



U.S. International Trade Commission's Digital Trade Roundtable: Discussion Summary

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Author:¹
Jeff Horowitz

Abstract

On January 29, 2015, the U.S. International Trade Commission (Commission or USITC) hosted its first roundtable related to digital trade. Representatives from universities, various industries, government agencies, think tanks, and several international institutions shared their views on a number of digital trade issues, including the barriers to and benefits of digital trade. They also discussed recent contributions to digital trade research.²

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¹ This article presents a summary of issues related to digital trade discussed at a roundtable held at the USITC on January 29, 2015, and not the views of the United States International Trade Commission or any of its individual Commissioners. This paper should be cited as the work of the author only, and not as an official USITC document. Please direct all correspondence to Jeff Horowitz, Office of Economics, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, or by email to Jeff.Horowitz@usitc.gov.

² Some of these issues had been previously discussed as part of the USITC's annual Services Roundtable, but this was the first time that they were addressed in a stand-alone forum.

INTRODUCTION

The Commission's digital trade roundtable provided a forum for discussion by representatives of universities, various industries, government agencies, think tanks, and several international institutions. The forum enhanced the Commission's understanding of both current issues and potential future issues in the field of digital trade.³ The roundtable followed the Commission's publication of two reports on digital trade, one in 2013 and the other in 2014, both requested by the Senate Committee on Finance.⁴

Forum discussion centered around four areas: (1) the benefits of digital trade; (2) constraints on digital trade; (3) new business models in this realm (and the need for sound laws and institutions to support them); and (4) developments in reporting and measuring digital trade. This paper summarizes discussion held during the roundtable's two sessions: the first session concerned Effects of Global Digital Trade, and the second session concerned Digital Trade and Emerging Markets.

DISCUSSION

Benefits of Digital Trade

The Internet is used by traditional goods and services companies to connect with customers and suppliers, both directly (via email and other direct correspondence) and through websites that serve as a platform for this interaction. Some panelists stressed that digital trade gives both major companies and small and medium-sized enterprises (SMEs) access to markets and customers that otherwise might be inaccessible to them, and it is therefore well suited to international trade. Some participants stated that it might be useful to share examples explaining how increased digital trade can help an economy; such efforts could help reduce barriers to digital trade in countries like Cuba that are currently closed off from the Internet. They emphasized the belief that the benefits of digital trade are higher than the costs for most countries.

One participant stated that it is not just the United States that benefits from digital trade and added that digital trade should not be seen as a zero-sum game with winners and losers, but instead as a way of expanding global trade in all directions. According to this participant, discussions of trade in terms of imports and exports tend to imply that exports are good and imports are bad. It might be more accurate to talk about a digital transaction in terms of a series

³ The USITC's second digital trade report defined digital trade as "U.S. domestic commerce and international trade in which the Internet and Internet-based technologies play a particularly significant role in ordering, producing, or delivering products and services."

⁴ U.S. International Trade Commission, *Digital Trade in the U.S. and Global Economies, Part 1*, USITC Publication No. 4414, July 2013; USITC, *Digital Trade in the U.S. and Global Economies, Part 2*, USITC Publication No. 4485, August 2014.

of connections, rather than an import and an export. Separately, another participant stated that some U.S. policymakers express opposition to outsourcing practices, which that participant considered to be in contradiction to statements promoting growth in emerging markets.

According to participants, standards and laws that protect a potential consumer's privacy and security are also critical to building trust on the Internet. They stated that, in the United States and Europe, there are reliable laws and institutions to ensure that online transactions can be trusted. This reduces the risk for the buyer and the seller, thus expanding the market. Participants commented that standards still need to be improved in developing countries; trusted e-trade programs may help. The participants expressed the belief that the adoption of global standards by firms in emerging economies can increase their reach and lower their costs.

Barriers to Digital Trade

Industry participants noted that their entry into and presence in certain foreign markets have met resistance from local firms, and despite domestic governments' claims that certain regulatory barriers to digital trade have legitimate rationales (e.g., national security, privacy protection, intellectual property protection, etc.), they assert that local firms' opposition is the likely actual motivation. They listed four main types of barriers to digital trade: data localization measures, differing privacy regimes, intellectual property protection measures, and shortcomings in infrastructure. Many participants agreed that measures such as data localization requirements (further discussed below) often did not yield the desired policy outcomes, and in some cases did more harm than good to domestic enterprises and consumers.

