

ANALYTICAL ESSAY

**The International Trade Regime and the
Quest for Free Digital Trade**

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We highlight the technological contingency of international trade rules and how

in building transnational business coalitions ([Sell 2003](#))

mandates ([Nye 2014](#); [Raymond 2016](#)). In 2011, the World Summit on the Information Society (WSIS) defined internet governance as “the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that

Table 1. Lobbying spending by some ICT/technology firms and industry associations, US\$ million

Company	2011	2012	2013	2014	2015	2016	2017	2018
Google/Alphabet	9.68	18.22	15.80	16.83	16.66	15.43	18.37	21.74
Amazon	2.22	2.50	3.46	4.94	9.44	11.35	13.00	14.40
Facebook	1.35	3.85	6.43	9.34	9.85	8.69	11.51	12.62
Microsoft	7.34	8.09	10.49	8.33	8.49	8.71	8.66	9.59
Apple	2.26	1.97	3.37	4.11	4.52	4.67	7.15	6.68
Alibaba	0.1	0.46	0.43	0.45	0.41	1.02	2.01	2.74
Uber	–	–	0.05	0.20	0.47	1.36	1.83	2.31
Salesforce	0.11	0.42	0.44	0.44	0.63	1.25	2.10	2.10
eBay	1.63	1.56	2.24	1.56	1.56	2.15	1.82	1.65
Expedia	1.22	1.34	1.39	0.92	1.16	0.77	0.80	1.37
Netflix	0.50	1.02	1.20	1.26	1.32	0.80	0.80	0.80
Yahoo	2.47	2.75	2.78	2.94	2.84	2.45	n/a	n/a

a point where a majority of their customers were abroad, and they hadn't actually formulated trade policies, which is a pretty amazing thing, when you think about it.

So, around, say within the last eight years, business constituencies started to engage with the government. And, you can see the beginnings of that in things like the National Trade Estimate comments, where companies, business associations would show up filing comments saying, "Hey, we're a really big part of the economy. We're very successful exporters, you should care about us for those reasons, we create jobs, we generate value, and we're encountering these issues abroad."

Much of the impetus for tackling digital trade issues within international trade regime emerged from these large technology firms (and supported by a number of technology associations who represent various groupings). A number of reports by firms and tech associations have implored the US government to tackle these issues through the trade regime. A 2010 paper by Google argued that "governments should not treat Internet policy and international trade as stand-alone silos, and recognize that many Internet censorship-related actions are unfair trade barriers" (Google 2010, 16). In 2012, the Business Software Alliance (BSA) published a report titled: "Lockout: How a New Wave of Trade Protectionism Is S012,

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Table 2. Key objectives of the digital trade agenda

Objective	Comment
Prohibition of custom duties on digital goods	A commitment that custom duties will not be applied to digital goods such as music, books, software, games, and movies.
Nondiscrimination principle for digital products	Extending the nondiscrimination principle to digital goods and services.
Enabling cross-border data flows	Data flows are crucial for the functioning of the digital economy. Rules in this area include a commitment to free flow of data and an explicit ban on any data localization measures. Free flow of data will also discipline the use of filtering measures.
Ban on access to encryption keys requirement	As encryption is an important tool for maintaining security of

with the United States, with an eye on potentially more interventionist policy.

The United States is leading this campaign through adopting the digital trade agenda and promoting digital trade rules at the WTO and also through other forums. The TPP and TTIP agreements were seen by US trade policymakers

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