

METI/JETRO Digital Trade Symposium

Expanding digital protectionism & Impact on business

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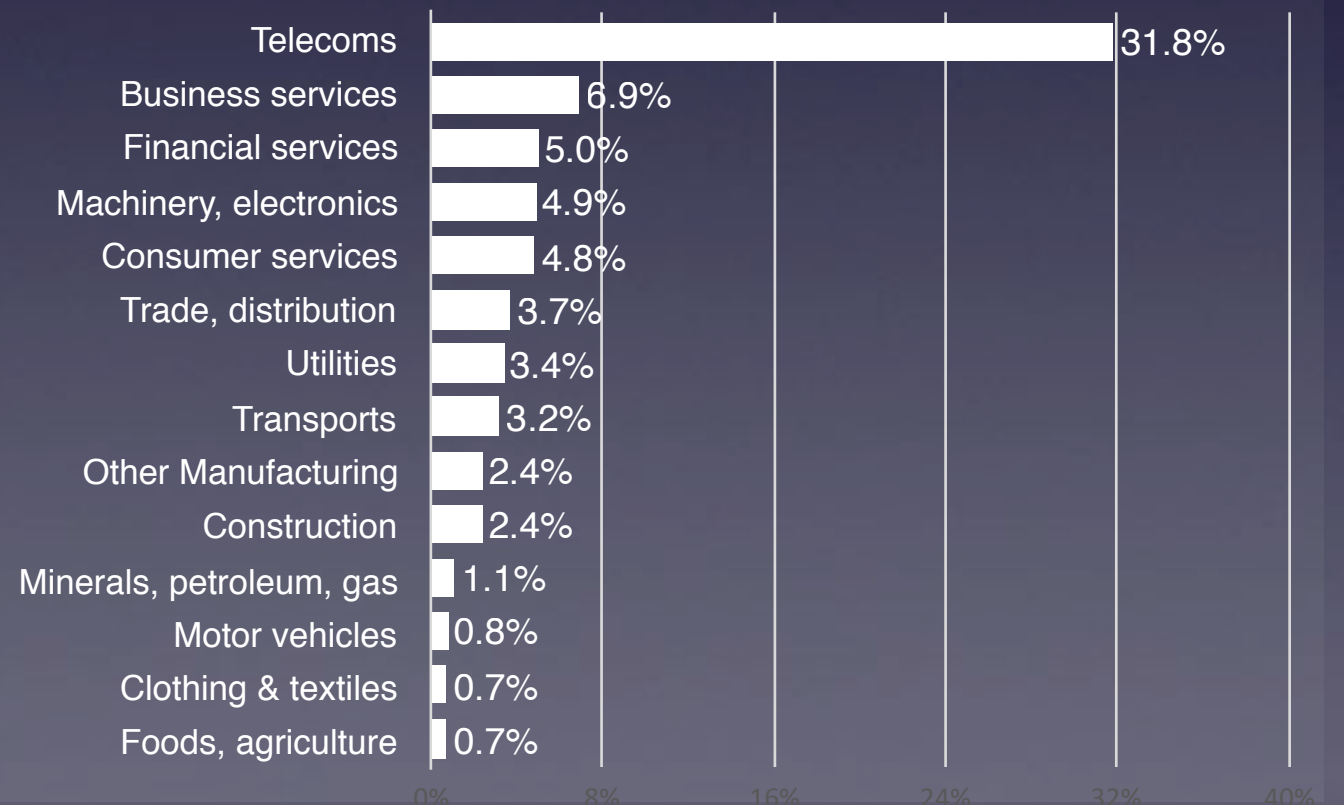
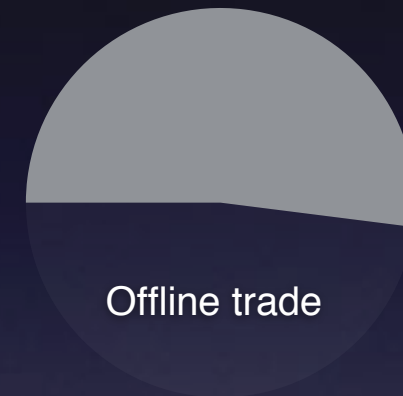
Digitalisation enabling international trade

