

TO: United States International Trade Commission
FROM: Harley Geiger, Director of Public Policy, Rapid7
DATE: April 7, 2017
RE: Summary statement for the record regarding Investigation No. 332-561

Rapid7 commends the US International Trade Commission for producing this report on the increasingly important issue of digital trade barriers, and appreciated the opportunity to testify at your Apr. 2017 hearing. Digital trade issues are growing in significance to us as we seek to expand our global customer base.

By leveraging cloud computing, digital commerce offers significant opportunities to scale globally for individuals and companies of all sizes – not just large companies or tech companies, but for any transnational company that stores customer data. However, this growth depends on the free flow of information across international borders.

Companies seeking to provide global access to digital services are impeded by "data localization" – laws or norms compelling companies that do business within a country to store data associated with that country's citizens locally, rather than in data centers located elsewhere. Data localization erodes the analytic capabilities, standardization, and cost savings that cloud computing can provide. Segregating data collected from particular countries, maintaining servers locally in those countries, and navigating complex geography-based laws are all activities that require significant resources, increasing overhead costs without boosting product development or innovation. These costs can price smaller companies out of a country market entirely, which also reduces the commercial choices for the citizens in the localizing country. In addition, the resulting fragmentation undermines the fundamental concept of a unified and open global internet.

A major driver of customer concern is US intelligence and law enforcement access to data, such as through the Electronic Communications Privacy Act and the Foreign Intelligence Surveillance Act. We respect the legitimate needs of government agencies to access data for security, but abroad there is a perception that agencies have easy access to data located in the US, and will use that data to infringe on privacy in a way that would not occur if the data were stored locally. There is also a lack of legal clarity regarding jurisdictional rules for data – who owns it, which government agencies can access it, under what legal standard, where disputes get resolved.

Rapid7 urges the ITC to help ensure that digital economy issues are prioritized in multilateral and bilateral agreements and standard setting bodies. We have five recommendations:

1. Pursue international agreements that prevent forced localization of data, and that increase coordination on rules regarding cross-border data flow and government access to data. These legal frameworks should be transparent and respectful of human rights and due process.
2. International agreements should include an express presumption that governments should minimize disruptions to the flow of commercial electronic information across

borders.

3. Agreements should streamline government licensing requirements for digital services, and ensuring the transparency of licensing requirements.
4. Pursue oversight measures, implemented by international trade bodies, designed to explicitly track and quantify global trade barriers related to data.
5. Support federal legislation updating the Electronic Communications Privacy Act and the Foreign Intelligence Surveillance Act to clarify standards for US government access to data stored domestically and overseas.

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