Moreover, participants repeatedly noted that there is a tremendous need to continue to foster collective effort through education and trade negotiations to reduce barriers to digital trade, and to help governments recognize that regulations and restrictive policies can create negative consequences for domestic companies as well as for the foreign companies these policies usually target. In emphasizing the importance of collective action, several participants affirmed that all countries, whether developed or developing, can benefit from digital trade and removal of trade barriers. An example would be an agreement between the United States and China in 2012 that expanded the list of American films that would be released in theaters in China.⁵ According to a participant, since its signing, there has also been an increase in the number of American-Chinese co-produced films as well.

⁵ Cieply, Michael, "In China Movie Pact, More 3-D, Less Reality," *New York Times*, February 19, 2012. <http://www.nytimes.com/2012/02/20/business/media/more-3-d-less-reality-in-us-china-movie-pact.html>; White House, "United States Achieves Breakthrough on Movies in Dispute with China," press release, February 17, 2012, <https://www.whitehouse.gov/the-press-office/2012/02/17/united-states-achieves-breakthrough-movies-dispute-china>.

DATA LOCALIZATION AND PRIVACY

According to participants, data localization and privacy may be linked, as data localization is often justified as a solution for privacy concerns.⁶ Discussion at the roundtable centered on the growing consideration and use of data localization measures by many countries—a trend that strengthened after highly publicized revelations about U.S. government data-monitoring programs in 2013—and the enormous constraint that data localization can place on digital trade. For example, Russia reportedly has policies in place which require local storage of data regarding Russian citizens.⁷ Some at the roundtable expressed the belief that this is meant to target Western companies in response to sanctions imposed on Russia in 2014 by the United States, the European Union (EU), and other countries.

Participants also noted the introduction of some less direct data localization rules, such as the Brazilian “Marco Civil de Internet” legislation, that governments claim to be necessary to address privacy problems that have arisen or to help protect personal information.⁸ Notwithstanding these stated goals, participants considered the Brazilian legislation, as well as similar legislation in the EU, India, Nigeria, and Chile, to be impediments to the presence and productivity of their companies in these countries as well as to international trade as a whole.

Participants also pointed out that there is a strong argument to be made that data localization increases burdens on domestic firms, who are the supposed beneficiaries of the policies, without effectively protecting these firms from foreign surveillance. The increased burden comes from requiring these firms to have domestic data storage mechanisms in place that are more cost-efficient elsewhere. They said that domestic firms, particularly SMEs, may not have the financial or technical resources to comply with requirements for storage of data on local servers. While large companies may be able to manage data restrictions and other barriers with relative ease by absorbing the costs associated with establishing their own data centers, participants stated that this is not the case for firms in emerging economies or for SMEs anywhere. These firms often rely on third parties to host their data, and may pay a higher price for data storage if it must be kept locally. Participants commented that, in some smaller countries, there may not even be a cloud provider offering local data storage. They further argued that local data storage may not be as safe, as most cloud storage providers store backups of data in different locations around the globe to diffuse risk.

⁶ “Data localization” is a term used in discussions pertaining to reasons for storing data based on political needs rather than technical efficiency. It usually is discussed in terms of many countries having data localization requirements, which stipulate that some information must be kept on servers located within the country’s physical borders. For more information see; U.S. International Trade Commission, *Digital Trade in the U.S. and Global Economies, Part 1*, USITC Publication No. 4414, July 2013.

⁷ The law being referenced here is Russian Federal Law No. 242-FZ, the “Localization Law” adopted by the Russian parliament in July of 2014. As of January 2, 2015, President Putin has signed legislation into law moving the original September 1, 2016, deadline for compliance up to September 1, 2015. For more information, see <http://pravo.gov.ru:8080/page.aspx?112453>.

⁸ Brazilian Law No. 12,965, commonly known as the Brazilian Marco Civil de Internet, was signed on April 23, 2014. Text can be found here: <http://diretorio.fgv.br/sites/diretorio.fgv.br/files/marco20civil20inglc3aas2.pdf>.

ADEQUATE INTELLECTUAL PROPERTY PROTECTION

According to participants' statements at the roundtable, intellectual property is an important and multifaceted component of the digital trade discussion. Some participants emphasized the importance of strong intellectual property protection, while others stressed the need for clear rules and limited liability for intermediaries.

