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

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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

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