



Crafting an Open and Innovative Digital Trade Agenda for Latin America

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Digital trade is vital because the long-term economic prosperity of Latin America will be inexorably linked to the region's level of participation in the digital economy.

Success in the digital economy depends in large part on scale. Digital innovators that have access to larger markets usually do better than competitors with access to smaller markets. Because there is no single, integrated Latin American market, Latin American digital innovators compete with a considerable disadvantage, especially compared with U.S. and Chinese competitors. As such, countries in Latin America, in addition to subgroups within it like the Pacific Alliance, should pursue an ambitious digital trade agenda to accelerate the development of their individual digital economies—but with the overarching goal of a region-wide integrated digital single market (DSM). This digital trade agenda should embrace openness, innovation, and competition within the region—following the model of the Asia-Pacific Economic Community, rather than the more closed and heavily regulated European Union.

Removing barriers to digital trade and enacting similar or compatible frameworks and principles for digital and digitally enabled goods and services would provide the region's firms with the critical economies of scale needed to succeed in the global digital economy. Such an agenda would be grounded in both the region's large Spanish-speaking markets and increasingly connected and tech-savvy businesses and consumers. The risk is that without a shared, ambitious approach, the opportunity for a more integrated Latin American digital economy, from Mexico to Chile, will slip away as countries head in the other direction toward digital protectionism.

To accomplish this bold but achievable goal, Latin American nations should do the following:

- Improve trade facilitation for small packages
- Address broader trade-facilitation issues
- Establish intermediary liability protections
- Enable the free flow of data
- Centralize spectrum management
- Eliminate tariffs on information and communication technology (ICT) products
- Provide more open access to service markets
- Do not regulate online platforms and “over-the-top” (OTT) services as telecom providers

THE IMPORTANCE OF GETTING DIGITAL TRADE RIGHT IN LATIN AMERICA

Digital technologies are changing the nature and composition of international trade. At their heart, digital technologies lower marginal production and distribution costs for firms, while simultaneously broadening and deepening access to global markets. Goods can be purely digital, have an integral digital component, or be enabled by a digital service or intermediary. Meanwhile, technology makes the cross-border provisioning of services easier and cheaper. Digital services are crucial for nearly all businesses that rely on online platforms and cloud computing services to connect with customers and suppliers around the world. Together, these trends of digitalization and the unbundling of services from the geography of production have changed how businesses organize production networks, including through global value chains. E-commerce perhaps best typifies this change in many people’s minds, given how it vastly expands opportunity by allowing businesses to buy and sell in a global market.

Digitalization is enabling massive global data flows—from emails, financial transactions, and voice-over-Internet-protocol (VoIP) calls to music, movies, and software. While precise measurements of the economic value of these data flows remain elusive, they do show the growing importance of digital trade to the global economy. One estimate suggests digital trade as defined here constitutes one-fourth of global trade.¹

Individual countries in Latin America, and the region as a whole, should recognize that trade is increasingly digital, and seize the opportunity to maximize the benefits of the digital economy, primarily through a regional digital market. Such an initiative would go a long way toward delivering on the keys to success in the digital economy and digital trade, including large markets that both new and existing firms need; few or no policies artificially raising firm costs; and few or no policies artificially limiting firm revenues. Only through concerted and comprehensive action can Latin American countries hope to leverage the benefits of economies of scale and network economics that come from aligning their domestic markets through greater market access, smoother trade facilitation, and harmonized and interoperable digital policies.

Of course, neither digital technologies nor digital trade are a shortcut to development. But they can certainly help Latin America close the considerable gap to the world leaders in the global digital economy. The challenge facing the region is significant given the multitude of barriers to both digital trade and a digital single market in Latin America. A 2014 study by the Boston Consulting Group into the main factors that prevent consumers, firms, and countries from taking full advantage of the digital economy found that Latin American countries in the study were at a disadvantage with respect to all components: infrastructure, industry, individuals, and content.² To address these issues, governments should foster key enablers of the digital commerce, such as wired and mobile broadband, digital payments, electronic identification, and open data. Obviously, many of these domestic factors affect the development of the region's digital economy. Attention at the regional or global level should not, however, be seen as a distraction from this domestic effort, but rather as complementary. This provides a real opportunity for Latin America.

Many in Latin America look to Europe's efforts to establish a European "digital single market." But the European Union's digital single market should not be the model for Latin America in part because its efforts include broad-based regulatory prescriptions, like the General Data Privacy Regulation (GDPR) that will hold back EU digital innovation.³ Europe's efforts have also floundered in large part because it is home to 24 languages, which makes it harder for a firm in one nation to sell to customers in another.

In contrast, Spanish-speaking Latin American nations have a real advantage: a potentially unified digital market of hundreds of millions Spanish speakers within the region, in addition to more than 437 million worldwide. With easy market access, Spanish-speaking Latin American businesses—including Internet firms—can gain the market access they need to become true global players. And once combined with Brazil into a digital single market they will provide even more advantages.

The alternative to a Latin American digital single market should concern policymakers in the region: There is a real risk that Latin American countries will succumb to nationalist pressures to pursue a "digital protectionist" strategy that will undermine the region's ability to develop a truly competitive and innovative regional digital market. For example, Brazil, Colombia, and others have considered or enacted policies that would force companies to store data locally—a major barrier to digital trade. Other barriers to e-commerce, such as digital trade and poor customs facilitation and legal and regulatory frameworks for platforms and Internet-based services, may not be part of a concerted protectionist strategy, but affect trade all the same. Countries in the region certainly have not embraced digital protectionism to the same degree as China, Russia, or Indonesia, but they do present another model that Latin American countries may move toward if a different, positive model—in the form of a digital single market—is not set in the region. But these nations—especially China and Indonesia—have the advantage of operating in huge markets, which lessens their pressure to gain scale by cooperation.

In essence, Latin American countries must decide between incorporating a China-style “beggar-thy-neighbor” policy of digital protectionism that seeks to gain market share for firms by protecting their own markets, and a more integrated model of working with their neighbors to develop a new framework of rules to support an open, competitive, and innovative digital single market in the region, in order to achieve the critical economies of scale needed for digital trade and economic activity. Latin American countries should realize that the former approach will not work given their smaller size, while the latter is a better strategy to improve local competitiveness and productivity.

The issue of scale is especially important for Latin America’s smaller economies, which, despite the challenges posed by their size, occupy an important niche in the global digital economy. Policymakers need to recognize that there are multiple entry points into the global digital economy, and that size is not the only determining factor to success— as Estonia, Singapore, Sweden, and others have demonstrated in transforming themselves into global technology leaders.⁴ But each of these countries did this by strategically embracing global integration. Latin American countries, or subgroups within it like the Pacific Alliance, need to do likewise.

Thankfully, Latin America’s regional institutions recognize the potential opportunity in building a regional digital market, especially the United Nation’s Economic Commission for Latin America and the Caribbean (ECLAC) and the Inter-American Development Bank (IADB). For example, ECLAC’s “Digital Agenda for Latin America and the Caribbean” is the latest update to a cooperation strategy that has been in place for over a decade.⁵ However, it has been held back by the lack of action in some countries, with gaps emerging between countries in terms of putting in place the domestic policy, infrastructure, and services that act as the foundation for digital economic activity.⁶ If this trend of uneven or limited progress goes on for another decade, the region will have lost the ability to maximize the opportunity afforded by emerging cross-border digital trade and e-commerce. If member countries want to catch up to those frontier digital economies, they need to be proactive in taking similar steps to give their local firms the best possible opportunities, both at home and in foreign markets.

While IADB’s and ECLAC’s ongoing work is encouraging, it also highlights that if the collective region is not prepared to seize the opportunity, ambitious subgroups within it, such as the Pacific Alliance, should lead the way. Chile, Peru, and Mexico are clear leaders given their participation in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Colombia’s engagement in the (now stalled) Trade in Services Agreement (TiSA) and efforts to join the Organization of Economic Cooperation and Development (OECD) are promising signs. The coming years will provide opportunities for these Latin American countries to take the lead in developing an integrated digital market.

By working together, Latin American countries can establish a supportive and interoperable trading framework with their neighbors—and at an even greater scale at the regional level.

THE STATE OF THE DIGITAL ECONOMY AND TRADE IN LATIN AMERICA

Latin America’s digital economy is diverse, but the extent to which its countries recognize, adapt, and capitalize on the opportunities afforded by digital technologies varies wildly. While this is not unique to Latin America, reflecting the state of many economic issues that would benefit from greater regional action, the dynamics of digital economics—especially those of economies of scale and network effects—mean collective inaction would be especially costly for the region. Digital transformation will not wait at the border beholden to typical government policy action or inaction, like a shipping container on a truck. Policymakers need to avoid the slow status quo approach and focus on digital issues if they want the region and its citizens to be competitive against firms from countries and regions who have made digital issues a priority.

Table 1: State of Latin America’s Digital Economy⁷

Country	Population (2018)	GDP Per Capita PPP (U.S. dollars, 2018)	Mobile BB Subscriptions Per 100 Inhabitants (2017)	Fixed BB Subscriptions Per 100 Inhabitants (2017)
Argentina	44,570,000	\$20,610	80.0	17.8
Belize	396,000	\$8,467	14.2	6.0
Bolivia	11,248,000	\$7,940	76.5	3.3
Brazil	209,205,000	\$16,112	90.2	13.7
Chile	18,576,000	\$25,891	88.2	16.9
Colombia	49,834,000	\$15,021	48.8	12.9
Costa Rica	5,028,000	\$17,645	116.6	15.2
Ecuador	17,023,000	\$11,732	53.0	10.1
El Salvador	6,398,000	\$8,388	56.1	6.9
Guatemala	17,263,000	\$8,414	16.4	3.1
Guyana	782,000	\$8,525	26.3	8.3
Honduras	8,425,000	\$5,817	24.5	2.5
Mexico	124,738,000	\$20,645	63.6	13.3
Nicaragua	6,292,000	\$5,683	30.4	3.4
Panama	4,159,000	\$26,794	60.7	10.9
Paraguay	7,053,000	\$13,471	47.9	4.1
Peru	32,168,000	\$14,252	64.2	7.2
Suriname	590,000	\$15,363	46.9	12.6
Uruguay	3,506,000	\$23,267	112.0	27.5
Venezuela	29,187,000	\$10,968	50.1	8.2

Latin America has the solid platform to be a competitive regional digital economy (see Tables 1 and 2). It has a large, dynamic, and increasingly Internet-connected population of users, many of which have shown early signs of taking to e-commerce and digital trade. It has only two major languages. A number of local and foreign firms recognize the region's potential and are working to come up with innovative solutions to get more people and organizations engaged in the digital economy and trade.