Participants argued that piracy is a significant problem that affects industries globally, as firms in more countries involve themselves in not only the music industry but other forms of digital media as well (videos, video games, etc.). They expressed the view that adequate intellectual property protection serves as a baseline that allows creators to charge licensing fees and license legitimate delivery options through which customers can legally procure digital media. They said that, without such legal avenues available, the likelihood of piracy increases. According to these participants, in markets where Netflix's selection is less diverse than it is in the United States, consumers tend to look elsewhere to get their desired media. The Netherlands was cited as one country where Netflix has obtained licenses for only a limited library of movies and television shows. Netflix recently showed that Internet searches in the Netherlands for "Popcorn Time," an unlicensed online outlet streaming movies and TV shows, are just as plentiful as searches for Netflix in the last year or so.⁹ Similarly, participants reported that the Google Play store and YouTube are not available in China, likely encouraging consumers there to access content via unlicensed distributors.

One participant pointed out that the output of professional musicians and other artists represents their intellectual property and this ongoing conversation about digital trade is extremely important to them; their biggest concern is protecting their intellectual property rights.

OTHER BARRIERS

De Minimis Requirements

According to participants, customs requirements can also be a substantial barrier to digital trade, especially in countries that have low "de minimis" ceilings for duties payable on goods entering the country.¹⁰ They pointed out that the low de minimis requirement adds disproportionate trade costs to low-value shipments of imported goods. In Canada, for example, the ceiling is \$20, whereas in the United States it is \$200. Participants contended that even low-cost

⁹ Millan, Mark, "This is the Chart That's Freaking Netflix Out," Bloomberg, January 20, 2015, <http://www.bloomberg.com/news/articles/2015-01-21/this-is-the-chart-that-s-freaking-netflix-out>.

¹⁰ "De minimis" is defined as a valuation ceiling for goods, including documents and trade samples, below which no duty or tax is charged and clearance procedures, including data requirements, are minimal. For more information see; United Nations Economic Commission for Europe, "Trade Facilitation Implementation Guide: ICC Customs Guidelines," <http://tfig.unece.org/contents/icc-customs-guidelines.htm> (accessed February 27, 2015).

items involve complicated paperwork, duties, and taxes on both sides of the transaction, often making transactions cost-ineffective for SMEs.

Cultural Restrictions

Participants stated that another historically important barrier is cultural restrictions. Some countries have primetime TV and radio allotments for foreign and/or domestic content, as well as movie screen quotas that used to be relatively easy to enforce. According to the participants, the Internet has undermined this, allowing virtually anyone to transmit/receive media at will. Participants reported that in countries such as France, there are attempts to include Internet broadcast restrictions in laws that historically targeted only the broadcast television and radio industries.¹¹ Many at the roundtable agreed on the importance of keeping such cultural barriers out of the digital space.

Another major concern for participants was limits on foreign investments in cultural products in some countries. It was noted that Vietnam prohibits investing in projects considered to be detrimental to the cultural traditions of Vietnam.¹² These cultural restrictions, according to participants, can encompass things like movies, music, games, and books. On the other hand, participants noted that some countries, such as China, are more open now than they were 15 years ago.

Taxation and Investment

Participants asserted that various national governments' growing interest in taxing the use of Internet (or other parts of the Internet) is potentially damaging. They state that this approach comes from a mindset of considering Internet access to be comparable to telecom access before the Internet. In the view of these participants, this actually does more to hurt the domestic economy and the "traditional" economy (i.e., the one where goods and services are exchanged in person versus over the Internet) than it does to discourage foreign access, because it diminishes the ability of the domestic companies to use the Internet to be globally competitive. By the same token, participants stated that foreign investment policies are a significant barrier to

¹¹ In France, pending legislation requires that 60 percent of programming be EU in origin and 40 percent in the French language. Internet, cable, and satellite networks must broadcast content that is 50 percent EU-origin and 30–35 percent French-language, as well as meet additional requirements to invest in the production of French-language content. Moreover, cinemas must reserve five weeks per quarter for French feature films (with some exceptions). Similar radio broadcast quotas have been in effect since 1996. For more information, see United States Trade Representative (USTR), *2015 National Trade Estimate Report on Foreign Trade Barriers*, Washington, DC: USTR, 2015.

¹² Consulate General of Vietnam in San Francisco, Ministry of Foreign Affairs of Vietnam, "Investment Sectors," n.d. <http://www.vietnamconsulate-sf.org/en/about-vietnam/investment-sectors/> (accessed May 8, 2015).

trade in some countries. For example, Indonesia has a foreign ownership cap of 49 percent on e-commerce sites.¹³

BUSINESS MODELS, INTERNATIONAL AGREEMENTS, AND LAWS

Business Models

One participant stated that future business models have to focus on reaching new customers wherever possible. The participant claimed that 90 percent of the growth opportunities for digital trade are in the developing world, but that only 33 percent of people in those countries have access to the Internet. According to this participant, lack of access is both a government problem (infrastructure development) and a private enterprise problem (expanding Internet services and other outlets for digital media into these locations). The participant explained that the goal of increasing overall Internet access goes hand in hand with initiatives to develop cloud-based software, but increased access requires a certain amount of infrastructure so that people in developing countries can use cloud-based applications.

