



# 2020 Global Services Summit

Meeting the Challenges of Services and Digital Trade

--- PANEL SUMMARIES ---

This year CSI held a three-day virtual Global Services Summit from November 17 to November 19. Below we have provided summaries of the Summit panels.

## DAY 1

*Tuesday, November 17, 2020*

### *Congressional Perspective on Trade Post-election*

#### **Presentation of 2020 CSI Services Champion Award**

Yancy Molnar, Senior Vice President, Head of International Government Affairs at Chubb, presented the 2020 CSI Services Champion award to House Services Caucus Co-Chair Congressman Tom Suozzi (D-NY-03).

#### **Post-election Congressional Forecast for Services and Digital Trade**

- MODERATOR: ARROW AUGEROT, DIRECTOR, AMERICAS PUBLIC POLICY, AMAZON
- Katherine Tai, Majority Chief Trade Counsel, House Ways & Means Committee
- Jayme White, Chief Advisor for International Competitiveness and Innovation, Senate Finance Committee Minority Staff
- Mayur Patel, Majority Chief Trade Counsel, Senate Finance Committee

\*This panel was off the record\*

## DAY 2

*Wednesday, November 18, 2020*

### *Digital Protectionism*

#### **Assessing the Risks for Services and Digital Trade**

- MODERATOR: CHRISTINE BLISS, PRESIDENT, CSI
- James Sullivan, Commerce Department Deputy Assistant Secretary for Services
- Don Abelson, Consultant, Sudbury International
- Nigel Cory, Associate Director for Trade Policy, Information Technology and Innovation Foundation

- Kimberly Strosnider, Partner, Covington & Burling
- Nova Daly, Senior Public Policy Advisor at Wiley Rein

Summary: The European Court of Justice ruling that invalidated the Privacy Shield framework in July also created “enormous uncertainties” about how companies can continue to legally transfer data between Europe and the U.S., including through the use of standard contractual clauses and binding corporate rules, said James Sullivan. The Commerce Department and other U.S. agencies are working urgently to clarify the issues with European counterparts. But in any case, he noted that the lack of a globally accepted standard or multilateral framework for online privacy and data protection represents a major barrier for the digital economy.

While there’s no common definition of digital protectionism, an ever-increasing number of governments are seeking either to impose outright bans on data transfers or to implement measures so onerous they serve as de facto restrictions, said Nigel Cory. Don Abelson underscored the need for international legal principles on fairness, transparency, openness and reliance on international standards that would apply to digitally enabled services. As it stands, only goods are protected by the principles on the non-discriminatory use of standards and conformity assessment set out by the WTO’s Technical Barriers to Trade Agreement. As a result, cross-border services suppliers are too often disadvantaged by standards that skew the playing field.

Kimberly Strosnider said export controls often have the effect of serving as digital trade barriers, even if they are not typically framed that way. So far it appears the U.S. government will approach export controls on emerging technologies in a deliberative, tailored approach that includes consultation with industry as well as U.S. allies. U.S. companies should also expect to see more expanded use of the Entity List to restrict technologies on national security grounds. Nova Daly noted that President-elect Biden has outlined his intention to pursue a multilateral rather than unilateral approach in responding to China. But some of the more hawkish policies set in motion by the Trump administration appear unlikely to change, given bipartisan support for them on the Hill.

### **Services in a Post-COVID World: New Demand for Seamless Data Flows**

- **MODERATOR: TOM ROBERTSON, CORPORATE VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, MICROSOFT**
- Lailee Moghtader, Deputy Assistant Secretary for Trade and Investment, U.S. Treasury
- Michael DiPaula-Coyle, Director, International Trade Policy and Director, Government & Regulatory Affairs, IBM
- Isabelle Roccia, Senior Manager, Business Software Alliance
- Susan Ritchie, Vice President, Trade & Technology Policy, U.S.-India Strategic Partnership Forum

Summary: Lailee Moghtader explained that financial authorities rely on data flows to conduct systemic risk assessments, noting specifically that data restrictive policies have the potential to increase cyber and other operational risks to global financial stability. Moghtader stressed the importance of continued engagement between policymakers and trade negotiators on cross-border data policies, such as how Treasury and USTR worked together to ensure that USMCA included a prohibition on forced data localization. She also highlighted Treasury’s global leadership in this area, pointing to a joint statement

issued this year with the Monetary Authority of Singapore, and the establishment of a technical experts group under the U.S.'s presidency of the G7.

Michael DiPaula-Coyle emphasized the need to enhance public trust in the data economy. He called for the U.S. to reassert its global leadership to work with like-minded allies and highlighted the importance of innovative trade agreements that strike the right balance between data flows and trust. DiPaula-Coyle also said the U.S. should work towards building a consensus at the G20 and called for the continuation of its data flows with trust initiative launched by Japanese Prime Minister Abe. On the congressional front, DiPaula-Coyle suggested that Congress should renew TPA with added provisions that give negotiators a new mandate to address standards around data mobility and privacy issues.

Susan Ritchie underscored the importance of the digital economy to global development efforts. She expressed alarm about the protectionist policies coming from the Indian government, such as the highly problematic personal data protection bill under consideration, which also provides the legal basis and a placeholder for a non-personal data governance regime that could lead to the expropriation of private sector data. Ritchie also explained India's plans to build its own soft data architecture, and its potential global implications.

