

Another Digital Divide: The Rise of Digital Realms and Its Implications for the WTO and the Global Economy

“EU Trade Policy in the 21st Century”, Ottawa, March 9, 2018

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Context

- Rise of trade in digital goods and services
- Growing importance of data and information for technological development (DDE)
 - “Data is gold”
 - “Data is the new oil”
- Need for data and information to flow freely across borders
- WTO has been unsuccessful at developing a governance framework for cross-border data and information (only CPTPP has provisions on this)
 - No clarity on scope of exceptions for “legitimate public policy objective”

Argument

- Rise of three digital realms (US, EU, China)
- Fragmentation of digital economy
 - Gravitational pull to one of the three realms
 - Network effects
 - Market access
 - For outside countries, which data realm to choose?
 - E.g., Canada (US and EU?); Africa (EU or China?); Latin America (China, EU or US?)
 - Smaller, less-developed countries risk being left behind in the DDE
- Bad for the global economy and the WTO
- So we need the WTO to clarify language and rules and settle disputes

Three Digital Realms

- United States
 - Cross-border flow of data: free
 - Privacy protection: medium-low
 - Ownership of data: firm
 - Industrial policy: weak
- European Union
 - Cross-border flow of data: regulated
 - Privacy protection: High
 - Ownership of data: consumer and firm
 - Industrial policy: moderate
- China
 - Cross-border flow of data: restricted
 - Privacy protection: very low
 - Ownership of data: government (in practice)
 - Industrial policy: strong

Approaches to data flow language in trade agreements

	US	EU	China
Include binding free flow provisions	Yes	No	No
Including binding privacy provisions	Must have national privacy laws (floor)	Yes-priority	No
Require no disclosure of algorithms/source code	Yes	No	No
Right to an explanation of use of algorithms	No	No	No
Ban on data localization	Yes	Data localization	No

Implications of Digital Fragmentation

- End of the WTO?
 - FTAs will entrench fragmentation
 - International trade becomes increasingly digital
 - Gradual decrease in cross-border trade in goods?
 - 3-D printing
 - Automation and robotization
 - FTAs around three digital poles will entrench fragmentation
 - IP rules will also become fragmented
- Global economy
 - Less innovation and competition
 - Domination by few regional giants
 - Medium-sized firms to disappear?
 - Small- and medium-sized countries to become innovation takers?
 - Growing inequality within and between countries?

Need for Global Rules Governing Data and Innovation

- Ensure free flow of data and information across borders but protect individuals' privacy
 - Modulate freedom of flows according to types of data
- Clear rules on data ownership and use
 - Public good versus private good
- Clear delimitation of exceptions for “legitimate policy objectives”
 - Security, public safety, etc.
- The WTO is the logical place to set these rules and defend them
 - E.g., US communication against China on 23 Feb. 2018
- Is the EU's Digital Single Market approach a good model to follow internationally?

THANK YOU!