

## Session 76 Summary:

### Data localisation: Balancing trade disciplines and national policy objectives

Moderated by William J. Drake, this standing-room-only session explored ways to strike a balance between potential trade disciplines and national policy objectives with respect to forced data localization requirements. The format involved interactive dialogue rather than serial presentations and focused on three sets of issues: 1) the costs and benefits of data localization for developing countries; 2) the extent of fit between localization and the exceptions provisions in trade agreements, e.g. GATS Art. XIV and in the CPTPP; and 3) the potential benefits of new digital trade rules on data localization, as well as the use of informal intergovernmental processes and inclusive multistakeholder dialogues to help identify a proper balance between trade disciplines and national policy.

Regarding the first set of issues, the panellists discussed the costs of forced localization and highlighted the significant expenses and limited employment gains associated with data centres; the reduced access by domestic consumers and companies to world-class technologies; the often adverse effects on manufacturing and agricultural sectors; and resulting fragmentation of global Internet processes and markets. In parallel, the panellists considered the purported benefits that could lead governments to consider enacting data localization requirements. These included promoting privacy and data protection, easy access to data by law enforcement agencies, and the promotion of domestic digital industries. The panellists noted that there was scant empirical evidence that developing countries' localization policies have achieved these objective to date, and that rigorous empirical investigations are therefore needed. In this context, Dr. Badran discussed her economic analysis of the negative effects of localisation in some African countries.

Regarding the second set of issues, the panel noted that GATS Art. XIV and the CCTPP cover privacy protection and could be interpreted in an evolutionary manner to address security issues more clearly. Tuthill, Crosby and Mishra agreed that the GATS necessity test provides an objective, evidence-based approach to assessing localization measures' relationships to legitimate policy objectives and trade restrictive impacts, as well as available alternatives that are less trade-restrictive. They also discussed the utility of dispute resolution panels drawing on external expert opinions to supplement the parties' submissions.

Regarding the third set of issues, Crosby argued the GATS already applies to data localization and that the joint statement initiative on e-commerce should help to clarify this and close any gaps in coverage. Tuthill noted that both the adoption of a regulatory reference paper and the expansion of existing commitments could be considered. Tuthill and Mishra emphasised the need to avoid any conflicts between a new plurilateral agreement and existing WTO rules. Badran noted the need to provide opportunities for SMEs/MSMEs through digital trade rules. Finally, Drake concluded that the technical complexity of the issues, many interfaces with a wide variety of interests in the Internet ecosystem, and the lack of international consensus across countries and stakeholders could make informal intergovernmental agreements and multistakeholder dialogues a useful supplement to new digital trade efforts generally and help to build common ground on data localization issues in particular.