Trends in International Rule-Making for the Digital Economy

TFMA: Seizing Global Trade Opportunities and Minimizing Global Trade Threats
Mapping the Digital Economy

**The Digital Economy Defined**

- Telecommunications networks and connectivity infrastructure;
- Optical fiber, cables, switches, signal amplifiers, servers, data centers, satellites, wireless base stations, mobile telephone towers, antennas, routers, modems, range extenders and other equipment that brings connectivity to our homes, offices and devices.

**Who?**

- Few large equipment vendors working with carriers;
- 1000s of smaller players manufacturing and selling individual components.

**Infrastructure**

**Digital Trade Defined**

- Cross-border provision of goods, products, services and solutions that are instrumental to or avail themselves of online connectivity.

**Who?**

- Google and Android versus Apple and iOS;
- WeChat and Alibaba in China;
- Amazon, Microsoft.

**What?**

- Few large equipment vendors working with carriers;
- 1000s of smaller players manufacturing and selling individual components.

**Services**

- Information, communications and computing services;
- Comprises everything from banking to retail to booking and paying for travel and accommodation, to finding and booking someone to clean your apartment and someone else to take you to your next appointment.

**Devices**

- Traditionally desktops or laptops;
- Mobile telephones are portable super-computers capable of almost any functionality;
- Wearables (watches, headphones), VR goggles, AR glasses becoming more prominent;
- Trend moving towards the Internet of Things, the Internet of Vehicles and the Internet of Everything.

**Who?**

- Telcos who invest in build, operate and lease access to their networks;
- Millions of other providers from Citibank to Uber and across many other sectors.

**Platforms & Ecosystems**

- Google and Android versus Apple and iOS;
- WeChat and Alibaba in China;
- Amazon, Microsoft.

**Who?**

- Few large equipment vendors working with carriers;
- 1000s of smaller players manufacturing and selling individual components.

**Conclusion**

- The future belongs to those who can make all of the devices users want;
- And connect them seamlessly with ecosystems that they either own or control.

"The ecosystem comprising goods, products, services, platforms and solutions that are either instrumental to or avail themselves of online connectivity.”
The End of Silofication

- Cross-border bandwidth used has grown 45 times since 2005;
- Half of cross-border services trade enabled by connectivity and ICT;
- Global E-commerce turnover exceeds US$1tn, equivalent to Australia’s GDP, growing 3x faster than Chinese economy.

End of “silos” between goods, services, IP, and data;
Holistic trade policy approach
Servification of manufacturing. 3D printing, IoT, cloud.

Convergence & complementarity

Need for new rules

- Trade in digital goods (ICT items) grew from 5% of global trade to 25% since ITA-I (20 years);
- South-south trade bigger than north-north;
- Trade in digital intangible products also growing.
The Rise in Digital Protectionism

Types of discriminatory digital trade measures and number of occurrences in global trade

- Data policies: 445
- Online sales and transactions: 166
- Tariffs and Trade Defence: 159
- IPR: 146
- Foreign investment: 137
- Business mobility: 112
- Public procurement: 102
- Competition policy: 84
- Taxation & Subsidies: 76
- Content access: 69
- Intermediary liability: 67
- Standards: 64
- Quantitative Trade Restrictions: 50

Source: ECIPE Digital Trade Estimates

Rise in data localization measures (actual and anticipated)

Governments are clearly more inclined to intervene in the digital economy using a range of policy tools and regulatory instruments.

Source: ECIPE Digital Trade Estimates

Note: CBDF is Cross Border Data Flows
Different Choke-Points and Vulnerabilities

**Production**
- **IPRs**
  - Legal injunctions granted on designs and SEPs
  - Lack of protection of trade secrets
- **Subsidies**
  - Discriminatory subsidies for R&D
- **Local content requirements**
  - Posed by some governments on smart devices

**Market access**
- **Business mobility**
  - Unable to fly in experts, consultants
  - Requirement to have local management
- **Govt. procurement**
  - Declared unfit for use by gov't officials unless tablet is made locally or source code is handed over to government
- **Investment restrictions**
  - Foreign manufacturer banned from acquiring a video service intended to be integrated into the tablet OS