The growth in digital adoption should act as an example to policymakers of what is possible when the right domestic and regional policy frameworks are put in place. Internet penetration in Latin America and the Caribbean more than doubled from 20.7 percent to 54.4 percent between 2006 and 2015.⁸ An estimated 33 percent of people currently have Internet-connected smartphones.⁹ This is sizable, as Latin America has more than 700 million mobile telephone connections, with over 320 million unique subscribers. Many of these countries rank among those with the heaviest users of global social networks worldwide.¹⁰ In Latin America and the Caribbean, the average Internet user spends 21.7 hours per month online (an hour less than the global average of 22.8 hours). At the top of regional rankings, Brazilian users spent 29.4 hours, and Uruguay 32.6 hours, online each month.¹¹

This connectivity and engagement obviously feed into e-commerce and digital trade, with the number of online shoppers increasing from 104 million in 2014 to 127 million in 2017. It is projected to reach over 150 million in 2019, representing 45 percent of all Internet users.¹² E-commerce is rapidly growing as more local and foreign e-commerce businesses set up operations in the region and develop better payment methods—as more of the population becomes “banked” and logistics get quicker and cheaper. Business-to-consumer (B2C) e-commerce sales are forecast to rise from \$63 billion to \$87 billion.¹³ B2C e-commerce in Latin America has grown over five times faster than overall trade, at about 20 percent per year from 2012 to 2017.¹⁴ However, this growth is from a small base, and the region lags well behind leading digital economies. In 2013, B2C e-commerce in the region was still only 2 percent of total retail, which was less than half that of North America and Western Europe at the time.¹⁵ Individual countries had similarly low rates of B2C e-commerce, such as 0.5 percent of total retail in Peru and 3.1 percent in Brazil.¹⁶ Furthermore, the region's share of the global e-commerce retail market is set to diminish (as other regions grow even faster), despite already being quite small (about 4 percent).¹⁷

Table 2: State of Latin America's Digital Trade¹⁸

Country	% of Population Having Mail Delivered at Home	% Age 15+ With a Credit Card	% Age 15+ With a Debit Card	Days to Clear Direct Exports Through Customs
Argentina	93.0	24.0	41.4	6.5
Belize	90.0	10.7	24.0	6.2
Bolivia	35.0	7.2	28.0	9.7
Brazil	85.9	27.0	59.3	16.4
Chile	91.7	29.8	59.8	10.8
Colombia	99.6	13.9	25.7	12.5
Costa Rica	99.5	13.9	51.7	10.0
Ecuador	52.2	8.7	28.4	9.2
El Salvador	88.0	5.7	18.9	2.9
Guatemala	95.0	6.6	15.9	4.5
Guyana	90.0	-	-	11.5
Honduras	60.0	4.5	16.9	10.1
Mexico	87.6	9.5	24.6	7.0
Nicaragua	65.0	4.9	15.7	5.2
Panama	37.0	8.0	29.3	7.6
Paraguay	91.0	6.6	15.4	8.6
Peru	88.0	11.6	27.9	8.4
Suriname	75.0	-	-	12.6
Uruguay	94.7	40.6	55.8	2.1
Venezuela	100.0	28.8	66.1	18.4

Small packages trade should be able to leverage broader e-commerce growth in the region, yet retail e-commerce sales were only 2.2 percent of total retail sales in 2015. Only 24.8 percent of people in Latin America made a purchase over a digital channel in 2015 (as compared with 64 percent in the United States).¹⁹ The average number of annual online transactions per capita in Latin America in 2016 was the lowest worldwide, with only 9.2 annual online transactions.²⁰ Indicative of the potential, however, Latin American companies with cross-border sales reported an average \$26 gross revenue receipts for each dollar invested in international sales.²¹ Part of this growth was driven by traditional retailers using popular e-commerce platforms, including Mercado Libre, Alibaba, and Amazon. Yet, again, highlighting the progress that needs to be made is the fact that there are no Latin American firms among the world's 20 largest online retailers.²² However, showing the potential for scale, the most popular online retailers in Latin America (in 2016) were from the region: Mercado Libre had 50 million unique visitors in January 2016, followed by B2W with 18.68 million, and Nova Pontocom with 18.5 million.²³

Moreover, web traffic analysis in Latin America shows users in the region are using their time online to access many local providers of visual content, such as Televisa in Mexico, Globo in Brazil, Grupo Clarín in Argentina and El Mercurio in Chile—and alongside major foreign providers such as Google and Facebook. Latin America’s video-streaming market is dominated by Netflix, with 7.3 million subscribers, followed by Google Play with 3.1 million and Apple TV with 1.8 million.²⁴

Converting Latin America’s Potential Scale to Actual Value: The Critical Role of Economies of Scale and Network Effects

The prior section highlighted the need for Latin American policymakers to do more to fully convert the region’s (potential) economies of scale to actual economic value. More than most industries, digital and digitally-enabled industries benefit from scale, in part because as software-driven industries, firms must spend money to create initial business offerings (e.g., software, websites, etc.). But once digital systems are built, the marginal cost of the next product or service is usually quite low. This means firms that can gain more customers will do better than firms with a smaller customer base—and they will be able to provide lower-cost goods and services and more innovation.

Obviously, one of the biggest challenges to greater scale for digital and digitally-enabled firms is large segments of the population not yet being online, as Internet use is not as high as in leading nations. Although this is due to many factors, policymakers should realize that policies to spur Internet adoption are important not only to help individuals gain opportunity, but to build markets that help domestic firms.

Removing barriers to digital trade should also be part of broader government effort to develop a more integrated digital economy. Technology has changed the nature of trade and how firms achieve economies of scale. Once confined to advanced economies and large multinational companies, technology has opened the door to digital trade for developing countries, small companies and startups, and millions of individuals. Startups often are “born global” over the Internet, meaning they do not have to follow the linear progression of moving from local to state to national to international markets, but rather can sell globally from day one.

Within this transformation, Internet platforms deserve special attention. While Internet platforms are new, market platforms are not (think of newspapers hosting want ads and shopping malls hosting stores). Internet platforms play a unique role in the global marketplace in how easily and seamlessly they bring many users together and reduce one of the most important barriers to international trade: transaction costs. And because it reduces communication costs, scales easily, and is increasingly available anywhere all the time, the Internet has enabled the rapid rise of companies whose business model is to provide a platform that lets others create value.

Economies of scale are critical for online platforms, especially those in smaller markets, as they are typically characterized by a cost structure that has relatively high fixed costs (e.g., research and development, technology, software, and staff) and relatively low variable costs.

Firms can now use a full suite of turnkey Internet services to easily and cheaply establish their websites and social media presence, target their services to new markets, understand where consumers are searching for their products, and build a local following for their brand.

Wherever the average costs of doing business are higher, such as in Latin America, where there are higher-cost payment services, more-restrictive customs clearance, and more-limited delivery services, these economies of scale are even more critical.

Technology also helps reduce fixed costs. The ability to lease cheap processing power and storage capacity in the cloud lowers costs of starting a new digitally-enabled business. Moreover, the Internet, enabled by search and social media, helps many more customers find businesses, while also facilitating cheap and more-targeted advertising to help businesses get in front of consumers more likely to be interested in their products.

Firms can now use a full suite of turnkey Internet services to easily and cheaply establish their websites and social media presence, target their services to new markets, understand where consumers are searching for their products, and build a local following for their brand.²⁵ Again, highlighting the critical role of economies of scale, the fact that many Internet platforms concentrate on putting buyers and sellers together, rather than on directly providing consumers with the goods or services that they ultimately want, relieves sellers of the need to make large capital investments. This allows firms to use the Internet and other digital technologies, many of which are provided by platforms (e.g., cloud computing services, social media and search advertising, payment systems, and trade facilitation) to quickly and cheaply extend their services to millions of people and acquire large market valuations, in part because there are real network effects that lead to scale.

SUCCESSFUL TECH FIRMS IN THE REGION SHOW THE POTENTIAL FOR GREATER DIGITAL DYNAMISM AND THE ABILITY TO SCALE ACROSS THE REGION.

A report by the Multilateral Investment Fund identified 123 technology-based private companies or “tecnolatinas” that are already worth over \$25 million and that have a collective worth of over \$37.7 billion.²⁶ One famous tecnolatina is Brazil’s Samba Tech, an online video platform whose founder Gustavo Caetano started the Brazil Startup Association, whose membership includes over 4,000 startups and 38,000 entrepreneurs.²⁷ Easy Taxi, also a Brazilian startup, was conceived during Startup Weekend Rio, and is now the most downloaded taxi app in the world.²⁸ Investors and multinationals alike are beginning to take note of the region’s potential, with famous venture capital firm Andreessen Horowitz backing Colombian delivery app Rappi, and the Fandango acquisition of Lima-based ticketing service Cinepapaya. As Latin America further integrates digital technologies into its business landscape, we can expect to see more exciting innovations emerge from the region.

The interrelated concepts of economies of scale and network effects are critical to a growing digital economy. Network effects—the scale achieved when enough people have joined a network to make it beneficial for others to also join—are largely influenced by the number of users. In other words, a platform that brings together sellers and buyers is more valuable to both if it has more of both. Sellers are more attracted to a site that has more buyers, and buyers are more attracted to a site with more sellers.

While more work is necessary to increase the number of Internet users in Latin America, there are still many opportunities to leverage the network effects of those already online. Consider the network effects for a budding e-commerce platform in Latin America facing a classic chicken-and-egg problem: To obtain a critical mass of buyers, the platform needs a critical mass of suppliers. But to attract suppliers, the platform needs a lot of buyers. Too few sellers, and buyers will look elsewhere; too few buyers, and sellers will go elsewhere. Network effects depend on the balance and proportion of each group to the other—hence the need for scale. However, once these network effects are achieved, growth follows an exponential, rather than linear, trajectory.²⁹ A motivating factor for policymakers in the region, especially those from smaller markets, is that there is a window of opportunity to help local firms achieve network effects in their respective sectors—as once a certain number of buyers and sellers have been established within a marketplace, it becomes harder for a rival to lure them away. But that is much more difficult to accomplish when companies are only able attract buyers and sellers from within their own national economy.