Some participants in the content industry reported that their business models rely on protection from sites offering pirated content, which are difficult to compete with since such sites are giving away content for free. For example, participants said that subscription based models such as Netflix rely on the company being relatively certain that their content won't be acquired or stored illegally, as these actions eliminate the need for a continued subscription for the consumer. As these types of business models continue to become more popular, laws protect them will become even more important.

International Agreements

Participants noted the increasing prominence of digital trade in various proposed trade agreements: the Trans-Pacific Partnership (TPP), the Trade in Services Agreement (TiSA), and the Transatlantic Trade and Investment Partnership (TTIP). They expressed concern that government access to data and commercial access to data were being conflated in the trade agreement negotiations, and that it was important for these issues to be separated, with commercial access governed by trade agreements. The participants expressed hope that negotiators would be able to create a framework for TPP to reduce or eliminate barriers to commercial data use. With regard to TTIP, the importance of the Safe Harbor Agreement (an agreement that allows many U.S. companies to transfer their data outside of European countries if they meet certain

¹³ Grainger, Toby, Satyam Sharat, Alwin Redfordi, and Oentoeng Suria, "Investing in Indonesia: Recent Developments," *The Emerging Markets Private Equity Association*, August 26, 2014, <http://empea.org/research/legal-regulatory-issues/investing-in-indonesia-recent-developments>.

standards) or a new agreement allowing expanded commercial access to European data was emphasized.¹⁴

A few participants called for a long-term discussion about the growing need for a separate agreement allowing the free flow of data transfer and the global benefits this would provide. They asserted that digital trade should be considered as important as services trade, and should be given the same level of attention. They stated that with respect to public protection, there should be some sort of necessity test putting limits on regulation: it cannot be unduly restrictive or a disguised restriction on trade.

Participants also emphasized that it is vital to recognize the increasing importance of digital trade in other international agreements moving forward. They suggested that the ongoing dialogues about trade facilitation and trade capacity building could be expanded to include digital trade. For example, participants felt that an “aid for e-trade” initiative, similar to the “aid for trade” initiative could really help put the international community behind the concept of digital trade, with respect to both infrastructure and capacity building. Moreover, they felt that discussions of capacity building and trade facilitation as it relates to digital trade should also be a part of ongoing TPP and TTIP negotiations.

Participants stated that U.S. companies have also been pioneering innovative solutions to Internet access problems in emerging economies, but they are restricted by the continuing high policy barriers to services trade. These participants observed that the Trade in Services Agreement (TiSA) could be critical to reducing these barriers.

Additionally, one participant indicated that transparency in negotiations was increasingly important. While trade negotiations have historically been conducted in secret, this approach is harder to maintain in the digital age, according to this participant, and may also be suboptimal. The participant said that the EU increased transparency by delineating some of its objectives for TTIP, and suggested that the United States also take this approach.

RECENT CONTRIBUTIONS TO THE LITERATURE ON MEASURING AND REPORTING DIGITAL TRADE

Participants repeatedly noted the high quality of the work done by the Commission in quantifying the benefits of the Internet to the U.S. economy. They felt that this work should be extended to other economies around the world. It was also pointed out that research should be framed to describe the global benefits of a balanced and open digital trade environment. Quantifying the

¹⁴ The “Safe Harbor” framework is an agreement that allows data transfer outside the European Union. The European Commission’s Directive on Data Protection, which went into effect in October 1998, prohibits the transfer of personal data to non-European Union countries that do not meet the European Union “adequacy” standard for privacy protection. This program allows U.S. organizations to be evaluated and then join a list of exceptions. For more information see <http://www.export.gov/safeharbor/>.

benefits of more open investment regimes, improved access to information technology services and broadband, and a balanced set of rules governing digital trade would also be very helpful, in the view of many participants. They said it also would be helpful to obtain a better understanding of the relative importance of an environment that enables digital trade, the impact of industrial policies that hinder digital trade, and the effects of particular barriers. A working paper by a Commission economist which quantifies the relationship between broadband access and increased international trade was also discussed.¹⁵

