Can Trade Set Information Free? Trade Agreements, Internet Governance and Internet Freedom

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Abstract

This policy brief shows how three governments (the US, EU, and Canada) have used trade policies to regulate the Internet. We focus on their policies to advance the free flow of information, privacy, and Internet stability. We make suggestions on how to ensure that trade policy enhances internet freedom, openness and stability. Due to limited funding, we could only examine US, EU and Canadian trade and internet policies, but we hope to examine other countries in the future.

Document

Can Trade Policy Set Information Free?

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Background:

Although the internet is creating a virtuous circle of expanding global growth, opportunity, and information flows, policymakers and market actors are taking steps that undermine access to information, reduce freedom of expression and splinter the internet. Almost every country has adopted policies to protect privacy, enforce intellectual property rights, protect national security, or thwart cyber-theft, hacking, and spam. While these actions may be necessary to achieve important policy goals, these policies may distort cross-border information flows and trade. Meanwhile, US, Canadian and European firms provide much of the infrastructure as well as censor-ware or blocking services to their home governments and repressive states such as Iran, Russia, and China. As a result, although the internet has become a platform for trade, trade itself and trade policies have served both to enhance and undermine both internet freedom and an open internet. This policy brief shows how governments have used trade policies to regulate the Internet and we make suggestions on how to ensure that trade policy enhances internet freedom, openness and stability. Due to limited funding, we could only examine US, EU and Canadian trade and internet policies, but we hope to examine other countries in the future.

Trade agreements as internet governance

Trade agreements and policies have become an important source of rules governing cross-border information flows:

- Policymakers recognize that when we travel the information superhighway, we are often trading – and internet usage can dramatically expand trade.
- The internet is not only a tool of empowerment for the world's people, but a major source of wealth for US, EU, and Canadian business.
- Moreover, internet commerce will grow substantially in the future as much of the world's population is not yet online. US, European and Canadian policymakers want to both protect their firms' competitiveness and increase market share. US, European and Canadian governments understand that while some domestic laws can have global reach, domestic laws on copyright, piracy, and internet security do not have global legitimacy and force. Hence, they recognize they must find common

ground on internationally accepted rules governing cross-border data flows.

The WTO

In theory, the WTO should be an appropriate venue for such discussions. WTO members agreed not to place tariffs on data flows. In addition, the WTO's dispute settlement body has settled two trade disputes related to internet issues: internet gambling and China's state trading rights on audiovisual products and services (WTO 2007, WTO 2012). However, the member states have not found common ground on how to reduce new trade barriers to information flows. In 2011, several nations stopped a US and EU proposal that members agree not to block internet service providers or impede the free flow of information online. Moreover, the members of the WTO have made little progress on adding new regulatory issues such as privacy and cyber security that challenge internet policymakers. However, many new online activities will require cooperative global regulation on issues that transcend market access – the traditional turf of the WTO. These issues will require policymakers to think less about ensuring that their model of regulation is adopted globally but more about achieving interoperability among different governance approaches. Alas, policymakers are not consistently collaborating to achieve interoperability.

Trade giants and the internet

In a recent policy brief (Aaronson and Townes 2012), Miles Townes and I examined how the US, the EU, and Canada use trade policies to govern the internet at home and across borders. We found the three trade giants use bilateral and regional trade agreements to encourage e-commerce, reduce online barriers to trade, and to develop shared policies in a world where technology is rapidly changing and where governments compete to disseminate their regulatory approaches. Policymakers also use export controls, trade bans or targeted sanctions to protect internet users in other countries or to prevent officials of other countries from using internet related technologies in ways that undermine the rights of individuals abroad. Finally, policymakers may use trade agreements to challenge other governments' online rules and policies as trade barriers. We discuss how these policies, agreements, bans and strategies could affect internet openness, internet governance, and internet freedom.

Table 1 Case study Free Trade Agreements: Provisions that can enhance (+) or reduce (-) internet openness

Findings

· The Internet is transforming trade policy. Policymakers in the US, EU, and Canada

want to advance the free flow of information, but lack consensus on how to balance Internet openness (policies and procedures that allow netizens to make their own choices about services and content to create or share) and Internet stability (policies to prevent hacking and piracy, as well as policies to protect privacy and security).

· The US is actively pushing for binding provisions in trade agreements to advance the free flow of information while challenging other nations' privacy and server location policies as trade barriers.

· Trade policies lag trade realities, and the norms of the Internet (speed, transparency, and responsiveness) have not yet fully penetrated policymaking. Policymakers make Internet policies in bureaucratic silos of intellectual property rights (IPR), privacy, etc... without weighing the collective effects on Inter- net openness or Internet freedom. Officials do not coordinate policies to promote the free flow of information with policies to advance Internet freedom.

· While officials in the three case studies are responsive to their constituents, they have not figured out how to negotiate trade agreements in a way that accommodates the need for secrecy as well as meets public expectations for transparency.

· US, EU, and to a lesser extent Canadian policymakers have made expanding Internet freedom a foreign policy goal, but they have not consistently collaborated or addressed the global spillovers of national web censorship.

· The US, EU, and Canada have worked internationally to develop principles to ensure an open and stable Internet, but these principles are neither universal nor enforceable. Governments and netizens in the US, EU, and Canada agree that Internet openness and freedom are important goals. However, they have not clearly defined these terms or developed principles for the proper role of government in balancing Internet freedom and stability at the domestic and global levels.

· Policymakers don't know if censorship is a barrier to trade. The US and EU have issued reports describing other countries' Internet policies (privacy, censorship, server location and security policies) as potential barriers to trade. None of the three governments has yet challenged Internet restrictions as a barrier to trade.

Recommendations:

· Policymakers cannot sustain the Open Internet by relying solely on rules that advance the free flow of information. As trade agreements have long addressed governance, the US and other governments negotiating binding provisions to encourage

cross-border information flows should also include language related to the regulatory context in which the Internet functions: free expression, fair use, rule of law, and due process. Thus, the US, EU and Canada should show their commitment to Internet openness by annually reporting when and why they blocked specific applications or technologies and/or limited content (or asked intermediaries to limit access) to sites or domains. With this information, policymakers may get better understanding of how to achieve a flexible and effective balance of Internet stability and Internet openness.

· Policymakers may need to develop shared principles for maintaining the One Global Internet and to delineate steps to take when countries do not live up to these principles.

· Trade policymakers should ask the WTO Secretariat to analyze if domestic policies that restrict information (short of exceptions for national security or public morals) are also barriers to cross-border information flows which can be challenged in a trade dispute. Moreover, policymakers should develop strategies to quantify how such policies affect trade flows.

· WTO member states should use the trade policy review process to discuss the trade implications of member state Internet regulations that can distort trade.

· The three trade giants' use of bilateral/regional trade agreements with diverse Internet/e-commerce provisions may, without deliberate intent, gradually fragment the web. Given that countries have different priorities for privacy, free speech, national security, etc... which make international harmonization of strategies to advance the open Internet unlikely. Thus, when they negotiate bilateral, regional or multilateral trade agreements, policymakers should use language to encourage interoperability among signatories' privacy, online piracy, and security policies.

Links:

Policy Brief

http://www.gwu.edu/~iiep/governance/taig/CanTradePolicySetInformationFreeFINAL.pdf

Op ed- Aaronson, "Can Trade policy Set Information Free?" VoxEU 12/22/2012

http://www.voxeu.org/article/trade-agreements-global-internet-governance

Prezi: http://prezi.com/i0sm6trenpul/can-trade-agreements-and-policies-promote-internet-freedom/