ICT and a Digital Single Market Enable Scale, and Scale Enables Productivity

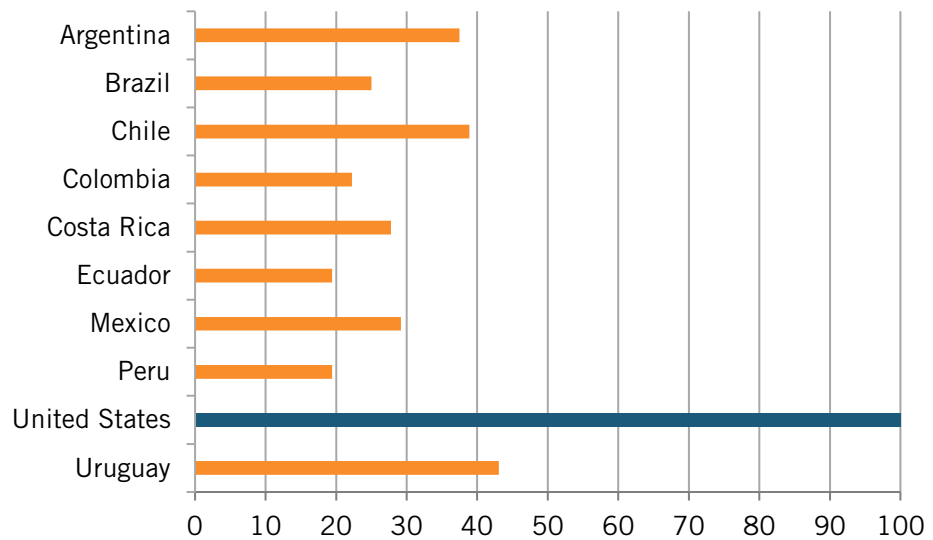
The reason policymakers should focus on ICT and a digital single market is together, they enable scale (as explained in the prior section)—and scale enables productivity.

Productivity growth should be governments' principle economic policy goal, as without increased productivity, raising living standards in a sustainable way is impossible.

Productivity is the key to income growth. As Ocampo, Rada, and Taylor wrote, “Historically, labor productivity increases have been the major contributing factor to growth in real GDP per capita.”³⁰ Rath and Madheswaran wrote, “Labour productivity growth [is] the only route to enhance labour welfare in the long run.”³¹ All nations, even the wealthiest, need higher productivity.

The problem with Latin America is it lags well behind in productivity. As the IADB's research into productivity in Latin America shows, slow productivity growth is at the root of the region's overall weak economic performance and inability to catch up to neighbors such as the United States. Between 1960 and 2011, total factor productivity grew at 0.78 percent annually in the United States, while it stagnated in Latin America at -0.01 percent.³² Since 1960, income per capita of the typical country in Latin America declined by 16 percent relative to the rest of the world, and relative productivity declined by 18 percent. Total factor productivity for Latin America and the Caribbean halved relative to the typical East Asian country.³³ Raising Latin American and Caribbean living standards requires much faster productivity growth.

Figure 1: Latin American Output Per Hour Worked, 2018 (Indexed: United States = 100)³⁴



This report deals with two key contributors to productivity: the adoption of ICTs, and the economies of scale. As described later in this report, Latin American countries should cut tariffs on ICTs as part of a plan to develop a dynamic domestic and regional digital economy—as cost is a major determinant of diffusion and adoption. One reason for Latin America’s poor productivity is the diffusion and use of ICTs still being relatively low. As per the prior section, technology allows scale and efficiency, which improves productivity, as ICTs are “general-purpose technologies”—just as electricity and the steam engine were. This is why ICT capital has a three to five times larger impact on improving productivity than non-ICT capital.³⁵

An integrated digital single market in Latin America would provide critical economies of scale for firms to grow in size and thus become more productive. When it comes to productivity, “big is beautiful,” as in most nations small firms are significantly less productive than large ones within the same industry—in part because they have fewer economies of scale when they invest in capital stock, including ICT.³⁶ In the United States, workers in large firms earn 57 percent more than workers in companies with fewer than 100 workers—and large firms also injure and lay off their workers less, are more innovative, and export more. In Europe, the economies with the highest productivity—Germany, Switzerland, and the United Kingdom—have the smallest proportion of workers in small firms.³⁷ On the other hand, nations with the lowest productivity, such as Greece, have the highest percentage of small firms in Europe.³⁸ In reality, for most nations, shifting more output to larger firms away from small or micro ones would boost productivity. An integrated digital single economy provides the scale for firms to do just that.

DIGITAL TRADE AGENDA PRINCIPLES AND PRIORITIES

There are many policies affecting technology that inadvertently stifle large-scale digital adoption and engagement in the region. The Internet economy can give rise to new business models that would benefit consumers, but not when incumbents control market entry or when governments enact barriers to data flows, such as through forced data localization. E-commerce can increase access to global markets, but not when delivery channels are unreliable, and products are stuck at customs. Latin American countries should embrace a set of trade principles, policies, and provisions that allow digital innovation to flourish across the continent. These principles require countries to reject protectionist policies that make Latin American businesses less competitive and restrict digital adoption so as to enable digital transformation.

Improve Trade Facilitation for Small Packages

E-commerce platforms like Mercado Libre, Amazon, and Alibaba are some of the defining faces of the Internet. For traditional retailers, the Internet can be used to adapt to consumer preferences, in addition to providing online access. Meanwhile, micro, small, and medium-sized businesses (SMEs) can be third-party sellers on these platforms, thereby providing them access to global markets, or set up their own websites or platforms to sell small packages. However, these modern businesses still face traditional market barriers, such as the cost, time, and ease of getting these packages to their customers in another country. Trade liberalization has reduced tariffs and quotas, propelling dramatic growth in trade in recent decades. But it's now at a point in many countries where logistics costs are greater deterrents to trade than remaining tariffs.³⁹ The frictions associated with trade logistics are critical factors for small package trade, which is essentially SME trade, as they do not have the scale, resources, or administrative capacity to navigate legal and regulatory issues across multiple jurisdictions.

Companies in Latin America face significant barriers in getting packages into and out of a country.⁴⁰ Dan March, the CEO of WCA, the world's largest network of independent freight forwarders, states that "the biggest challenge to cross-border B2B and B2C growth [in Latin America] is logistics. Complex Customs compliance, importation, and rapidly changing governmental rules have ensured cross-border e-commerce shipments are expensive, slow and poorly integrated into the domestic delivery market."⁴¹ In an IADB survey of 263 companies (from multiple sectors) that used its ConnectAmericas social network for businesses in Latin America, 60 percent found poor logistics in other markets a high/important/medium obstacle, while just over 50 percent found that compliance with customs requirements was a high/important/medium obstacle.⁴² Trade compliance costs and duties are especially problematic in e-commerce because online sellers tend to export to many markets and are thereby running into a diverse range of trade-facilitation regimes.

The rapid growth of certain regional e-commerce platforms highlights the potential for the development of a bigger and more dynamic regional digital economy. For example, Mexico-based e-retailer Linio is a leading e-commerce platform in Mexico, Colombia, Peru, Venezuela, Chile, Ecuador, Panama, and Argentina. It has tripled its sales in the

region in the last three years, and has increased its product portfolio by almost 500 percent, reaching more than 3 million products in the region. This growth is due to the opening of its platform to sellers from all over the world, especially from Asia, the United States, and Europe. In just one year, Linio went from having 2,000 sellers to more than 10,000. About 40 percent of Linio's orders are international.⁴³ Likewise, Mercado Libre is one of the largest e-commerce platforms in Latin America, providing users with a complete portfolio of services (such as payment services), which has made it a market leader in Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Peru, Uruguay, and Venezuela (based on the number of unique visitors and page views). In 2017, Mercado Libre estimated it matched around 50 million different buyers and sellers, up from 38 million in 2016.⁴⁴

Reducing border-related barriers to small package trade would help the region's many SMEs—which make up more than 90 percent of firms—become more competitive and productive.⁴⁵ Firms in the region are starting to realize the value of platforms for trade. Of the firms in the same IADB survey, cross-border online sales represented a significant 39 percent of all sales, of which over half relied on their own or third-party platforms such as Mercado Libre, Alibaba, or Amazon to export.⁴⁶ However, there is significant room for growth, as fewer than 15 percent of SMEs in Latin America export—and these exporters are undiversified, typically only exporting two products to one market.⁴⁷ Addressing barriers to SME-based small packages trade holds broader economic significance—SMEs that engage in trade employ more people, pay higher wages, achieve higher sales, and are more productive than SMEs that do not.⁴⁸ Exporting SMEs also have a higher chance of surviving. Exporting helps SMEs learn, innovate, diversify sources of revenue, improve capacity utilization, and improve overall competitiveness. In addition, helping SMEs diversify their exports drives further firm productivity.⁴⁹

Address Broader Trade Facilitation Issues

Trade facilitation issues matter for e-commerce as poor or weak infrastructure, custom procedures, and logistics competition has a direct impact on trade costs, which especially for SMEs, can quickly erode profits from exports. Higher trade costs are one of the reason why there are not more firms exporting a greater variety of goods to more foreign markets in Latin America.⁵⁰ Thereby, improving the cost, speed, and efficiency of border procedures—whether through capacity building, harmonization, digitalization, or transparency—addresses a real-world barrier to digital trade.

