

Trends in International Rule-Making for the Digital Economy

*TFMA: Seizing Global Trade Opportunities and
Minimizing Global Trade Threats*

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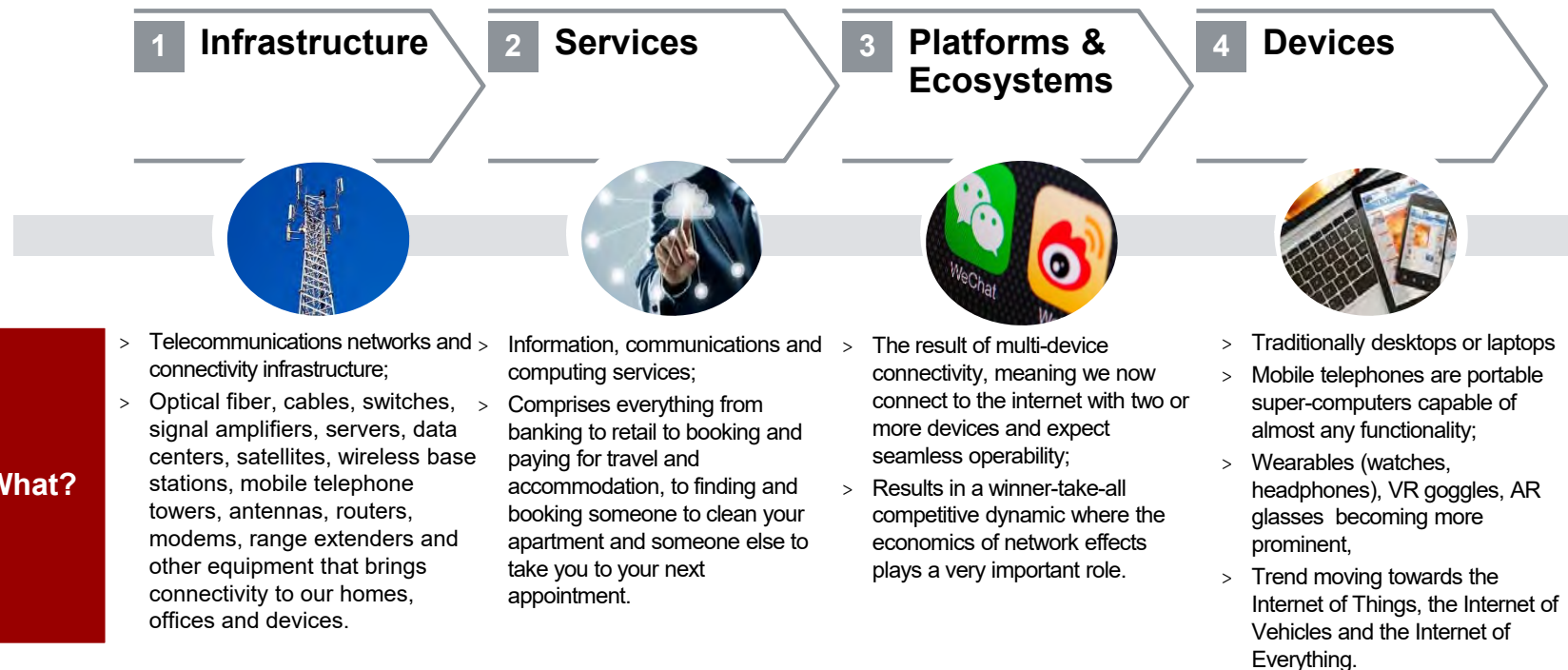
Mapping the Digital Economy

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."



Who?

