METI/JETRO Digital Trade Symposium

# Expanding digital protectionism & Impact on business

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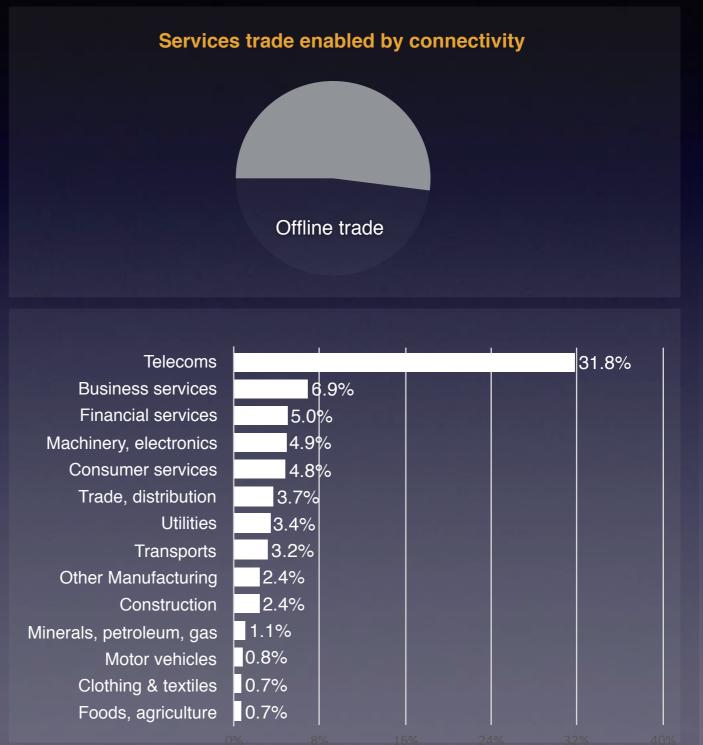
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# Digitalisation enabling international trade

- » Typically 50~56% of services trade enabled by connectivity and ICT technologies in both OECD and developing countries
- » Up to 32% of inputs in the services sector (5% in manufacturing) coming from data and connectivity
  - *i.* Impact on manufacturing bigger than indicated, as they use services that contain connectivity
  - *ii.* Underestimation of true impact due to free services and two-sided markets; transforming fixed costs to transactional costs



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## Data restrictions interacting with other trade restrictions

## Limiting digital market access...

Demanding data localisation leads to increased establishment costs from multiple data locations (index US = 100)



### Further increased trading cost from administrative data restrictions

- Privacy (administrative requirements, sanctions, right to be forgotten, etc)
- Intermediary liability
- Content access restrictions (censorship)
- Bandwidth limitations
- Encryption standards

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### ... undermining competitiveness

### **Traditional establishment measures**

- Local content requirement
- Foreign equity caps or screening of ecommerce and ICT firms
- Residency requirement
- Limits on IPRs
- SOEs in telecom and e-commerce
- Interconnection, bitpipe issues

