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THE TURN TO TRADE AGREEMENTS IN GLOBAL PLATFORM GOVERNANCE

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Context

As the rules, policies and regulations governing the global digital ecosystem multiply, they have become a key arena for contending visions of governance over the digital data flows created by billions around the world. Issues once exclusively in the realm of internet scholars have become deeply politicized and contested facets of international public policy (Suzor, 2019; Gorwa, 2019).

In the past few years, a growing number of proposals have been developed to govern major platforms for user-generated content through formalized legislation as well as voluntary self-regulatory initiatives. However, less work has sought to understand how governments worldwide are increasingly turning to *trade agreements* in order to pursue their preferences for how to govern platforms specifically and the digital ecosystem more broadly.

While it is well-known that China and the United States represent different visions for the governance of the internet and its applications, this paper seeks to understand how different political actors are using trade agreements to seek to 'lock in' their preferences on platform governance topics. In some democratic countries such as Brazil, India or Germany policymakers, courts, and citizens have called for restrictions of the cross-border flow of specific types of data. The limitation of data traffic to a country or region may lead to a stronger protection of citizens' rights in the digital sphere and to more independence from foreign service providers. Yet other countries have sought to deliberately and strategically use trade agreements to remove barriers to cross-border data flows, most prominently the United States, which regards other governments'

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efforts to restrict them as “digital protectionism” (Aaronson, 2018). Therefore, the platform governance implications for restrictions on cross-border data flows cannot be overlooked.

Historical Trends in Digital Policy and Trade

Research has shown that in 2012, the US and Korea were the first to include specific language related to digital data flows in their Free Trade Agreement. Since then, similar language has been part of trade negotiations around (draft) agreements such as ACTA, TTP, TTIP, and bilateral agreements between the EU or the US with third countries (Aaronson, 2016; Bendiek & Schmiege, 2016). In addition, the issues first included by the US in Free Trade Agreements can now also be found in agreements between other countries, such as Singapore–Australia, Thailand–Australia, Japan–Singapore, and others (Burri, 2017).

These trade agreements have been deeply analysed by academics working on internet governance, copyright, and other issues, but still have underexplored implications for national governments that are increasingly seeking to craft regulation designed to address a host of perceived democratic externalities posed by dominant technology firms and platform providers like Facebook, Google, Microsoft, and Amazon. The recently re-negotiated North American Free Trade Agreement (USMCA) has provisions which stipulate that the members will not amend intermediary liability frameworks that could hold American platforms liable for illegal content posted by their users. Is including these issues in trade agreements a major developing way that the US is fighting back to protect its firms in the global digital economy?

Existing research tends to concentrate on multi-level governance and the role of the WTO in the negotiation of digital trade issues (Burri, 2017; Weber, 2015). Given the economic and political weight of the EU or the US in the negotiations, most scholars concentrate primarily on trade deals involving these two partners (e.g. Aaronson, 2016; 2019). A systematic examination of all digital provisions included in trade agreements was created by Burri and Polanco (2020) in their TAPED (Trade Agreements Provisions on Electronic-Commerce and Data) dataset. The TAPED dataset is focused on a systematic categorization of digital trade provisions included in PTAs (preferential trade agreements) which states have used to “fill in gaps” left by pre-internet WTO frameworks and address new issues involving cross border data flows (Burri & Polanco, 2020). This dataset has led to a clearer mapping of digital governance issues addressed by trade and the implementation of specific state preferences. This paper uses this data along with available policy discourse and other regulatory developments to examine how actors have sought to lock in their preferences in key digital governance areas.

Paper Outline

The paper provides a first step in this direction, presenting the first results of an interdisciplinary project bringing together digital communication scholars, internet governance researchers, and international relations academics to look at the nexus of digital governance and international trade. Based on a platform governance focused analysis of the TAPED dataset, as well as policy papers put forth in trade discussions, the first part of the paper maps digital provisions in trade agreements and their relation

to platform governance. Using this dataset, we then analyse the respective positions of the US, EU, and China on issues relating to cross-border data flows. Understanding how the movement of data between states relates to key digital governance issues will provide a starting point for a deeper analysis of key actor strategies.

Drawing upon the literature on platform governance and regulation (e.g. Lynskey, 2017; Culpepper & Thelen, 2019; Helberger et al. 2018), trade agreements and trade policy, and work at the intersection of digital governance and trade, we seek to reach a better understanding of the various issues at stake, building the ground for future research on the trade positions of specific countries or regions, and an analysis of the normative impact of these trade agreements on the digital rights of the world's connected population.

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