

Digital Trade: Prospects for new trade governance amidst emerging protectionist digital industrial policies and national security concerns

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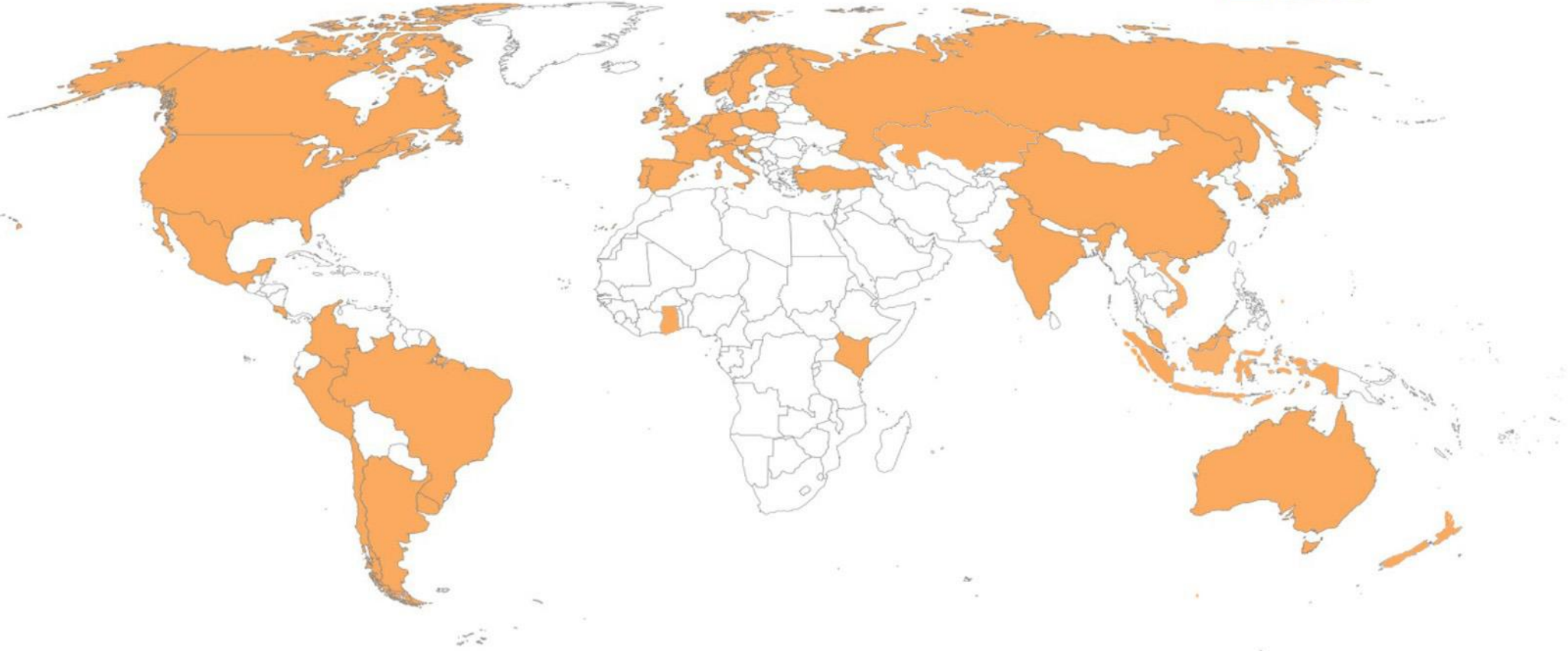
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Global Digital Trade: Limiting Trend Towards Fragmentation

1. Slim & Grim: Prospects for new digital agreements exist—but they are few amidst a fragmented global Internet.
2. Beacon of Hope: Depends on ambitious & pragmatic countries pushing ahead.
3. Hand-in-Hand: Need new digital rules AND proactive & holistic cooperation on domestic & international issues.
4. The Steepest & Slipperiest Slope: Unspecified national security concerns can further fracture the global Internet.