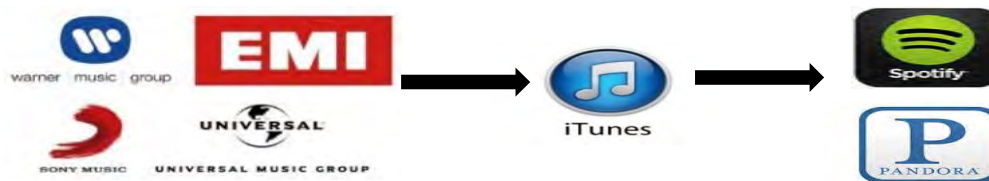
- > Few large equipment vendors working with carriers;
- > 1000s of smaller players manufacturing and selling individual components.
- > Telcos who invest in build, operate and lease access to their networks;
- > Millions of other providers from Citibank to Uber and across many other sectors.
- > Google 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.

Innovation and Disruption in the Digital Economy

The digital economy is not only difficult to define, but is also in a constant state of flux and is always evolving.



The record label business was first disrupted by iTunes which itself suffered disruption by music streaming services.



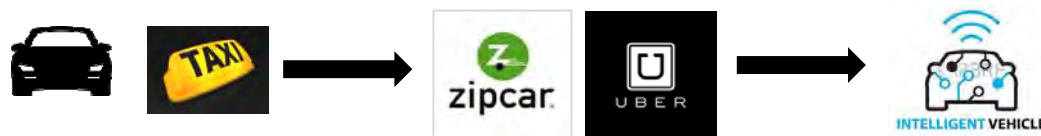
Card issuers have been challenged by online payment systems.



Global travel and tourism industry has been repeatedly shaken up by online platforms.



