

HOUSE OF COMMONS INTERNATIONAL TRADE COMMITTEE:

INQUIRY INTO DIGITAL TRADE AND DATA

Memorandum from the City of London Corporation

Submitted by the Office of the City Remembrancer

Summary

- I. The UK should seek to emulate the standard set by like-minded jurisdictions in setting its own independent digital trade policy. It is important that any provisions are modern, forward looking and consider the increased digitisation of services trade.
- II. For the financial and professional services (FPS) sector, the free flow of data between entities in various jurisdictions is of paramount importance. To counter the increasing implementation of laws and regulation that promote or lead to data localisation, policymakers should move as close as possible towards mutual recognition of core principles in order to achieve the protection of personal and non-personal data whilst ensuring the continuation of cross border trade and opportunities.
- III. The UK should seek to break ground on cooperation within free trade agreements (FTAs) and other mechanisms available in a bid to enhance regulatory coherence as well as mitigate threats to businesses that follow from the increased fragmentation of the digital economy. This should be supplemented by the effective use of the UK seat in multilateral organisations such as the WTO.
- IV. There are many provisions and precedents that exist within recent trade agreements that the UK should seek to emulate. In the short term, the UK's approach should focus on adopting these provisions and facilitating industry implementation of them. In the long term, the UK should seek to build upon these provisions through mechanisms such as regulatory dialogue and MOUs.

Digital Trade

1. The City of London Corporation works closely with a wide range of stakeholders to promote UK-based financial and professional services. These include TheCityUK and London and Partners, as well as a wide range of government departments, professional and trade bodies. The City of London Corporation supports the UK Government's ambition to include services and digital provisions in new free trade agreements (FTAs) with global markets and encourages the UK to explore opportunities to break new ground through developing agreements which evolve with technological change in the markets and address wider societal challenges. It is crucial that the UK works to advance and support forward looking trade agreements on the global stage, including both FTAs and plurilateral agreements.
2. Digital trade provisions in trade agreements serve several purposes. They uphold the values of the WTO and provide some legal certainty for digital commerce; they enable digital trade either by cutting red tape or making it easier to conduct business online; and they cover new issues that have not been discussed in the WTO context and try to address areas such data flows and data protection.
3. The UK should seek to emulate the standard set by like-minded jurisdictions in setting its own independent digital trade policy. It is important that any provisions are modern, forward looking and consider the increased digitisation of services trade.
4. The FPS sector is working closely through the UK Government's Trade Advisory Groups and the Global Financial Partnership initiatives on these agendas. The City Corporation complements these efforts with a sustained programme of in-market activity which seeks to

identify key market access issues to address, opportunities for alignment, and build the inter-institutional trust needed to underpin bilateral FPS relationships.

Data Localisation

5. The City of London Corporation, under the International Regulatory Strategy Group (IRSG) has looked extensively at the detrimental impact to the sector of data localisation and the limits on data flows.¹ The free flow of data between entities in various jurisdictions, not least within financial services groups, is of paramount importance to the financial services industry. Nevertheless, there has been increasing implementation of laws and regulations that promote or lead to data localisation within various jurisdictions, creating obstacles to the flow of data across borders and raising issues for the financial services industry.
6. These measures arise not only from intentional protectionism but also as a consequence of otherwise admirable objectives, such as improved security and regulatory oversight, protecting citizens data and increasing local employment opportunities. However, security is often not increased as businesses subject to data localisation measures cannot benefit from the increased security standards of centralised data centre structures which allow more focused, consistent and significant investment in data security measures. Regulatory oversight can also be hampered as measures can prevent any regulator from having a full picture of the regulated activity when financial products and services are transacted across borders, and such measures may negatively impact local businesses and markets. A recent [report](#) by the IRSG makes recommendations for policymakers to move as close as possible towards mutual recognition of core principles in order to achieve the protection of personal and non-personal data, whilst ensuring the continuation of cross border trade and opportunities.²

International Cooperation and Regulatory Coherence

7. Given the increased digitisation of trade and the repercussions of this for government and businesses alike, cooperation and the regular convening of parties is imperative to address and promote issues such as the interoperability of systems across jurisdictions. A key issue is building confidence in the systems of other jurisdictions. Until regulators can cooperate on these issues ‘behind the border’, the ‘at the border’ barriers cannot be addressed. Therefore, there is a need for collaboration at the multilateral level to be preceded by that at the bilateral level. Most agreements contain clauses which place emphasis on regulatory cooperation. However, any firm commitments within FTAs are few and far between. The UK should seek to break ground on cooperation within FTAs and other mechanisms available in a bid to enhance regulatory coherence in this area as well as mitigate threats to businesses that follow from the increased fragmentation of the digital economy.
8. The UK should seek to utilise its seat at the WTO to put forward the case for making permanent the WTO moratorium banning customs duties on electronic transmissions. This would provide certainty for businesses and allow for them to plan and build the necessary infrastructure required to develop innovative digital trade approaches. The prohibition of customs duties on electronic transmissions secures a cost-effective means for businesses to deliver their products across borders. This is especially true of smaller and medium sized Fintech companies who are heavily reliant on IT enabled services and would be disproportionately affected by any imposition of duties. For instance, a duty on every

