

“The Systemic Impact of the Twin Digital and Green Tech Revolutions in the Indo-Pacific: Toward a New Industrial Policy Race?”

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Digital Trade Governance: Competing Imperatives in the Indo Pacific

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The digital revolution is affecting virtually all aspects of modern life. Trade in digitally delivered services and the data flows that underpin them have increased significantly in recent years—even as there has been a broader slow-down in flows of goods and other kinds of services. This makes digital trade and technologies an obvious area of focus for governments seeking to shore up resilient economic growth. States are also concerned with the broader societal, cultural, political and security implications of digital technologies – and this has prompted a range of government interventions.

By its nature, the digital economy is global: much of the hardware involved is the product of global value chains and many of its opportunities and threats – such as digital trade, technological innovation and cybercrime – cross borders. Given this, it might be expected that states would develop national digital policies with an eye to integration into the broader global context. However, recent responses are often siloed and inward-looking.

State responses to the digital revolution can be seen across a number of domains. First, there is a renaissance of “industrial policy” when it comes to the hardware of the digital revolution. The US, Europe and China are increasingly focused on achieving greater security of supply in strategic technologies. This includes hardware components, critical materials and technologies such as semiconductors and artificial intelligence; and digital infrastructure including data centres and networks, and submarine cables. States are deploying a combination of regulatory levers, such as export or investment restrictions, and subsidies.

However, “industrial policy” in the digital economy arguably goes beyond traditional tools such as subsidies, and traditional sectors such as manufacturing. While the production of strategic technologies is important to the digital revolution, so is data. In parallel with the increasing focus on digital technologies, states are also increasingly active in regulating data flows.

States may be motivated to intervene by a number of different factors. In some cases, there may be economic drivers. Some states’ regulatory responses seek to facilitate growth in digital trade by creating more enabling environments for data flows. In other cases, states may curb data flows to protect infant industries.

In short, economic profile can shape policy design — for example, whether a country is a large digital services exporter (such as the US) and so favours free flows of data; focused on large domestic markets (the EU, India), so more interested in protecting domestic interests or public policy concerns; or primarily an exporter of digitally-facilitated physical goods trade (China), so less interested in enabling digital services. Others may have an interest in their small businesses being able to operate in global markets or source competitive digital imports more easily (for example, Singapore, Australia or New Zealand).

In other cases, states may desire to regulate data flows for public policy reasons, such as consumer protection, privacy or human rights, enforcement of intellectual property protection, cybersecurity

or law enforcement. In still others, a primary motivation for regulating data flow may be for authoritarian political purposes, seeking to exert control over populations.

States often attribute different levels of importance and priority to each of these factors—and these attributions can shift over time in response to the international context, such as increased regional geopolitical tensions. Even where regulatory interventions may not have an economic rationale, they may nevertheless have an impact on digital trade flows or economic growth.

Governments are prioritising regulatory action in this space: since the start of the pandemic, the Digital Trade Alert identified more than 3,000 regulatory interventions and has characterised the current trend as “regulatory overdrive”. Many of these regulatory interventions are domestic rather than international, but there has also been significant growth in cross-border regulation through trade agreements. Overall there is increasing fragmentation in digital regulation.

The three largest digital economy actors—the United States, China and the EU—have been characterised as the three “digital kingdoms” (Gao), “data realms” (LeBlond and Aaronsen) or even “digital empires” (Bradford). They each take a different approach to regulating cross-border data flows, prioritising, respectively, business interest in free data flows, authoritarian control of data flows, and safeguarding personal data protection as a fundamental human right.

However, small and mid-sized states in the Indo-Pacific have also been active in developing more innovative approaches, blending both economic and geostrategic factors in doing so. Japan has been influential with its “Data Free Flow with Trust”, now integrated into G7 policymaking. Another important trend is the emergence of Digital Economy Agreements (DEAs). The development of DEAs has been led by Singapore, along with a range of other small states. These states include New Zealand, Chile, Australia, Korea, the Association of Southeast Asian Nations and the United Kingdom.

While the innovative DEA approach draws on the core US template for cross-border data flows, it also mandates regulatory cooperation on a much wider range of topics than the trade agreements that preceded it – reflecting a broader conceptualisation of “trade in the digital economy”. These topics range from elements of digital trade facilitation such as e-payments or paperless trade, to frontier areas of digital trade governance such as artificial intelligence and even infrastructure.

While these DEAs are “trade” agreements, they potentially enable states to address a broader set of concerns, including those where more classical “industrial policy” is being deployed, such as artificial intelligence or submarine cables, in a cross-border setting.

This model is arguably starting to influence the approach of larger states. For example, China is seeking to accede to one of the new DEAs, the Digital Economy Partnership Agreement. The new US regional initiative, the Indo-Pacific Economic Framework (IPEF), will include a number of DEA-like elements, including seeking to meet objectives of fostering “inclusive, sustainable growth of the digital economy”, “responsible development and use of emerging technologies”, “protecting the rights and interests of our diverse communities” and supporting small businesses in digital trade.

At least in the short term, however, the growth in the number of new DEAs may lead to greater fragmentation, rather than coherence. This could be characterised as the emergence of a new “digital noodle bowl” – akin to Jagdish Bhagwati’s “spaghetti bowl” of diverse and entangled preferential trade agreements creating discrimination and confusion.