The impact that Latin America's poor trade facilitation profile has on raising trade costs are well known and been the subject to a growing range of studies and regional efforts, including by Pacific Alliance countries.⁵¹ The IADB has identified poor infrastructure, excessive red tape, and a lack of shipping/delivery competition as a key barrier to Latin America's ability to boost intra-regional and global trade. These are some of the main factors that determine at-the-border trade costs.⁵² World Bank Enterprise Survey data shows that an average of 20 percent of firms in Latin America (11.3 percent in Pacific Alliance countries) identify customs and trade facilitation as a major constraint (as

compared to 4.3 percent in developed countries), especially for SMEs.⁵³ Time equals money for small packages trade, and when the wait times for customs clearances in Latin America are long, these costs become a significant barrier to trade. For Latin American economies it takes over twice as long to ship intra-regionally (about 23 days) as it takes to ship among advanced economies (about 9 days).⁵⁴ Each day adds considerable costs—studies estimate that each extra day a good is in transit is equivalent to 0.6–2.3 percent ad valorem tariff.⁵⁵

The potential gains are significant. A recent World Economic Forum (WEF) study estimated that if Mexico, Brazil, and the Latin America and Caribbean region improved their trade costs half way to global best practice, exports would increase 11.2 percent, 29.7 percent, and 37.9 percent, respectively.⁵⁶ The firm-level impact of reducing cases are significant: in a pilot study, eBay worked with a group of SMEs to help remove key trade cost barriers, for example, by providing transparency on fully landed costs and delivery dates and by handling shipping, which helped these firms expand export/imports by an estimated 60–80 percent.⁵⁷

Latin American countries need to recognize that trade facilitation is a crucial determinant of trade costs, especially for SMEs, and that much more needs to be done to reduce these costs if they want their firms to maximize their ability to use technology and e-commerce in today's global economy. Latin American countries, especially Pacific Alliance countries, need to inject greater political will and resources to addressing these issues, including through regional trade agreements. WTO's Trade Facilitation Agreement is a welcome step in the right direction, but more needs to be done, especially to help small-package e-commerce.⁵⁸ There is a growing body of research, and a range of regional and global initiatives and forums—including regional and development banks—to complement future work on this, such as through a regional trade agreement.

There are key overarching actions and principles a number of Latin American countries may already have adopted that would help improve trade facilitation. Some of these actions fall within the scope of regional and bilateral trade agreements, while others are considered complementary efforts.

- **Leverage existing efforts and tools.** Latin American countries should sign on to WTO's Trade Facilitation Agreement and join regional initiatives to further simplify and expedite the clearance of e-commerce shipments through targeted customs, tax, and market-access measures. Latin American countries should engage with regional and global development organizations to access the resources and expertise these organizations have to address local and regional trade facilitation issues. As at March 2018, Latin American signatories include Nicaragua, Panama, Paraguay, Brazil, Honduras, Mexico, Peru, Uruguay, Chile, Guatemala, Costa Rica, Argentina, and Bolivia.

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- **Improve coordination.** Each country should form a national trade facilitation committee to coordinate among the public and private sectors and other stakeholders. Having such a committee in place is already an obligation under the TFA.⁵⁹
 - **Improve transparency.** A simple starting point is to ensure buyers (regardless of their country) know and are able to access the rules and regulations in place online such that they are able to comply with them and pay any applicable duties and taxes. A related idea is to develop country- and region-level repositories of information to help firms identify, compare, and quantify critical issues related to customs, transportation, and trade compliance.⁶⁰
 - **Improve data and information exchange.** There needs to be a clear channel for the digital flow of information between e-commerce stakeholders and the customs administration. World Customs Organization (WCO) responses from Latin American countries indicate that postal services often do not have the necessary mechanisms to exchange information electronically. Seamless communications mean customs is able to gather all relevant information regarding each shipment, which in turn allows for faster clearance of a large number of legitimate shipments while at the same time controlling illicit trade. Members in the region report to WCO that the transmission of express manifests takes place after the arrival of the shipments. One mechanism is to use a memorandum of understanding agreement between e-commerce operators and customs (either within a single country or between multiple) to govern cooperation and data exchanges between them.
 - **Provide market access for logistics services, such as express delivery services, within trade agreements when access is not already provided.** Foreign providers can spur greater competition and efficiency in local markets and act as a facilitator for local exporters to get their goods to customers around the world. Given the crucial role logistics services plays, a proactive effort to help address issues for entry and operation would help these firms play a role in spurring greater trade.
 - **Simplify returns processes, certificates of origin, and duty drawback procedures—and streamline VAT collection on trade.** To encourage more robust digital trade, especially for e-commerce, there should be minimal barriers for buying and selling goods online in the region.

Establish Intermediary Liability Protections

Every time users conduct searches on the Internet, engage with friends on social networks, or make e-commerce purchases, they are using online intermediaries. Internet intermediaries play a key role in connecting users, information, and services by hosting, transmitting, and indexing content. In many cases, online intermediaries are merely conduits of information for users, and it is unreasonable to demand that they have the capabilities or capacity to monitor and approve all user activity. Indeed, the threat of holding online intermediaries responsible for the actions of the users on their platform—

whether for libel, defamation, child pornography, terrorism-related materials, hate speech, blasphemy, copyright infringement, breaches of privacy, or fraud—undermines the ability of these platforms to scale globally. Whether these intermediaries are directly engaged in digital trade (e.g., e-commerce, auction sites, free-lance work sites), or indirectly facilitate trade (e.g., search engines, social networks), there needs to be a clear and balanced legal framework of rights in the forms of liability limitations and responsibilities in handling valid legal requests regarding user actions. When a country does not find the right balance, or simply does not have a legal framework in place, it can act as a barrier to digital trade and e-commerce as it leaves these crucial intermediaries open to unreasonable legal liabilities.

Many countries want local firms involved in digital trade to become competitive in the global digital economy. In looking at world leaders, such as the United States, policymakers from many countries only see Google, Facebook, and other Silicon Valley leaders, and wonder how they can create their own copycat companies or versions of Silicon Valley—when in fact, from a policy perspective, they should be looking at the framework of laws that created the ecosystem that allowed these firms to emerge. Intermediary liability limitations in the United States have allowed Silicon Valley Internet firms to focus on improving and expanding features and attracting and retaining customers, rather than policing their services for fear of lawsuits.⁶¹ This policy has provided the foundation for companies to build platforms for millions of users without incurring unreasonable legal risks. Notably, these policies do not allow intermediaries to avoid complying with the law or responding to legitimate government requests, such as court orders, injunctions, or other legal measures. Instead this balanced framework ensures companies are accountable for their own activities and users are responsible for their own conduct on these platforms.

In the United States, the key non-intellectual property-related law is Section 230 of the Communications Decency Act (CDA), signed into law in 1996. Section 230 of the CDA provides intermediary liability protection for defamation and other civil claims in order to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services.”⁶² It addresses the treatment of online service providers by outlining that “no provider or user of an interactive service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁶³

In the European Union, the key law is the E-Commerce Directive, enacted in 2000, which similarly aimed to establish legal certainty for intermediary service providers.⁶⁴ It holds that the person or entity responsible for posting content or goods for sale has legal responsibility for the content or goods in question, not the intermediary.⁶⁵ However, the Directive is broader as it covers liability for defamation, breach of privacy, intellectual property infringement, and criminal laws.⁶⁶ The corresponding side of this protection from liability is a responsibility to act when notified of certain issues. The Directive imposes a knowledge requirement on intermediaries about these issues, while clarifying that intermediaries generally do not have a duty to monitor their networks.

Without intermediary liability protection rules designed for the digital economy, courts can—and have—imposed substantial penalties on Internet intermediaries for the conduct of their users. The lack of a clear legal framework on this critical area of potential liability deters investment and market entry by Internet-based firms as it increases the likelihood they could face more litigation by plaintiffs in local courts. Such an outcome would deny local firms, especially SMEs, from using foreign platforms to access global markets. It would also deter local startups. Conversely, a clear legal liability framework would help local intermediaries, including e-commerce sites, build a critical mass of users who use their service, thereby drawing in more users from across Latin America, thereby creating the virtuous cycle of demand that allows these intermediaries to achieve economies of scale.

As facilitators, online intermediaries need protections—a “safe harbor”—from user actions for which they are not aware or directly responsible. Countries need laws to clarify that Internet intermediaries are not publishers when facilitating the speech of others, such as user reviews, postings on social media, or making travel arrangements via TripAdvisor. These platforms allow for easy aggregation of people’s views on any number of topics, which adds to the value people get from the Internet (about 88 percent of consumers say they have been influenced by online customer reviews when making purchasing decisions).⁶⁷ Without protections from liability for the conduct of their users, these platforms would potentially be liable for a broad range of illegal actions.

For example, e-commerce intermediaries, such as Internet retailers and auction platforms, are crucial facilitators of international trade, as they allow the expansion, aggregation, and globalization of markets as well as the customization of goods and services—which otherwise may not have been possible between users.⁶⁸ However, without reasonable liability protections, such as for defamatory comments posted by a user, e-commerce platforms may avoid providing tools for user reviews and customer feedback, which would reduce the information available to buyers and sellers and undermine the value of e-commerce platforms.

The intermediary service liability situation in Latin America varies, as many countries have no framework in place, some have signed trade agreements that include components to do so (mainly on copyright), and only Brazil and Chile have explicit frameworks in place. In many court cases involving intermediary liability issues (defamation, fraud, copyright, and privacy), countries have to rely on civil codes and copyright laws, which often do not deal directly or in a nuanced manner with intermediary liability issues. There have been a number of court cases in Latin American countries that highlight the risk of not having a proper liability framework in place, wherein the intermediary was taken to court for the action of third parties.

Some examples from Latin America include:

- Argentina does not have specific legislation regarding intermediary liability (although it is considering legislation), with related court cases referring to the civil code and intellectual property law. Two prior legislative proposals, which were never enacted, addressed liability limitation for Internet service providers (ISPs).⁶⁹

There have been several court cases involving copyright and defamation material and intermediaries, especially search engine liability for linking to and indexing certain content.⁷⁰ For example, celebrities and public figures have brought civil cases against search engines for allegedly violating their honor and privacy by linking or making thumbnails of their images, such as a suit filed against Mercado Libre (a popular e-commerce platform for third-party sellers) for allegedly selling counterfeit tickets on their website.⁷¹

- In 2014, Brazil enacted the Marco Civil da Internet (Brazilian Internet Bill of Rights), which introduced an explicit liability exemption—a safe harbor—for ISPs and other digital intermediaries for content generated by third parties (but not including intellectual property).⁷²

Before this law was enacted, there had been cases that raised legal concerns for online platforms. For example, two teenagers brought suit against Google's social networking website Orkut for jokes that offended them.⁷³ In response, the court fined Google for each day the offending material remained on its website and ordered the company to prevent the posting of similar material in the future.

- In 2010, Chile amended its intellectual property law to create a regime of limitations on liability for ISPs.