» 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*

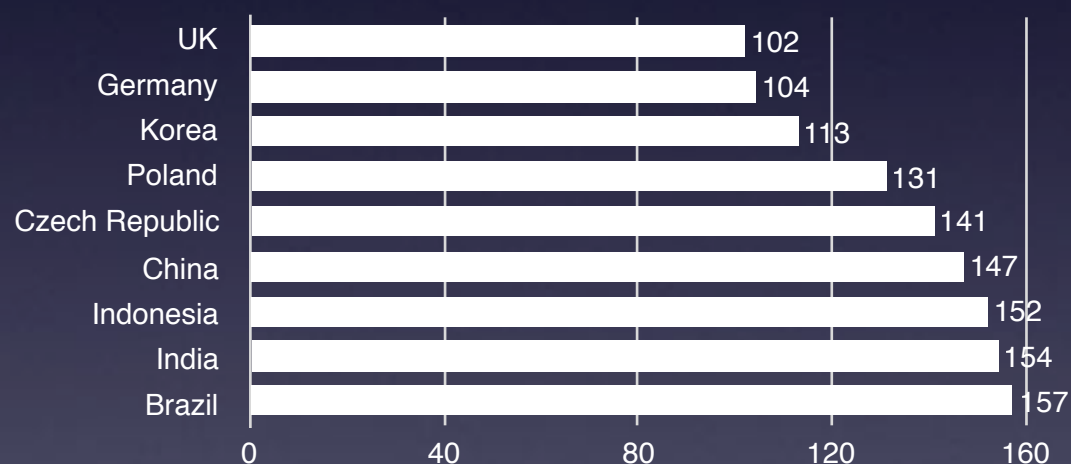
Services trade enabled by connectivity



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

...undermining competitiveness

Traditional establishment measures

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

