



Global Trade Rules on E-Commerce? Implications

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What Changes are Taking Place – Traditional to Digital Economy?

1. DATA is Central

One definition of Digital Trade – by US Congressional Research Services is as follows:

*‘Digital Trade not only includes end-products like downloaded movies and video games, but also the means to enhance the productivity and overall competitiveness of an economy, such as **information streams** needed by manufacturers to manage global operations; **communication channels** (email and voice over Internet protocol (VoIP)); and **financial data and transactions** for online purchases and electronic banking’.*

Fefer R, Akhtar S and Morrison W 2018 ‘Digital Trade and U.S. Trade Policy’, Congressional Research Service, 11 May
<https://fas.org/sgp/crs/misc/R44565.pdf>

2. Organising Mechanism – PLATFORM

- ‘Extractive apparatus for data’ (Nick Srnicek- author of ‘Platform Capitalism’)
- *‘The platform has emerged as a new business model, capable of extracting and controlling immense amounts of data, and with this shift we have seen the rise of large monopolistic firms. Today, the capitalism of the high-and middle-income economies is increasingly dominated by these firms’.*
- Disperses and Concentrates the market
- *‘The route through which it (the market) is dispersed, however, redirects each of those transactions through a small number of technology platforms usually based in California or China’.*
- *Uber, ‘a huge chunk of the Italian GDP just moved to Silicon Valley. With these platforms, the Valley has become like ancient Rome. It exerts tribute from all its provinces.’*
- *As sharing platforms expand, ‘the value flows to one of the places in the world that can produce tech platforms. So the global regional inequality is going to be unlike anything we’ve ever seen’.*

From Ross A 2016 ‘The Industries of the Future’, Simon and Schuster, p. 93.

- Digital Markets: Economists – ‘Winner Takes All Markets’
- Direct and Indirect Network Effects – Monopolising effect

3. Mode of Supply

- Goods – physical good to digital good transported through digital transmission
- Services – from Commercial Presence to cross-border supply

4. Traditional Trade Policy Tools are Ineffective

E.g. tariffs; GATS market access limitations

5. For the Same Level of Market Opening or Closing

=> Need to Regulate Data Flows/ localisation

Requirements

6. This Explains Shift in US Position from Doha Round NAMA/ Services to Digital Trade Rules

US' Model:

- Free data flows
- No localisation requirements possible for data/ infrastructure/ presence

USTR Complaints:

- **China's Restrictions on Cross-Border Data Flows and Data Localization Requirements:** China's 2017 Cybersecurity Law and 2015 National Security Law prohibit or severely restrict routine cross-border transfers of information and impose data localization requirements on companies in "critical information infrastructure sectors."
- **China's Restrictions on Leased Lines and VPNs:** In 2017, China issued a circular that imposes severe restrictions on the use of leased lines and virtual private networks (VPNs), which are commonly used in the course of supplying a wide range of services to ensure the security and confidentiality of information transferred across borders.
- **China's Cloud Computing Restrictions:** China severely restricts investment in cloud computing services, which affects companies that supply cloud computing services and those that need to source such services. In addition, the 2017 circular on leased lines and VPNs effectively prohibits the use of leased lines and VPNs in providing cloud computing services on a cross-border basis.
- **China's Web Filtering and Blocking:** China continues to engage in extensive blocking of legitimate websites. China currently blocks 12 of the top 30 global sites and up to 3,000 sites in total, affecting billions of dollars in potential U.S. business.
- **Indonesia's Data Localization Requirements:** Indonesia requires providers of a "public service" to establish local data centers and disaster recovery centers in Indonesia. Other regulations require local storage and processing of certain personal data and financial data.
- **Indonesia's Barriers to Internet Services:** In 2017, Indonesia proposed new regulations that would require providers of "over the top" (OTT) services to register with the government, identify permanent local representatives, and open bank accounts in Indonesia. The proposed regulations include a broad definition of OTT services that may cover every service provided via the Internet.

