

International Trade Commission Releases Comprehensive Study on the Role of Digital Trade in the U.S. and Global Economy

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The U.S. International Trade Commission (ITC) has released the first of two reports concerning digital trade in products and services that are delivered via digital networks both in the United States and abroad. The 300-page report also examined the barriers to cross-border trade for U.S. companies.

Digital trade is one of the most rapidly growing segments of the U.S. economy. U.S. exports of digital goods and services increased from \$282 billion in 2007 to \$356 billion in 2011. In addition, the United States enjoys a large digital trade surplus, as U.S. digital trade imports in 2011 totaled \$221 billion.

In spite of this strong growth, the ITC report identifies many nontariff measures that operate as barriers to digital trade. In particular, the ITC identified forced localization rules, censorship, conflicting data privacy and protection rules, and poor intellectual property protection as the most significant trade restrictive measures.

- **Forced localization** rules have compelled companies to conduct certain digital trade-related activities within a country's borders. For example, these localization rules may require data servers to be located in-country, require local content, and establish government procurement preferences and technology standards that favor local digital companies.
- **Online censorship** of digital content and platforms is "pervasive and growing," according to the ITC report, with China and Vietnam's content review systems identified as particularly onerous.

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Practice Areas

International Trade

- **Piracy** - Representatives of the software, music, movies, literature, and video games industries identified internet piracy as the single most important barrier to digital trade for their industries.
- **Privacy** - All digital industries reported that requirements for data privacy and protection impose substantial costs to their business operations, particularly for small and medium-sized enterprises.

Several trade agreements currently being negotiated, such as the Trans-Pacific Partnership (TPP), the Trade in Services Agreement (TISA), and the U.S.-EU Transatlantic Trade and Investment Partnership (TTIP), provide important opportunities to negotiate removal of these trade barriers and to level the playing field for U.S. companies that already have a competitive advantage.

Wiley Rein's Trade and International Telecommunications Practices are closely monitoring trade negotiations such as TPP, TISA, and TTIP, and advising clients on how to eliminate barriers to trade in a variety of sectors, including digital trade.