

The Digital Trade Governance Logic of the CPTPP and its Implications

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ABSTRACT: In the current era of vigorous global digital economy, the significance of digital trade rules has become increasingly prominent. As a typical representative of regional trade agreements, the digital trade rules of the CPTPP(Comprehensive and Progressive Agreement for Trans-Pacific Partnership) exhibit a unique governance logic. The demand for unified and efficient rules in the development of the digital economy has prompted the continuous evolution of the CPTPP digital trade rules. For China, the CPTPP digital trade rules offer multiple insights: exploring the connection mechanism between cross-border data flow rules and the data classification and categorization system, establishing a safety risk prevention mechanism involving enterprise self-discipline, social participation, and government supervision, and promoting the orderly integration of domestic standards with the CPTPP rules. Actively participating in the formulation of global digital trade rules, enhancing the discourse power in global digital trade governance, and responding to the challenges and opportunities brought by the CPTPP digital trade rules, in order to promote the sustained and healthy development of digital trade.

KEYWORDS: Digital Trade Governance; CPTPP; Digital Trade Barriers

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1 The digital trade governance logic of the CPTPP

1.1 Promoting the evolution of global digital trade rules towards "high standards"

The CPTPP, with its forward-looking rule design, has set a new benchmark for global digital trade rules and directly pushed the rules to a higher level of liberalization. Its core rules, such as the liberalization of cross-border data flows, the prohibition of digital localization, and the strengthening of digital intellectual property protection, break through the limitations of traditional trade rules and precisely respond to the core demands of the digital economy. This "high standard" rule spreads globally through a demonstration effect: Subsequent agreements such as the USMCA and DEFA draw heavily on CPTPP provisions, and even in WTO e-commerce negotiations, some member countries have put forward proposals based on CPTPP. The spread of the rules has enabled concepts such as "free flow of data" and "zero-tariff digital products" to become standard in medium - and high-end trade agreements, pushing global digital trade rules out of the "low-level consensus" predicament and towards a direction that is more in line with the nature of the digital economy.

1.2 Accelerating the "fragmentation of rules" in global digital trade governance

The "high standards" of the CPTPP, while raising the level of rules, have also exacerbated the fragmentation of global digital trade rules due to the high threshold. On the one hand, developed countries form a "rule alliance" through the CPTPP, excluding developing countries from the core rule system. For instance, the CPTPP's strict restrictions on cross-border data flows can only be truly met by developed countries with sound data governance capabilities, while developing countries are forced to stay out of the system due to insufficient regulatory capacity. On the other hand, countries that have not joined the CPTPP, in order to protect their own interests, have turned to formulating rules that meet their own needs, forming a parallel pattern of "CPTPP systems" and "non-CPTPP systems". For instance, the BRICS Digital Economy Partnership Agreement, which is being promoted, differs significantly from the CPTPP in areas such as data localization and intellectual property protection. This "multi-track" rule leads to "rule adaptation costs" for companies - the same company has to comply with different standards when entering different regional markets, and the synergy of global digital trade governance is weakened.

1.3 Reshaping the "power structure" of global digital trade governance

The CPTPP has reshaped the distribution of power in global digital trade governance through the control of rule-making powers. Traditionally, the WTO has been the core platform for global trade governance, but the CPTPP has partially shifted the dominance of digital trade governance to regional agreements. Developed countries, leveraging their strengths in digital industries and rule-making, have transformed their own interests into rule standards through the CPTPP, creating "rule hegemony". For instance, the digital intellectual property rights provisions of the CPTPP are clearly tilted towards countries with a concentration of innovative enterprises, strengthening the discourse power of technology-exporting countries. While developing countries have a weak say in the CPTPP system, it is difficult for them to change the direction of the rules, leading to a further concentration of power in global digital trade governance in developed countries. This imbalance in the power structure makes it difficult for the governance system to fully reflect the demands of developing countries and may exacerbate the digital divide.

2 Implications for Global Digital Trade Governance from the CPTPP

2.1 Break the fragmentation of rules through "tiered governance"

In the face of the fragmentation of rules caused by the CPTPP, global digital trade governance needs to establish a "tiered governance" system: at the global level, formulate "basic rules" with the WTO at the core, clarify the basic principles of digital trade (such as non-discrimination, transparency) and minimum standards (such as basic data protection requirements), and ensure that all countries' digital trade activities have a common bottom line to follow; At the regional level, regional agreements such as the CPTPP are allowed to formulate "higher-order rules", but they are required not to conflict with the global basic rules and to open compatible channels to the global rules; At the bilateral level, developing countries are encouraged to build up experience through "progressive agreements" and gradually align with higher-level rules. For example, ASEAN could first unify its digital trade rules internally and then introduce high-level provisions in phases through bilateral negotiations with CPTPP member states. This tiered governance would retain the flexibility for rule escalation while avoiding fragmentation and runaway through global base rules.