Individual transport solutions reshaped by ICT industry.




The emergence of competing operating systems has led to the rise of a winner-take-all dynamic.



The End of Silofication

Services, data flows



Year	IP traffic BP/month (1000)
1990	0
1995	0
2000	0
2005	2
2010	20
2015	70

- 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.

-



Need for new rules

Digital goods and manufacturing

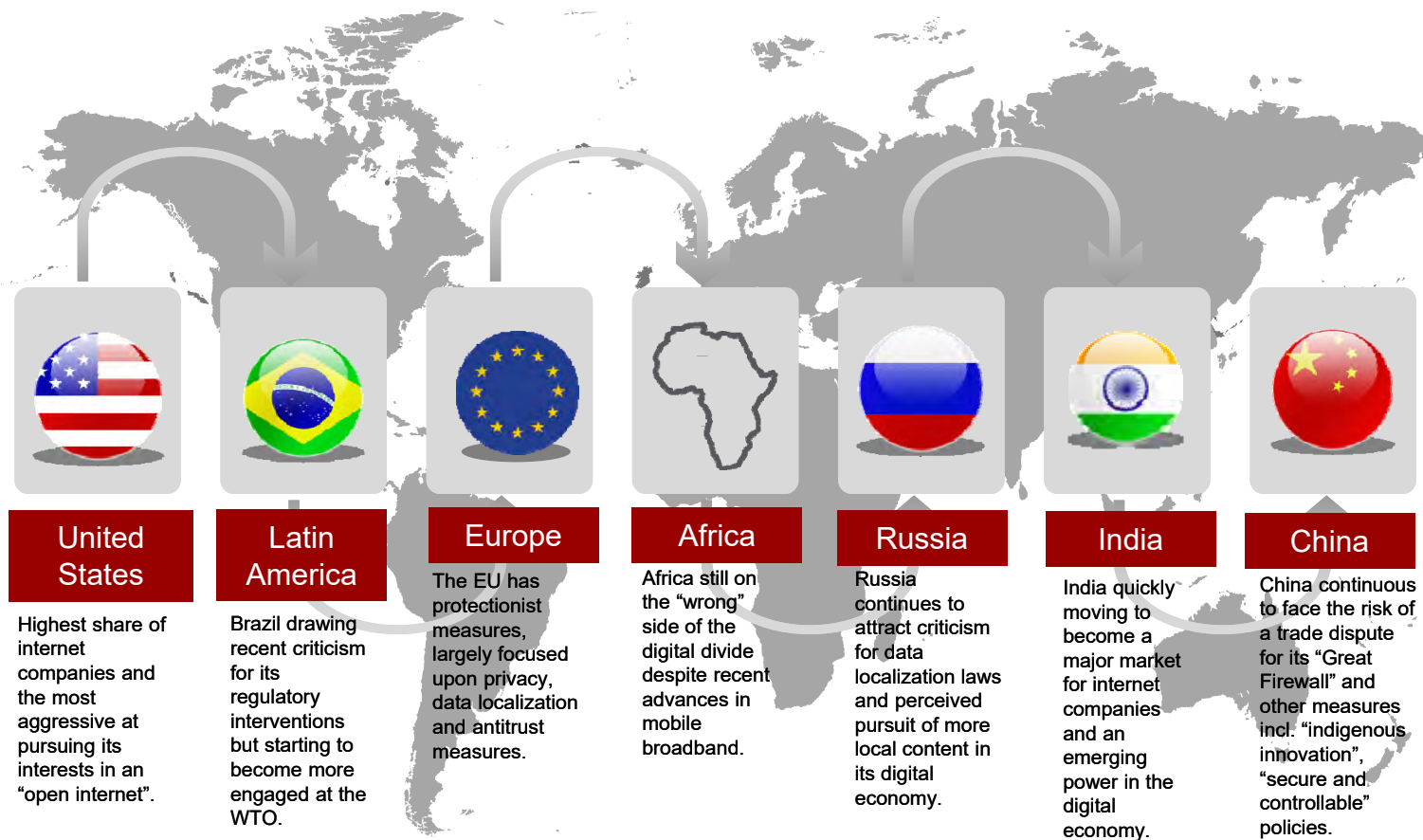
The graph illustrates the growth of trade in digital goods (measured in million tons) over a 20-year period. The data shows a consistent upward trend, starting at approximately 600 million tons in 1995 and reaching nearly 2500 million tons by 2015. A notable dip occurs around 2009, likely due to the global financial crisis, followed by a sharp recovery and continued growth.

