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TOWARDS GREATER REGULATORY CO-OPERATION IN THE ASIA-PACIFIC FOR BOOSTING E-COMMERCE TRADE

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EXECUTIVE SUMMARY

The Asia-Pacific (APAC) region accounts for over 50 per cent of the world's population and over 35 per cent of the world's gross domestic product (GDP) and is one of the fastest growing regions in the world. The region is growing at higher than the global growth rate and is expected to continue a high growth trajectory. With high economic growth, the APAC region has become the largest e-commerce market in the world. APAC nations are amongst the most important e-commerce players in the world. While some of the largest e-commerce markets globally

The e-commerce sector in APAC grew at 11 per cent in 2022 and is expected to increase from US\$2.9 trillion in 2022 to US\$6.146 trillion by 2030.

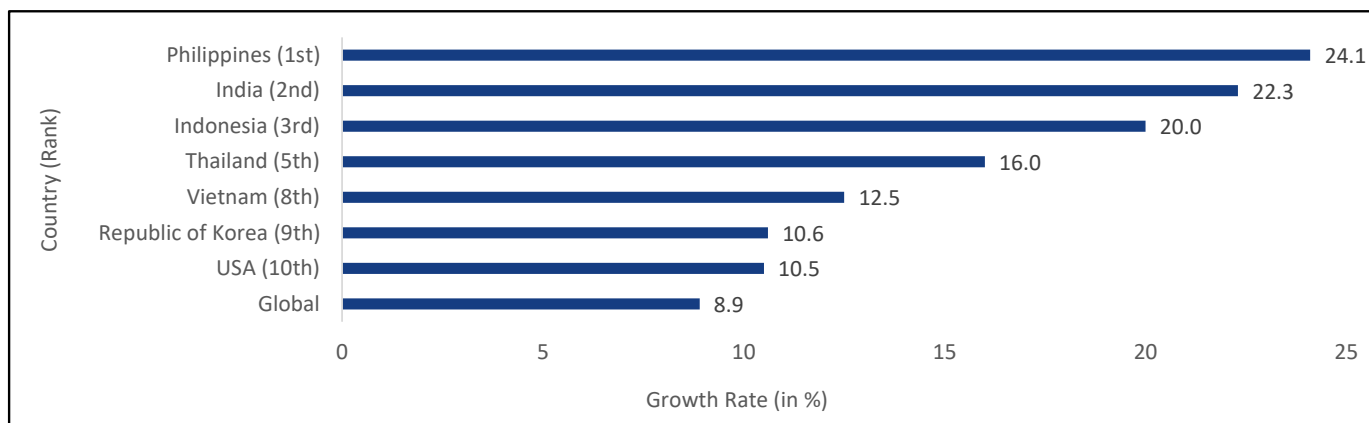
are the United States of America (USA), the United Kingdom (UK) and Japan, APAC countries such as the Philippines, India, Indonesia and Thailand had the highest e-commerce growth rates in 2023, higher than the global growth rate (see Figure A).

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Figure A: Ranking and Growth Rates of Selected Countries in Top Ten Fastest Growing E-commerce Markets in the World, 2023



Source: Compiled from Oberlo Statistics.

The key growth drivers of the e-commerce sector are rapid urbanisation, a rising middle-class population, increase in internet penetration, increase in mobile subscriptions, increased usage of digital devices, rise in digital wallets and technological developments, etc. The coronavirus (COVID-19) pandemic further facilitated the growth of e-commerce in this region with consumers and micro, small and medium enterprises (MSMEs) increasingly using e-commerce platforms.

Regulations related to e-commerce have also been evolving with its growth. APAC nations have enacted domestic legislations on e-commerce and allied sectors such as data privacy and protection, consumer protection, artificial intelligence (AI), etc.;

however, their provisions are not uniform. This lack of regulatory co-operation amongst nations gets perpetuated by the lack of a regional platforms to discuss and deliberate on these issues.

In this context, the Indian Council for Research on International Economic Relations (ICRIER) and the United Nations Economic and Social Commission for Asia and the Pacific: Sub-regional Office for South and South-West Asia (ESCAP-SSWA) jointly organised the *First Asia-Pacific E-Commerce Policy Summit* on March 14, 2024, to provide a platform for multiple stakeholders to discuss and collaborate on e-commerce related issues and share international best practices. This paper is a summarisation of the key findings of the summit.

The objective of this paper is to (a) examine the growth of e-commerce in the Asia-Pacific region, (b) identify the growth drivers and the contribution of the sector to MSMEs, women entrepreneurs and allied sectors such as express delivery services, (c) examine the policy landscape and how it is evolving in APAC countries with a focus on learning from each other's best practices (d) identify policy and other challenges such as those related to cross-border data sharing, consumer privacy, cross-border payments, gaps in paperless trade, etc., that may impact the current and/or future growth of the e-commerce sector and its users, and (e) make recommendations to facilitate cross border e-commerce.

