METI/JETRO Digital Trade Symposium

Expanding digital protectionism & Impact on business

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Ecipe (European Centre for International Political Economy)
Digitalisation enabling international trade

» Typically 50~56% of services trade enabled by connectivity and ICT technologies in both OECD and developing countries

» Up to 32% of inputs in the services sector (5% in manufacturing) coming from data and connectivity

i. Impact on manufacturing bigger than indicated, as they use services that contain connectivity

ii. Underestimation of true impact due to free services and two-sided markets; transforming fixed costs to transactional costs

<table>
<thead>
<tr>
<th>Services trade enabled by connectivity</th>
<th>0%</th>
<th>8%</th>
<th>16%</th>
<th>24%</th>
<th>32%</th>
<th>40%</th>
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</thead>
<tbody>
<tr>
<td>Telecoms</td>
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<td>31.8%</td>
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<td>Business services</td>
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<td>Financial services</td>
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<td>Machinery, electronics</td>
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<td>Consumer services</td>
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<td>Trade, distribution</td>
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<td>Utilities</td>
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<td>Transports</td>
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<td>Other Manufacturing</td>
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<td>Construction</td>
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<tr>
<td>Minerals, petroleum, gas</td>
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<tr>
<td>Motor vehicles</td>
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<tr>
<td>Clothing &amp; textiles</td>
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<tr>
<td>Foods, agriculture</td>
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</tbody>
</table>
Data restrictions interacting with other trade restrictions

Limiting digital market access...

Demanding data localisation leads to increased establishment costs from multiple data locations (index US = 100)

<table>
<thead>
<tr>
<th>Country</th>
<th>Index</th>
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<tbody>
<tr>
<td>UK</td>
<td>102</td>
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<tr>
<td>Germany</td>
<td>104</td>
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<tr>
<td>Korea</td>
<td>113</td>
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<tr>
<td>Poland</td>
<td>131</td>
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<td>Czech Republic</td>
<td>141</td>
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<td>China</td>
<td>147</td>
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<tr>
<td>Indonesia</td>
<td>152</td>
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<td>India</td>
<td>154</td>
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<td>Brazil</td>
<td>157</td>
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</tbody>
</table>

Further increased trading cost from administrative data restrictions
- Privacy (administrative requirements, sanctions, right to be forgotten, etc)
- Intermediary liability
- Content access restrictions (censorship)
- Bandwidth limitations
- Encryption standards

...undermining competitiveness

Traditional establishment measures
- Local content requirement
- Foreign equity caps or screening of e-commerce and ICT firms
- Residency requirement
- Limits on IPRs
- SOEs in telecom and e-commerce
- Interconnection, bitpipe issues

Fiscal measures
- Traditional tariffs on devices and software
- Discriminatory taxation on online services
- Discrimination in government procurement (localisation requirements, technology transfer or mandates)

E-commerce measures
- Trading restrictions, licensing
- Online retailing, DNS restrictions, discriminatory consumer regulations
Data localisation and data restriction measures in the world are increasing

- Conditions to flows
- Local storage requirement
- Prohibition on transfer/processing

Cases of “legacy measures” previously applied offline
Emergence of privacy measures and conditional flows

- 2 billion internet users reached
- E-commerce revolution
- M-commerce revolution
Personal data across all sectors are at the core of data localisation/restriction measures

Affected sectors

- Healthcare: 2%
- Gambling: 4%
- Telecom: 7%
- Government: 8%
- Online services: 10%
- Finance: 11%
- Other: 7%
- Horizontal: 51%

Affected types of data

- Personal and user data: 58%
- Operational data: 42%
## Selected examples of data localisation measures

### European Union + European Economic Area
- **Sweden**: Company records
- **Luxembourg**: Banking data
- **Germany**: Company, tax records
- **Poland**: Gambling
- **Netherlands**: Public records
- **Bulgaria**: Gambling
- **Belgium**: VAT, tax records

### China
- Personal information
- Online content
- Maps
- Data localisation requirement
- Taxi data
- Health information
- Banking