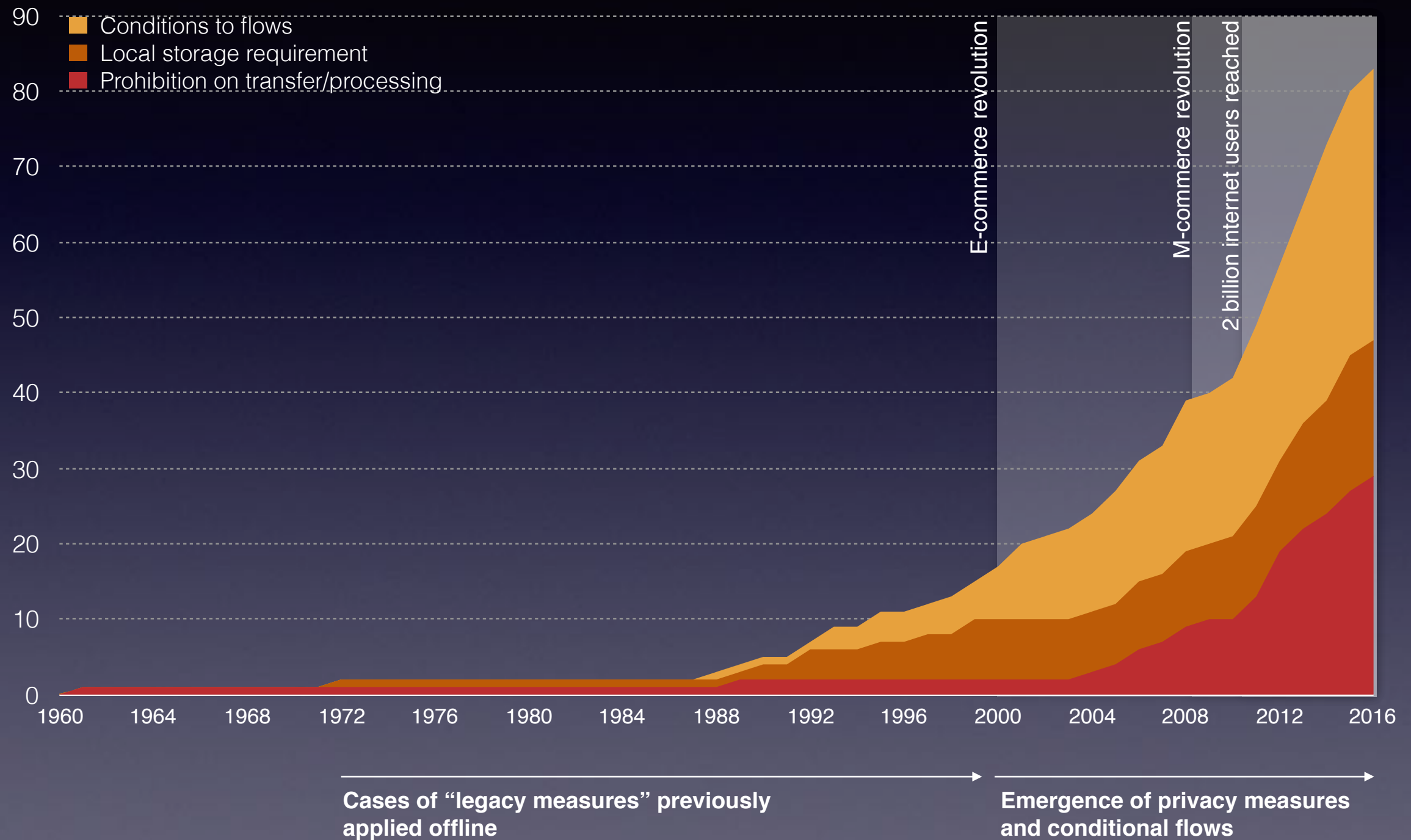
Fiscal measures

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

E-commerce measures

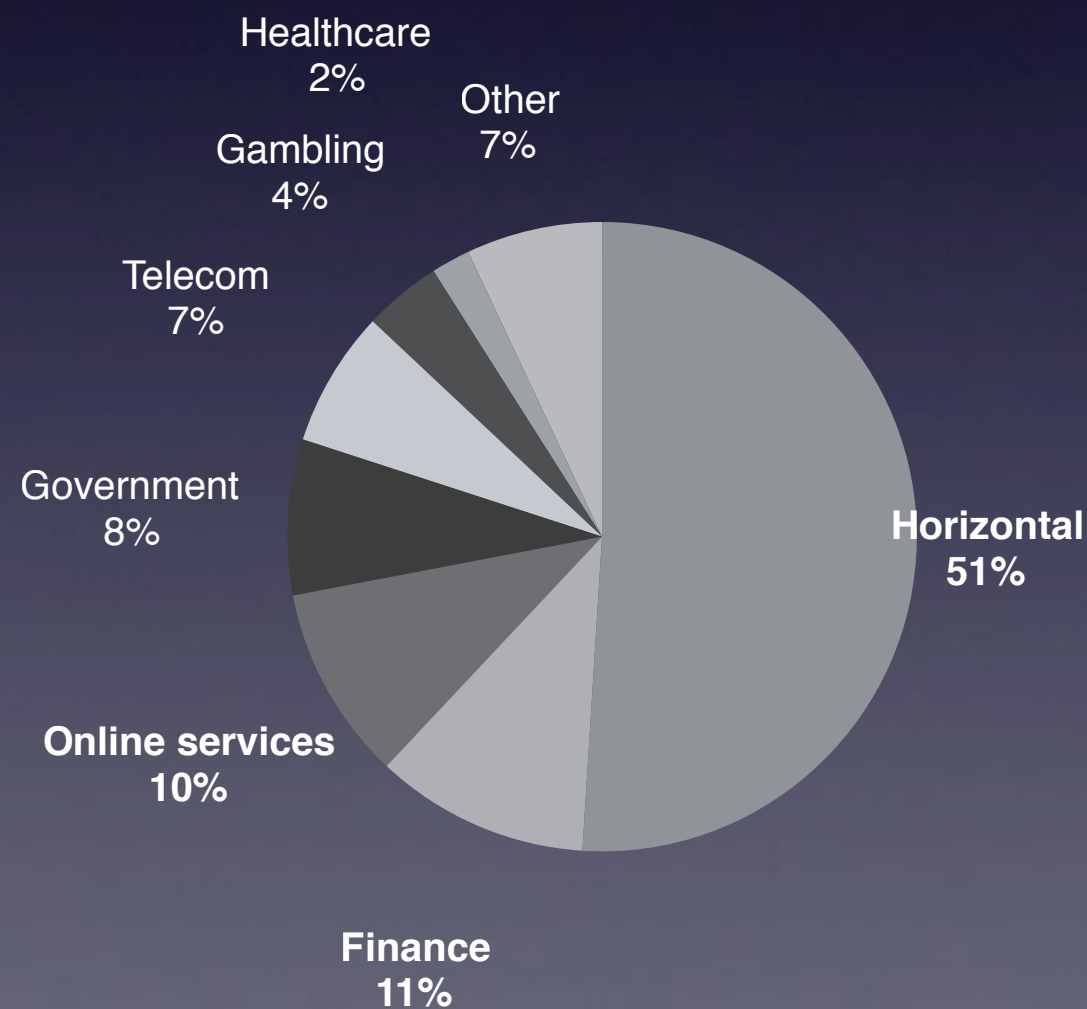
- Trading restrictions, licensing
- Online retailing, DNS restrictions, discriminatory consumer regulations