2.2 Establish a rule implementation mechanism of "ability matching"

The "gap between ideals and reality" in the implementation of CPTPP rules (such as the inability of some member states to implement data protection provisions due to insufficient capabilities) suggests that global digital trade governance needs to establish a "capability fit" implementation mechanism. On the one hand, rule-making should incorporate a "capability assessment" process, where the digital infrastructure and regulatory capabilities of different countries are evaluated before the rule standards are determined to ensure that the rules match the implementation capabilities of the majority of countries. For example, when formulating rules for cross-border data flows, a distinction can be made between "general data" and "sensitive data", and more regulatory space can be reserved for sensitive data in developing countries. On the other hand, establish a "capacity building - rule enforcement" linkage mechanism that binds rule enforcement to technical assistance. For instance, developed countries commit to providing data security technology training and support for the construction of regulatory platforms to developing countries, while developing countries commit to implementing the rules in phases. This "teaching people how to fish" model can both enhance the enforcement of rules and boost the enthusiasm of developing countries to participate in governance.

2.3 Establish a "diversified balance" framework for interest coordination

The "imbalance between corporate interests and public interests" exposed by the CPTPP calls for the establishment of a "multi-balance" framework for coordinating interests in global digital trade governance. At the value level, define the dual goals of "digital trade development" and "public interest protection", and avoid taking liberalization as the sole orientation. In terms of rule design, a "public interest exception clause" should be set up, allowing countries to take necessary measures in areas such as national security and public health, but strict review and restraint mechanisms should be established to

prevent the exception clause from being abused as a trade protection tool. At the level of participation, expand the discourse power of stakeholders. In addition to the government, enterprises, consumer organizations, academic institutions, etc. should be involved in rule-making. For example, in the negotiation of rules on cross-border data flows, the operational needs of digital enterprises, the privacy protection demands of consumers, and the risk assessment opinions of experts should be heard. Find the balance point of "freedom of trade - security protection - right to development" through the game of interests among multiple parties.

Global digital trade governance needs to draw on the experience of the CPTPP in upgrading its rules, while also addressing its shortcomings in inclusiveness and synergy. Only by building a governance system that takes into account both high standards and inclusiveness, rigid rules and flexible implementation, regional innovation and global synergy can we truly achieve inclusive development of global digital trade.

3 The potential challenges in digital trade that China may face after joining the CPTPP

China's digital economy started relatively late and its digital trade development is lagging behind. The CPTPP, as the world's highest standard free trade agreement, has many provisions to reduce digital trade barriers, which can lower transaction costs and market access thresholds for related enterprises in the contracting states. If China joins the CPTPP, it will not only reduce the difficulty for digital enterprises to participate in the development of international digital trade, but also increase the enthusiasm of foreign digital enterprises to enter the Chinese market, push the development of Chinese digital enterprises and promote the development of the digital economy. Since the main signatories of the CPTPP agreement are countries in the Asia-Pacific region, China's accession to the CPTPP can deepen economic ties between China and the Asia-Pacific region and prevent the marginalization of China's economy and trade in the region. As a result, China formally applied to join the CPTPP in September 2021. While China's accession to the CPTPP could boost its own digital trade, it may face the following challenges as some of the provisions in the CPTPP agreement conflict with China's claims on digital trade.

3.1 High risk in the across-border data flow

With the development of digital trade in the world, the volume of cross-border data flows in countries conducting digital trade has also increased. However, the increase in the volume of data flows may lead to the leakage of personal privacy and even national information in trading countries, seriously threatening the basic security interests of trading countries. Therefore, more and more countries have begun to formulate measures to restrict cross-border data flows. Companies involved in digital trade are required not to transfer personal and national information abroad at will, and the collection and processing of information must be carried out within the country. But the CPTPP advocates for the free movement of data across borders and calls for "absolute" freedom of cross-border data flows. After joining the CPTPP, the volume of China's cross-border data flows will also increase rapidly. It will lead to the leakage of personal privacy of Chinese residents and even national information data, threatening the fundamental security interests of the country. In addition, the CPTPP's call for "absolute" liberalization of data flows could also lead to a rapid influx of digital enterprises from the signatory countries into China's digital industry, occupying a large part of the digital trade market and making it difficult for domestic digital trade enterprises in China to develop.