Key Findings

1. Rising trend of signing bilateral/regional agreements on e-commerce: The slow pace of discussions in multilateral and plurilateral forums has motivated many APAC countries to move towards the inclusion of e-commerce related aspects in their bilateral/regional trade agreements. The agreements can either be standalone Digital Economy Agreements (DEAs) or Digital Economy Partnership Agreements

(DEPAs) or a separate digital trade chapter in an FTA. Apart from bilateral agreements, the Association of East Asian Nations ((ASEAN) also announced the ASEAN Digital Economy Framework Agreement (DEFA) in September 2023.

As of October 2022, the APAC region had signed 81 out of 193 RTAs with e-commerce chapters or provisions.

2. Level of obligation on different aspects of e-commerce differ across agreements: Despite the rise in bilateral and regional trade agreements, the obligations related to e-commerce differ in coverage and stringency. Some agreements impose hard obligations with mandatory commitments (e.g. shall do/shall adopt), while others include soft obligations with more flexible language (e.g. shall endeavour). There are certain provisions that have hard obligations across most

bilateral agreements such as the adoption of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on E-commerce (MLEC), e-authentication and e-signatures, online consumer protection, paperless trade, etc. On the other hand, provisions covering AI and MSMEs only attract soft obligations, and provisions on cybersecurity are largely limited to recognition of the issue with no commitments.

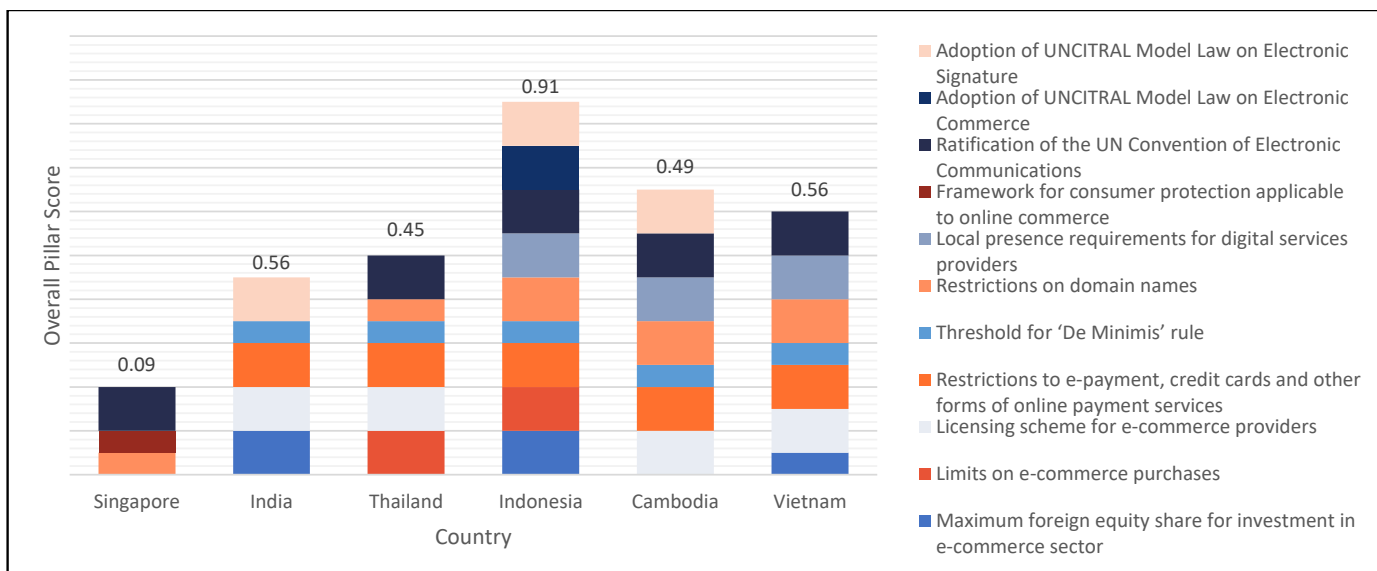
The following four areas have seen advanced discussions among member nations, with subjects such as data sharing with trust and UNCITRAL laws featuring hard commitments in FTAs among these countries:

- Ensuring cross-border data sharing with trust.
- Harmonisation of regulations based on international laws like UNCITRAL, which must be preceded by adaptation of international best practices into domestic regulation.
- Adopting Paperless Trade.
- Facilitating the participation of MSMEs and women entrepreneurs in cross-border trade.

