Digital Trade: Prospects for new trade governance amidst emerging protectionist digital industrial policies and national security concerns

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About ITIF

- Independent, nonpartisan research and education institute focusing on intersection of technological innovation and public policy, including:
  - Innovation and competitiveness
  - IT and data
  - Telecommunications
  - Trade and globalization
  - Life sciences, agricultural biotech, and energy

- World’s top think tank for science and technology policy, according to the University of Pennsylvania’s authoritative Global Go To Think Tank Index
ITIF Global Engagement
Global Digital Trade: Limiting Trend Towards Fragmentation

1. **Slim & Grim**: Prospects for new digital agreements exist—but they are few amidst a fragmented global Internet.

2. **Beacon of Hope**: Depends on ambitious & pragmatic countries pushing ahead.


4. **The Steepest & Slipperiest Slope**: Unspecified national security concerns can further fracture the global Internet.
What’s At Stake: Key Driver of Productivity/Innovation

- Data is lifeblood of the modern global economy.

- Competitiveness and productivity: Increasingly depends on how firms leverage data and digital tools.

- Businesses use data to create value, and many can only maximize that value when data can flow freely across borders.
Digital Trade, Innovation, & Competitiveness

- Value of data comes from how it’s used—not where it’s stored.

- Competitive advantage = How firms aggregate and use big (& quality) data, consistently over time.

- Policymakers need to encourage—not coerce—as many firms as possible to be “data rich.”
  - Data flows and digital trade help.
  - Data is not a finite input that must be evenly distributed or locked away within a country.
Doom and Gloom: Digital Protectionism & Misguided Policies

- Digital Protectionism: Tools are many and varied.
- Tool No 1: Data localization
  - Sliding scale of restrictiveness: Local mirroring -> full local storage - > local processing (only by local firms).
- Both explicit and unintentional/misguided.
  - Policymakers don’t do cost-benefit analysis and consider alternatives.
- Disproportionately affects SMEs – lack resources/expertise.
Barriers To Data Flows Are Also Growing

What Types of Data Are Blocked?*

<table>
<thead>
<tr>
<th>Type of Data</th>
<th>Numbers of Countries Blocking These Types of Data</th>
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</thead>
<tbody>
<tr>
<td>Accounting, Tax, and Financial</td>
<td>18</td>
</tr>
<tr>
<td>Personal</td>
<td>13</td>
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<td>Government and Public</td>
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<td>Emerging Digital Services</td>
<td>9</td>
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<tr>
<td>Other</td>
<td>5</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>4</td>
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Which Countries Block Data Flows?*

- No data blocked
- 1-2 types of data blocked
- 3+ types of data blocked

*Data as of [specific date]
Popular Target: Financial, Accounting, and Tax Data

– Some restrictions due to outdated pre-Internet laws/regulations
  Tax/accounting documents to be stored at firm’s office (Belgium and Finland)

– Other restrictions due to prudential, regulatory, & cybersecurity concerns
  Sweden – requires “immediate” access to data, interpreted as physical access to servers.
  New Zealand – requires firms to store business records in local data centers.
  Luxemburg – financial firms required to process data in country.
  Brazil – considered data localization for financial data due to cybersecurity concerns.
China is a World Leader in Data Localization

- “Great Firewall China”—Long limited data imports.

- Extensive data export bans: Data localization the norm, flows the exception.
  - 2006 – e-banking data
  - 2011 – personal financial data
  - 2013 – personal credit data
  - 2014 – health and medical data
  - 2015 – (proposed) insurance data
  - 2016 – online publishing (apps, audio and video platforms, online gaming)
  - 2016 – Counter-terrorism (broad requirements)
  - 2016 – Cybersecurity law (broad requirements)
  - 2016 – Cloud computing restrictions
  - 2017 – Personal and Important Data (broad requirements)
Main Motivations for Data Localization

1. Privacy and Cybersecurity
   Wrong: Secure server in NZ, same as a secure server in Brazil.

2. Digital Mercantilism
   Misguided: Data storage does not create value.
   Costly: Raises costs & cuts access to better services.