¹ The City Corporation co-sponsors the International Regulatory Strategy Group (IRSG) alongside TheCityUK. The IRSG is a practitioner-led group comprising senior leaders from across the UK-based financial and related professional services industry. It is one of the leading cross-sectoral groups in Europe for the industry to discuss and act upon regulatory developments. With an overall goal of promoting sustainable economic growth, the IRSG seeks to identify opportunities for engagement with governments, regulators and European and international institutions to advocate an international framework that will facilitate open and competitive capital markets globally. Its role includes identifying strategic level issues where a cross-sectoral position can add value to existing views.

² *International Regulatory Strategy Group* “How the trend towards data localisation is impacting the financial services sector” https://www.irsg.co.uk/assets/Reports/IRSG_DATA-REPORT_Localisation.pdf

electronic transmission would be prohibitive for a smaller payments firm looking to scale up and expand internationally.

UK-Japan CEPA

9. It is welcomed that the UK-Japan CEPA went beyond the EU-Japan EPA on digital trade. The wide range of issues covered such as data localisation, the movement of financial data as well as the protection of source code and algorithms are all positive developments for the FPS sector. They help establish the UK's position as a forward-looking player in the data and digital sphere. The UK should seek to continue to include these measures in all future trade deals. In addition, the UK should emulate global best practice in digital trade and follow the high standards set by other jurisdictions in agreements such as the CPTPP, USMCA, and DEPA.

Future Trade Agreements

10. The FPS sector would benefit from many provisions which feature in digital trade chapters of recent trade agreements:
- a. Non-discriminatory treatment of digital products: Firms benefit from having their products and services treated in a non-discriminatory manner. This ensures market competition and provides better quality choices for consumers.
 - b. Domestic regulation: Avoiding unwieldy regulatory burdens makes it easier for firms to operate within other jurisdictions without the need to abide by onerous compliance rules. As firms expand into other markets it is useful when any regulations for conducting cross border business are clear.
 - c. Trade facilitation measures such as the acceptance of e-signatures and the use of paperless trading: This allows greater ease of business for firms particularly in relation to contracts and invoicing. The delay caused by the requirement of paper documentation can be costly and inefficient. With the increase of remote working and the acceleration of the digitisation of services trade, this provision is more significant than ever. Many of these practices have seen greater adoption to ease trade in the pandemic and active promotion of these should be continued in the recovery and beyond.
 - d. Consumer protection: DEPA provides the gold standard in this regard with further detail on the adoption of regulations that require goods and services provided to be of acceptable and satisfactory quality, consistent with the supplier's claims and provide consumers with appropriate redress when they are not. This helps to establish consumer trust in digital trade which ultimately assists firms when engaging in digital practices, cross border or within jurisdictions
 - e. Source Code: This is of particular value to Fintechs as source code is often at the heart of their operation. The protection of this intellectual property, which may give firms a competitive advantage over other players in the market, is important in ensuring the ultimate survival and effectiveness of the business. Provisions providing for the protection of source code as well as the proprietary algorithms as featured in USMCA and CEPA provide a good precedent for the UK.
 - f. Cybersecurity: Commitment to build capabilities responsible for incidence response and strengthening collaboration on risk based approaches are encouraged over prescriptive regulation in addressing cyber threats. The increase in digitisation leaves businesses (particularly FPS providers) open to attack. Cooperation which can lead to consensus-based standards help to minimise risks.

CPTPP

11. The City of London Corporation welcomes the UK government's focus on negotiating deals with ambitious digital trade provisions. Indeed, the initiation of FTAs with Australia and New Zealand and the prospective UK-Singapore DEA show a step in the right direction in this respect. The UK accession to CPTPP will further help cement the UK's ambitions to become a leader in the digital trade space.

12. Many of the provisions and precedents that exist within the trade agreements of these jurisdictions are ideals the UK should seek to emulate. In the short term the approach should focus on adopting these provisions and facilitating industry implementation of these. In the long term the UK could seek to build upon these provisions through mechanisms such as MOUs.

UK-EU Digital Trade

13. Digital trade provisions within the UK-EU Trade and Cooperation Agreement (TCA) constitute some of the most advanced digital trade provisions that the EU has concluded to date. The ban on forced data localisation and provisions around regulatory cooperation are welcomed. However, it is yet unclear how the ban on localisation will relate to the FS sector given the carve out for prudential regulation which exists in the digital trade chapter.
14. The UK and the EU have each put in place additional rules for the protection of personal data which are not covered by the provisions within the TCA. In order to ensure the continued ability to transfer personal data between the UK and the EU/EEA and international destinations both parties should secure mutual adequacy decisions. The UK's decision to recognise all EEA countries as 'adequate' to allow data flows continue from the UK to the EU is welcomed by the sector.

City Remembrancer's Office
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