What's At Stake: Key Driver of Productivity/Innovation

- Data is lifeblood of the modern global economy.
- Competitiveness and productivity: Increasingly depends on how firms leverage data and digital tools.
- Businesses use data to create value, and many can only maximize that value when data can flow freely across borders.

Digital Trade, Innovation, & Competitiveness

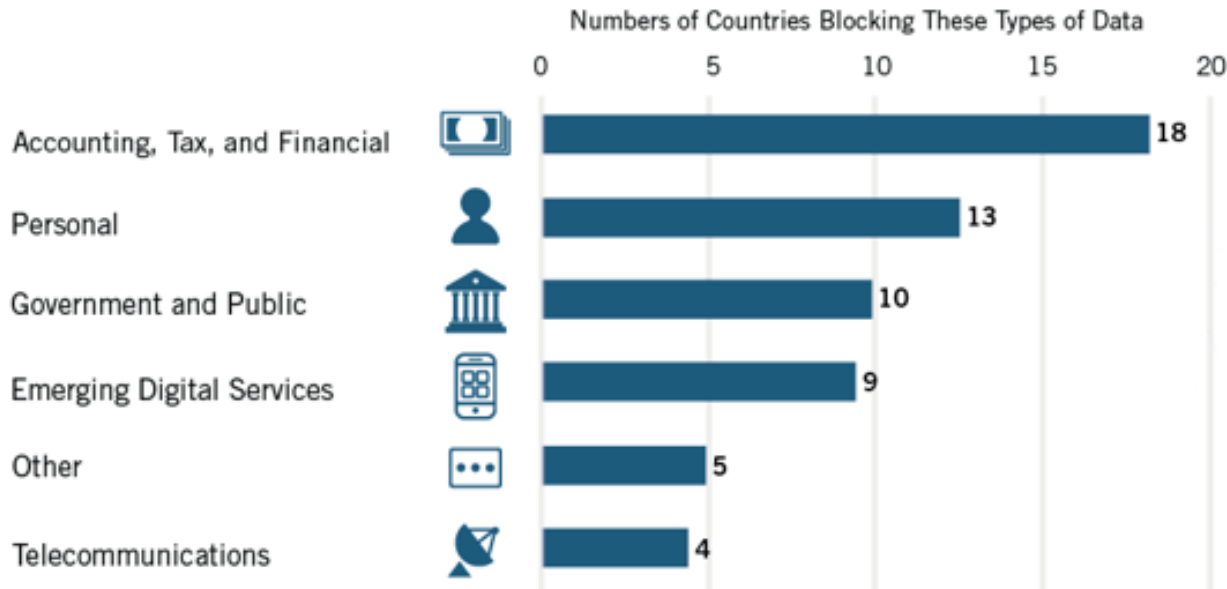
- Value of data comes from how it's used—not where it's stored.
- Competitive advantage = How firms aggregate and use big (& quality) data, consistently over time.
- Policymakers need to encourage—not coerce—as many firms as possible to be “data rich.”
 - Data flows and digital trade help.
 - Data is not a finite input that must be evenly distributed or locked away within a country.