However, Chile still faces intermediary liability for other issues, such as defamation. In a strange case, Chile's attorney general, Jorge Abbott, took Google.cl (not Google the company, but the entity registered in Chile with this domain name) and a number of Chilean websites to court for defamation over a number of articles that alleged corruption and human rights violations while he was a public prosecutor. The Court of Appeals sided with Mr. Abbott and ordered the websites to remove the relevant material and actively filter it before reposting. This order raises major constitutional and technical issues, which have apparently led to the current situation wherein Google.cl has not enacted a filter and the court has not followed through with its order.⁷⁴

- Colombia has seen specific court cases that relate to intermediary liability issues. In addition, draft law No. 119 of 2013 aimed to deactivate in search engines the autocomplete function before it produces a pejorative or defamatory reference to an individual or group.

Latin American countries need to create a balanced framework of transparent, detailed, and appropriate legal rights and responsibility to ensure online intermediaries can play a supporting role in developing a vibrant regional digital economy. While there can be some flexibility in how each country should build and administer a framework for liability protection, there are common principles and processes that should be included. Latin American countries should work toward a broadly similar framework, based on key common principles and processes, to ensure intermediary service providers and users across the region have greater certainty as to their rights and responsibilities.

To this end, Latin American countries should clearly exempt online intermediaries from liability for the conduct of their users. Where necessary, countries should create or modernize intermediary liability to provide a balanced framework of protections and responsibilities so intermediaries have the certainty to play their role as facilitators in digital trade. In addition, to simplify compliance, Latin American countries should work to establish a common regional approach to intermediary liability, reflecting common goals, such as transparency, accountability, redress, and proportionality, and values, such as freedom of expression and rule of law.

Enable the Free Flow of Data

Latin America's digital trade policy should be built on the central feature of the global digital economy: the free flow of data. The problem is the main international trade agreement that governs services trade and data flows—the General Agreement on Trade in Services (GATS)—is unclear about and has proven ineffective in protecting data flows. This reflects the fact that GATS came into force in 1995, when the Internet and ICT revolutions were in their infancy. Since then, Internet traffic, for example, has exploded: Worldwide Internet traffic totaled one terabyte (TB) per month in 1994; by 2015, Internet traffic totaled around 75 million TB per month.⁷⁵ Many countries are exploiting this uncertainty to enact barriers to data flows.

As more business models and practices incorporate digital technologies, and data is increasingly shared and exchanged on an international basis, including in traditional industries like mining, manufacturing, and retail, the need to move data across borders intensifies.⁷⁶ Firms engaged in digital trade increasingly rely on data and data flows for a number of daily business purposes, including monitoring production systems, managing global workforces, engaging with and selling to customers, monitoring supply chains, and supporting products in the field in real time. The Swedish Board of Trade's aptly named report "No Transfer, No Trade" highlights how practically no company—whether in the tech, manufacturing, or agriculture sector—would be able to do business or take part in international trade without the ability to transfer data across borders.⁷⁷ Evidence of this is digital trade and cross-border data flows are expected to continue to grow faster than the overall rate of global trade. The United Nations Conference on Trade and Development (UNCTAD) estimates that about 50 percent of all traded services are enabled by ICT, including by cross-border data flows.⁷⁸

Despite the significant benefits to companies, consumers, and national economies that arise from the ability of organizations to easily share data across borders, dozens of countries—across every stage of development—have erected barriers to cross-border data flows, such as data-residency requirements that confine data within a country’s borders—a concept known as “data localization.”⁷⁹ Data localization can be explicitly required by law or be the de facto result of a culmination of other restrictive policies that make it unfeasible to transfer data, such as requiring companies to store a copy of the data locally, requiring companies to process data locally, and mandating individual or government consent for data transfers. Some nations erect such barriers on the mistaken rationale that doing so will mitigate privacy and cybersecurity concerns; others do so for purely protectionist reasons.

As ITIF has shown in past reports, including “Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?” the costs of these policies are significant—not just on the global economy, but on the nations that “shoot themselves in the foot” by using these policies.⁸⁰ In IADB’s survey of “very significant” barriers to cross-border e-commerce, 57 percent of firms in the education sector, 36 percent of business service firms, and 29 percent of firms in the consumer products sector cited data localization.⁸¹

Examples of data localization policies that have been considered or enacted in Latin America include:

- Article 2 of Panama’s Data Protection bill states that databases containing “critical State data shall be kept in Panama.” The definition of critical State data is very broad, which could create a de facto data localization mandate for all types of data (even if this is not the intent of the law).⁸²
- In 2018, Brazil released an official gazette on information security and cloud computing for the federal public service that requires all data related to the government to be stored locally.⁸³ Furthermore, in 2017, the Central Bank of Brazil released a cybersecurity proposal that would require financial firms to store all financial data in the country.⁸⁴
- In 2016, Colombia’s Ministry of Information and Communication Technology publicly called for data localization and released a document—on “Basic Digital Services”—that recommended all data-processing centers be located in Colombia, as they perceived storing data overseas to be too great of a risk to network security and personal data.⁸⁵

These policies represent a new barrier to global digital trade. Cutting off data flows or making such flows harder or more expensive puts foreign firms at a disadvantage.⁸⁶ This is especially the case for small and solely Internet-based firms and platforms that do not have the resources to deal with burdensome restrictions in every country in which they may have customers. In essence, these tactics constitute “data protectionism” because they work to keep foreign competitors out of domestic markets, and as such keep markets smaller than would otherwise be the case.

Establishing Balanced Data Privacy Protections

Consumers' use of the Internet and technology as part of their daily lives and jobs generates huge amounts of data, including personal data. This makes personal data an important part of global data flows. Companies collect and analyze personal data to better understand customers' preferences and willingness to pay—and adapt their products and services accordingly. It is a simple fact that international trade involving consumers cannot take place without personal data—such as names, addresses, billing information, etc.—being collected and sent across borders.⁸⁷

The global flow of personal data raises legitimate concerns about data privacy, which a growing number of governments are responding to with new or revised data privacy laws. Countries in Latin America are still in the early stages of putting in place this critical building block of the digital economy. Only one-third of Central American countries have privacy and data protection laws, while two-thirds of South American countries do.⁸⁸ Countries with comprehensive privacy laws include Argentina, Chile, Colombia, Costa Rica, Mexico, Nicaragua, Peru, and Uruguay.⁸⁹ Other countries, such as Brazil, Ecuador, El Salvador, and Panama, have drafted bills that have either been or are expected to be introduced in their legislatures. Argentina, Chile, and Mexico are or have been working on major amendments to their existing data privacy laws.⁹⁰

Privacy is an issue in all countries, yet differing social, cultural, political, and legal norms suggest there is no one best way to protect privacy. Different countries use different approaches, but most share some key principles and processes.⁹¹ However, in looking to revise or put in place a framework, Latin American countries should take a careful and considered approach in enacting their own data protection and privacy regimes—as opposed to simply importing the European approach—as these key building block laws can have a considerable impact on their digital economy and ability to benefit from digital trade.

Unnecessarily restrictive data protection rules can act as a barrier to the data flows that are critical to digital trade, such as accessing customer data. For example, in an IADB survey of firms engaged in digital trade in Latin America, 65 percent stated that privacy or data protection requirements were an obstacle of some degree to cross-border online sales.⁹² The absence of domestic legal protections could also lead to missed business opportunities, especially for the export of ICT-enabled goods and services.⁹³

From a trade perspective, the most problematic response to data privacy concerns is the use of forced data localization because such requirements would significantly add to business costs, especially in smaller countries that lack competitive domestic service providers.

Many policymakers reflexively and mistakenly believe data is more private and secure when it is stored within a country's borders. This misunderstanding lies at the core of many data-localization policies. However, data-localization mandates do not increase commercial privacy or data security.⁹⁴ This is a key point few policymakers have fully grasped.

Latin American countries should avoid the temptation to copy and paste someone else's approach to data privacy without first carefully considering the implications, especially the European Union's General Data Protection Regulation (GDPR).

Most companies doing business in a nation—all domestic, and most foreign, companies—have a legal presence within that country's jurisdiction. For example, a global bank or manufacturer that has branches or plants in a certain nation is subject to that nation's privacy and security laws and regulations. As such, the bank must comply with those rules whether it stores the data in the host country, the home country of the foreign company, or even a third country. Companies simply cannot escape complying with a nation's laws by transferring data overseas.

Moreover, policymakers often misunderstand that the confidentiality of data does not generally depend on which country the information is stored in, but rather only on the measures used to store it securely. A secure server in Colombia is no different from a secure server in Brazil. Data security depends on the technical, physical, and administrative controls implemented by the service provider, which can be strong or weak, regardless of where the data is stored. While cloud computing does not guarantee security, and organizations should investigate the terms of service and security practices of any service provider, cloud computing will likely lead to better overall security because implementing a robust security program requires resources and expertise, which many small and mid-sized organizations lack, but which large-scale cloud-computing providers can offer.

It is critical that Latin American countries, in considering their own approach to data privacy, avoid this knee-jerk reaction for local data storage, as well as other overly restrictive privacy rules. A key litmus test should be whether a given data protection provision is a “disguised restriction on trade.”

An overarching goal for Latin America, and its individual countries, should be interoperability such that data is still able to flow between different privacy regimes, and that a country's data protection rules flow with it. This reflects a central point policymakers need to recognize when dealing with data privacy: Modern technology, especially the Internet, dictates each country's domestic data protection regimes be global in scope and application. The goal for interoperability also reflects the fact that there will be no one global privacy regime; nations will have different laws and regulations. It is no surprise that interoperability is part of the goal of the leading data protection initiatives, such as APEC and the OECD.

An example of an unnecessarily restrictive data privacy requirement, beyond forced data localization, that will act as a barrier to data flows is individual (and often explicit) consent to such transfers. It would be a considerable barrier to have to repeatedly ask users for their consent every time they access data stored in the cloud, or if every person on an email needed to provide consent before sending data overseas. Furthermore, many applications involve personal data not only of the contracting counterparty, but also of third parties⁹⁵ There are also reasons to believe a requirement for consent for information transfer will prove difficult to satisfy—for example, whether consent has been meaningfully obtained, as companies simply add “cross-border data transfer” to their list of terms and conditions.⁹⁶

Instead, consent should be implied for common-use practices, such as transferring data to cloud computing services located abroad.

