Trade Policy: Cross-Border Data and Digital Trade

With: Martin Molinuevo

Hi, my name is Martin Molinuevo. I am a senior counsel at the Trade Department of the World Bank where I am also leading the Digital Trade World Program. And I am here today to talk you about Cross Border Data and Digital Trade. There is no doubt that we are leading in a type of revolution, a digital revolution. Digital technologies are transforming the way that we interact with each other and with the world. And they are doing so rapidly. Every day we create and share more data than we have ever created in the three hundred thousand years of our existence on earth and these we are sharing on a daily basis. And of course, this affects every aspect of our life, including of course international trade. It does so not only by empowering the more traditional aspects of international trade by creating fostering inputs into production and making it more efficient. But more importantly also to create, also to boost in what we call digital services trade. This is the most dynamic aspect of international trade and are basically all services that can be traded online or can be traded remotely through digital meets.

Data and digital technologies are essential to digital services. Not only because they are a key input, well information is a key input to all services. But because data specifically is the actual medium through which cross border services are traded. Think of a bit like the containers of digital services. In goods trade you attach the merchandise into containers which are shipped across the world. The containers are not the object of the international trade but what moves it across the world, what moves it across borders. So is digital data, digital data is not the object necessarily of trade but is what gives, what allows it to move from one place to the other.

And digital services are creating important opportunities for developing countries. Yes, it remains, data-enabled services remain dominated by high income countries as most IT services. But important success opportunities are found also in the middle and even low-income countries. One of my favorite stories is that of AUGMEDIX. This is Bangladeshi based firm that provides a real time assistance to doctors in the United States. As you can see in the little graph, you can see the doctor wearing a sort of smart glass with a camera with a component that allows his assistant based in Dhaka or based in South Asia to communicate with him on a real time basis providing inputs but also taking notes of the interaction with his patients. While doing so, his assistant based in Dhaka, is compiling a bunch of forms that are required for doctors to fulfil their administrative obligation. It is estimated that this service cuts about between 2 or 3 hours of administrative work for the doctors in the US allowing them to focus on them much. These types of high value-added digital service would not be able to bloom if data was not able to be shared between those two countries. So, in the World Development Report of 2021 we focus on how cross border flows of personal data are regulated around the world.

Now, we found that there are three main approaches towards personal data. One what we call the open transfers model which is basically inspired by the federal regulation of the U.S. which relies heavily on private standards. It does not feature strong mandatory requirements but only focuses on exposed accountability based on the compliance with voluntary standards.
Another model is what we call the conditional transfers model which sets out a series of regulatory requirements for the transfer of data, information across borders. Such as consent by the parties or the adequacy of the regulation of the destination country or other tools for the private sector such as binding corporate rules or contractual arrangements between the parties. The EU has been the traditional component of this model.

And finally, there is a third model which we call the Limited transfers model, and which is featured in countries like Russia or China which see digital data as a core element of their national security and safety infrastructure. So therefore, they also focus on a strict control over the data that moves in and out of the country through what we can generally call a data localization requirement. Technically different types of regulatory measures such as government approval of the digital transfers or the mandatory domestic processing or the domestic storage of data. These types of measures limit the type of information that can be shared across borders and give the government greater leeway in the control of the flow of information.

So, how do these models feature around the world. We looked at the regulatory frameworks of over a hundred countries around the world. Now, we focus on two aspects of their data governance regulation. Their rules on cross border data flows and how they regulate domestic data including the ability of the governments to access that personal information.

And we find that when it comes to cross border rules, the so-called conditional transfer model inspired mostly by the EU regulation seems, appears to be the most popular with 55% of the countries that I have dealt with. More importantly it is also the fastest growing model. More than 60% of the countries that have enacted a type of regulation on data governance in the last few years have chosen the model inspired greatly by the EU.

The second most popular model is that what we called the open transfers regulation featured by in this case of course the United States. But also featured somewhat by default by countries that have not yet enacted a comprehensive framework on data governance. Because there are no comprehensive rules on data governance, they rely their fact on private standards. So, that's where they land when they have no comprehensive regulatory framework.

And finally, domestic and finally the limited control model lands more or less in the 9 or 10% of the countries as you can see led of course by Russia and China and few other countries in Asia and Africa. We will all look at the domestic regulation on data governance and we find that usually this workspace overlap, so whoever has adopted a conditional transfer model for cross border rules also tends to adopt the cross borders tool, a domestic regulation, similar to the conditional transfers with some few exceptions.

After looking at the regulation on data governance we also look at how do countries trade on digital services. And we find here that countries trade digital services regardless of the type of regulation. As you can see India is a big exporter of digital services and it trades services, and it trades digital services and data with the US and with EU who have different regulatory approaches. So, the regulatory approach, so the fact everybody trades in digital services regardless of their regulatory model.
However, we did want to enquire whether regulatory model does have an any impact on who trades with whom. So, we use this data on regulation and on trade to conduct an econometric analysis to find whether there are any correlations between regulatory models and digital trade. And we find in this that there is a positive association between the cross-border rules of the open transfer models with digital trade. And we also find that there is a positive association of the domestic regulations typically found in the conditional transfer models with digital trade.

We also found that either the domestic regulation or the cross-border element of the limited transfer model does not associate positively with the digital services. So, what is that mean in impacts. It means that they optimal regulatory approach for digital trade would be having some types of flexible cross border rules for data flows and complemented with a strong domestic safeguard on individual privacy. That way that creates trust by consumers on how their data and their information is treated by the companies, but it also allows for cross border transfer of information, of data based on some arrangements that protect that data across borders.

So how is data being covered in international rules. So far, we have been looking at how domestic rules and the different models applied to cross border data flows. But what does an international regulation say. It so happens that trade agreements have been the most advanced international instruments in the governance of digital trade. And digital trade rules are increasing central to trade agreements. Most of the rules focus on establishing a conditional regulatory framework for digital trade, such as having provisions on e-documents and e-signature and promoting online consumer protection and of course promoting the establishment of a privacy framework for a day. But also trade agreements are ensuring that cross border data can move across borders with certain exceptions. Typical exceptions for the protection of privacy or the protection for other public interests.

These types of rules for instance are being taken up at the plurilateral level of the WTO. But are also increasingly being found in bilateral and regional agreement. Somehow, in some cases that go much farther and much stronger than those featured in the plurilateral. One important aspect however to keep in mind is that trade agreements are usually not the best instruments to govern standards and regulatory coordination. So, trade agreements do not go very deep on the types of regulations that have to be in place say regarding by the privacy protection but only a establish high level placings.

So where does that leave us in terms of data and digital trade. Well, we know that the cross-border services offer meaningful opportunities for developing countries and international data flows are a core element of services trade. To foster that we need to build trust in digital markets ensuring consumers and users that their information is safe. So, regulation should focus on both fostering data sharing, because sharing information across borders is essential for trade, but also ensuring that protection of legitimate policy norms that adjust consumer protection, individual privacy or national security norm. In that sense we found that two models, the open transfers and the conditional transfers model provide valuable reference for both the domestic elements and the cross-border rules on international data. The challenge of course remains squaring these two approaches into a flexible rules of cross border data flows that however offers strong protection of individual man. This is all from me today.

Thank you very much.