- **Korea's Restrictions on Cross-Border Transfer of Location-Based Data**: Korea restricts the export of location-based data, disadvantaging international suppliers that incorporate services such as traffic updates and navigation into their products. Korea is the only market in the world that USTR is aware of maintaining such restrictions.
- **Nigeria's Data Localization Requirements**: Nigeria requires businesses to store all data concerning Nigerian citizens in Nigeria. Nigeria also requires businesses to host all government data locally unless officially exempted. These requirements discriminate against foreign businesses that distribute their data storage and processing globally.
- **Russia's Data Localization Requirements**: Russian law requires that certain data on Russian citizens collected electronically by companies be processed and stored in Russia. Many U.S. companies face a choice between withdrawing from the Russian market and operating under significant legal uncertainty.
- **Thailand's Web Blocking**: Thailand recently expanded its authority to regulate online content, and, over the past year, the Thai government has greatly increased the number of social media posts that it has blocked. The new rules afford no mechanism for appealing or otherwise challenging these decisions.
- **Turkey's Data Localization Requirements**: Turkey limits transfers of personal data out of Turkey and, in many cases, requires firms to store data on Turkish citizens within Turkey. A separate law requires all suppliers of electronic payment services, including those that are Internet-based, to maintain primary and secondary information systems within Turkey.
- **Vietnam's Restrictions on Online Advertising**: Vietnam requires advertisers to contract with a local services supplier as a condition of placing advertisements on foreign websites targeting Vietnam. This requirement is burdensome and impractical, given that the online advertising market typically functions through automated, real-time auctions for ad space.
- **Vietnam's Data Localization Requirements**: Vietnam is currently debating a draft law on cybersecurity that contains many provisions that could serve as barriers to digital trade, including data localization rules and requirements to obtain consent to transfer personal information across borders. Such requirements place extra burdens on foreign firms operating in Vietnam.

7. Free Data Flows/ No Localisation Requirements Mean Different Things for Different WTO Members

- US – US data stays in Silicon Valley
- EU – EU data stays in EU due to GDPR
- Developing Countries – data flows out when citizens engage with digital giants (Google, Amazon, Facebook, Uber etc, with perhaps the exception of China)

Leaked EU Document About Cross Border Data Flows and Trade Agreements

Article A: Cross-border data flows

1. The Parties are committed to **ensuring cross-border data flows** to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between Parties by:
 - (i) Requiring the use of computing facilities or network elements in the Party's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of a Party;
 - (ii) Requiring the localisation of data in the Party's territory for storage or processing;
 - (iii) Prohibiting storage or processing in the territory of the other Party;
 - (iv) Making the cross-border transfer of data contingent upon use of computing facilities or network elements in the Parties' territory or upon localisation requirements in the Parties' territory.

Article B: Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. Each Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards.
3. For the purposes of this agreement, 'personal data' means any information relating to an identified and identifiable natural person.
4. For greater certainty, the investment Court System shall not apply to the provisions in Articles A and B.

8. Digital Industrialisation - examples

- South Korea
- Turkey – PayPal
- Indonesia / Vietnam – Online payments through national switches
- China
- India – Draft National E-Commerce Policy: India's data for India's development

USTR's NTE

Factsheet: Key Barriers to Digital Trade

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Digital Industrialisation – What does it entail?

Location-based services in Korea get support from the government

by FRANCIS TAN — Apr 22, 2011 in ASIA



Most



Revenue from location-based services to grow by 25 percent this year in South Korea: Study

By News Desk - February 15, 2018

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Revenue from location-based services to soar by 25% in South Korea

South Korea: Revenue generated from location-based services has been forecast to grow by 24.8 percent to reach 1.2 trillion won this year, as compared to the previous year.

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9. Homework at Country Level - Urgent

Regulation of data for economic value –

Data sovereignty

10. Plurilateral/ Multilateral – to Join or Not?

- Only after domestic regulation has been done + some level of maturity in terms of data economy
- Eventually: we could possibly negotiate data flows sector by sector, sub-sector by subsector, i.e. positive list approach (or GATS approach), however only after countries have some experience participating as suppliers in the data economy (not just e-commerce). This is different from US model and likely that US model may prevail in the negotiations.
- Whether we are in or out of the plurilateral, know that free data flows = 100% market opening. Enter only when ready, or countries could find themselves being only consumers given the extraordinary level of concentration and market barriers for new players.
- Even the 'soft' issues have far reaching consequences – eg e-signatures has a portion that is a TRIMS+ provision. The big semiconductor companies would like to ensure that their hardware can be sold throughout the world – hence US/EU/Japan want to ensure countries are not allowed to mandate their own authentication standards. [See material from the Semiconductor Industry Association (SIA).]