Doom and Gloom: Digital Protectionism & Misguided Policies

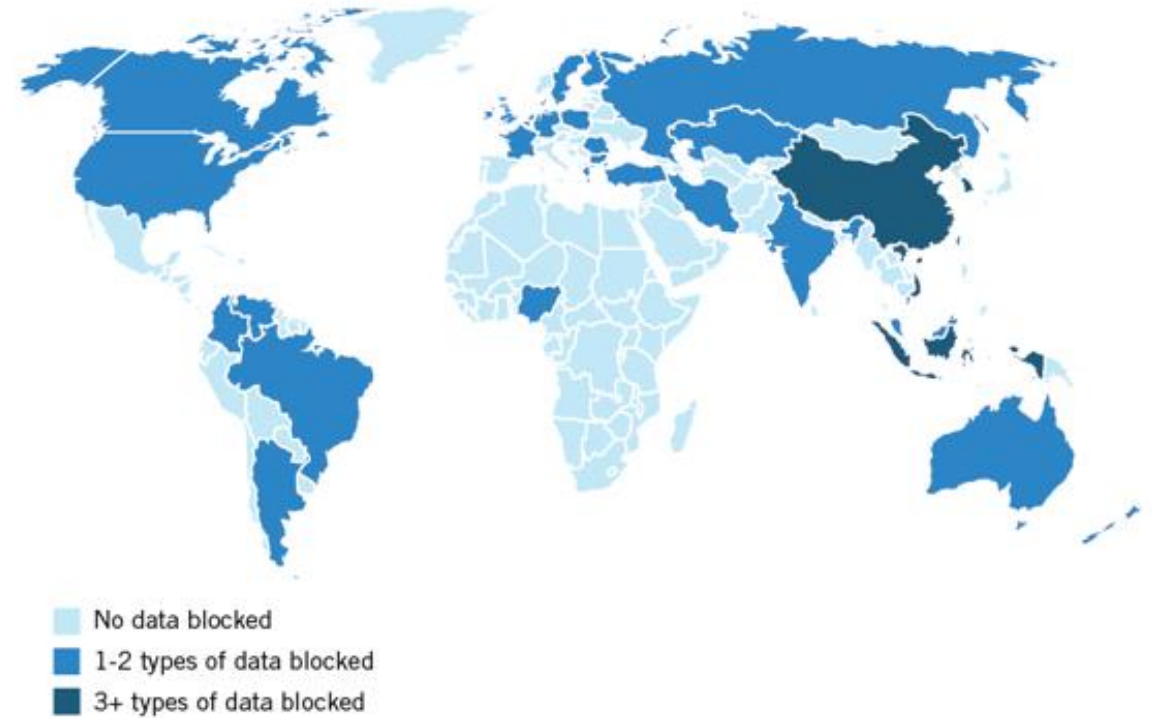
- Digital Protectionism: Tools are many and varied.
- Tool No 1: Data localization
 - Sliding scale of restrictiveness: Local mirroring -> full local storage - > local processing (only by local firms).
- Both explicit and unintentional/misguided.
 - Policymakers don't do cost-benefit analysis and consider alternatives.
- Disproportionately affects SMEs – lack resources/expertise.

Barriers To Data Flows Are Also Growing

What Types of Data Are Blocked?*



Which Countries Block Data Flows?*



Popular Target: Financial, Accounting, and Tax Data

- Some restrictions due to outdated pre-Internet laws/regulations

Tax/accounting documents to be stored at firm's office (Belgium and Finland)

- Other restrictions due to prudential, regulatory, & cybersecurity concerns

Sweden – requires “immediate” access to data, interpreted as physical access to servers.

New Zealand – requires firms to store business records in local data centers.

Luxemburg – financial firms required to process data in country.

Brazil – considered data localization for financial data due to cybersecurity concerns.

China is a World Leader in Data Localization

- “Great Firewall China”—Long limited data imports.
- Extensive data export bans: Data localization the norm, flows the exception.
 - 2006 – e-banking data
 - 2011 – personal financial data
 - 2013 – personal credit data
 - 2014 – health and medical data
 - 2015 – (proposed) insurance data
 - 2016 – online publishing (apps, audio and video platforms, online gaming)
 - 2016 – Counter-terrorism (broad requirements)
 - 2016 – Cybersecurity law (broad requirements)
 - 2016 – Cloud computing restrictions
 - 2017 – Personal and Important Data (broad requirements)



Main Motivations for Data Localization

1. Privacy and Cybersecurity

Wrong: Secure server in NZ, same as a secure server in Brazil.

2. Digital Mercantilism

Misguided: Data storage does not create value.

Costly: Raises costs & cuts access to better services

3. Government Access to Data

Access for political/social vs. law enforcement.



National Security: The All-Purpose Loophole

- Slipper slope: Unspecified, overly broad use of national security concerns could undermine global digital trade.
 - No limits in China. National security = regime stability.
 - Better: Australia/US specify criteria for data in FDI reviews.
 - Recent US actions misguided—basing national security action simply on basis of firm nationality without evidence.