### Turkey
- Data Protection Law 6698;
- Payment Services & e-Money Law 6493

### Sweden
- Company records

### Greece
- Data retention

### Italy
- VAT, tax records

### Bulgaria
- Gambling

### Belgium
- VAT, tax records

### Russia
- Personal information

### Turkey
- Data Protection Law 6698;
- Payment Services & e-Money Law 6493

### Pakistan
- Prohibition of data transfer

### India
- Reasonable security practices
- Sensitive Personal Data
- Email

### Korea
- Financial services/holding
- Personal information
- Mapping

### Brunei
- Data generated in the country

### Malaysia
- Personal Data Protection Act

### Singapore
- Personal Data Protection Act

### Philippines
- Guidelines on outsourcing

### Vietnam
- Advertising information
- Decree 72 on general websites, mobile data

### Indonesia
- Regulation 82 on Data transferring activities
- E-money operations

### Australia
- Company records
- Personal information

### New Zealand
- Company records
- Personal information

### Canada
- Public data
- Personal information

### United States
- State laws on outsourcing
- Network security agreements

### Mexico
- Personal data of private parties

### Colombia
- Protection of Privacy Act

### Peru
- Personal Data Protection Law

### Argentina
- Data Protection Act

### Brazil
- Personal information (withdrawn)

### Greece
- Data retention

### Italy
- VAT, tax records

### Belgium
- VAT, tax records

### Russia
- Personal information

### Turkey
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### Australia
- Company records
- Personal information

### New Zealand
- Company records
- Personal information
Severe impact on growth and economy

GDP losses from current legislation

- Brazil: -2.0%
- China: -1.8%
- EU: -2.0%
- India: -1.5%
- Indonesia: -1.7%
- Korea: -1.7%
- Russia: -1.7%
- Vietnam: -0.5%

Export losses

- Brazil: -1.7%
- China: -0.5%
- EU: -1.7%
- India: -1.7%
- Indonesia: -1.7%
- Korea: 0%
- Russia: 0%
- Vietnam: 0%
Observations

» Data restrictions disable future business models
   i. *i.e.* services and investment-led trade; business integration
   ii. data-driven manufacturing, 3D printing, big data and data mining (*TDM*)
   iii. e-commerce and micro-multinationals in developing countries

» Digitalisation has enabled regulators to block market access anywhere in the value-chain – goods, services, investments
   iv. Conditional flows based on adequacy and interoperability decisions undermines the value of *MFN*
   v. Effectively led to a rollback on existing *GATS/GATT* commitments.

» Resulting in unprecedented discretionary decision for the executive to control market access on country-to-country and firm-to-firm basis
   vi. *Mostly a matter of governments seeking extraterritorial jurisdiction over business for security, fiscal stability and industrial policy*

» New political dimension of trade negotiations:
   vii. *Similarity in ambition and sensitivity is no longer a recipe for ambitious *EPA/FTA* commitments*
   viii. *The political identity and industrial advantage of the counterparts are the defining questions*
Similarity amongst economies are not always a recipe for ambitious FTA/EPA commitments

Heterogeneity by FTA/RTA

High and low scores in different areas

High and low scores in same areas
Considerations for new trade disciplines on cross-border data flows and data localisation

» In reality a negotiation for ‘legitimate’ exceptions
  i. Public order (gambling, censorship) in the WTO, financial services in TPP

» Current key topic on exception is data privacy
  ii. at least 75% of all data user-generated; business and personal data indistinguishable
  iii. Is transfer of data an “ordinary course of business” – issue in Korus/KorEU
  iv. Interoperability (adequacy) regimes often beyond negotiation

» Burden of proof: on complainant (business) or defendant (regulator)?
  v. Proving bad faith of the regulator
  vi. Increasing discrimination if WTO principles (necessity test and least-trade restrictive test) are removed

» Freedom for business, but also users?
  vii. Business freedom to plan their digital services supply chain, but also rights for users – to access device, service, apps from overseas

» Taxation on data flows and online services – compensation for lost VAT, tariffs
  viii. Reversed taxation on online services (digitally downloaded products, advertising services)

» Bridging diverging views on data ownership and liability