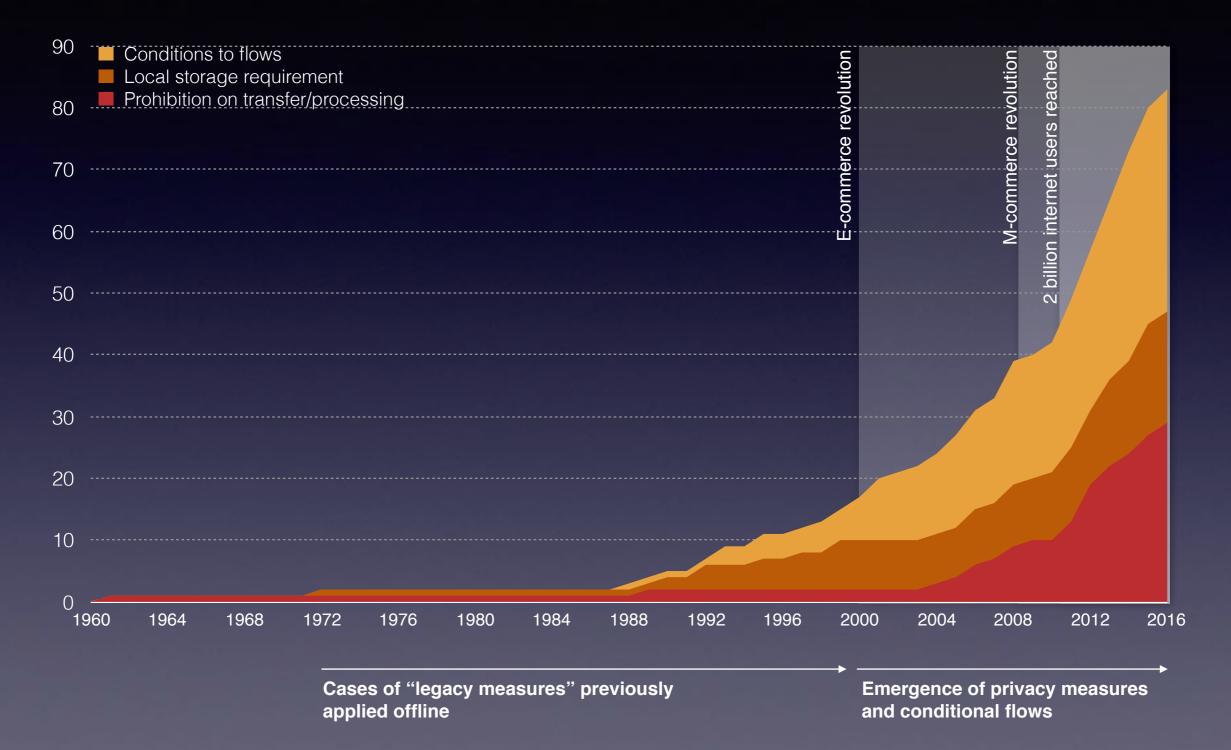
#### Fiscal measures

- Traditional tariffs on devices and software
- Discriminatory taxation on online services
- Discrimination in government procurement (localisation requirements, technology transfer or mandates)

#### **E-commerce measures**

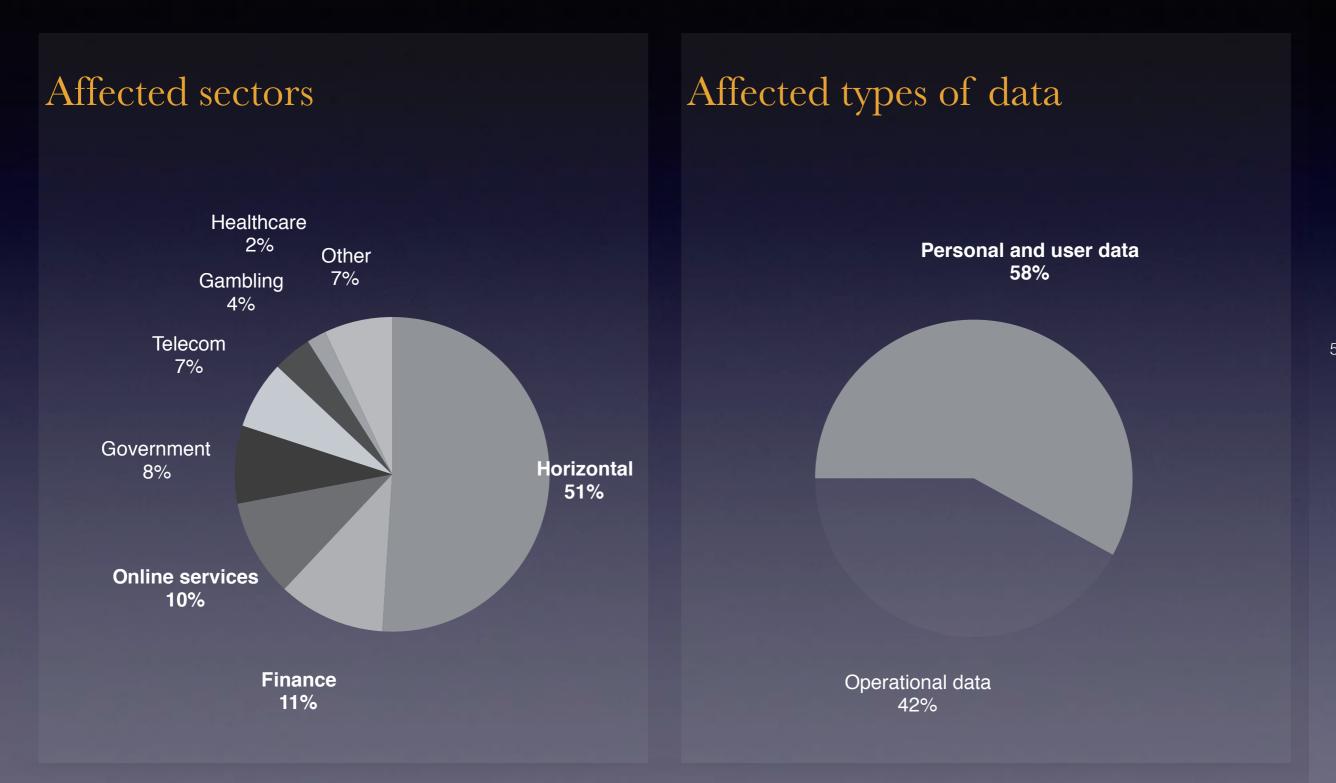
- Trading restrictions, licensing
- Online retailing, DNS restrictions, discriminatory consumer regulations

# Data localisation and data restriction measures in the world are increasing



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Personal data across all sectors are at the core of data localisation/restriction measures