Once Again Shooting Ourselves in the Foot: Banning Trade With WeChat Parent Tencent Only Hurts the U.S. Economy **“Clean Network” Initiative Risks Undermining U.S. Digital Trade**

By [Nigel Cory](#), [Robert D. Atkinson](#), and [Daniel Castro](#) | August 7, 2020

By [Daniel Castro](#) and [Nigel Cory](#) | August 31, 2020

Where Do We Stand: China

- China: Continues to separate itself = “Internet Sovereignty.”
 - No data/digital trade provisions. Only small-package e-commerce trade.
- Digital trade wars: US & others start to fire back.
 - Targets: WeChat, TikTok, & other Chinese tech firms.
 - While U.S. tactics are misguided, it’s understandable in that it is partly due to the long-standing lack of reciprocal digital market access.

Dozens/hundreds of foreign firms excluded during period of rapid digital economy growth.

India, Indonesia, Vietnam, Russia, & the EU

- India: Attracted to—and moving towards—the China model.
 - Indonesia: Similar attraction, but also some hope.
- Vietnam: Enacting political/social restrictions, despite CPTPP.
- Russia: The double: digital authoritarianism & protectionism.
- UNCTAD: Parts support protectionist “digital industrial development.”
- Africa: Just starting to consider a regional digital economy plan.
- EU: Building walls to, and removing mechanisms for, data flows.
 - Misguided focus on harmonization. Not tenable, nor realistic, especially for developing countries.

Asia-Pacific and Latin America: Some Hope

- APEC: CBPR could grow/expand.
- ASEAN digital/data governance framework.
 - Developing its own potential model.
- Latin America: Pacific Alliance (Chile, Colombia, Mexico, & Peru) and Brazil/Uruguay are actively engaged.
- United States: Engaged (based on USMCA), but needs to evolve & to consider impact of natsec and other issues.

WTO: Joint Statement Initiative (JSI) Ecommerce Talks

- Great initiative—building understanding among broad range of 70+ countries.
 - Follows 20 years of fruitless talks at WTO ecommerce work programme.
- Want to be hopeful about JSI—represents promise & progress.
 - But current broad membership (China, Russia, and EU) means it's unlikely to be ambitious, especially on data flows.
- Better to narrow membership and push for ambition.

Digital Economy Agreements: A Model

- New rules + new cooperation + proactive/early policy engagement on new issues based on common principles/processes = maximized, interoperable-based digital trade.
- Countries need holistic approach to global digital trade and economy strategy.
 - Aust/NZ/Singapore/Chile Digital Economy Partnership Agreements.
 - AI, E-invoicing, digital identity, data-innovation, and other issues.
- Pragmatic cooperation with like-minded partners is a prerequisite—not an afterthought or minor component (as in the EU).

A Trade-Plus Digital Trade & Economy Agenda

- Legitimate need: New/improved mechanisms to improve cross-border law enforcement access to data.
 - Updated MLATs and CLOUD Act Agreements.
- New MOUs between financial regulators:
 - Improves regulatory confidence and oversight, while allowing data flows.
- Greater resources for digital development and regulatory capacity building.
- Pre-standardization cooperation on AI and other data issues.

Plus-Plus: The Clear Need for Global Leadership

- The Global Partnership on Artificial Intelligence (GPAI).
- OECD does some great work on digital issues.
- Potential for UK to use chair of G7 to push digital agenda.
 - Build on Japanese PM Abe’s “Data Free Flow With Trust”
- Final Point: Need for ambitious countries to seize leadership opportunities to keep pushing for an open, rules-based, innovative, and interoperable global digital economy.

ITIF Reports on Digital Trade

- Report: Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?
- Report: Principles and Policies for “Data Free Flow With Trust”
- Report: The False Promise of Data Nationalism
- Report: Why China Should Be Disqualified From Participating in WTO Negotiations on Digital Trade Rules
- Testimony to the U.S. Senate Regarding Censorship as a Non-Tariff Barrier to Trade
- Submission: The European Commission’s White Paper on a European Approach to AI
- Comments to the UK Parliament: U.S.-UK and Global Digital Trade

Thank You!

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