Year	ITA goods in mtn
1995	600
2000	1150
2005	1650
2009	1600
2010	2100
2015	2450

- 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.

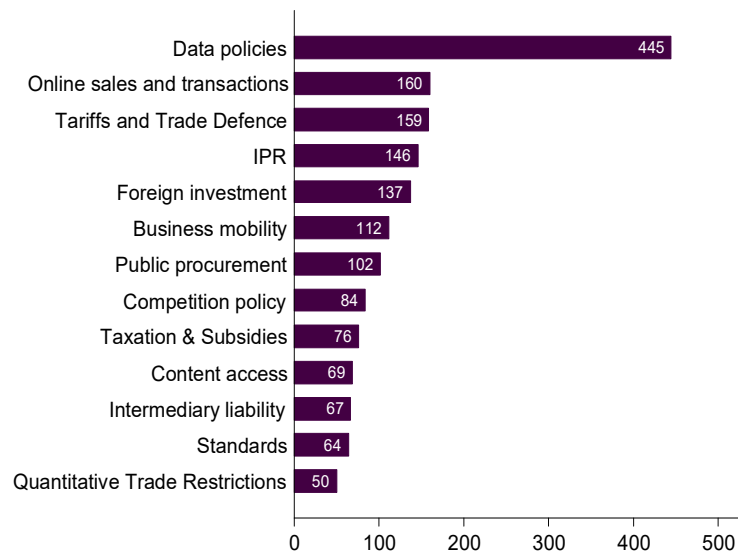
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- The graph illustrates the volume of ITA goods in million units over a 20-year period. The data shows a steady increase from 1995 to 2000, followed by a period of relative stability until 2002. From 2002, there is a consistent upward trend, with a notable dip in 2009, likely due to the global economic crisis. The volume reaches its peak in 2015.
- | Year | ITA goods in mln |
|------|------------------|
| 1995 | 600 |
| 1996 | 750 |
| 1997 | 780 |
| 1998 | 800 |
| 1999 | 900 |
| 2000 | 1150 |
| 2001 | 1050 |
| 2002 | 1050 |
| 2003 | 1150 |
| 2004 | 1450 |
| 2005 | 1600 |
| 2006 | 1800 |
| 2007 | 1850 |
| 2008 | 1950 |
| 2009 | 1600 |
| 2010 | 2050 |
| 2011 | 2250 |
| 2012 | 2300 |
| 2013 | 2350 |
| 2014 | 2450 |
| 2015 | 2500 |

