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Trends in International Rule-Making for the Digital Economy
TFMA: Seizing Global Trade Opportunities and Minimizing Global Trade Threats

by

Aviva Zhang
Senior Public Relations Manager
Global Government Affairs Department
Trade Facilitation and Market Access, Huawei Technologie

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Mapping the Digital Economy

The Digital Economy Defined

“The ecosystem comprising goods, products, services, platforms and solutions that are either instrumental to or avail themselves of online connectivity.”

Digital Trade Defined

“Cross-border provision of goods, products, services and solutions that are instrumental to or avail themselves of online connectivity.”

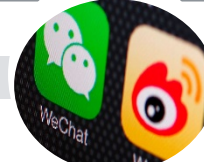
1 Infrastructure



2 Services



3 Platforms & Ecosystems



4 Devices



What?

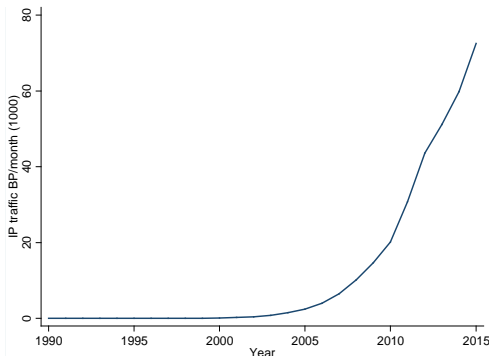
- > Telecommunications networks and connectivity infrastructure;
- > Optical fiber, cables, switches, signal amplifiers, servers, data centers, satellites, wireless base stations, mobile telephone towers, antennas, routers, modems, range extenders and other equipment that brings connectivity to our homes, offices and devices.
- > Information, communications and computing services;
- > Comprises everything from banking to retail to booking and paying for travel and accommodation, to finding and booking someone to clean your apartment and someone else to take you to your next appointment.
- > The result of multi-device connectivity, meaning we now connect to the internet with two or more devices and expect seamless operability;
- > Results in a winner-take-all competitive dynamic where the economics of network effects plays a very important role.
- > Traditionally desktops or laptops
- > Mobile telephones are portable super-computers capable of almost any functionality;
- > Wearables (watches, headphones), VR goggles, AR glasses becoming more prominent,
- > Trend moving towards the Internet of Things, the Internet of Vehicles and the Internet of Everything.

Who?

- > Few large equipment vendors working with carriers;
- > 1000s of smaller players manufacturing and selling individual components.
- > Telcos who invest in build, operate and lease access to their networks;
- > Millions of other providers from Citibank to Uber and across many other sectors.
- > Google and Android versus Apple and iOS;
- > WeChat and Alibaba in China;
- > Amazon, Microsoft.
- > The future belongs to those who can make all of the devices users want;
- > And connect them seamlessly with ecosystems that they either own or control.

The End of Silofication

Services, data flows



- Cross-border bandwidth used has grown 45 times since 2005;
- Half of cross-border services trade enabled by connectivity and ICT;
- Global E-commerce turnover exceeds US\$1tn, equivalent to Australia's GDP, growing 3x faster than Chinese economy.

- End of “silos” between goods, services, IP, and data;
- Holistic trade policy approach
- Servification of manufacturing. 3D printing, IoT, cloud.

