Data Localization vs. Data Governance: Why China Should Support Open, Clear, and Binding Rules on Data Flows and Digital Trade

Nigel Cory
Associate Director, Trade Policy
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Email: ncory@itif.org
Twitter: @nigelcory

ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

@ITIFdc

About ITIF

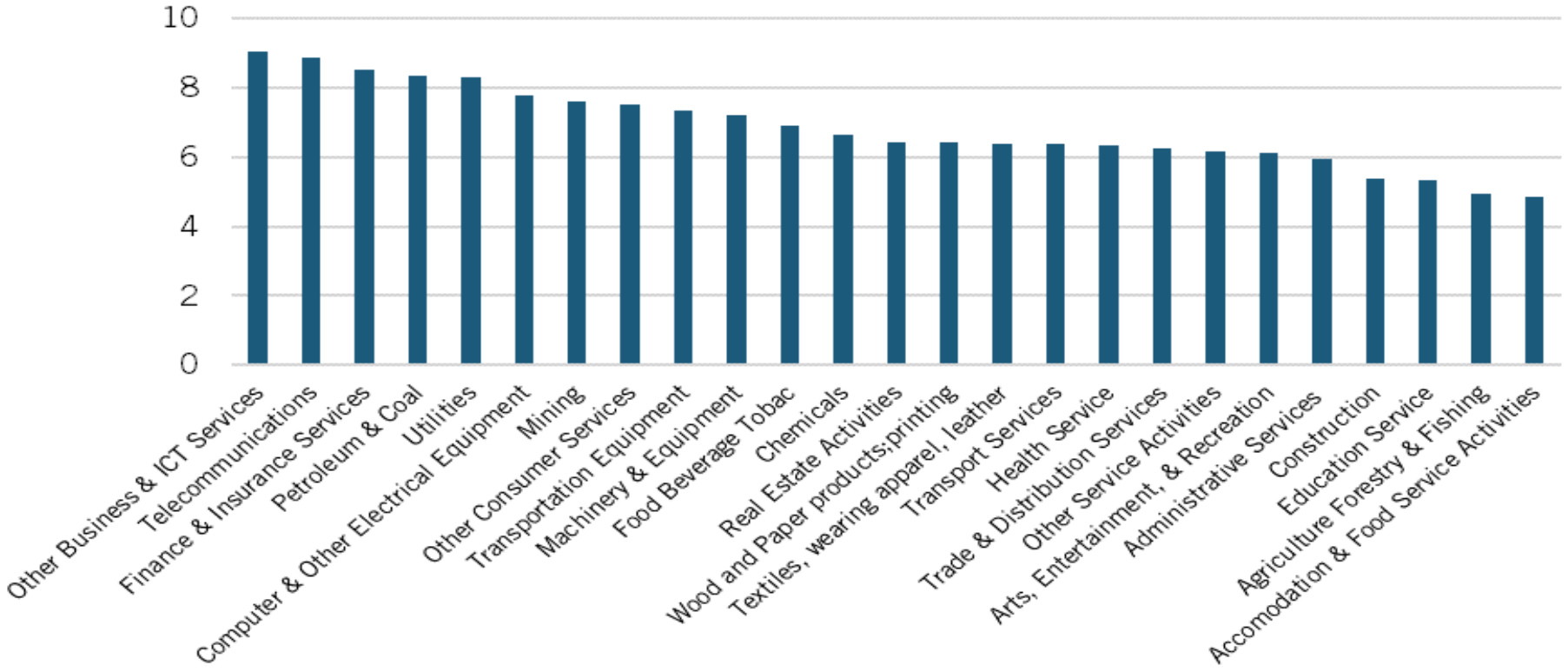
- Independent, nonpartisan research and education institute focusing on intersection of technological innovation and public policy, including:
  - Innovation and competitiveness
  - IT and data
  - Telecommunications
  - Life sciences, agricultural biotech, and energy
- World's top think tank for science and technology policy, according to the University of Pennsylvania's authoritative *Global Go To Think Tank* Index

What's At Stake: Key Driver of Productivity/Innovation

- Data is a key input in the modern global economy.
- Competitiveness and productivity: Increasingly depends on how firms leverage data and digital tools.
- Businesses use data to create value and can only maximize that value when data can flow freely across borders.
- Value of data comes from how it's used—not where it's stored.
- Data will naturally flow across borders unless governments (like China) enact artificial restrictions.