Isabelle Roccia spoke about the influx of digital innovation policies and regulatory activity in the EU. She pointed out a need for greater coordination within the European Commission, noting specific industry concern over data categorization challenges, such as the overlap between the DORA proposal on digital resilience in financial services and existing cybersecurity legislation. As the EU lays out its digital policy agenda in the digital space moving forward, the current Commission must work with the legacy of the previous Commission and its flagship work around the Digital Single Market. The Commission's economic recovery plan will depend on cross-border data flows, and there is recognition that this will require a global dimension to its plans.

All panelists urged greater cooperation between governments and the private sector. DiPaula-Coyle said that industry is able to provide technical expertise to governments, and he stressed the importance of educating policymakers and negotiators on how the digital economy is transforming traditional sectors like agriculture, manufacturing, retail services, among others. Roccia urged industry to work with governments on converging privacy regimes at a global level. Ritchie stressed the importance of cross-sectoral industry voices at the table to educate Indians on how data policies affect all sectors of the global economy.

### DAY 3

*Thursday, November 19, 2020*

## ***FINDING THE WAY FORWARD ON SERVICES AND DIGITAL TRADE***

### **A Forward-Looking Agenda Services & Digital Trade**

Beyond FTAs: A Forward-Looking Agenda for Services and Digital Trade

- **MODERATOR: DEMETRIOS MARANTIS, SENIOR VICE PRESIDENT, GLOBAL GOVERNMENT ENGAGEMENT, VISA**
- Australian Ambassador to the United States Arthur Sinodinos

- Ambassador Michael Froman, Vice Chairman and President, Strategic Growth, Mastercard
- Ambassador Susan Schwab, Strategic Advisor, Mayer Brown LLP

Summary: In a Biden administration, U.S.-China relations are likely to rank near the top of a list of trade concerns, said Ambassador Michael Froman. The incoming President must also consider how to reassert leadership in the Asia-Pacific region, where a relative lack of recent engagement is highlighted by the U.S. absence from two major trade agreements, the Regional Comprehensive Economic Partnership (RCEP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

With a nod to the Digital Economy Agreement recently signed by Australia and Singapore, Froman noted that engagement on digital trade could offer one means to bring Asian countries together to agree on a forward-looking set of principles and rules. From the Australian perspective, when asked if the Digital Economy Agreement could perhaps be regionalized, Ambassador Arthur Sinodinos said he would be “happy with the prospect.” He added, “If the U.S. is in the tent, it’s the best guarantee” that a broader deal would feature advanced standards and rules for digital trade.

Speakers broadly agreed on the need to rally like-minded countries around trade rules robust enough to serve as a counterweight to illiberal or protectionist Chinese measures. That would extend not just to provisions on data flows and other core elements of digital and services trade, but also intellectual property protections, disciplines for industrial subsidies, and the treatment of state-owned enterprises, said Sinodinos. Stronger rules should include but not be limited to WTO reform, he added: What’s important is that “a considerable chunk of the world’s trade and GDP” unite in support of rules to level the playing field.

Ambassador Marantis, noting that job competitiveness will be one area of focus for the Biden administration, highlighted the need to see trade as part of a broader national economic strategy. To that end, Froman said it would be important to develop a meaningful dialogue with Europe on data and privacy to head off potential conflicts – perhaps create a digital analogue to the Financial Stability Board, he suggested. Likewise, there should be standards to promote interoperability among different data regimes while at the same time ensuring privacy protections for individuals.

In order to elevate services within the trade agenda, Ambassador Schwab said it will be important to bring traditional manufacturing companies, which increasingly derive more of their value from services, into a broader industry coalition to support services trade liberalization.

### **Taxing the Digital Economy**

- MODERATOR: JANE DRAKE BROCKMAN, FOUNDER, AUSTRALIAN SERVICES ROUNDTABLE
- Patrick Low, Fellow, Asia Global Institute
- Hosuk Lee-Makiyama, Director, European Centre for International Political Economy

Summary: One of the complicating factors in the digital tax debate is the high degree of geographic concentration of leading tech firms, with most of the biggest based in the U.S. as well as a handful in China, said Patrick Low. Meanwhile, tax authorities outside those two nations have shown themselves eager to latch onto some of the revenues – so much that nearly four dozen countries have either implemented or are considering such a tax.

But such unilateral measures have harmful economic and political impacts, not least in their tendency to provoke trade retaliation. The national pursuit of digital services taxes is all the more unwelcome given that a multilateral alternative exists in the form of OECD negotiations for a potential new tax framework. And while it is difficult to assess the costs associated with DSTs, Low said developing countries that impose DSTs risk hampering the growth of their own digital sectors, which could in turn hurt their ability to move up the value chain.

WTO disciplines never anticipated the complexities of the modern digital economy. But under the General Agreement on Trade in Services (GATS), if a country imposes a DST on a cross-border services supplier but not its domestic counterparts, the foreign supplier could complain that the tax has resulted in less favorable treatment – in other words, that the taxing jurisdiction has not complied with its commitments to provide national treatment. Whether a particular country is bound to provide national treatment, though, would depend on which service sectors it opted to include on its positive list schedule.

Given that reality, Jane Drake-Brockman expressed concern that the status quo rewards countries with few mode-one (cross-border) commitments -- because in the absence of such commitments, there is little formal basis to lodge GATS-related complaints against them. For as long as DSTs are seen as a viable option, she said, “There may be less incentive for services trade liberalization, especially in mode one.”

Hosuk Lee-Makiyama observed that a system in which every purchase of a cross-border service would incur a tax based on the customer’s location would introduce extraordinary complexities into the global service economy. “It’s not about fairness, because digital companies pay taxes. It’s really just about where the taxes are paid. It’s a zero-sum game,” he said.