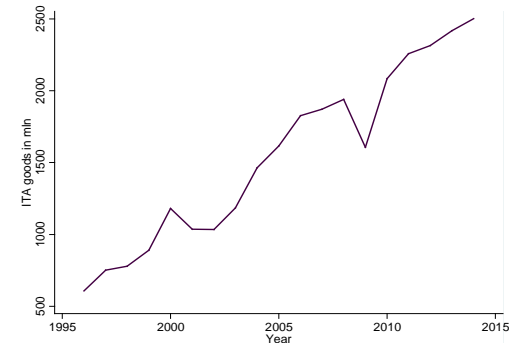


Convergence & complementarity



Need for new rules

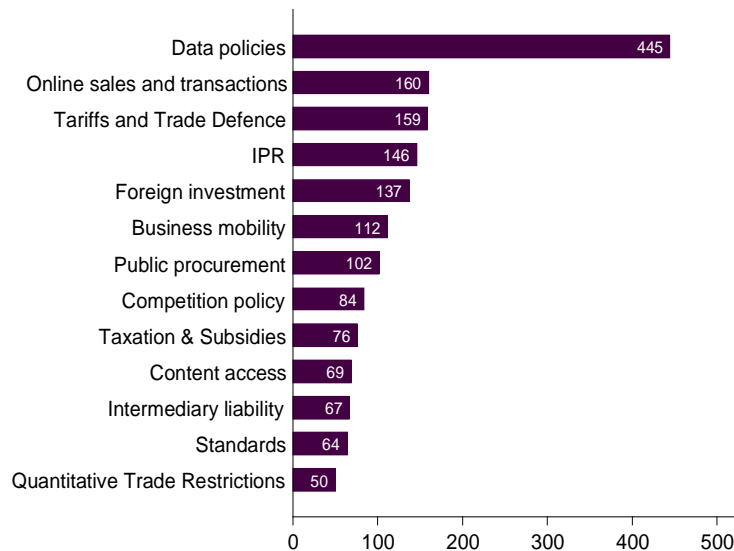
Digital goods and manufacturing



- Trade in digital goods (ICT items) grew from 5% of global trade to 25% since ITA-I (20 years);
- South-south trade bigger than north-north;
- Trade in digital intangible products also growing.

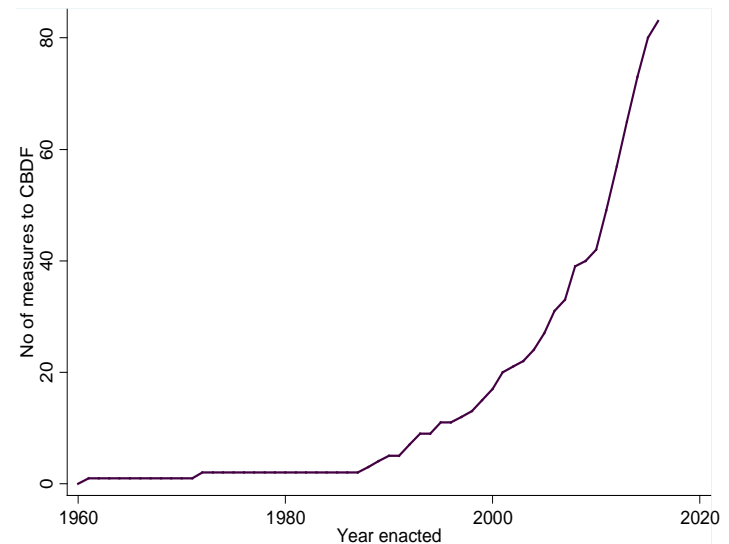
The Rise in Digital Protectionism

Types of discriminatory digital trade measures and number of occurrences in global trade



Source: ECIPE Digital Trade Estimates

Rise in data localization measures (actual and anticipated)