Just as Latin American countries should avoid data localization, they should also avoid the temptation to copy and paste someone else's approach to data privacy without first carefully considering the implications, especially the European Union's General Data Protection Regulation (GDPR). Examining Colombia's approach is instructive for the rest of Latin America because of its recent decision to do just this and adopt a framework similar to the GDPR. In August 2017, while pursuing the misguided policy that countries should be responsible for enforcing the privacy regulations of foreign countries, the Superintendence of Industry and Commerce (SIC)—the agency responsible for setting and enforcing data protection regulations in Colombia—issued new rules regarding the international transfer of Colombian citizens' personal data.⁹⁷

In general, Colombia's data privacy laws prevent businesses from transferring personal data outside the country without the permission of users. However, the exception to this rule is businesses may transfer data without the permission of users to countries found to provide an "adequate level" of protection, which can never be lower than those established by Colombian privacy law.⁹⁸ This adequacy requirement mirrors the European Union's flawed approach to data protection in that it tries to make foreign countries enforce Colombian data privacy standards instead of using domestic regulators to hold companies responsible for breaches of Colombian data privacy laws—regardless of where the company stores the data.

By copying the European Union's approach, Colombia has instituted an untenable and impractical approach to governing data privacy and global data flows. The European Union's own process and criteria for assessing "adequacy" is not clear, nor is it comprehensive, covering a disparate collection of 11 countries—from Israel to the Faeroe Islands, Guernsey to the Isle of Man. (Data transfers to the United States are covered separately by the EU-U.S. Privacy Shield, although this remains threatened by legal challenges in the European Union.)

A critical flaw in the European Union's approach is the misguided logic that this country-by-country assessment is effective in promoting better data privacy and protections in companies that manage the personal data of the country's citizens.⁹⁹ This top-down approach is ultimately untenable, as not every country regulates privacy in the same way due to differences in social, cultural, and political values, norms, and institutions. For example, it is inconceivable China would ever be deemed "adequate" from a European perspective given the country's approach to data protection and privacy.¹⁰⁰ The reality is data can be safely stored almost anywhere, and inadequately secured data is not safe anywhere, be it at home or abroad.

Rather than adopt the "adequacy" standard used by the European Union and copied by others such as Colombia, the rest of Latin America should adopt a duty-of-care provision. When it comes to handling data, companies doing business in a country should be

responsible for their own actions and the actions of both their agents and business partners, regardless of where they are located. This could be made clear in law by stating that companies that do business in a country are legally responsible for any failure to protect the personal data of that country's citizens, regardless of whether that failure is the fault of the company in that country, or of an affiliate or business partner in another nation. In other words, a country's data protection would travel with the data, regardless of where the data travels. Companies doing business in Country A would then have a strong incentive to insist their business partners outside the country adhere to its privacy protections, because Country A's citizens and the government could seek remedies from any privacy violations.

This duty-of-care approach to data privacy is what most nations do, after all. For example, the United States does not have an "adequacy" standard, but companies in the United States need to enact proper data-protection measures and safeguards when processing data outside the United States, as they remain responsible for the data regardless of where it is processed. U.S. companies mitigate these risks by stipulating requirements in relevant data handling and processing contracts they might put in place with other companies. For example, Colombian companies operating in the United States must comply with the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), which regulates U.S. citizens' privacy rights for health data, even if they move data to Bogota. And, if a company's affiliate in Bogota violates HIPAA, then U.S. regulators can bring legal action against the Colombian company operating in the United States.

Improving Data Flows

Latin American countries, including those in the Pacific Alliance, should take the following steps:

1. Pursue digital trade rules that support the free flow of data in bilateral, regional, and multilateral negotiations and discussions. This framework should not allow exemptions for specific categories of data—whether health, financial, or personal. As part of this, wherever possible, countries should include a specific provision in their domestic legislation or regulations to make clear cross-border data transfers are allowed.
2. Adopt a core set of data protection principles to simplify compliance for businesses, while still allowing some flexibility in domestic implementation.
3. Pursue data privacy frameworks that use a duty-of-care approach that makes companies, and their third-party partners, responsible for protecting personal data (as per the domestic law of the citizen's country), wherever the data is stored.
4. Latin American countries that are members of the Asia Pacific Economic Community (APEC) should join its Cross-Border Privacy Rules (CBPR) system. The CBPR system provides a mechanism to facilitate the flow of personal information across borders, while at the same time providing effective protection for personal information. This recognition is critical to a framework that supports

the free of flow of data. APEC's CBPR system also supports the equally critical notion that a company should be responsible, and held accountable, for following the domestic laws of each country it operates in, and that these requirements move with the data, wherever it is stored. The CBPR system also recognizes there is no one-size-fits-all approach to privacy, and different countries take different approaches based on local political, social, and cultural values and institutions.

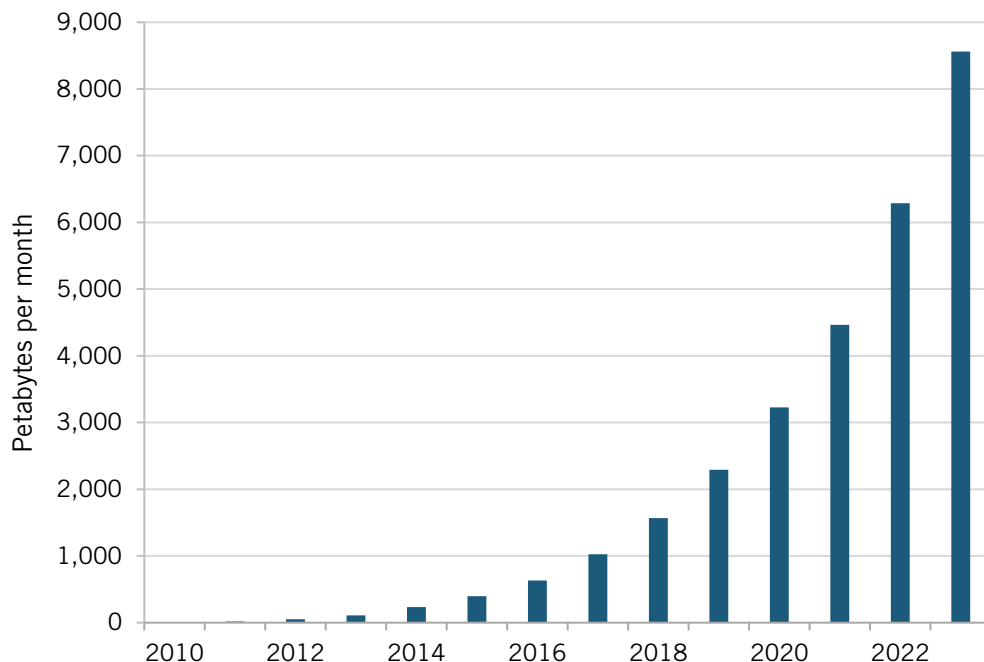
5. Latin American countries should review all laws and regulations that could directly or indirectly act as a barrier to data flows. The goal should be to remove any forced local data storage requirements and replace them with specific requirements for each issue, such as with the requirement that companies provide timely access to requests for data from law enforcement or other agencies.
6. Latin American countries should include provisions in bilateral and regional trade agreements that prohibit customs duties on data transmissions, as well as at the World Trade Organization. It is critical that more countries include rules that prohibit these types of duties as a way to build a broader base of countries that are permanently committed to not taxing data imports and exports. The risk is without such broad agreement, more countries will consider this type of data to be a tax.

Centralize Spectrum Management

The demand for mobile wireless technology in Latin America is booming, and the productivity benefits of having ubiquitous broadband connectivity are difficult to overstate. Latin America should take a few key policy actions to ensure continued growth of mobile wireless. A primary objective should be to make more spectrum available for flexible mobile use, ideally on a broadly harmonized fashion, through market-based auctions. A key institutional change that would assist in realizing all of these policy goals would be to centralize spectrum management for all of Latin America, allowing for nesting licenses that enable operators to more easily gain scale throughout the region while permitting auction revenues to remain with national authorities.

Electromagnetic spectrum is the critical, constraining resource when it comes to the capacity of wireless networks. The more spectrum that is available for commercial wireless use, the greater the coverage and speed of mobile wireless networks. As mobile use transitions from simple voice and text and becomes ever more data-intensive—and as carriers and users move to 4G and soon 5G systems—carriers will require more spectrum. Moreover, carriers will require a sufficient amount of spectrum to offer a competitive service at all, as in some markets an insufficient amount of spectrum allocated to commercial wireless use can constrain the ability of competition to drive investment.

Figure 2: Estimated Latin American Wireless Traffic¹⁰¹



Historically, countries in the Latin America and the Caribbean region have not been particularly generous with spectrum licensed for mobile communications. The region has licensed about 60 percent of the OECD average amount, and, as of late 2015, had licensed about 20 percent of the amount of mobile broadband spectrum the International Telecommunications Union (ITU) recommends countries license by 2020.¹⁰²

Aside from the raw amount of bandwidth made available, it is important that spectrum band plans be harmonized with other countries to the maximum extent possible. While technology is advancing to allow radios to dynamically tune to different frequencies, this adds tremendous complexity and cost, and is not intended for consumer devices. Similar spectrum allocations across regions or, ideally, coordinated globally allow for tremendous economies of scale in devices, ultimately driving down the cost of connectivity. They also facilitate roaming between nations. While each country has its own history, industry structure, and market opportunities, spectrum policy should be coordinated across wide regions to achieve scale in end-user devices, drive down the cost of network equipment, and ease international roaming agreements. At a very minimum, countries in the Inter-American Telecommunication Commission (CITEL) should work to coordinate their spectrum use, especially when it comes to new allocations at the ITU level.

Throughout history, several different methods have been used to allocate spectrum. But today, economists agree that auctions are the most effective means to discover which firms are confident they can put spectrum to its most valuable use. Auctions work best with relatively few constraints or distortions. Spectrum should be cleared and licensed for

flexible use without constraints on particular technology or business model. Alongside these property-rights-like licenses, a healthy amount of unlicensed spectrum allows for its more efficient use.¹⁰³

Certain spectrum managers in Latin America have been accused by GSMA of setting unnecessarily high auction fees and auction reserve prices in order to drive up the cost of spectrum access.¹⁰⁴ Here, Panama is a particularly egregious offender.¹⁰⁵ Spectrum auction revenues and annual fees can be a tempting revenue generator for national regulators (who are often forced to implement extractive fees by statute). While it is understandable this obscure source of revenue can be difficult for governments to resist, it slows deployment and use of mobile broadband—one of the most powerful force multipliers for economic growth in the 21st century—and should be avoided. Auctions should be designed to efficiently allocate scarce resources, not raise revenue. In fact, a portion of revenues would ideally be used to support both universal service buildout of wireless systems to rural areas and adoption of wireless by low-income individuals.

