The Software Alliance

CASE STUDY

MODERNIZING TRADE RULES: Trans-Pacific Partnership Pact Eases Data Sharing

The 21st century will be defined by explosive growth in digital trade. Every year, more businesses and their customers are using data services — including storage, processing and analytics — much of it through cloud computing.

Software and data services have transformed the lives of millions of people around the world. Farmers use analytics to reduce the use of pesticides and water and improve yields; cities use data to design transportation routes that save time and reduce emissions; and doctors employ data analysis to speed up diagnoses for their patients and increase the effectiveness of treatments.

But while digital trade has been rapidly evolving, trade rules have not kept up. Multilateral trade agreements currently in force do not contemplate the rapid technological advances that have occurred in recent years, including the scope and potential of cloud computing technology. It is an area of growing concern because the digital economy needs a positive policy environment to continue growing.

The good news is that in October of 2015 an important development occurred: 12 countries[1] announced the conclusion of the negotiation of the Trans-Pacific Partnership Agreement, known as TPP.[2]

The TPP is a milestone as it represents the first multilateral trade agreement to create a strong framework for the movement of data across borders. Among its key provisions, the signatories agree that they "shall allow" the cross-border transfer of information by electronic means, subject to a limited public policy exception, and they will not require the presence of local computing facilities as a prerequisite for access to their national markets. Also, they will not mandate source code disclosure for market access, and they will not impose customs duties on electronic transmissions.

The final provisions are expected to align and considerably improve digital trade policies among the participating nations. Since these countries account for 40 percent of the global economy, the potential positive impact of the TPP cannot be overestimated.

The TPP is an important step in the right direction. It also paves the way for other digital trade agreements, such as the Trade in Services Agreement (TiSA), which currently has 23 countries at the negotiating table. TiSA seeks to open markets and improve rules in areas such as licensing, financial services, telecoms, e-commerce and maritime transport.

Multilateral trade agreements may take time, effort and compromise to complete, but they deliver benefits that go far beyond the negotiating table. In the case of the TPP, the result is a bigger, healthier cloud for users of every size and need.

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[1] When TPP negotiations were concluded, the participating countries were Australia, Canada, Japan, Malaysia, Mexico, Singapore, the United States and Vietnam (all of which are countries covered by this report), Brunei, Chile, New Zealand and Peru. Other countries may join TPP in the future.

[2] As of January 2016, TPP signature and implementation is still pending.