Data localisation and data restriction measures in the world are increasing



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

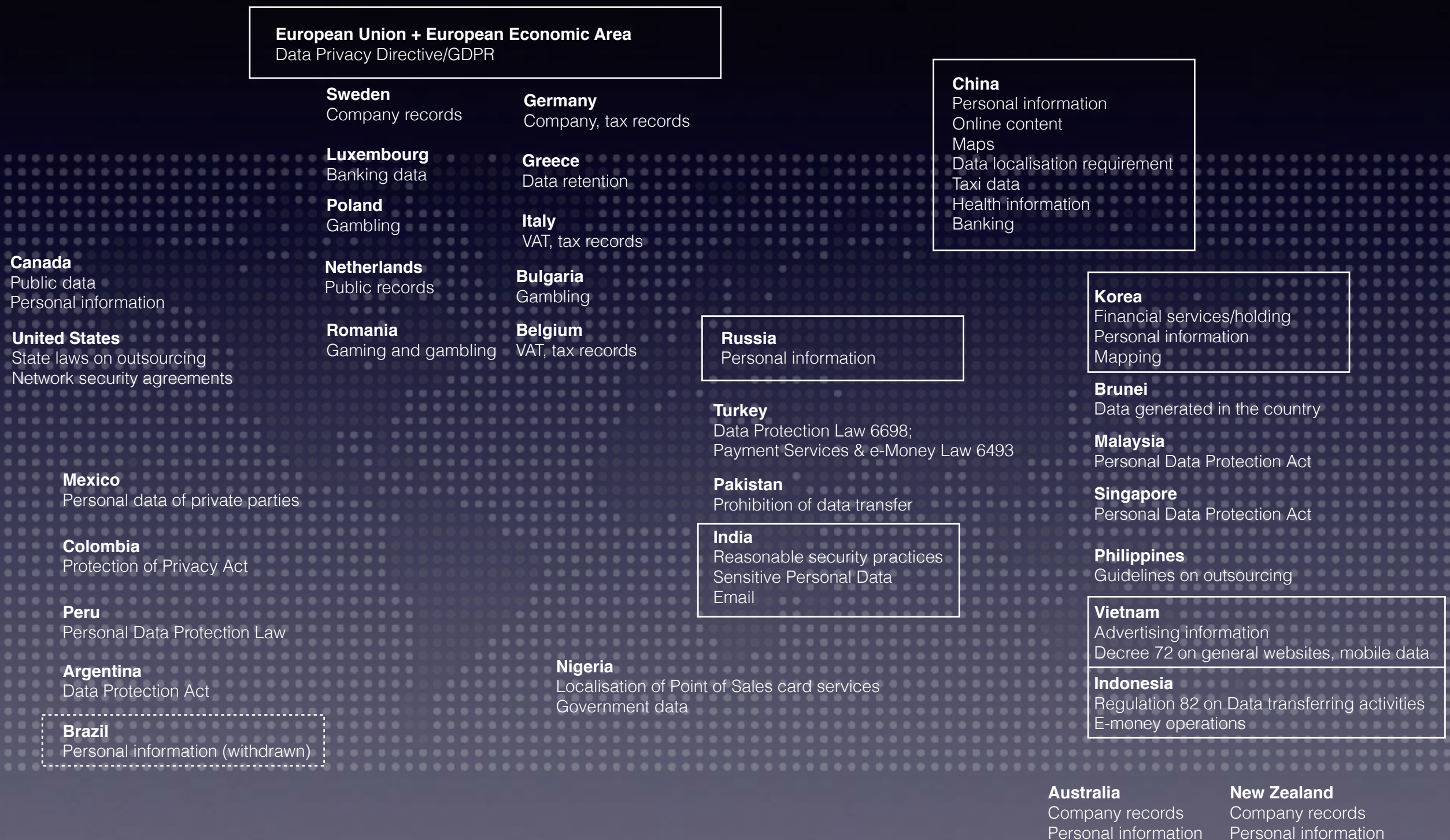
Affected sectors



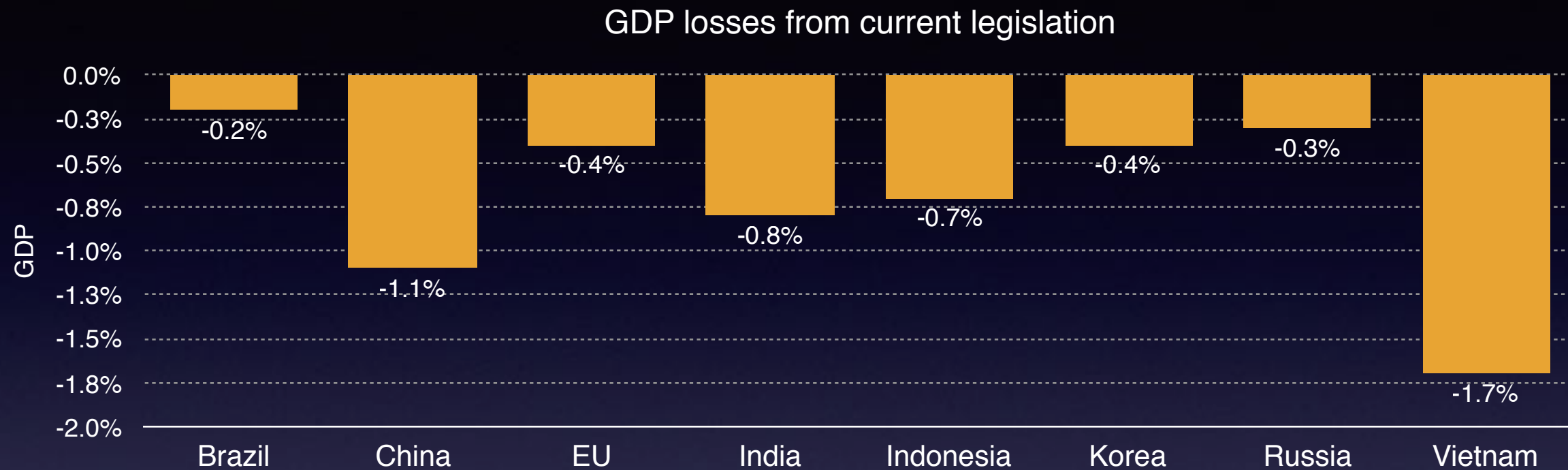
Affected types of data



Selected examples of data localisation measures



Severe impact on growth and economy