Participants also highlighted the limitations of services data, noting the immense differences in disaggregation levels in particular; one pointed out that there are 48 categories (at the most disaggregated levels) in the Bureau of Economic Analysis services data, while there exist thousands of different categories for goods.¹⁶ The participants cited the Commission as a leader in modeling the benefits of liberalizing services, and in showing that services are important for every industry. They said that further work on modeling the impact of policy barriers on services would be valuable. One participant described a recent World Bank study which found that a 10 percentage point increase in mobile phone penetration led to an increase in economic growth of 0.8 percent among developing countries. The same study reportedly found that a 10 percent increase in broadband Internet deployment leads to a 1.31 percent increase in annual per capita income.¹⁷

Participants recognized that private think tanks and research organizations have also done extensive research on the benefits of digital trade. As one participant noted, a recent McKinsey study found that three-quarters of the benefit of Internet connectivity accrues to traditional industries outside of the technology sector.¹⁸ A participant also mentioned a recent Brookings Institution study on the Internet and transatlantic data flows, which found that both the United States and the EU are very competitive in digitally deliverable services sectors (i.e. services that may be, but are not necessarily, delivered digitally) of international trade, and that the EU has a bigger trade surplus in this area than the United States does.¹⁹ ²⁰ Another recent study that was cited was carried out by the Information Technology and Innovation Foundation (ITIF),

¹⁵ Riker, David, "Internet Use and Openness to Trade," U.S. International Trade Commission Working Paper No. 2014-12C, December 2014.

¹⁶ U.S. Department of Commerce, Bureau of Economic Analysis, "Interactive Data Table 2.1: U.S. Trade in Services, by Type of Service," <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=1&isu=1&6210=4&6200=160> (accessed March 27, 2015).

¹⁷ World Bank, *Information and Communications for Development: Extending Reach and Increasing Impact*, Washington, DC: World Bank, 2009.

¹⁸ Pélassié du Rausas, Matthieu, James Manyika, Eric Hazan, Jacques Bughin, Michael Chui, and Rémi Said, *Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity*, McKinsey Global Institute, May 2011. http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters.

¹⁹ Nicholson and Noonan, "Digital Economy and Cross-Border Trade," January 27, 2014; U.S. Census Bureau, "E-Stats," May 23, 2013

²⁰ Meltzer, Joshua, "The Importance of the Internet and Transatlantic Data Flows for U.S. and EU Trade and Investment," Global Economy and Development, Brookings Institute, GED Working Paper 79, October 2014, <http://www.brookings.edu/~media/research/files/papers/2014/10/internet-transatlantic-data-flows-meltzer/internet-transatlantic-data-flows-version-2.pdf>.

which ranked 125 nations on taxes and tariffs on information and communication technology (ICT) goods and services; the participant noted for example that the study found that taxes and tariffs in Bangladesh add 58 percent to its costs for ICT goods and services, over and above the value-added tax. The study reportedly concluded that these taxes result in substantial decreases in the adoption of ICT technologies, depressing annual GDP growth 0.7–2.3 percent among African and East Asian developing countries.²¹ Participants cited other work being done on related topics, including studies by the Asia-Pacific Economic Cooperation forum (the global digital economy), the Organisation for Economic Co-operation and Development (OECD) (localization barriers and the internet), and the International Development Division (IDD) at the Education Development Center (entrepreneurship in the Asia region).

FINAL THOUGHTS

Participants at the digital trade roundtable discussed the benefits and constraints of digital trade in a global context; the role that future business models, international agreements, and national laws will play in shaping the digital trade landscape; and finally, emerging work on digital trade in the world economy. They widely supported a reduction of barriers in foreign markets, as well as more globally recognized standards for contentious aspects of digital trade such as localization requirements, the “de minimis” issue, and cultural barriers. Participants also expressed a desire for consistent international governance and the creation of international agreements covering digital trade and its place in the global economy. This roundtable was an informative avenue through which the agency gained invaluable insight from leading academics, representatives from various industries, government agencies, and think-tanks, as well as other international institutions about the growing scope and importance of digital trade.

²¹ Miller, Ben, and Robert Atkinson, “Digital Drag: Ranking 125 Nations on Taxes and Tariffs on ICT Goods and Services,” *Information Technology and Innovation Foundation*, October 24, 2014. <http://www.itif.org/publications/2014/10/24/digital-drag-ranking-125-nations-taxes-and-tariffs-ict-goods-and-services>.

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