

E-commerce in the World Trade Organization: Identifying Key Development Issues in Relation to a Potential Outcome of the Negotiations

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Outline

- Relation between e-commerce and development
- Data-related issues
 - Data localization
 - Access to the source code
- Identification of relevant questions and research topics

Relation between e-commerce and development

E-commerce can:



Become a driver of inclusive growth and sustainable development by empowering women as entrepreneurs and traders



Support productive activities, create decent jobs, and encourage the formalisation and growth of micro, small and medium-sized enterprises (MSMEs).



Help MSMEs gain access to financial services (including online and mobile payments) and their integration into value chains and markets.



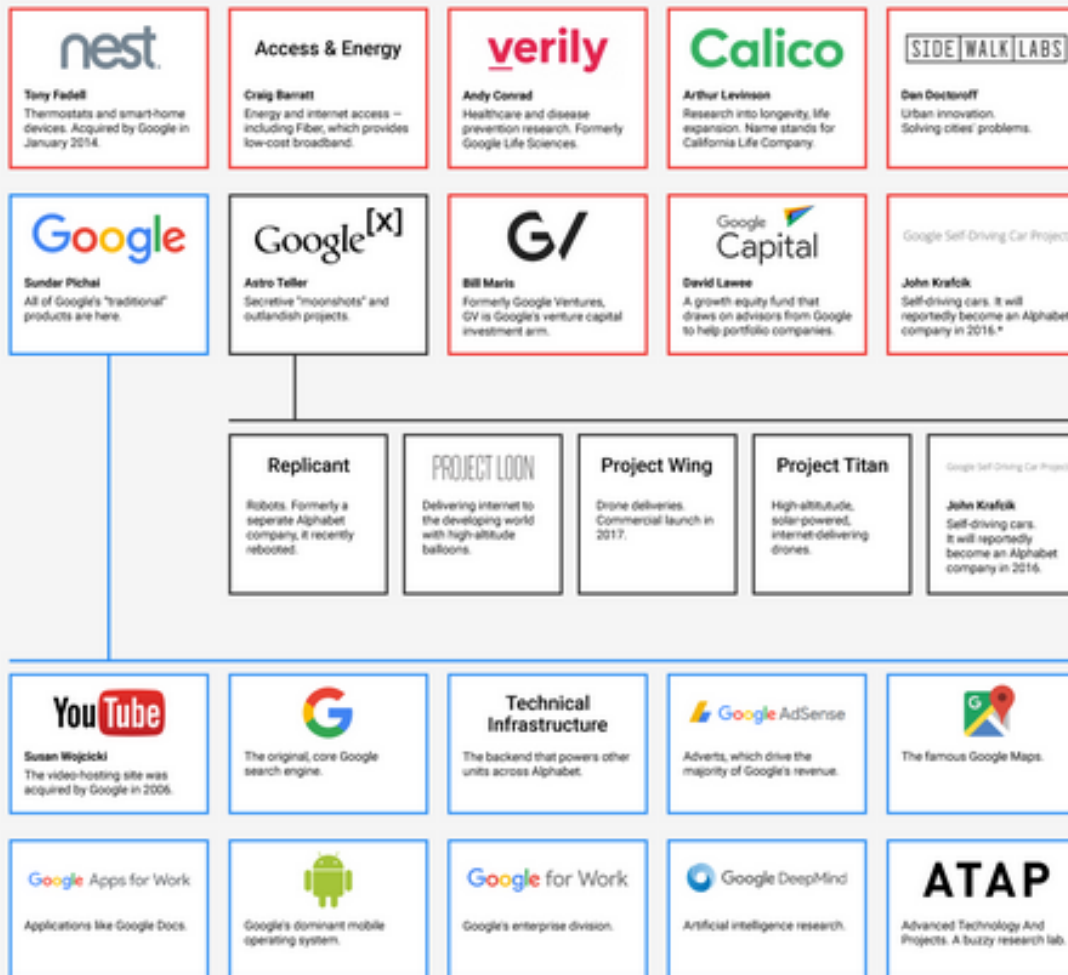
Contribute to significantly increasing the exports of developing countries, and doubling the share of global exports by LDCs by 2020.