The Risks of Internet Fragmentation



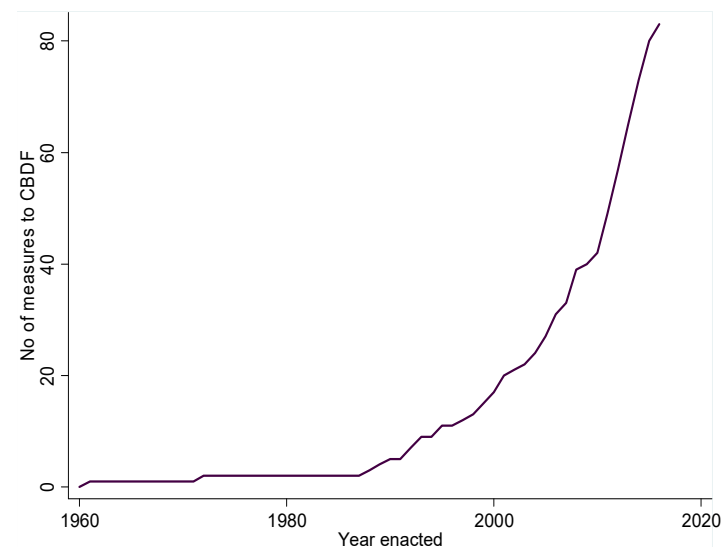
The Rise in Digital Protectionism

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

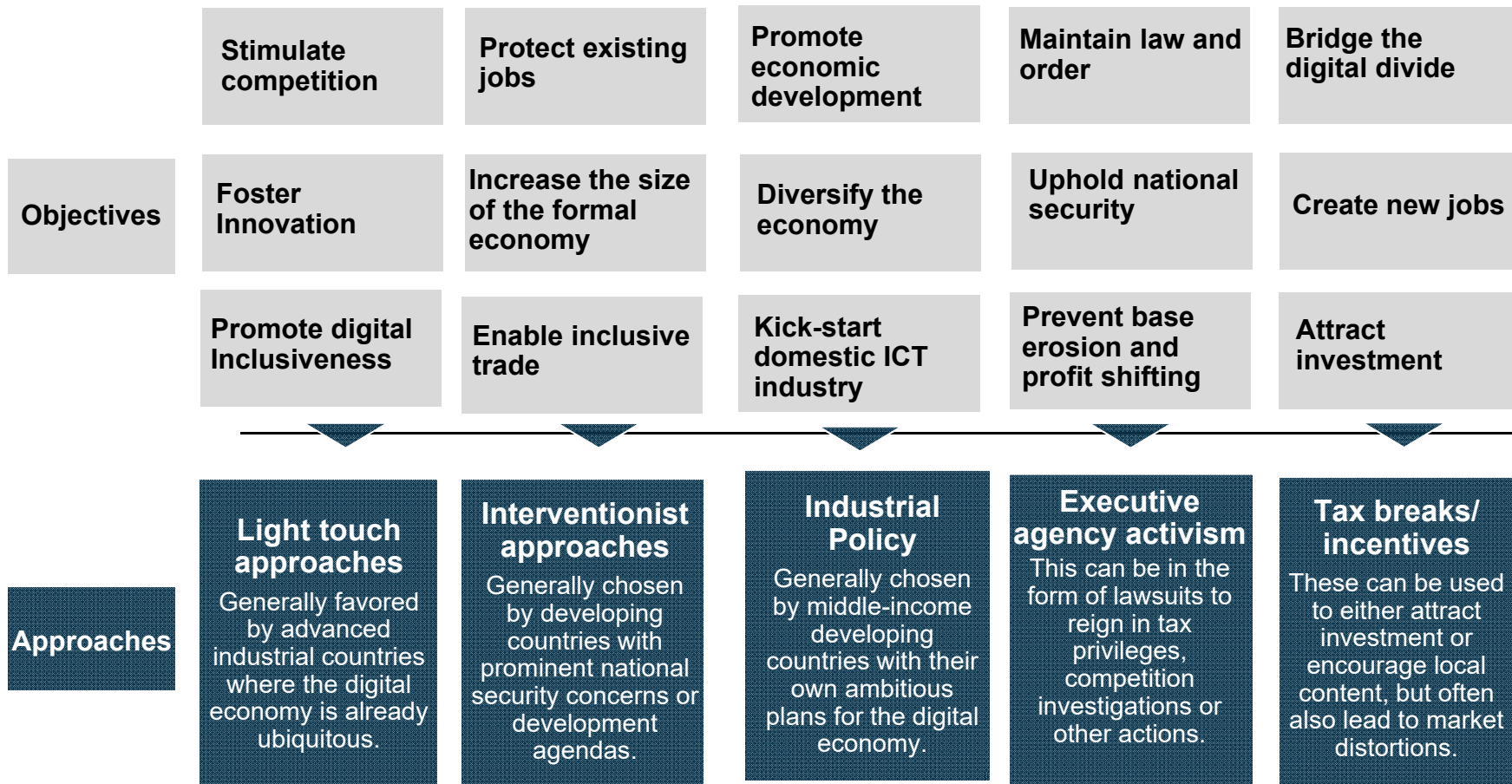


Governments are clearly more Inclined to Intervene in the digital economy using a range of policy tools and regulatory instruments.