A single unified body to manage spectrum throughout the Latin American and Caribbean region would greatly help to achieve these goals.¹⁰⁶ First, a single manager would help coordinate spectrum throughout the region with an aim toward global harmonization. Uniform regulation and spectrum management would allow carriers to more easily gain scale throughout the region, ultimately serving consumers at a lower cost. Furthermore, separating the designer of spectrum auctions from those controlling national treasuries would align incentives on avoiding extractive fees, unjustifiably high auction reserve prices, and other inefficiencies with spectrum allocation. If it is politically infeasible for countries in the region to transfer control of spectrum management to a central body, at the very least, national spectrum authorities should coordinate their efforts to harmonize band plans and auction dates.

Eliminate Tariffs on ICT Products

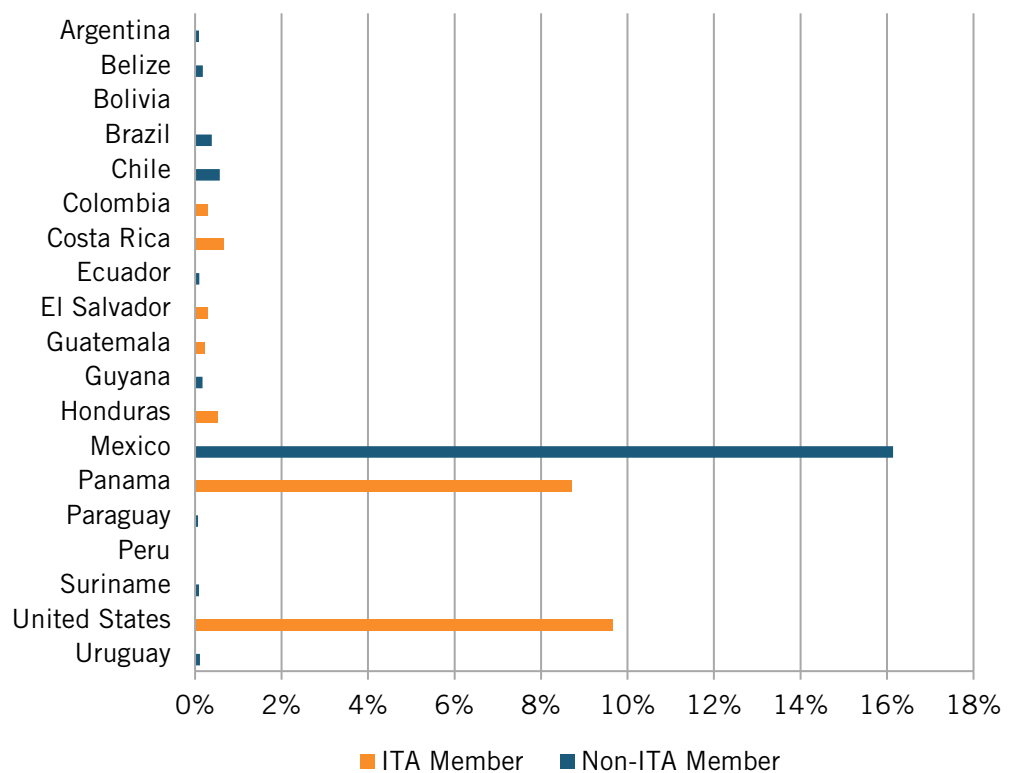
An easy step for Latin American countries to take to support digital trade is to reduce the price of ICTs by eliminating tariffs on them. If Latin American countries want more people and businesses to connect and use the Internet—including for cross-border trade—it needs to ensure prices are as low as possible in order to spur adoption and dissemination. Unfortunately, key ICT goods are unnecessarily expensive in many Latin American countries. For example, mobile telephones and related equipment face tariffs of up to 20 percent in Brazil and Argentina, and 6 percent in Chile.¹⁰⁷ A wide range of economic studies suggest these price increases reduce digital adoption by businesses and consumers. In fact, a review of studies of price elasticity of digital goods in Latin America found that, on average, every 1 percent increase in price of a digital good reduces adoption by 1.3 percent, including reduced broadband and wireless adoption.¹⁰⁸

The most straightforward way for Latin American countries to address this problem is to join WTO's Information Technology Agreement (ITA) and its recent expansion. ITA eliminates tariffs on a wide array of ICT products. At the moment, the region's

membership in this critical trade agreement is sorely lacking. ITA member countries from Latin America include Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and Peru—and only Colombia, Costa Rica, and Guatemala have signed on for ITA expansion.

ITA represents one of the most successful trade agreements WTO has forged.¹⁰⁹ ITA has played a powerful role in reshaping global trade since it first took effect 20 years ago by empowering the formation of efficient global ICT supply chains, thus enabling a shift from a linear, closed innovation model to an open innovation paradigm that relies on close collaboration among suppliers, network partners, and customers to bring breakthrough ICT products to market.¹¹⁰

Figure 3: ICT Goods as Percentage of Total Goods Exported, 2016¹¹¹



Under ITA, 82 signatory countries have agreed to eliminate tariffs on hundreds of ICT products. By reducing their costs, ITA leads to increased use of ICT goods, which spurs productivity and economic growth in signatory nations, while deepening their enterprises’ participation in global value chains (GVCs) for the production of ICT goods and services. Recognizing these benefits, 53 nations agreed in December 2015 to reduce tariffs on an additional 201 ICT tariff lines (including hundreds of products, parts, and components) as part of an expanded list of goods covered by ITA. Beyond supporting digital trade, joining ITA and its recent expansion has broader economic benefits, as shown in a study ITIF performed of six developing nations—Argentina, Cambodia, Chile, Kenya, Pakistan, and South Africa—joining the original ITA as well as its recent expansion.¹¹²

The expanded ITA was concluded by 24 participants representing 53 WTO members. The expansion of ITA, agreed to at the Nairobi Ministerial Conference in December 2015, eliminates tariffs on products valued at over \$1.3 trillion in annual trade. These are in addition to the products covered under the original ITA concluded in December 1996, which accounted for an estimated \$1.6 trillion in global trade in 2013. The new deal provides for the elimination of import tariffs and other duties and charges on an additional 201 new-generation information and communication technology products, either immediately or progressively over three years.

Unfortunately, many countries have not joined ITA due to their concerns over lost tariff revenue and a belief that doing so would limit their domestic ICT production. Regarding the first concern, the second-order effect from eliminating ICT tariffs is to increase ICT adoption, in turn boosting productivity and economic growth, and leading to increased tax revenues. For example, in an ITIF model that has Argentina joining ITA, after 10 years, the greater tax revenues from increased economic growth spurred by more ICT adoption would outweigh the tax revenue losses by 33 percent.¹¹³

As for the second consideration, the experience of countries such as Argentina that have imposed extremely high tariffs on ICT imports (e.g., up to 35 percent on computers and tablets) demonstrates that such tariffs chiefly serve to shield an uncompetitive domestic ICT production sector while harming all sectors of an economy that depend on ICTs, including those that have to compete in global markets.

Provide More Open Access to Service Markets

Latin American countries should ensure future regional trade agreements include clear and open services-market access. Addressing barriers to services trade is critical. The two interrelated trends—increased digitalization and the unbundling of services—have created a global market for services tasks that has contributed to the tripling of services trade over the past 15 years, particularly for business services such as legal, advertising, consulting, and accounting.¹¹⁴ Indeed, more and more services are delivered digitally. Yet, the liberalization of trade in services has long taken a backseat to trade in goods.

While not all services are tradable, ICT innovation has allowed more services to be traded by small and large firms alike. Many services that previously required face-to-face contact between the firm and consumer can now be provided remotely, with the additional transaction costs for some of these Internet-based services being close to zero. The ICT revolution has reduced the transaction costs and information asymmetries associated with international trade through platforms and support services that make it easier for firms to access international markets. Modern production networks, in the form of global value chains, directly and indirectly rely on many services as part of the production process, such as communications, insurance, logistics, finance, computer and information services, and other business services. Over 70 percent of global trade is now in intermediate goods and services, and capital goods.¹¹⁵

Moreover, purely digital services, while always tradeable, have grown significantly. For example, the offshoring of computer and related services is an important part of the growth in the services trade. This category covers consultancy services related to the installation of computer hardware and software, data processing and database services, and other related services. Exports of computer and related services accounted for 6.8 percent of all services exports in 2010, up from 4.9 percent in 2005.¹¹⁶ For OECD countries, computer and information service imports increased 3.6-fold from 1996 to 2005, while exports increased 5.2-fold.¹¹⁷

Latin American countries should use future trade agreements to correct the trend whereby efforts to address tariff barriers have outpaced efforts to address nontariff barriers (NTBs) to services trade. Regulatory restrictions on services trade should be limited to measures needed for legitimate public-interest purposes, such as for health, education, consumer protection, and environmental and national security concerns. However, all too often these rationales are used as smokescreens to justify what are fundamentally protectionist restrictions on the services trade.

Future Latin American trade agreements can make easy gains as many countries provide more open access to their service markets than they are obliged to under GATS. With the exception of the European Union and countries that acceded to GATS after it came into force (and were therefore forced to make more concessions as a part of accession), the majority of service-sector openings have been achieved by countries outside of formal trade agreements (i.e., autonomously).¹¹⁸ Studies also show that many countries have moved beyond their GATS commitments as part of bilateral and regional trade agreements. This signals that countries are willing to make commitments above and beyond GATS, in the right setting.¹¹⁹

Latin American countries, especially those in the Pacific Alliance, should consider a number of important principles on this topic, including:

- Ensure trade agreements include provisions that members cannot discriminate against other members (known as Most Favored Nation treatment); local and foreign goods and services are to be treated the same (known as “national treatment”); market access restrictions are prohibited; and measures requiring service firms to maintain a local presence as a condition for supplying a service be eliminated. These measures are a core part of WTO and other agreements, but need to be constantly reinforced.
- Ensure countries clarify how modern types of services apply under each country’s market-access commitments. GATS lost relevance after it was established because it used a positive list approach, and WTO members failed to make up for this by covering new services in successive negotiations or include a mechanism to add new service categories. GATS’s outdated provisions therefore create considerable uncertainty over how new services that are central to the global digital economy, such as cloud computing, are covered (or not). The outdated list of service types used by GATS creates significant uncertainty, as there is plenty of room for

speculation or arbitrary application of different trade restrictions depending on how each country categorizes new services.¹²⁰ For example, is cloud computing a telecommunications service or a computer service? Also, different cloud-computing trade issues fit under different trade issues, as cloud computing's use of the Internet is a telecommunications network access issue, while its data-processing services could fall under value-added service categories.¹²¹

- Ensure new trade agreements make clear market access coverage for any service sector also covers that service when it is delivered or performed digitally. For example, commitments by telecommunication services would cover cloud-storage-based emails and commitments by banking services would also cover online banking.
- Parties should agree to not discriminate against digital products.
- Cross-border service providers should not need to establish a physical presence to supply services in a given market.