3. Regulations on E-commerce by APAC nations: Countries in the APAC region are heterogeneous not only with respect to the enactment and implementation of e-commerce related regulations, but also in how they adopt international best practices in their domestic regulations. For example, Pillar 12 of Regional Digital Trade Regulatory Integration Index (RDTII

2.0) by ESCAP examines cross-country differences in adoption of UNCITRAL laws, UN conventions and other international standards with respect to online sales and transactions. For the select countries, the score varies from as high as 0.91 for Indonesia to as low as 0.09 for Singapore (see Figure B).

Figure B: Select Country Scores for Pillar 12 – Online Sales and Transactions (RDTII 2.0) in the Asia-Pacific Region, 2023



Source: Compiled from ESCAP RDTII 2.0.

Note: The RDTII Pillar score is the weighted average of scores at the indicator level. Indicator scores range from '0' to '1' and are based on a review of existing policies and regulations. A score greater than '0' indicates that at least one of the following conditions occurs: 1) differential treatment between domestic and foreign provider. 2) additional regulatory compliance costs to services provided online, relative to those provided offline. 3) absence of certain international norms, e.g., international agreement, legislation, or legal mechanism considered of significant importance for interoperability across jurisdictions.

Some other key regulations for cross-border e-commerce trade include the following:

3.1 Consumer Protection

Consumer protection laws across countries differ in their coverage of online consumers as some countries have updated their existing laws to cover online transactions but others do not explicitly mention them, giving a broad definition of consumers to cover online transactions.

3.2 Data Privacy

- While domestic policies for data protection and privacy are in place in many APAC countries, cross-border data sharing policies are becoming increasingly restrictive due to high compliance costs and the complex nature of policies, adversely affecting cross-border trade.
- Despite differences, countries are taking collaborative measures and are participating in various cross-border data protection and sharing agreements.
- Data localisation is a sensitive issue, and requirements related to this are applied in certain sectors only, such as health data and financial services.
- With respect to non-personal data, there are hardly any country specific regulations. While some countries cover it under intellectual property acts, others are still at the stage of drafting related policies.

3.3 Policies to support MSMEs and Women entrepreneurs

- Initiatives by APAC countries with clearly defined target and goals for MSMEs have given better outcomes.
- APAC nations are engaging in public-private partnerships (PPP) with e-commerce companies to help MSMEs access global markets. These collaborations have defied national boundaries with even cross-border PPPs coming up, where the government of one country partners with a private player of another.

MSMEs account for around 80 per cent of international trade in the APAC region, which makes it important to integrate them into e-commerce platforms and link them to global value chains (GVCs) to ensure their growth.

- However, there are limited initiatives that specifically focus on integrating women entrepreneurs into e-commerce platforms for exports to address key challenges such as restricted market access, insufficient financing, lack of information and inadequate skills training.

3.4 Regulations on AI

- APAC nations recognise the potential of AI in the socio-economic growth of a country and are investing in research and development in the sector to benefit from higher job creation, higher productivity, sustainable growth, etc., of the economy.
- They are also fostering international and national collaborations on AI, which highlights a shared commitment among the nations to bridge the gap between theory and practice in AI.

3.5 Regulations on Social Media

- The growth of social media has led to countries imposing restrictions through regulations, which vary across countries based on their governance objectives. The reasons for these restrictions are related to public safety issues, maintaining national security and political stability.

Globally, in 2023, the region accounted for 75 per cent of the internet penetration, which plays a key role in boosting the use of social media for commerce.

4. Challenges to cross-border e-commerce trade in the APAC region

There are four issues that impede the expansion of cross-border e-commerce trade. These are mentioned in Figure C.

Figure C: Challenges to cross-border e-commerce trade in the APAC region

Lack of Forums for Multi-Stakeholder Discussions, Sharing of Best Practices and Policy Co-ordination

- There is lack of co-ordination, both within and across countries, and between different stakeholders such as government, domestic and international companies/firms, MSMEs, industry bodies and associations.
- Further, sharing of best practices and examples of cross-border partnerships and collaborations to facilitate just-in-time door-to-door delivery is limited.

Policy and Regulatory Challenges related to E-Commerce

- These challenges include the following:
 - a) Evolving regulations and heterogeneity in regulations leading to lack of harmonised standards.
 - b) Concerns related to data localisation.
 - c) Issues with respect to customs regulation, digitalisation and clearance processes.
 - d) Issues related to taxation and subsidies.

Cross-border Payment related Issues

- These include policy-related restrictions on cross-border financial transactions, such as financial data localisation requirements and process-related issues, such as ensuring smooth financial transactions for return consignments.
- Further, different countries support different payment schemes and there is a lack of payment interoperability.

Limited Engagement of MSMEs and Women in E-commerce

- MSMEs encounter specific challenges during e-commerce customs clearances, including difficulties in resolving customs related technical disputes such as HS code classification and customs valuation, non-user-friendly importer registration requirements involving complex documentation procedures, etc. Gender disparity is another key issue faced by women entrepreneurs, apart from the ones listed above.