Data Flows & Digital Tools Matter to All Sectors – Not Just "Tech"

Figure 4: Data intensity by KLEMS industry (as log of noncapitalized software expenditure per worker)



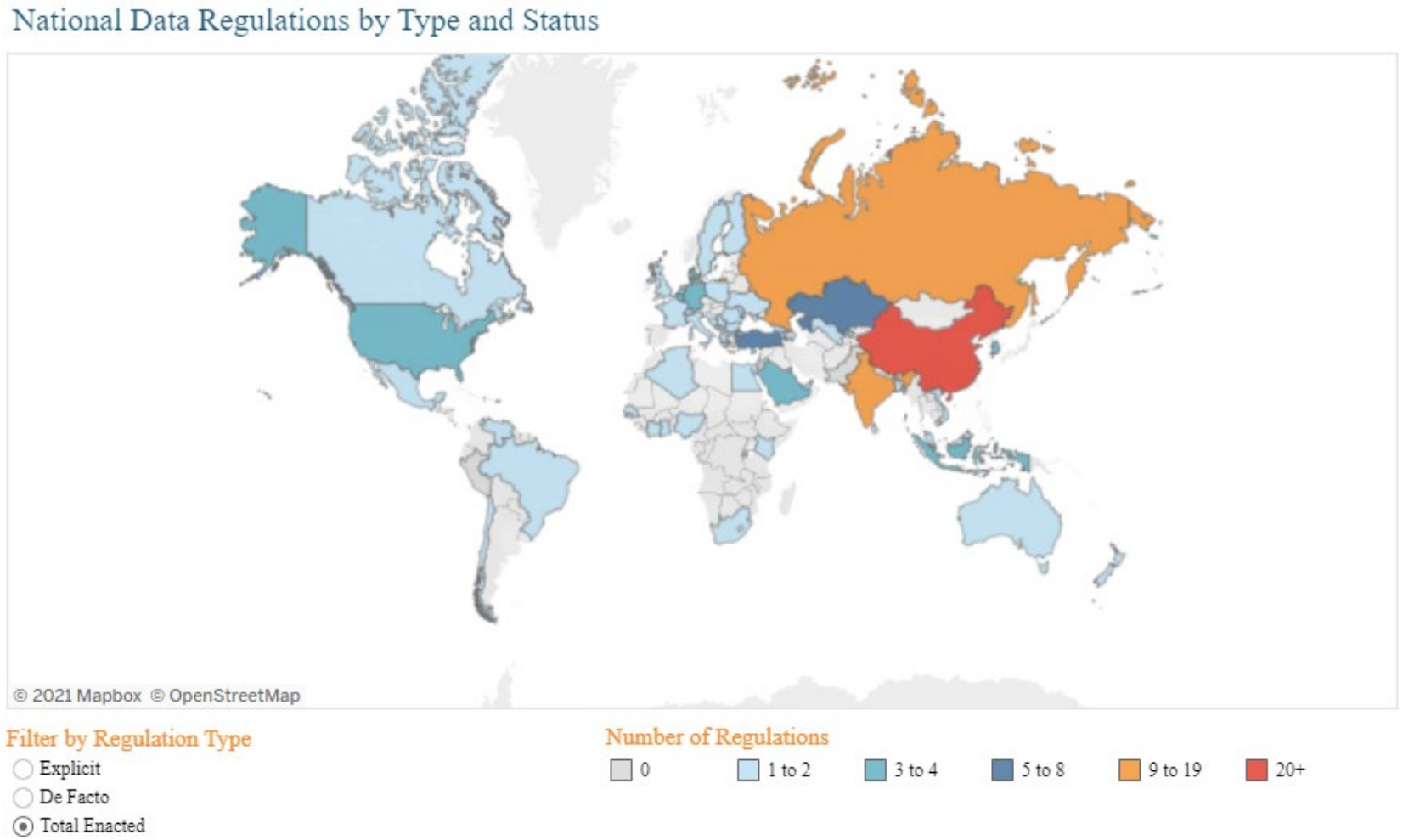
Digital Trade, Innovation, & Competitiveness

- Worth repeating: Value of data comes from how it's used—not where it's stored.
- Competitive advantage = How firms aggregate and use big (& high quality) data.
- Policymakers need to encourage as many firms – local and foreign – to be "data rich."
  - Data flows and digital trade help firms do this.

