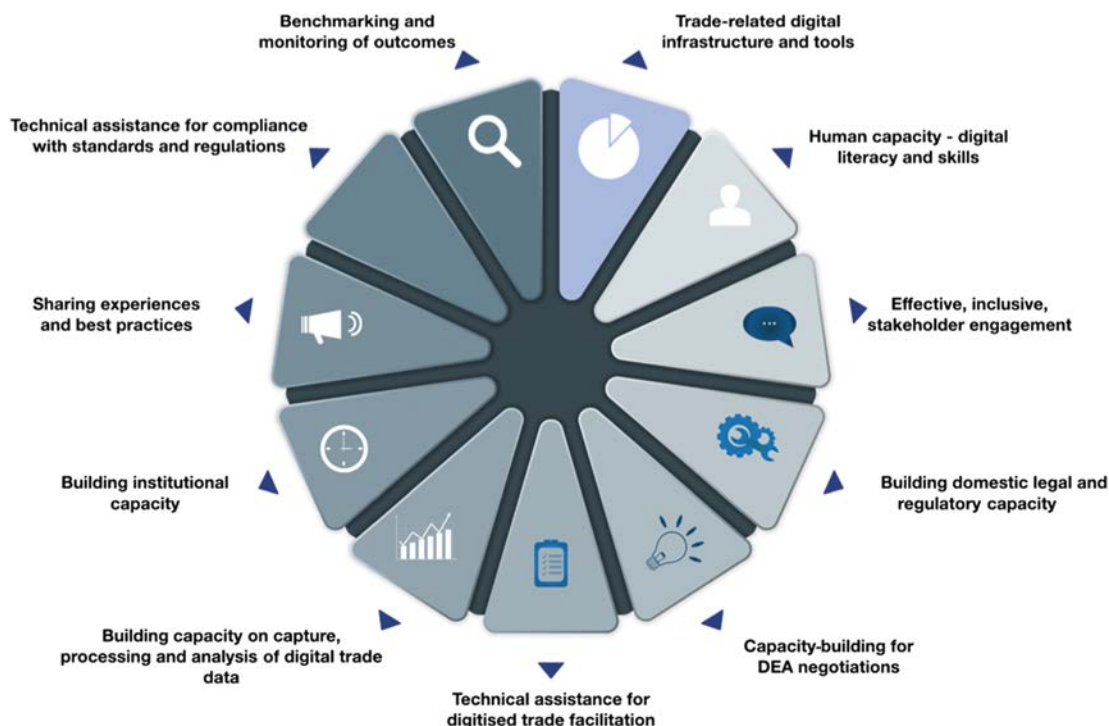
It would also include building capacity to *effectively use digital technologies* in trade and trade-related activities, including through:

- Improved access to information and tools for digital awareness;
- Human resource development through training and technical co-operation and assistance towards building digital skills and digital literacy across stakeholder groups – consumers, businesses, policy-makers, regulators, negotiators and trade-related administrators;
- Training and reskilling of policy and administrative officials in the nuances of digital trade and trade policy;
- Training for the development of, and assistance with, the implementation of regulatory frameworks for digital trade;
- Sharing of best practices and experiences in building institutional capacity (particularly for designing and implementing digital trade projects and programmes);
- Capacity-building in the management of e-documents, and the acceptance and vetting of e-signatures; simplifying, automating and digitising customs and border processes; and facilitating customs co-operation among partners.

In addition, capacity-building should include better mechanisms for *capturing and analysing data* for digital trade and transactions, in both goods and services. The objective of such capacity-building would be to help capture and mine accurate, segregated data across segments, for digital trade, as well as processing, analysis and interpretation of the analytics for trade and trade-related policy-making. This would also make it easier to assess the impact of regulation and digital agreements on the economy, and enable forward-looking regulatory frameworks and negotiations on digital trade.

Simultaneously, such capacity-building provisions should aim to provide technical assistance for *regulatory and institutional reforms*, including for the development of robust, implementable domestic legal and regulatory frameworks for digital trade, especially in areas like data security, cybersecurity, security of e-transactions and online consumer protection, in participating economies. Such capacity building would take into account

Figure 3: Recommendations for capacity-building provisions in DEAs



Source: Author’s elaboration.

the specific requirements of each participating economy, and the “as-is” status of regulatory and institutional capacity, and aim to work towards the “to-be” status necessary to optimise its benefits to each participating economy. This would also lay the necessary groundwork for countries to implement and comply with the standards and regulations provided in potential DEAs.

Provisions for effective and inclusive *two-way engagement* among all participating economies and stakeholders, including with MSMEs, women-owned businesses and start-ups, in the digital space would be key to facilitate sharing of experiences, best practices and trade-related tools and solutions. This would help ensure interoperability of systems, and lead to the development of well-informed regulatory frameworks and guidelines. It would also inform better-designed and better-implemented capacity-building initiatives.

Most importantly, while such commitments cannot by nature be binding on participating economies, it would be necessary to incorporate robust and implementable *benchmarking and monitoring mechanisms* to assess the progress, outcomes and impact of such capacity-building engagements into the language of these provisions.

Conclusion

Agreements on the regulation of digital trade offer effective tools for deeper economic co-operation, while digital technologies make trade

more inclusive across size, geography and levels of development. Nevertheless, both digital trade and DEAs place their own specific demands on the capacity of developing economies to participate in, and harness, their benefits. It is only fitting, then, that co-operation among trading partners to build capacity for digital trade should be an integral part of such agreements, backed by clear benchmarking and monitoring mechanisms to assess their impact. This is a critical missing link in most of the active DEAs as well as chapters addressing digital trade in existing economic co-operation agreements. Plugging this gap is key to bridging the digital divide, making the digital economy truly inclusive, improving the regulation of digital transactions and ensuring the equal distribution of the benefits from digital trade. Doing so is likely to motivate more trading economies to participate in these agreements in the future.

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Trade Hot Topics

ISSN: 2071-8527 (print) ISSN: 2071-9914 (online)

Commonwealth Trade Hot Topics is a peer-reviewed publication which provides concise and informative analyses on trade and related issues, prepared both by Commonwealth Secretariat and international experts.

Series editor: Brendan Vickers

Produced by Trade, Oceans and Natural Resources Directorate of the Commonwealth Secretariat

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