**Inside the market**
- **Competition, antitrust**
  - Some OS under anti-trust investigation
- **Intermediary liability**
  - Devices, operator they connect to, pre-installed social media apps may not be covered by liability limitations
- **Restrictive data privacy**
  - Device user data, app data forcefully localized

**Users/ecosystem**
- **Taxation on users**
  - Forced local taxation on cross-border downloads of digital products (content) sold in the ecosystem
- **E-retail**
  - Limits on purchases (value, of devices, electronics via global e-commerce sites
- **Content access limitations**
  - Globally pre-installed mapping or VoIP apps forbidden

**Tariffs & licensing**
- Some customs do not recognize tablets as a laptops (duty free under ITA) since they lack keyboards

**Standards**
- Encryption on device or email protocol may be market standards but forbidden by local policing laws

**Examples of:**
- **goods trade barriers**
- **Cross border data flow barriers**
- **General/horizontal barriers**

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Declarations of Principle on Internet Governance

1998 Blueprint for Action on Electronic Commerce
- Affirms leading role of private sector;
- Seeks to limit government’s role to providing a legal and regulatory environment that is predictable, transparent and consistent;

APEC Privacy Framework
- Recognizes the right of members to set their own rules;
- But seeks to promote mutual recognition of privacy regimes.

1980 Privacy Principles and 2013 Update
- Guidelines on the Protection of Privacy and Transborder Flows of Personal Data;

2011 Recommendations
- Promote and protect global free flow of information; open, interconnected internet;
- Promote competition in high-speed networks, services, privacy at global level;
- Limit intermediary liability;
- Co-operation to promote internet security.

Joint Statement of the G20 2016
- Upheld the principle of the free flow of data;
- Endorsed a blueprint on innovative growth affirming the importance of preserving the global nature of the internet as an engine for growth, and expressed the G-20’s commitment to the free flow of information, ideas, and knowledge across borders, freedom of expression, and the multi-stakeholder approach to internet governance;
- Work continued by Germany 2017.

Consensus: Internet should be open, freely accessible and governed by a plurality of stakeholders (multi-stakeholder governance)
New Rules on E-Commerce

TPP E-Commerce Chapter: An Industry Wish List of New Rules

- **No Customs Duties**
  Permanent moratorium on customs duties for electronically downloaded products (music, books, games); Implications for 3D printing?

- **Non-Discrimination**
  Equal treatment to all digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party.

- **Access to and Use of the Internet**
  Hortatory language on recognizing the benefits of consumers having access to and use of services and applications of their choice and being able to use devices of their choice to access the internet.

- **Cross-Border Information Transfer**
  Obligations to allow the cross-border transfer of information provided it’s for business purposes but subject to exceptions (legitimate public policy objective) with similar language to the GATT Art. XX Chapeau.

- **Localization of Computing Facilities**
  Basic ban on data localization, subject to a similar exceptions clause to cross-border information transfer.

- **Mandatory Disclosure of Source Code**
  Basic ban on requiring suppliers to disclose source code, but limited in scope to mass-market software and excludes software for critical infrastructure.

- **Compatibility of Privacy Regimes**
  Duty to adopt a domestic data privacy regime in accordance with international “principles and guidelines”; transparency requirements; compatibility of different privacy regimes.

Despite its dwindling prospects, the TPP establishes rules that are likely to serve in future
Characteristics of an Optimal Trade and Investment Regime

**Market Access**
- Have an open and non-discriminatory trade and investment regime.
- Limit investment reviews to only the most clearly strategic assets.
- Limit the use of the nation security exception to the most clear-cut cases.

**National Treatment**
- Treat foreign economic operators and investors the same as domestic actors in all areas of policy, regulation and legislation.
- Allow foreign operators and investors to join local business associations.

**Partnership**
- When contemplating far-reaching changes to the trade, investment or business climate consult first with business and the private sector.
- Work together with the private sector in enacting and implementing policy and regulatory reforms.

**Cross-cutting issues**
- Skills
- Infrastructure and logistics
- Predictability of the trading and investment climate | Ease of doing business | Rule of law
Thank you

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