



Trade Barriers for Digital Exports: Identifying Threats to U.S. Leadership in Global Digital Trade

Internet-enabled trade in goods and services is a driver for U.S. economic growth, but firms are experiencing a rise in barriers that prevents them from reaching new markets. The U.S. should lead in setting rules of the road for digital trade, and identifying key threats around the world is critical to achieve this goal.

What's at Stake?

The Internet is integral to U.S. economic growth. The U.S. Department of Commerce estimates the digital economy has grown more than 4 times faster than the overall economy since 1998. In 2017, the digital economy accounted for 6.9% of GDP, \$1.35 trillion, in the United States. More than half of U.S. service exports are digital. The U.S. exported \$439.1 billion and imported \$266.6 billion in digitally deliverable services, resulting in a trade surplus of \$172.5 billion.

Foreign governments are pursuing laws and regulations that hinder the further growth and cross-border delivery of Internet services at an alarming rate. Under the guise of promoting domestic innovation, national security, and privacy, countries are increasingly adopting discriminatory policies that disadvantage U.S. technology companies and pose significant barriers to cross-border delivery of Internet services.

As the Internet continues its exponential growth and becomes even more intertwined with international commerce, it is essential that such barriers are identified and quelled. The U.S. should engage with trading partners to raise concerns, pursue trade agreements that will open up foreign markets for U.S. services exports, and ensure that countries fulfill their international obligations. The ongoing work at the World Trade Organization to achieve global rules on digital trade is a key opportunity for the U.S. to put forth proposals that build off the success of the digital provisions in the U.S.- Mexico-Canada Agreement and the U.S.- Japan Digital Trade Agreement.

Key Threats

- **Data and Infrastructure Localization Mandates.** Cross-border data flows are critical to digital trade and forced data and infrastructure localization mandates make it difficult for U.S. exporters to expand into new markets. The U.S. should work to remove barriers to cross-border data flows and discourage data localization mandates, encouraging partners to build off strong commitments in the digital trade chapter in USMCA. Industry is particularly concerned about localization-related policies in India, South Korea, China, and Vietnam.
- **Online Content Regulations.** U.S. firms operating as online intermediaries face an increasingly hostile environment in a variety of international markets which impedes U.S. Internet companies from expanding services abroad. While ostensibly in pursuit of legitimate and valid goals to address illegal content online, many of the proposals are expansive in scope and will conflict with U.S.



law and free expression values. Industry is particularly concerned about the UK's Online Harms proposal, France's hate speech law, and the EU's plans for a Digital Services Act that is poised to dramatically change intermediary liability rules throughout Europe.

- **Censorship and Internet Shutdowns.** Among the most explicit barriers to digital trade are the outright filtering and blocking of U.S. Internet platforms and online content, a trend that continues to grow. Another concerning trend in recent years is authoritarian governments pursuing content regulations to fight “fake news” that have the effect of targeting dissidents and political opposition. Recent developments in Egypt, South Korea, Russia, and Turkey are of immediate concern.
- **Targeting the U.S. Digital Economy for Discriminatory Taxation.** An alarming trend among foreign countries is the singling out of the U.S. digital economy for additional taxation. To date, the following countries have introduced, or signaled that they will introduce, digital taxes: Austria, Belgium, Canada, Czech Republic, Denmark, Hungary, India, Italy, Poland, Russia, Spain, and the UK. CCIA supports a long-term multilateral solution driven by the OECD's collaborative process rather than these conflicting interim measures.
- **Market-Based Platform Regulation.** The idea of “platform regulation” is spurring measures around the world, including the EU, Japan, and Australia. In some cases, platform regulation serves as a backdoor for outcome-oriented competition policy and often targets leading U.S. Internet services.
- **Copyright Liability for Online Intermediaries.** Countries are increasingly using outdated Internet service liability laws that impose substantial penalties on intermediaries that have had no role in the development of objectionable content. These practices deter investment and market entry, impede legitimate online services, and undermine collaboration between online services and rightsholders. The EU Copyright Directive imposed an EU-wide mandate for filtering content that will have a significant deterrent effect for U.S. Internet exporters in the region.
- **Ancillary Copyright and “Link Taxes”** Legislatures in Europe and elsewhere have proposed or implemented new publisher subsidies styled as so-called “neighboring rights” – related to copyright – that may be invoked against online news search and aggregation services. Service providers of online search, news aggregation, and social media platforms are compelled to pay for the “privilege” of quoting from news publications. The EU Copyright Directive creates a new EU-wide press publisher right and countries are currently in the process of implementing the new right within national law.
- **Customs Duties on Electronic Transmissions.** The WTO moratorium on customs duties for electronic transmissions has recently been under threat by countries including Indonesia and India. The moratorium has been key to the development of global digital trade and reflects the international consensus with respect to the digital economy, reflected in the number of commitments made in free trade agreements among multiple leading digital economies.
- **Undermining Security in Communications.** Strong encryption has been increasingly enabled on now ubiquitous smartphones and deployed end-to-end on consumer-grade communications services and browsers. Many countries, at the behest of their respective national security and law enforcement authorities, are considering or have implemented laws that mandate access to encrypted communications. Of recent concern is Australia's 2018 Assistance and Access Bill.

This summary draws upon CCIA's annual submission to the Office of the U.S. Trade Representative, as U.S. trade officials prepare the 2020 National Trade Estimate Report