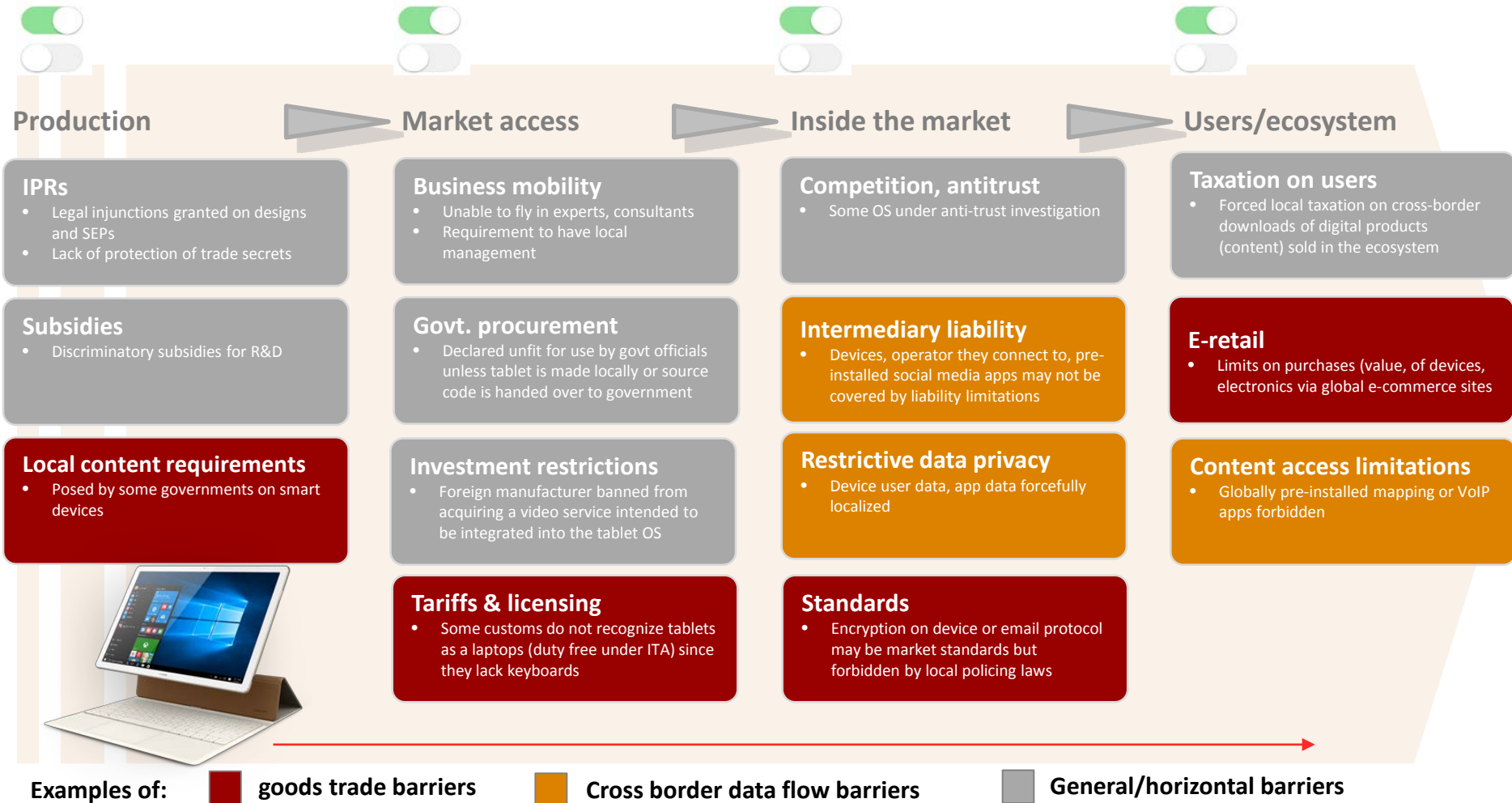
Source: ECIPE Digital Trade Estimates
Note: CBDF is Cross Border Data Flows



Governments are clearly more Inclined to Intervene in the digital economy using a range of policy tools and regulatory instruments.



Different Choke-Points and Vulnerabilities



Declarations of Principle on Internet Governance



1998 Blueprint for Action on Electronic Commerce

- Affirms **leading role of private sector**;
- Seeks to limit government's role to providing a legal and regulatory environment that is **predictable, transparent and consistent**;

APEC Privacy Framework

- Recognizes the **right of members to set their own rules**;
- But seeks to promote **mutual recognition** of privacy regimes.



1980 Privacy Principles and 2013 Update

- **Guidelines on the Protection of Privacy and Transborder Flows of Personal Data**;

2011 Recommendations

- Promote and protect **global free flow of information; open, interconnected internet**;
- Promote competition in **high-speed networks, services, privacy at global level**;
- Limit **intermediary liability**;
- Co-operation to promote **internet security**.