Do Not Regulate Online Platforms and OTT Services as Telecom Providers

Platforms and Internet-based services are key agents of digital trade, akin to the production, sales, marketing, finance, marketplaces, freight forwarders, and advertising divisions and third-party agencies that traditional business models set up to handle the myriad of complex tasks involved in shipping physical things in 19th century and 20th century trade. While there is no universal consensus on how best to differentiate and classify the various kinds of platforms and services—concepts such as the platform economy, sharing economy, peer-to-peer economy, and others are often used interchangeably—it is clear their role as direct and indirect agents of digital trade is important, so rules and regulations that impede their ability to play this role deserve attention.

Categorizing Internet-based services as platforms is one of the main ways to view these agents. As previously discussed, these Internet platforms create value largely by bringing people (or companies) together and reducing the transaction costs for valuable activities. In some cases, these platforms allow users to do things that were previously either impossible or prohibitive to do. Both social networks and search engines give large and small businesses new platforms on which to advertise their services. App stores give smartphone users easy access to a multitude of apps, while giving developers a centralized place to access potential customers. Another common way to categorize many of these platforms and services is as OTT services, which utilize broadband Internet networks that can manage voice, data, and multimedia traffic to provide services, often (though not always) without the direct involvement of the ISPs, which are often traditional telecommunication and cable TV operators.

Examples of OTT services include:

- Voice over Internet Protocol (VoIP) services (e.g., Skype, Viber, FaceTime, etc.) and IP messaging services (e.g., WhatsApp, Line, WeChat). These services have fundamentally changed how customers use messaging and video services. GSMA (the trade association for mobile network operators) estimates that the active user base of major instant messaging platforms increased from 1.1 billion in 2013 to 3.6 billion in 2016.¹²²
- Audiovisual content (e.g., Netflix, Apple TV, ShowMax, YouTube, Hulu, iTunes). These video on demand (VOD) platforms have changed television viewing habits around the world by allowing consumers to directly access content over the Internet and without having to sign up for traditional cable television packages. For example, the average weekly OTT television viewing in the United States has increased from 3.6 hours in 2014 to over 14.5 in 2018.¹²³
- E-commerce platforms and services (e.g., online retailers, Internet banking, cloud services)
- Social media services (e.g., Facebook, Twitter, Pinterest, LinkedIn, Instagram)

These online services are wildly popular with consumers, yet in many countries, the main concern has not been how to maximize this benefit, but how to restrict these services, often by bringing them under traditional telecommunication, audiovisual, or other regulatory structures. A growing number of countries and regions—Brazil, Colombia, the European Union, India, Indonesia, Thailand, Vietnam, and Russia—are considering or enacting measures to overly regulate platforms and OTT services. Given their role in directly or indirectly supporting digital trade, these regulations have obvious trade implications.

Most worrying is the growing number of countries erect a virtual wall around their digital economies by enacting policies that require a “physical presence.” A growing number of countries are using a range of trade-distorting and unnecessary or excessive “localization” measures for data, personnel, financial and accounting, content, and taxation to discriminate against foreign tech firms.

Examples of these types of restrictions include:

- Licensing or registration requirements
- Local (physical) office and staff
- Local content requirement (for videos and movies)
- Local data storage
- Taxation treatment as a traditional broadcasting or telecommunication firm
- Taxation treatment that requires a physical presence
- Local content funds contribution, and other regulations

In another example, on May 18, 2017, Brazil's National Agency of Cinema (known as Ancine) proposed regulations for all OTT platforms that offer videos on demand, regardless of where they are based, including periodic reports on content, users, and revenue; a 20 percent local cultural content requirement (specifying that half of this should be independently produced); and a requirement that companies make an annual investment in local production (up to 4 percent of revenue).¹²⁴ Ancine also recommended that future regulation include other online video platforms, such as YouTube.¹²⁵ Ancine's director bases the need for mandatory national quotas, established across Brazil's film sector in 2011, on having to counter the fact that international productions are cheaper, as they are able to spread their costs over many markets.¹²⁶

While motivations vary, and often involve legitimate public policy concerns (such as taxation), a common refrain is that restrictions are needed to "level the playing field" with traditional telecommunications and broadcasting companies. In many cases, these measures serve to protect incumbent and traditional telecommunications and broadcasting providers, impede trade in online services, and make it substantially more difficult for platforms and Internet-based services to access local markets.

However, just because an OTT service like Netflix or YouTube provides video does not mean it is equivalent to an over-the-air TV broadcaster, or that Skype or other VoIP services are like circuit-switched telephony. The fundamental point to understand about these newer IP-based services is that they are more like email than television or telephony. In other words, these new services simply transport digital bits, just like email, web surfing, and other applications. In some cases, the bits are displayed as text on a screen, in other cases as sound coming out of a computer's speakers, and in still other cases as video on a computer or smartphone screen. As such, they are not the same functionally as services that use dedicated, single purpose technology to deliver specific services (e.g., telephony).

Moreover, the relationship between OTT platforms and traditional telecom firms is not win-lose, but one of interdependence. For telecommunications firms, declining demand for traditional voice and text messaging services from OTT services is counterbalanced by increasing demand not only for data but for connectivity itself, which is partly driven by OTTs. OTTs need a reliable high-speed network, and telecommunication firms need Internet-based applications to stimulate demand for data traffic.

There is considerable uncertainty about whether current international trade rules apply to these Internet-based services. For example, a basic question is whether OTT services are covered by existing trade services classifications. Are OTT voice and messaging services a form of mobile telephone services or a form of data and message transmission services? The answer is the latter. What about the online distribution of audiovisual content?¹²⁷ Is it a form of traditional television distribution or an Internet service? Once again, it is the latter. Along similar lines, do commitments countries took on at WTO with regard to telecom services cover OTTs?¹²⁸ Countries are able to exploit the lack of agreement on technical issues to enact measures that cut off or restrict market access.

Recommendations:

- Latin American nations should not regulate OTT services as traditional communications or content services. Wherever regulations are needed, they should be narrowly targeted for key policy goals. For example, VoIP services should not require customers of fixed services to register their home address in order to be able to dial emergency services.
- While Internet platforms are just as capable of anticompetitive behavior and bad business practices as any other company, the traditional powers available to injured parties and government regulators can handle virtually all actual (as opposed to possible) harms. There is thus little need at this point for new laws or regulatory actions aimed solely at platforms, per se.

CONCLUSION: LATIN AMERICA'S OPPORTUNITY TO LEAD IN DIGITAL TRADE

Chances of success in the digital economy are greatly enhanced when markets are larger. Latin American nations have a considerable opportunity to craft a continental digital single market that would benefit both producers and consumers. Latin America needs a digital trade agenda that complements domestic efforts to develop their digital economies.

A digital single market for Latin America would provide a welcome catalyst to the Latin American digital economy. Removing regulatory barriers to the digital economy would help ensure consumers and businesses have greater access to online goods and services, improve the pace of development for digital networks and services, and unlock new economic opportunities for businesses and workers. For example, by ensuring the free movement of data across Latin America, firms would be able to more easily do business across borders, and consumers would be able to access more online tools and services.

Multilaterally, new and high-standard rules are unlikely to emerge from WTO any time soon, despite the formation of an e-commerce subgroup following the WTO ministerial meeting in Buenos Aires in 2017. WTO has proved incapable of making progress on an e-commerce agenda, despite years of talks. Many of WTO's multilateral agreements, which still act as the framework for the rules-based trading system, were introduced before the Internet—as we know it—existed, which creates gaps and uncertainty about how old rules apply to new issues. China, Russia, Indonesia, Vietnam, and others are exploiting this lack of rules to enact digital protectionist measures. WTO's ability to act as a forum for rule setting for digital trade is seriously constrained for a number of reasons: the growing number and variety of restrictions, such as local data residency requirements, being enacted by some of its members; the inability of other key members to come out forcefully against such restrictions, such as the European Union; and a general lack of understanding about digital trade issues in a number of countries.

The European Union's ongoing inability to pursue meaningful rules that protect data flows in trade agreements undermines broader efforts to set new rules, such as in TiSA, which stalled in late 2016 in large part due to the European Union's intransigence regarding data

flows. Meanwhile, the Regional Comprehensive Economic Partnership between China, India, and 14 other countries is unlikely to set high standard global norms on digital trade given the growing number of discriminatory and protectionist policies that its members—especially China, India, and Indonesia—have used to target digital trade and data flows.

This means Latin America needs to take its fate into its own hands when it comes to trade rules governing the digital economy. While a Latin America-wide digital trade agreement would be ideal, there is a need for a realistic assessment of the avenues for progress. Beyond the Pacific Alliance, other Latin American countries should aim to high standard digital trade provisions in other trade agreements, just as Uruguay and Chile did in their bilateral agreement in addressing e-commerce issues. In particular, Brazil and Argentina each have a lot of ground to make up in embracing the opportunity from technology and the global digital economy, given the range of restrictive, costly, and discriminatory measures they currently have in place.

Pacific Alliance countries are best positioned to lead the way in the region. These countries have already demonstrated their ambition to form a more integrated market, as well as two members being party to the CPTPP, which includes ambitious e-commerce provisions. Pacific Alliance countries have shown that they realize that the opportunity to develop a dynamic, innovative, and productive domestic digital economy will only be fully maximized when it is integrated with new trade rules that remove or minimize the barriers that prevent firms from using technology to trade across borders—thus achieving critical economies of scale.

In doing so, Pacific Alliance countries could ensure the progress made by the CPTPP is maintained, as the broader efforts to develop new digital trade rules continues to be delayed and grows increasingly uncertain. The withdrawal of the United States from the CPTPP leaves one of the world's leading digital economies outside a framework to protect digital trade (that it helped design).

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ABOUT ITIF

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