Doom & Gloom for the Global Digital Economy

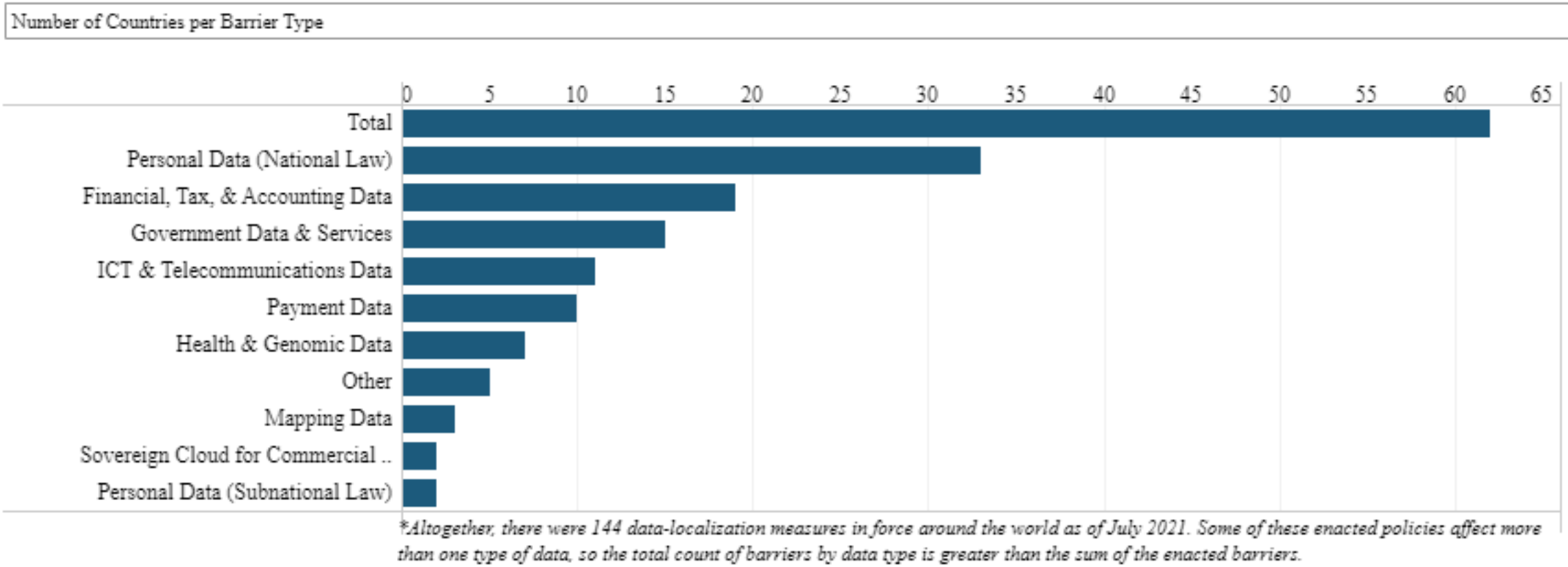
- Digital Protectionism: Tools are many and varied.
- Tool No 1: Data localization
- Other tools:
  - Local presence requirements.
  - Discriminatory licensing & certification processes.
  - Opaque & discriminatory digital content review processes.

2021: Data Localization Spreads to More Countries



2021: Data Localization Spreads to More Types of Data

Number of Barriers by Data Type*



**Altogether, there were 144 data-localization measures in force around the world as of July 2021. Some of these enacted policies affect more than one type of data, so the total count of barriers by data type is greater than the sum of the enacted barriers.*

China is a World Leader in Data Localization

- Has long limited data imports via “Great Firewall of China”
- Extensive data export bans: Data localization the norm, free data flows the exception.