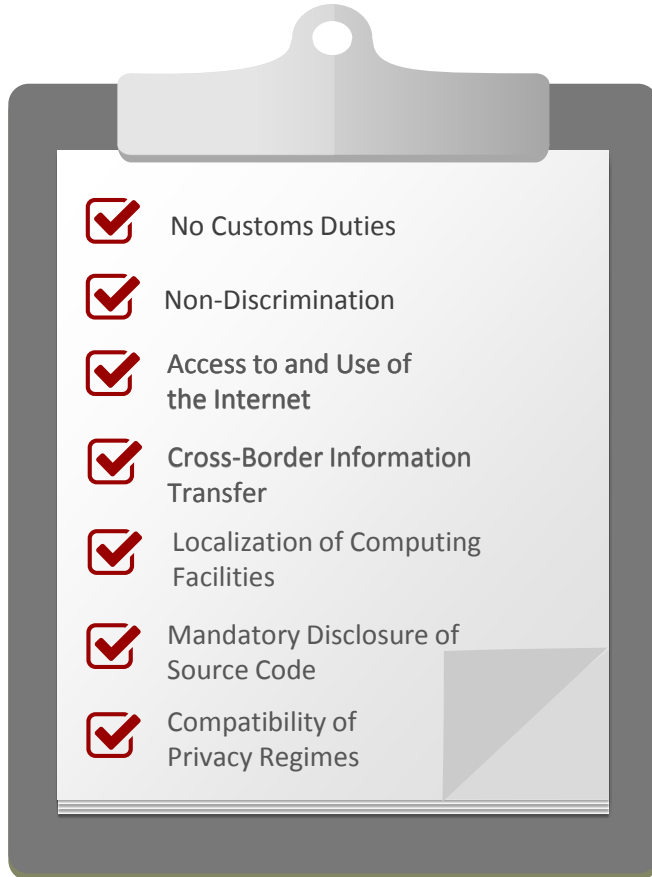
Joint Statement of the G20 2016

- Upheld the principle of the **free flow of data**;
- Endorsed a blueprint on innovative growth affirming the importance of preserving the global nature of the internet as an **engine for growth**, and expressed the G-20's commitment to the **free flow of information**, ideas, and knowledge across borders, freedom of expression, and the **multi-stakeholder approach** to internet governance;
- Work continued by Germany 2017.

Consensus: Internet should be open, freely accessible and governed by a plurality of stakeholders (multi-stakeholder governance)

New Rules on E-Commerce

TPP E-Commerce Chapter: An Industry Wish List of New Rules



No Customs Duties

Permanent moratorium on customs duties for electronically downloaded products (music, books, games); Implications for 3D printing?

Non-Discrimination

Equal treatment to all digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party.

Access to and Use of the Internet

Hortatory language on recognizing the benefits of consumers having access to and use of services and applications of their choice and being able to use devices of their choice to access the internet.

Cross-Border Information Transfer

Obligations to allow the cross-border transfer of information provided it's for business purposes but subject to exceptions (legitimate public policy objective) with similar language to the GATT Art. XX Chapeau.

Localization of Computing Facilities

Basic ban on data localization, subject to a similar exceptions clause to cross-border information transfer.

Mandatory Disclosure of Source Code

Basic ban on requiring suppliers to disclose source code, but limited in scope to mass-market software and excludes software for critical infrastructure.

Compatibility of Privacy Regimes

Duty to adopt a domestic data privacy regime in accordance with international "principles and guidelines"; transparency requirements; compatibility of different privacy regimes.

Despite its dwindling prospects, the TPP establishes rules that are likely to serve in future

Living in an Ideal World

Characteristics of an Optimal Trade and Investment Regime

Market Access

- Have an open and non-discriminatory trade and investment regime.
- Limit investment reviews to only the most clearly strategic assets.
- Limit the use of the nation security exception to the most clear-cut cases.



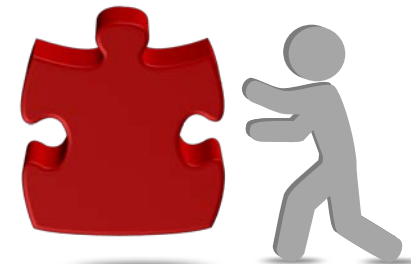
National Treatment

- Treat foreign economic operators and investors the same as domestic actors in all areas of policy, regulation and legislation.
- Allow foreign operators and investors to join local business associations



Partnership

- When contemplating far-reaching changes to the trade, investment or business climate consult first with business and the private sector
- Work together with the private sector in enacting and implementing policy and regulatory reforms



Cross-cutting issues

- Skills
- Infrastructure and logistics
- Predictability of the trading and investment climate | Ease of doing business | Rule of law

Thank you

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