At the same time reports and studies from several organisations call attention to:

- The growing inequality on the distribution of benefits from the digital economy. If left unaddressed, these dividends will exacerbate existing inequalities.
 - World Bank's 2016 World Development Report [*Digital Dividends*](#)
 - WEF [Global Competitiveness Report 2018](#)
 - UNCTAD's [2019 Digital Economy Report](#)
- The importance of regulation and mechanism to nurture national competition is essential for developing countries to gain from e-commerce
 - UNCTAD [Trade and Development Report 2018](#), *Power, Platforms, and the Free Trade Delusion*
- Concerns over losing trade competitiveness of developing countries and LDCs in digital products
 - [UNCTAD Rising product digitalisation and losing trade competitiveness, 2017](#)
- Concerns over concentration across all layers of the Internet economy and how it affects: use and consumption (total service environments), potential negative impact on competition, consumer choice and innovation, interoperability and standard development, 'deep dependencies' that may give rise to instability, governmental regulation and control.
 - Internet Society – [The Global Internet Report 2019](#): consolidation in the Internet Economy

Alphabet

Larry Page, CEO | Sergey Brin, President | Eric Schmidt, Chairman



NOTE: The list of Google departments is non-exhaustive, as is the list of Google X projects – because they're so secretive.

SOURCE: Google

BUSINESS INSIDER



THE BEZOS EMPIRE



CORE COMMERCE

RETAIL COMMERCE

China

TMALL 天猫

淘宝网
Taobao.com

农村淘宝
cun.taobao.com
(Rural Taobao)



(Hema)

银泰商业
Inno Retail

AliHealth
阿里健康

Cross-Border & Global

AliExpress

LAZADA
Effortless Shopping

天猫国际

CONSUMER SERVICES

ele.me

口碑
koubei

Fliggy

WHOLESALE COMMERCE

China

阿里巴巴
1688.com

零售通
LST 1688.com
(Ling Shou Tong)

Alibaba.com

Cross-Border
& Global

LOGISTICS SERVICES

CAI
N!AO

DIGITAL MEDIA & ENTERTAINMENT

YOUKU

UC

阿里巴巴 影业集团
Alibaba Pictures

大麦 domo

阿里音乐
Alibaba Music

阿里集团
Alibaba.com

INNOVATION INITIATIVES

高德地图
amap.com

DingTalk

天猫精灵
TMALL GENIE

PAYMENT & FINANCIAL SERVICES



CLOUD SERVICES

Alibaba Cloud

Potential questions:

- Are developing countries being affected by the unequal capture of value in e-commerce?
- Do proposals being advanced in the JSI mention concrete ways to address inequalities?
- Do they propose SDT provisions?
- Will developing countries and LDCs be able to take measures to address inequalities on the national level in accordance with their needs?
- Is an inter-agency plan being designed to help MSMEs and leverage local business environments, so that a favorable regulatory framework can effectively translate into increased e-commerce engagement?
- How can proposals reflect the gender perspective /include gender issues ?

Data-related issues



Like the oil barons at the turn of the 20th century, the data barons are determined to extract as much as possible of a resource that's central to the economy of their time. The more information they can get to feed the algorithms that power their ad-targeting machines and product-recommendation engines, the better.

