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US data snooping could put trade deals in limbo

EU members put up stiff resistance to allowing cross-border data flow in any such deal

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Revelations about US digital eavesdropping have fanned concerns about internet privacy and may complicate US attempts to write rules enshrining the free flow of data into trade pacts with European and Pacific trading partners.

As more and more consumers and businesses shop and sign up for services online, the IT industry is working to fend off rising digital protectionism it sees as threatening an e-commerce marketplace estimated at up to $8 trillion (Dh29.3 trillion) a year.

“Restrictions on information flows are trade barriers,” Google’s executive chairman, Eric Schmidt, said at a Cato Institute event last month, warning that the worst possible outcome would be for the internet to turn into ‘Splinternet’. The unease of US technology companies has mounted in lockstep with rising worries overseas about data privacy.

German Chancellor Angela Merkel — a target of US spying — has called for a European internet protected from Washington’s snooping. Brazil and the EU plan to lay their own undersea communications cable to reduce reliance on the US. And other countries are showing a preference for storing data on local servers rather than in the US.

President Barack Obama acknowledged that it would take time to win back the trust of even friendly governments. Trade experts predict the US will have to make concessions on data privacy in the Transatlantic Trade and Investment Partnership talks (TTIP) with the EU, and will probably not get all it wants in Pacific Rim trade talks either.

“It is unfortunate because there were some good nuanced conversations happening before the spying allegations,” said Adam Schlosser, director of the Center for Global Regulatory Cooperation at the US Chamber of Commerce. “But there is now a tendency to inappropriately conflate national security and law enforcement with... commercial privacy practices, which has put a damper on rational debate.”

The TTIP and the Trans-Pacific Partnership (TPP) talks are billed as next-generation trade negotiations, covering not only tariffs and goods trade but also common standards and goals in areas ranging from labour standards and environmental protection to intellectual property and data flows.

The last two issues are key for digital trade, which encompasses everything from US cherry farmers selling direct to Chinese families via Alibaba Group Holdings' Tmall electronic shopping platform to plane-maker Boeing monitoring in-flight diagnostic data online.

A 2011 report by the McKinsey Global Institute found almost $8 trillion changed hands each year through e-commerce, something that explains the keen interest IT firms and industry associations are taking in the trade agreements. According to data compiled by the Sunlight Foundation, the computing and IT industry has been the second-biggest lobbyist on the TPP, after the pharmaceutical industry.

Industry groups such as the Software & Information Industry Association say free exchange of data is the key focus.

"For SIIA and its members, the most crucial issue in the trade agreements under negotiation is to get provisions permitting cross-border data flows," said Carl Schonander, international public policy director at SIIA, whose members include Reuters News parent Thomson Reuters.

BSA The Software Alliance, an advocacy group for the software industry has warned that TPP partners Australia, Canada, Chile, Mexico, Peru and Vietnam are among countries adopting or proposing rules banning or limiting companies from transferring personal information offshore. This might mean US companies have to set up local servers in every country.

"Data flows are the lifeblood of the digital economy," said BSA policy director David Ohrenstein. "Trade agreements [must] ensure borders are open to data flows."

In an ideal world for IT companies, countries signing the TPP would promise not to impede cross-border data flows or make companies set up local servers.

US-based lobbyists expect those provisions to make it in, possibly with exceptions, but say work is still needed to convince trading partners to promise that any new regulations — including on privacy — will not restrict trade unnecessarily.

In Europe, where the backlash against US spying has been the strongest, policymakers want changes by mid-2014 to the Safe Harbour Agreement, which allows US companies with European-level privacy standards access to European data.

An opinion poll by the Atlantic Council and the Bertelsmann Foundation found rules governing cross border data flows and the alignment of privacy protections were among the most contentious, and important, issues in the US-Europe talks.

Atlantic Council vice-president Fran Burwell said it would be hard to get support from the European Parliament or countries like Germany without an agreement on data protection.

“I think the big concession that [the US] will have to make will be in the data privacy area,” she said.

Tension is also brewing over intellectual property. US music, book and software companies see piracy of copyright material as the biggest threat to their exports, while companies like Google worry about being held responsible for the actions of clients on their networks.

Data privacy group Electronic Frontier Foundation said proposals in draft TPP chapters would restrict flexibility in allowing fair use of copyright materials and encourage low-quality software patents by setting the bar too low.

A group of 29 smaller tech companies wrote to US Senate Finance Committee Chairman Ron Wyden last week and warned against including harsher criminal penalties for minor copyright infringements in the TPP. The committee has jurisdiction over trade issues in the US Congress.

“Reddit is a platform the same way that the telephone is a platform,” said Erik Martin, general manager of online news hub Reddit, one of the signatories to the letter. “To put so much burden on the providers to deal with problems from individual users is just really going to put a chill on investment and put a chill on innovation.”