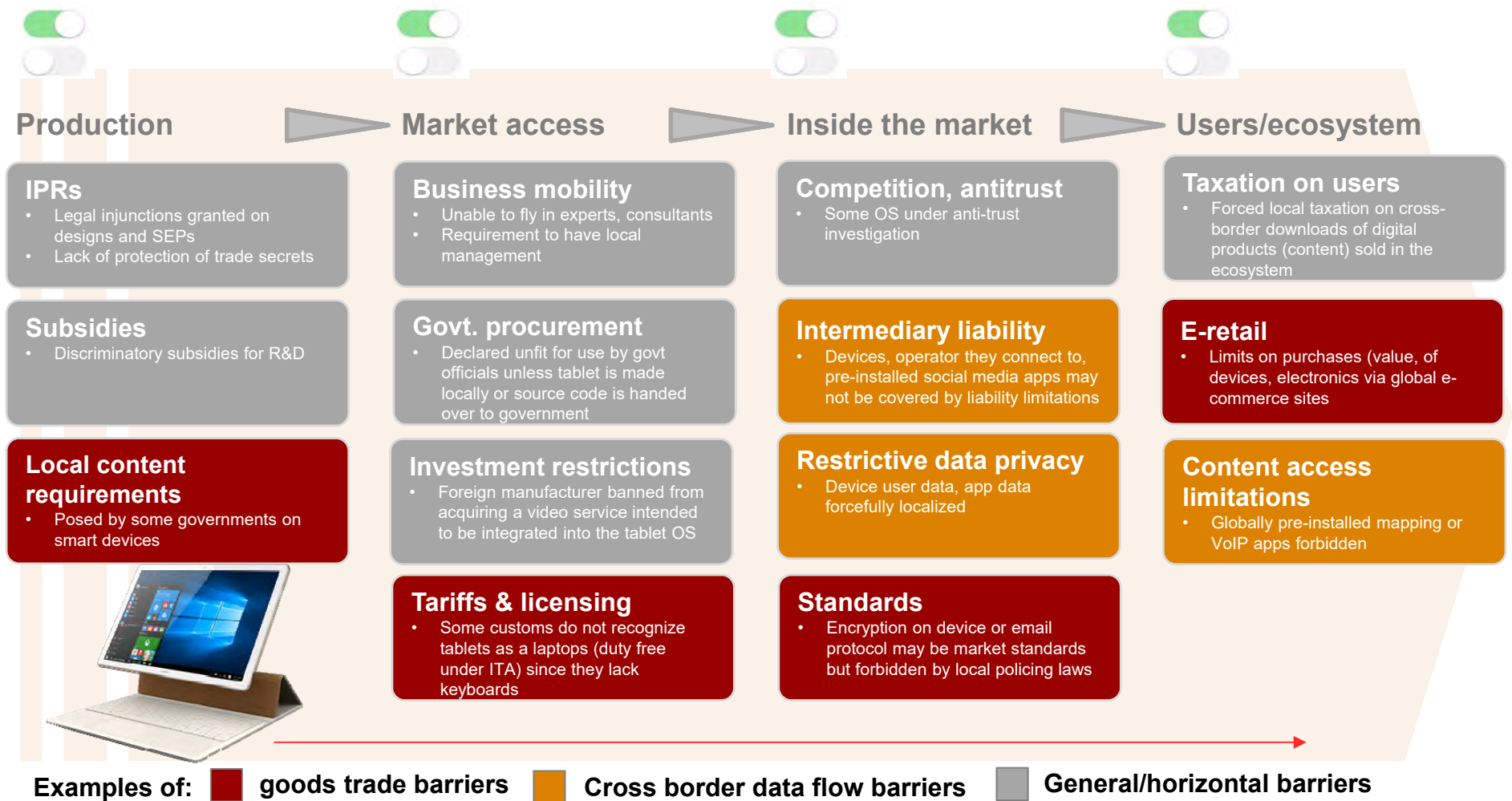


Policy and Regulatory Responses

Different Regulatory Objectives and Approaches in the Digital Economy



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)

Trade Rules Old and New

Existing WTO Rules governing the digital economy

- **GATT** applies to trade in all goods and provides for non-discrimination, transparency, and market access;
- **TBT Agreement** sets rules on the use of technical regulations and conformity assessment procedures;
- **ITA and ITA 2** provides duty-free trade in a broad range of ICT products;
- **GATS** sets out binding rules on how Members regulate different services sectors;
- **TRIPS Agreement** sets out rules on patents and copyright that are great significance to the digital economy;
- **1998 Work Program on E-commerce** sets temporary moratorium on customs duties on electronically traded good and established roadmap for future work.



Future WTO rules on the digital economy

- Possible **Trade Facilitation Agreement in Services** could have far-reaching implications for the digital economy;
- Possible **agreement on NTBs** in the context of the **ITA** could also be very important for the equipment and devices side of the digital economy;
- All eyes now on Buenos Aires and **MC 11** in December 2017.



- Updated and new disciplines on a whole range of areas relevant to the digital economy (see next slide);
- Ratification appears unlikely due to U.S. hostility to the deal.
- New market access commitments and clarification of existing rules on cross-border trade in services;
- Also an annex on e-commerce closely resembling TPP;
- Now suspended due to negotiating deadlock and the new U.S. administration.
- Talks on a whole range of mostly NTMs;
- Now completely on hold following deadlock and due to the Trump transition.
- Now the most important forum where new rules on the digital economy are being discussed;
- Chance for China to lead and fill the vacuum anticipated by a reduced U.S. engagement in the region.

The TPP: Dead but not Forgotten

Telecommunications

Obligations in the area of facilitating effective competition and good regulatory governance principles.

Regulatory Cooperation

Could limit the ability to erect NTBs or otherwise use regulation to tilt the playing field against foreign suppliers or operators.