  - 2006 – e-banking data
  - 2011 – personal financial data
  - 2013 – personal credit data
  - 2014 – health and medical data
  - 2015 – (proposed) insurance data
  - 2016 – online publishing (apps, audio and video platforms, online gaming)
  - 2016 – Counter-terrorism (broad requirements)
  - 2016 – Cybersecurity law (broad requirements)
  - 2016 – Cloud computing restrictions
  - 2017 – Personal and Important Data (broad requirements)



Main Motivations for Data Localization

1. Privacy and Cybersecurity

   Wrong: Secure server in NZ, same as a secure server in Brazil.

2. Digital Mercantilism

   Misguided: Data storage does not create value.

   Costly: Raises costs & cuts access to better services.

3. Government Access to Data

   Access for political/social vs. law enforcement.







Digital Protectionism is Short-Sighted

- China wants to support its tech firms to go global.
  - Glaring **lack of reciprocity**.
  - E.g., No Google, Facebook, Twitter, & many others.
  - Don't be surprised when other countries retaliate against Chinese tech firms.
- Possible end scenario: Chinese firms restricted to China and non-major markets and kept out of major markets.

Data Flows and Digital Trade Provisions and China

- China has not made meaningful, binding digital trade commitments in any trade agreement.
  - RCEP is non-binding and not legally enforceable.
- U.S.-China "Phase 1" talks covered cloud and digital market issues, but negotiations did not lead to any major and meaningful changes.
- China-EU CAI – nothing new and meaningful. Locked in existing (restrictive) market access.

China's Digital Free Trade Zones (FTZs) Will Not Work

- Digital FTZs in Beijing, Tianjin, Shanghai, Chongqing, and elsewhere.
  - Pilot projects to test limited digital market liberalization.
- However: Digital FTZs will not work like FTZs did for manufacturing.
- Digital firms need:
  - to operate across cloud/digital service sectors, and
  - be able to access customers wherever they are in China.

China and WTO Ecommerce Negotiations

- Clearly positive: China is involved in negotiations.
- Negotiations have not yet started on sensitive issues like data flows.
- **However**: Data flows will inevitably be part of an agreement.
- Questions:
  - Will China make meaningful commitments or not?
  - Will it be involved in the final deal or not?
- For United States and others, data flows are a deal maker/breaker.

China and Building Global Data Governance

- China needs clear & open rules for movement of commercial data.
  - Reality: Vast majority of data is not national security related.
- Pre-screening and approving firm-level data transfers is antithetical to modern business/trade & legal practice.
  - Modern business/trade involves the transfer of data as a matter of course.
- Focus on legal accountability/responsibility – not data location.
  - Firms are responsible for managing data, regardless of where they transfer it.

Other Ideas to Build Data Governance: Sectoral Agreements



- Support Data-Driven Health Research.
  - Create clear rules to facilitate the reasonable, responsible, & ethi cross-border sharing of health and genomic data.
- Support Financial Regulatory Oversight and Data Flows: Focus on Access, Not Location.



China and National Security: Squaring the Circle

- China's current focus: local data storage and control and overly broad national security measures.
- Result: Not compatible with emerging global norms and practices.
  - Will make it difficult, if not impossible, for China to make commitments similar to those of other digital trade partners (like CPTPP).
- China's future focus should be to:
  - Narrowly define and apply restrictive national security laws.
  - Create data privacy/protection laws that travel with data transfers.

Relevant ITIF Material

- How Barriers to Cross-Border Data Flows Are Spreading Globally, What They Cost, and How to Address Them
- Principles and Policies for "Data Free Flow With Trust"
- Testimony Before the U.S.-China Economic and Security Review Commission Regarding China's Cloud Computing Market
- Testimony to the U.S. Senate Subcommittee on Trade Regarding Censorship as a Non-Tariff Barrier to Trade
- How to Build Back Better the Transatlantic Data Relationship
- The False Promise of Data Nationalism

Thank You!

Nigel Cory | ncory@itif.org | Twitter: @nigelcory