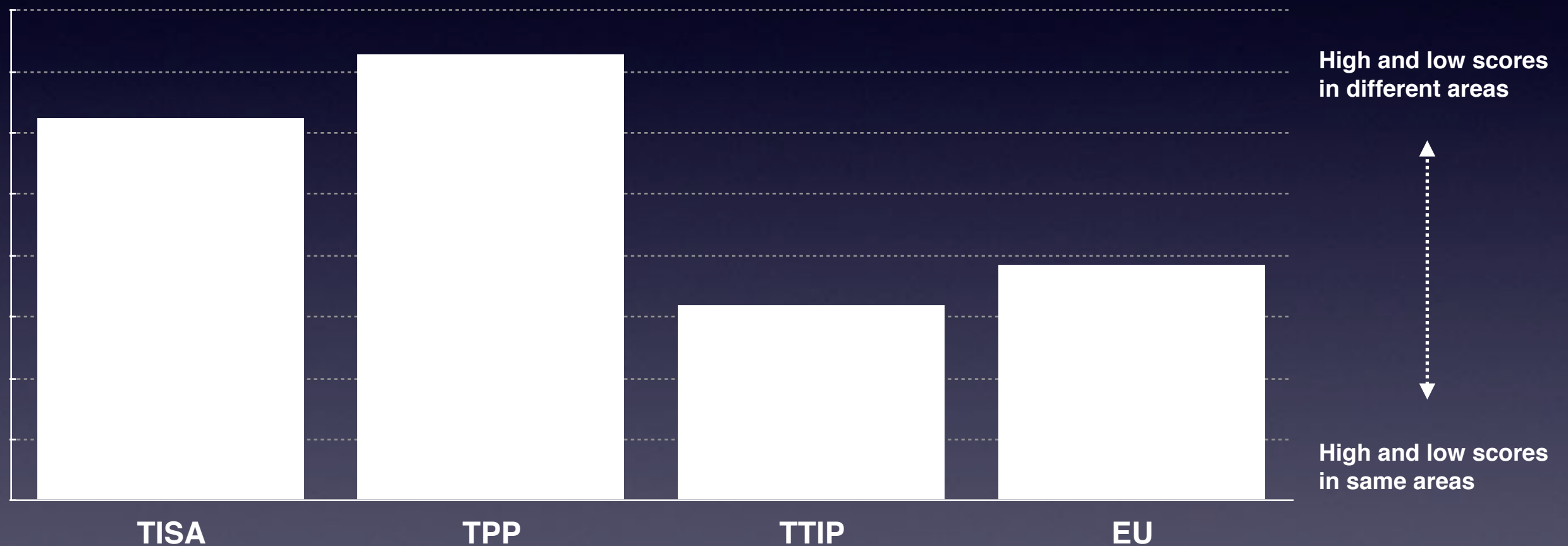


Observations

- » 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 value-chain – 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

Heterogeneity by FTA/RTA



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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