

BROOKINGS

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Digital Data and Implications for Inclusive Trade and Development

UNCTAD Intergovernmental Group of Experts on Ecommerce and the Digital Economy

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Joshua P. Meltzer

Senior Fellow, Brookings Institution

Washington D.C.

Global Digital Trends

- 3.7 billion people have access to the internet – but over 50% of the world does not have internet access
- Internet access is mobile
- Entire economies are becoming digital
- Transformation in international trade

Data flows and international trade

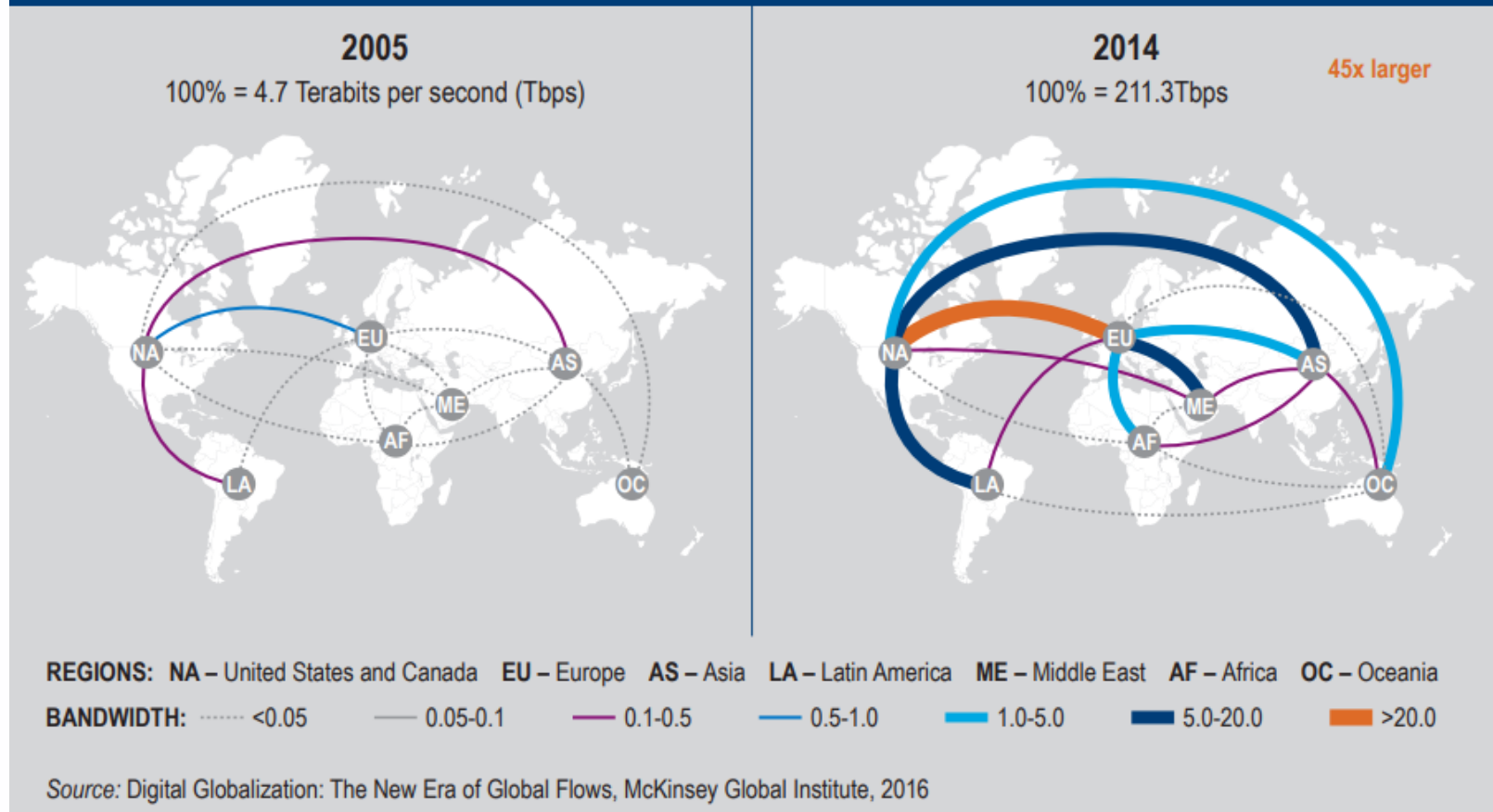
1. Cross border data flows are forms of international trade