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## Selected examples of data localisation measures

	uropean Union + European ata Privacy Directive/GDPR	Economic Area					
	Sweden Company records	Irg Greece		<b>China</b> Personal information Online content Maps Data localisation requirement Taxi data			
	Luxembourg Banking data						
	<b>Poland</b> Gambling	<b>Italy</b> VAT, tax records		Health information Banking			
anada Iblic data ersonal information	<b>Netherlands</b> Public records	<b>Bulgaria</b> Gambling			Korea	ices (boldies	
nited States ate laws on outsourcing	<b>Romania</b> Gaming and gambling	<b>Belgium</b> VAT, tax records	Russia Personal information		Financial serv Personal infor Mapping		
etwork security agreements			<b>Turkey</b> Data Protection Law 6698; Payment Services & e-Money	 Law 6493	Malaysia	generated in the country ysia	
<b>Mexico</b> Personal data of private partie	es		Pakistan Prohibition of data transfer		Personal Data Singapore Personal Data		
<b>Colombia</b> Protection of Privacy Act			India Reasonable security practices Sensitive Personal Data Email	5	Philippines Guidelines on	outsourcing	
Peru Personal Data Protection Law Argentina		Nigeria			Vietnam Advertising in Decree 72 on	formation general websites, mobile data	
Data Protection Act Brazil		Localisation of Poir Government data	nt of Sales card services		Indonesia Regulation 82 E-money oper	on Data transferring activities rations	
Personal information (withdrav	wn)						

Australia Company records

Personal information

New Zealand Company records Personal information

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## Severe impact on growth and economy



GDP losses from current legislation

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## Observations

### » Data restrictions disable future business models

- *i. i.e. services and investment-led trade; business integration*
- ii. data-driven manufacturing, 3D printing, big data and data mining (TDM)
- iii. e-commerce and micro-multinationals in developing countries
- » Digitalisation has enabled regulators to block market access anywhere in the valuechain – goods, services, investments
  - iv. Conditional flows based on adequacy and interoperability decisions undermines the value of MFN
  - v. Effectively led to a rollback on existing GATS/GATT commitments.
- » Resulting in unprecedented discretionary decision for the executive to control market access on country-to-country and firm-to-firm basis
  - vi. Mostly a matter of governments seeking extraterritorial jurisdiction over business for security, fiscal stability and industrial policy

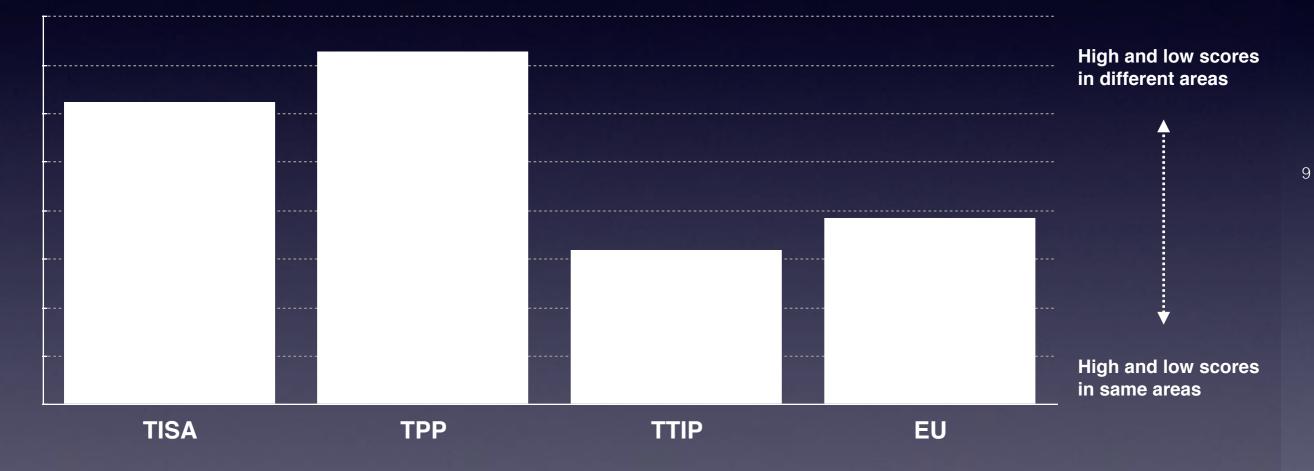
### » New political dimension of trade negotiations:

vii. Similarity in ambition and sensitivity is no longer a recipe for ambitious EPA/FTA commitments

viii. The political identity and industrial advantage of the counterparts are the defining questions

Similarity amongst economies are not always a recipe for ambitious FTA/EPA commitments

### Heterogenity by FTA/RTA



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## Considerations for new trade disciplines on cross-border data flows and data localisation

» In reality a negotiation for 'legitimate' exceptions

i. Public order (gambling, censorship) in the WTO, financial services in TPP

» Current key topic on exception is data privacy

ii. at least 75% of all data user-generated; business and personal data indistinguishable

iii. Is transfer of data an "ordinary course of business" – issue in Korus/KorEU

iv. Interoperability (adequacy) regimes often beyond negotiation

» Burden of proof: on complainant (business) or defendant (regulator)?

v. Proving bad faith of the regulator

vi. Increasing discrimination if WTO principles (necessity test and least-trade restrictive test) are removed

» Freedom for business, but also users?

vii. Business freedom to plan their digital services supply chain, but also rights for users – to access device, service, apps from overseas

- » Taxation on data flows and online services compensation for lost VAT, tariffs viii.Reversed taxation on online services (digitally downloaded products, advertising services)
- » Bridging diverging views on data ownership and liability

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