Source: Authors' compilation.

5. The Way Forward

5.1 Forum for Policy Discussion and Greater International Co-ordination

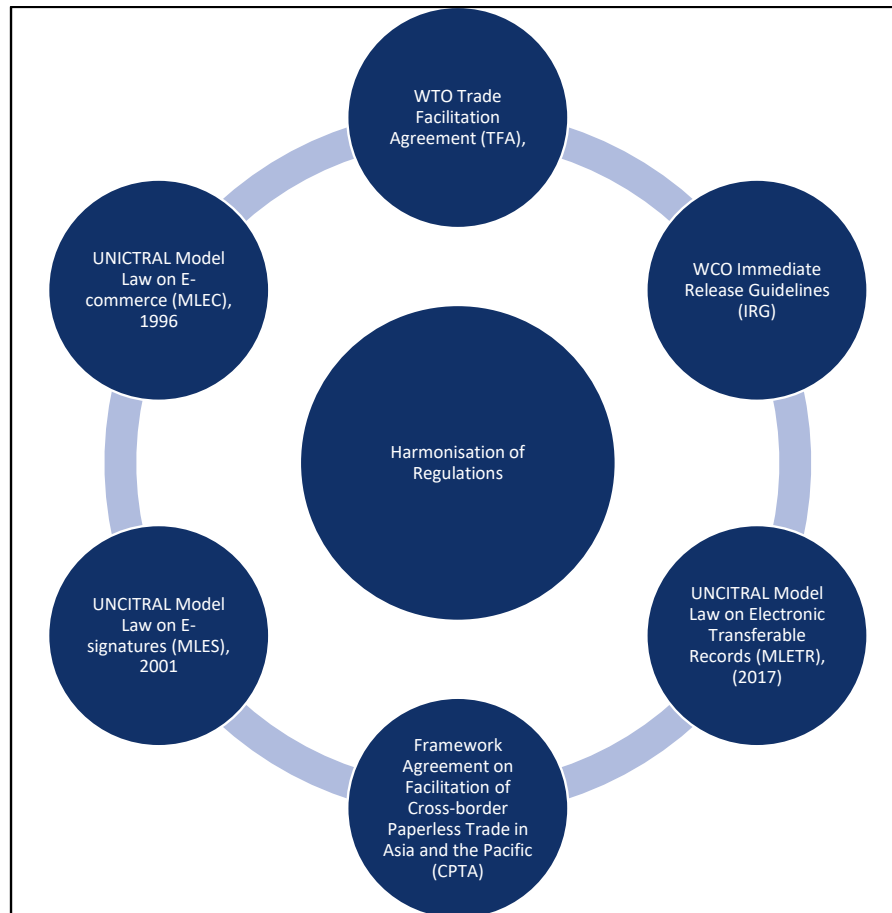
It is important to create a platform that will help facilitate co-ordination and partnerships across APAC countries, covering multiple stakeholders such as policymakers, academicians, industry, legal experts, etc. Countries in the APAC region can brainstorm and look at the possibility of forming a cross-border regional e-commerce platform in partnership with business enterprises. Such a platform can be used as a model for collaboration across countries, where countries recognise each other's digital transactions,

cross-border contracts and legal bindings. Further, in-depth discussions and research are required to tackle specific e-commerce challenges, including social media dark patterns, AI regulations, and the complexities of cross-border financial transactions and digital payments.

5.2 Adoption of International Agreements in Domestic Laws for Harmonisation of Regulations

Some of the most important international agreements through which countries can achieve harmonisation of domestic regulations are presented in Figure D.

Figure D: International Agreements for Harmonisation of Regulations



Source: Authors' compilation

5.3 Establish and Promote the Use of Financial and Cross-Border E-Payment Systems

Countries need to streamline and harmonise other e-commerce related digital measures, such as digital data localisation and protection, consumer rights protection, and digital payment related regulations.

To promote cross-border free flow of data with trust, countries can sign mutual recognition agreements (MRAs) to establish mutual recognition mechanisms.

5.4 Need for Targeted and Result-Oriented Initiatives for MSMEs and Women

Greater co-operation is needed between governments and stakeholders like companies, trade associations, MSMEs and industry bodies, both domestically and regionally, for greater on-boarding initiatives for MSMEs and resolving the cross-border trade-related issues faced by them through targeted initiatives. To promote increased involvement and equality for women entrepreneurs within the e-commerce sector, APAC countries should implement tailored policy interventions. There can be more jointly funded initiatives between industry and governments, and organisations like UNESCAP can provide support by creating a platform for training and sharing of best practices. These measures will help the nations achieve UN Sustainable Development Goal. (SDG) targets.