- Goods and services purchased online but delivered offline e.g. ecommerce
- Services purchased and delivered online e.g. professional, education, cloud computing, IoT
- Content delivery e.g. movies, books, social networks

2. Cross border data flows enable international trade

- Internal company data flows e.g. HR, communication, data sharing and analysis, managing GVC
- Innovation, R&D, Big data, AI development

Figure 1. Growth of global cross-border data flows 2005 vs. 2014

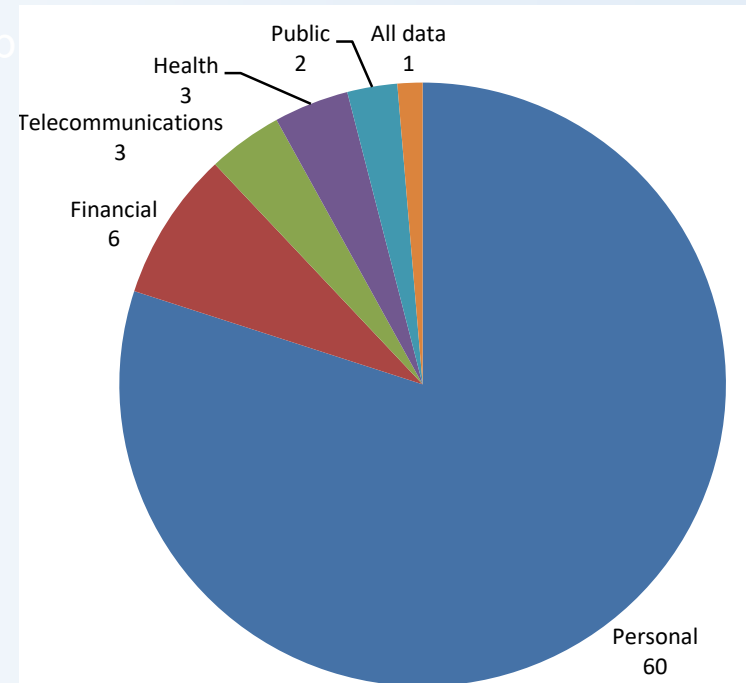
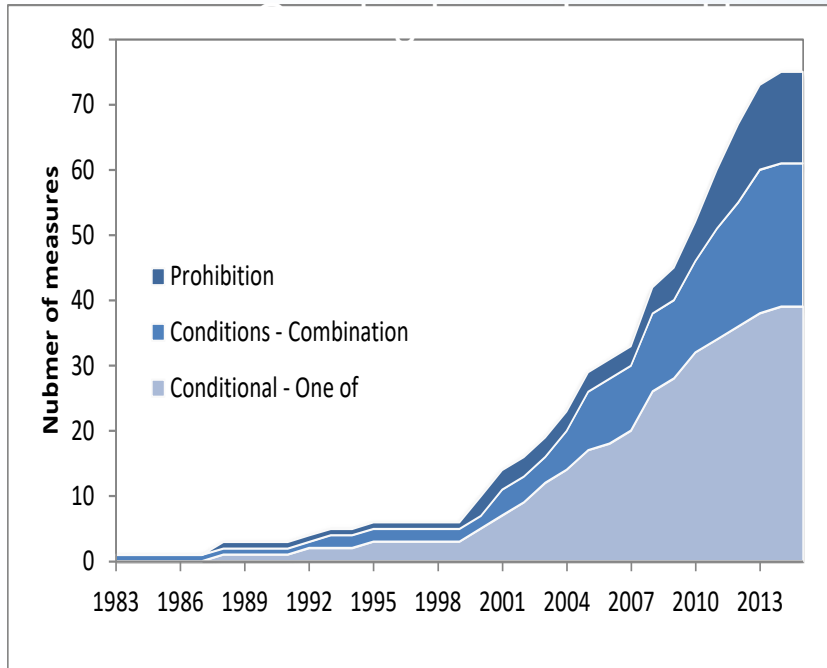