—MIT Technology Review, 2018

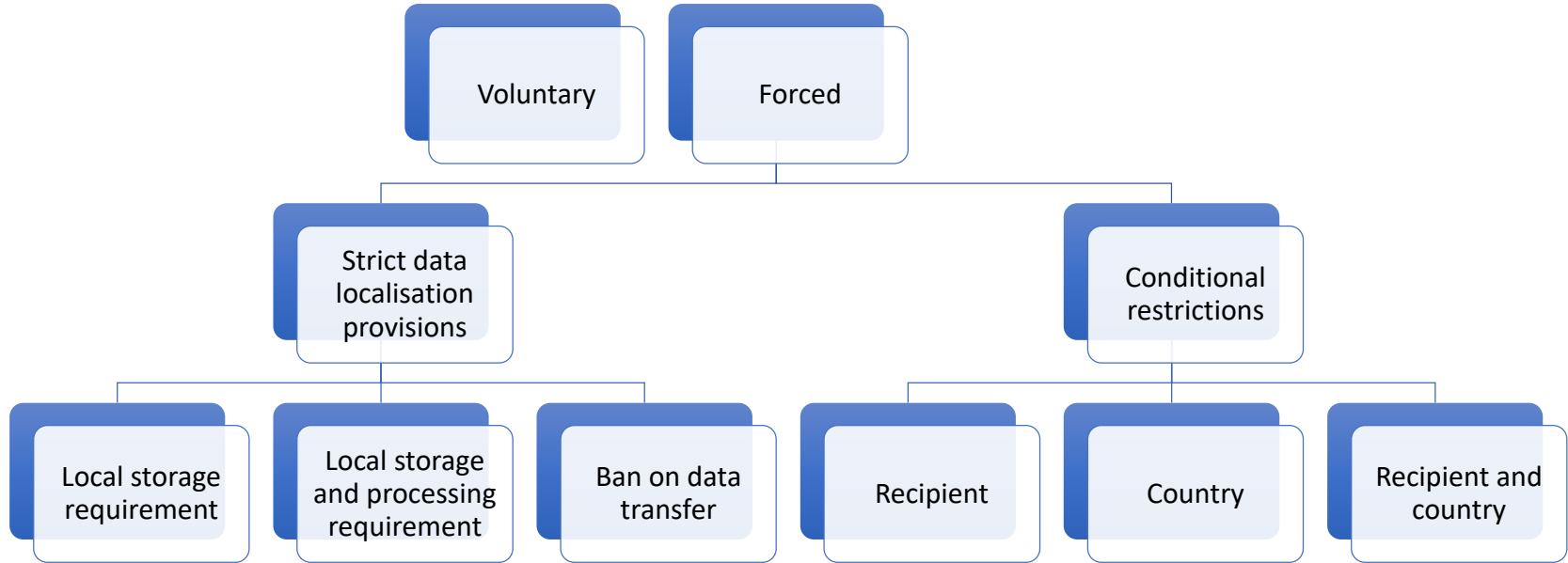
Approaches to data governance



Observations from the JSI process

- Underlying tension between these different regulatory approaches
- Lack of definition/taxonomy on the types of data that members would like to tackle in their discussions
- Lack of a preliminary identification of topics that could be productively discussed at the WTO and others that would be better addressed in other venues.

Data localisation – a typology



Source: Ferracane, 2017

- Australia prohibits the transfer of personally identifiable health records.
- Switzerland requires the prior consent of data subjects before financial records can be transferred across borders.
- Some Canadian provinces require that some government institutions store personal data domestically.
- South Korea prohibits the storage of mapping data on servers outside the country.
- Vietnam makes it mandatory for every online service provider to keep a copy of all Vietnamese data on a local server, so national authorities can access it if needed.

Potential questions

- Are countries comfortable with the approach that the free flow of data is the general rule and data localisation is the exception?
- Which policy objectives are motivating data localisation (ex. national security, privacy, law enforcement, tax enforcement, 'digital industrialisation')?
- Which type of data localisation is more adequate to achieve the objective?

Provisions on access to the source code

```
505         self._headers_buffer = []
506         self._headers_buffer.append("%s %d %s\r\n" %
507             (self.protocol_version, code, message)).encode(
508             'latin-1', 'strict'))
509
510     def send_header(self, keyword, value):
511         """Send a MIME header to the headers buffer."""
512         if self.request_version != 'HTTP/0.9':
513             if not hasattr(self, '_headers_buffer'):
514                 self._headers_buffer = []
515             self._headers_buffer.append(
516                 ("%s: %s\r\n" % (keyword, value)).encode('latin-1', 'strict'))
517
518         if keyword.lower() == 'connection':
519             if value.lower() == 'close':
520                 self.close_connection = True
521             elif value.lower() == 'keep-alive':
522                 self.close_connection = False
523
```

- Several trade agreements prohibit governments from requiring the disclosure, transfer of or access to source code as a condition for market access.
 - Ex. The Trade in Services Agreement (TiSA) and the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP).

- Governments checking source code is normal in many countries. In the US, for example, access to the source code is required for:
 - Tax verification
 - High frequency trading
 - Health
 - Car safety (ex. Toyota source code)
 - Gambling
 - Court order disclosure (ex. To prove an IP infringement concerning software)
 - Investigation of anti-competitive behavior (ex. Amazon products being displayed first in the platform). Transfer as penalty, or condition for merger or acquisition.

Potential questions

- Are the existing legal frameworks (ex. TRIPS) sufficiently protecting the source code (ex. Copyright protection and trade secret protection against unfair commercial use)? If not, what aspects are missing?
- If governments cannot require transfer of source code, it is likely they will face difficulties to require technology transfer. What are the consequences for development (ex. TRIMs allow requests for technology transfer in investment)?
- Are exceptions being discussed in the JSI sufficient?

Any other questions or issues?

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