Digital Data and Implications for Inclusive Trade and Development

UNCTAD Intergovernmental Group of Experts on Ecommerce and the Digital Economy
April 2019

Joshua P. Meltzer
Senior Fellow, Brookings Institution
Washington D.C.
Global Digital Trends

• 3.7 billion people have access to the internet – but over 50% of the world does not have internet access
• Internet access is mobile
• Entire economies are becoming digital
• Transformation in international trade
Data flows and international trade

1. Cross border data flows are forms of international trade
   - Goods and services purchased online but delivered offline e.g. ecommerce
   - Services purchased and delivered online e.g. professional, education, cloud computing, IoT
   - Content delivery e.g. movies, books, social networks

2. Cross border data flows enable international trade
   - Internal company data flows e.g. HR, communication, data sharing and analysis, managing GVC
   - Innovation, R&D, Big data, AI development
Figure 1. Growth of global cross-border data flows 2005 vs. 2014

2005
100% = 4.7 Terabits per second (Tbps)

2014
100% = 211.3Tbps

45x larger

The Digital Transformation of Trade

- Platforms
- Digital Services
- Increased services value-add in manufacturing
- Global Value Chains
Data Localization Requirements

- Growing in number and in complexity…
- Mainly but also...
Reasons for data localization

- Privacy
- Law Enforcement
- Cybersecurity
- Censorship
- Protectionism
India’s ICT-enabled services exports

• Cross-border data flows are vital for India’s exports of services

• ICT enabled exports in 2016-2017 were $103bn or 63% of total services exports
  » 80% delivered via mode 1 - over the internet

• Key markets for India’s ICT-enabled services exports
  » U.S. – 56%
  » EU – 26%

• Provision of these services often requires collecting data from EU citizens and is therefore affected by privacy laws in the US and the EU.
Regulating for a digital economy

• Current regulatory bias towards restricting data flows
  » Need interoperable regulation e.g. Privacy Shield
• Regulate must calibrate risk/return. For example;
  » Are there new risks?
  » Do regulations need to be reformed?
  » Avoid unnecessary costs for innovation and trade
• Balance is essential
  » competition issues can cut both ways
  » Privacy – what is the right balance?
A digital trade agenda

Three key elements:

1. Expand internet access and reduce cost

2. **Data source country** - a commitment to role of data for trade e.g. cross-border data flows

3. **Data destination country** - a commitment to extend domestic regulation to foreign citizens
   - Need to get domestic regulation right

4. Some convergence globally on appropriate regulatory standards
   - Bilateral, regional, multilateral
   - Privacy, consumer protection, IPRs
1. Commitment to global data flows

- Obligations on Data Source Country
- Commitment to free flow of information (and others that support data flows and its use e.g. no data localization, no source code disclosure...)
- With exceptions:
  » GATS Article XIV for legitimate policy reasons including privacy protection
2. Commitment to extend domestic regulation to foreign citizens

- Commitment on *data destination country*
- Protect the personal information of all users of ecommerce (CPTPP, USMCA)
  - Privacy Shield also extends US privacy protection to EU citizens
- Adopt non-discriminatory practices protecting ecommerce users from personal information violations within its jurisdiction
3. Convergence on global standards

- CPTPP and USMCA encourage the development of mechanisms to promote compatibility between different regimes for protecting personal information.
  - OECD 2013 – privacy principles and work towards interoperability
  - APEC Privacy Framework and CBPR
- GDPR
- Privacy Shield
Variable Interoperability – privacy

- Unilateral action – data source country determines privacy standards and compliance
  - E.g. EU GDPR but lacks FTA data flow commitment

- Data source country determines privacy standards but conformity assessment in data destination countries
  - E.g. Privacy Shield

- Global privacy standards but conformity assessment in data source country
  - APEC Privacy Framework and OECD Privacy Standards

- Convergence on privacy standards and conformity determined in data destination country
  - E.g. TFA Authorized exporter program (Art 7.7)
  - E.g. GDPR/APEC referential?
WTO Ecommerce Framework

- Support to expand internet access and reduce cost
- **Data Source Country** – Commitment to importance of data for trade
  - e.g. cross-border data flows, no data localization
  - GATS Article XIV exceptions
- **Data Destination Country** - Commitment to develop/implement domestic regulation
  - Privacy
  - Consumer protection
- Steps towards interoperability of regulatory regimes
  - TBT plus?
  - Technical support
Digital Economy and Trade Project

www.brookings.edu/digital-economy-and-trade-project/