The Digital Transformation of Trade

- Platforms
- Digital Services
- Increased services value-add in manufacturing
- Global Value Chains



Data Localization Requirements



Reasons for data localization

- Privacy
- Law Enforcement
- Cybersecurity
- Censorship
- Protectionism

India's ICT-enabled services exports

- Cross-border data flows are vital for India's exports of services
- ICT enabled exports in 2016-2017 were \$103bn or 63% of total services exports
 - » 80% delivered via mode 1 - over the internet
- Key markets for India's ICT-enabled services exports
 - » U.S. – 56%
 - » EU – 26%
- Provision of these services often requires collecting data from EU citizens and is therefore affected by privacy laws in the US and the EU.

Regulating for a digital economy

- Current regulatory bias towards restricting data flows
 - » Need interoperable regulation e.g. Privacy Shield
- Regulate must calibrate risk/return. For example;
 - » Are there new risks?
 - » Do regulations need to be reformed?
 - » Avoid unnecessary costs for innovation and trade
- Balance is essential
 - » competition issues can cut both ways
 - » Privacy – what is the right balance?

A digital trade agenda

Three key elements:

1. Expand internet access and reduce cost
2. Data source country - a commitment to role of data for trade e.g. cross-border data flows
3. Data destination country - a commitment to extend domestic regulation to foreign citizens
 - Need to get domestic regulation right
4. Some convergence globally on appropriate regulatory standards
 - Bilateral, regional, multilateral
 - Privacy, consumer protection, IPRs

1. Commitment to global data flows

- Obligations on Data Source Country
- Commitment to free flow of information (and others that support data flows and its use e.g. no data localization, no source code disclosure...)
- With exceptions:
 - » GATS Article XIV for legitimate policy reasons including privacy protection

2. Commitment to extend domestic regulation to foreign citizens

- Commitment on data destination country
- Protect the personal information of all users of ecommerce (CPTPP, USMCA)
 - » Privacy Shield also extends US privacy protection to EU citizens
- Adopt non-discriminatory practices protecting ecommerce users from personal information violations within its jurisdiction

3. Convergence on global standards

- CPTPP and USMCA encourage the development of mechanisms to promote compatibility between different regimes for protecting personal information.
 - » OECD 2013 – privacy principles and work towards interoperability
 - » APEC Privacy Framework and CBPR
- GDPR
- Privacy Shield

Variable Interoperability – privacy

- Unilateral action – data source country determines privacy standards and compliance
 - » E.g. EU GDPR but lacks FTA data flow commitment
- Data source country determines privacy standards but conformity assessment in data destination countries
 - » E.g. Privacy Shield
- Global privacy standards but conformity assessment in data source country
 - » APEC Privacy Framework and OECD Privacy Standards
- Convergence on privacy standards and conformity determined in data destination country
 - » E.g. TFA Authorized exporter program (Art 7.7)
 - » E.g. GDPR/APEC referential?

WTO Ecommerce Framework

- Support to expand internet access and reduce cost
- Data Source Country – Commitment to importance of data for trade
 - » e.g. cross-border data flows, no data localization
 - » GATS Article XIV exceptions
- Data Destination Country - Commitment to develop/implement domestic regulation
 - » Privacy
 - » Consumer protection
- Steps towards interoperability of regulatory regimes
 - » TBT plus?
 - » Technical support

Digital Economy and Trade Project

www.brookings.edu/digital-economy-and-trade-project/