3. Government Access to Data
   Access for political/social vs. law enforcement.
National Security: The All-Purpose Loophole

- Slipper slope: Unspecified, overly broad use of national security concerns could undermine global digital trade.
  - Better: Australia/US specify criteria for data in FDI reviews.
  - Recent US actions misguided—basing national security action simply on basis of firm nationality without evidence.
Where Do We Stand: China

- **China:** Continues to separate itself = “Internet Sovereignty.”

- **Digital trade wars:** US & others start to fire back.
  - Targets: WeChat, TikTok, & other Chinese tech firms.
  - While U.S. tactics are misguided, it’s understandable in that it is partly due to the long-standing lack of reciprocal digital market access.

  Dozens/hundreds of foreign firms excluded during period of rapid digital economy growth.
India, Indonesia, Vietnam, Russia, & the EU

- India: Attracted to—and moving towards—the China model.
  - Indonesia: Similar attraction, but also some hope.
- Vietnam: Enacting political/social restrictions, despite CPTPP.
- Russia: The double: digital authoritarianism & protectionism.
- UNCTAD: Parts support protectionist “digital industrial development.”
- Africa: Just starting to consider a regional digital economy plan.
- EU: Building walls to, and removing mechanisms for, data flows.
  - Misguided focus on harmonization. Not tenable, nor realistic, especially for developing countries.
Asia-Pacific and Latin America: Some Hope

- **APEC**: CBPR could grow/expand.
- **ASEAN** digital/data governance framework.
  - Developing its own potential model.
- **Latin America**: Pacific Alliance (Chile, Colombia, Mexico, & Peru) and Brazil/Uruguay are actively engaged.
- **United States**: Engaged (based on USMCA), but needs to evolve & to consider impact of natsec and other issues.
WTO: Joint Statement Initiative (JSI) Ecommerce Talks

- Great initiative—building understanding among broad range of 70+ countries.
  - Follows 20 years of fruitless talks at WTO ecommerce work programme.
- Want to be hopeful about JSI—represents promise & progress.
  - But current broad membership (China, Russia, and EU) means it’s unlikely to be ambitious, especially on data flows.
- Better to narrow membership and push for ambition.
Digital Economy Agreements: A Model

- New rules + new cooperation + proactive/early policy engagement on new issues based on common principles/processes = maximized, interoperable-based digital trade.

- Countries need holistic approach to global digital trade and economy strategy.
  - Aust/NZ/Singapore/Chile Digital Economy Partnership Agreements.
  - AI, E-invoicing, digital identity, data-innovation, and other issues.

- Pragmatic cooperation with like-minded partners is a prerequisite—not an afterthought or minor component (as in the EU).
A Trade-Plus Digital Trade & Economy Agenda

- Legitimate need: New/improved mechanisms to improve cross-border law enforcement access to data.
  - Updated MLATs and CLOUD Act Agreements.
- New MOUs between financial regulators:
  - Improves regulatory confidence and oversight, while allowing data flows.
- Greater resources for digital development and regulatory capacity building.
- Pre-standardization cooperation on AI and other data issues.
Plus-Plus: The Clear Need for Global Leadership

- The Global Partnership on Artificial Intelligence (GPAI).
- OECD does some great work on digital issues.
- Potential for UK to use chair of G7 to push digital agenda.
  - Build on Japanese PM Abe’s “Data Free Flow With Trust”
- Final Point: Need for ambitious countries to seize leadership opportunities to keep pushing for an open, rules-based, innovative, and interoperable global digital economy.
ITIF Reports on Digital Trade

- Report: Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?
- Report: The False Promise of Data Nationalism
- Report: Why China Should Be Disqualified From Participating in WTO Negotiations on Digital Trade Rules
- Testimony to the U.S. Senate Regarding Censorship as a Non-Tariff Barrier to Trade
- Submission: The European Commission’s White Paper on a European Approach to AI
- Comments to the UK Parliament: U.S.-UK and Global Digital Trade
Thank You!

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