Cross-Border Trade in Services

New chapter could go further than the GATS in limiting constraints to digital trade transactions.

TPP Rules affecting the Digital Economy

Rules on E-Commerce

Whole new chapter on e-commerce (see next slide) containing negotiating outcomes in many areas internet companies have been calling for.

Technical Barriers to Trade

New rules in the TBT Chapter which seek to minimize the burden of conformity assessment procedures and an ICT annex with rules on EMC and encryption.

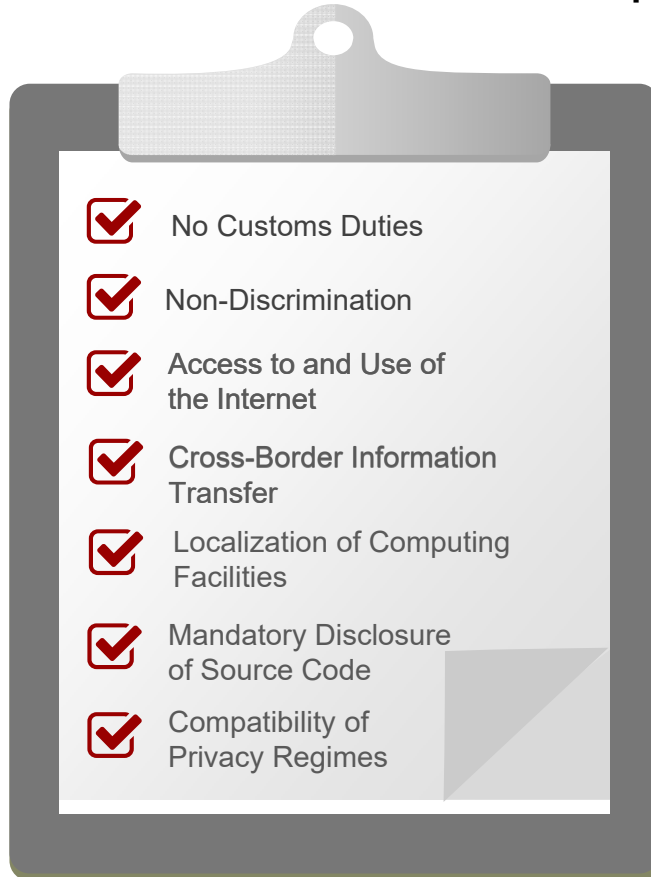
Intellectual Property

Safe harbor provisions that limit the liability of ISPs in cases of copyright infringement.



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

The Promise of Chinese Leadership

Brexit, The Trump Presidency and the Rise of Populism



- Brexit fractures EU;
- Years of painstaking negotiations ahead for the UK and EU;
- Negative impact on TTIP
- Outcomes still very uncertain.



- Trump kills TPP;
- Future of NAFTA uncertain;
- TTIP in the freezer;
- TiSA also on hold;
- Future level and nature of US global leadership uncertain.

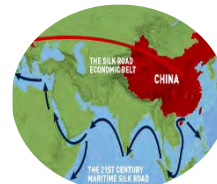


- Elections coming up in France, Italy and Germany;
- Unmistakable rise in populism;
- Validity of the post WWII economic order called into question.



- Represents new challenges for China;
- But also an opportunity to exercise leadership.

One Belt One Road



RCEP



- Initiatives like One Belt One Road and RCEP now in the spotlight;
- The chance to influence new rules currently in the making.

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.



Cross-cutting issues

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

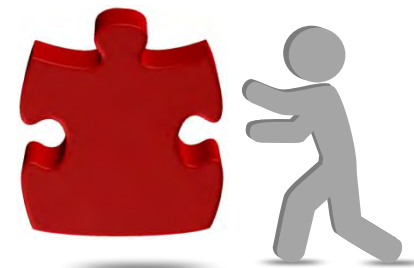
National Treatment

- 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



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