3.2 Unequal treatment in digital trade hinders the development of digital trade

China's digital trade started relatively late compared to Europe, the United States and other countries, and the laws and regulations concerning digital trade are not well-developed. Although the introduction of the E-commerce Law and the Data Security Law has to some extent made up for the deficiencies in China's laws and regulations concerning digital trade, Most of the content related to digital trade is already covered by the Regional Comprehensive Economic Partnership (RCEP). As a result, there are still many deficiencies in China's policies and regulations on digital trade, the definition of digital products is rather vague, and there are also problems of unclear rights and responsibilities in the regulation of digital products. The CPTPP, on the other hand, is more open in its treatment of digital products and has more complete laws and regulations on digital trade. As a result, after China's accession to the CPTPP, it may not be able to adapt well to the CPTPP's provisions in

the short term, leading to a contradiction between China's lower treatment of digital products and the CPTPP's higher treatment of digital products, and causing trade frictions due to unequal treatment between China and other contracting parties in digital trade. In addition, with the rapid development of China's economy and the increasing comprehensive national strength of China, which has threatened the interests of the contracting parties in the agreement, the contracting parties have imposed discriminatory treatment on China in a reasonable way, hindering the development of China's digital trade.

3.3 Inadequate digital trade terms have led to increased frictions

For digital enterprises, digital intellectual property is an extremely important trade product. The CPTPP, as an agreement derived from the withdrawal of the United States from the TPP, inherits most of the provisions of the TPP, has put aside some of its provisions on intellectual property protection, it still has a high standard of protection for intellectual property. Although China has always attached great importance to the protection of intellectual property rights since its accession to the WTO, there is still a considerable gap in the protection of intellectual property rights compared with countries such as Europe and the United States. As a result, there may be conflicts over intellectual property rights in digital trade with other contracting parties, leading to an increase in trade frictions. The CPTPP attaches great importance to the protection of personal information. Although China has enacted the Personal Information Protection Law and has made certain progress in the field of personal information protection, there are still many deficiencies. The legal system of the Personal Information Protection Law is not sound enough, and some provisions need to be explained in detail. The provisions related to the protection of personal information in digital trade are deficient. In terms of personal information storage, China lacks effective cooperation with other countries, which has led to restrictions on Chinese digital trading enterprises when conducting international trade.

4 China's measures in response to CPTPP

4.1 Accelerate the opening up of digital trade

China should accelerate its opening up to the outside world, gradually open up the digital trade sector, lower the market access threshold for digital trade, and reduce restrictions on cross-border data flows, thereby gradually increasing the openness of China's digital trade. In this regard, China could also build digital trade demonstration zones in individual cities, play the exemplary role of digital trade demonstration zones, develop digital trade in the demonstration zones themselves, provide experience for other cities with lower levels of digital trade development, and accelerate the improvement of digital trade rules and laws and regulations. Adapt to the CPTPP's high standards of digital trade protection and improve its own regulatory level of digital trade. But as China gradually opens up its digital trade market, it should also pay attention to protecting the basic security interests of individuals and the country, and prevent individuals and the country from being threatened by illegal acts such as hacking and data breaches when opening up digital trade.

4.2 Improve legislation on digital trade

As digital trade plays an increasingly significant role in the world trade landscape, China is striving to develop its own digital economy in order to keep up with global trends and encourages domestic enterprises to actively participate in international digital trade to promote the development of digital trade. However, due to China's lagging digital trade, the laws and regulations concerning digital trade are not well-developed, the system is not mature enough, and some provisions need to be explained in more detail. Therefore, in order to protect the basic security interests of the country and address the problem that the current policies related to digital trade are too strict and thus restrict the free development of digital trade, the most important thing is to improve the laws and regulations related to digital trade in China and enhance the level of supervision of digital trade. When formulating policies and regulations concerning digital trade, legal provisions that are not clear should be interpreted and supplemented in a timely manner. In addition, China can also learn from the policies and regulations of developed countries in digital trade such as Europe and the United States, and accelerate the establishment of a Chinese digital trade regulatory system that conforms to CPTPP standards.

4.3 Enhance the right of speak in the formulation of digital trade rules

China should actively promote negotiations on digital trade rules, meet the demands of developed countries for digital trade liberalization, call on developed countries to provide assistance to developing countries in the field of digital trade, improve the level of digital trade development in developing countries, coordinate the negotiation demands of countries with different levels of digital trade development, and effectively promote the formulation of international digital trade rules. Promote the improvement of digital trade rules. And since only the China-South Korea Free Trade Agreement, the China-Australia Free Trade Agreement and the RCEP are related to digital trade at this stage, but the digital trade aspects covered by these free trade agreements are relatively basic. Therefore, China should actively participate in other high-standard agreements, continuously enhance its say in digital trade, and thereby promote the rapid development of China's digital economy and digital trade.

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