



Digital trade for beginners
WITA Intensive Trade Seminar

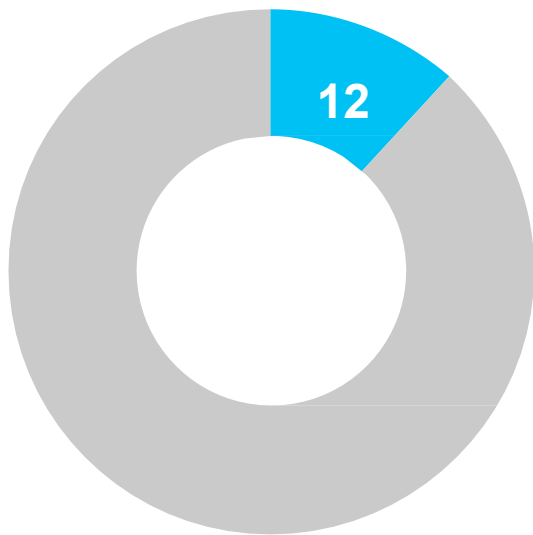


Amy Porges – May 13, 2016

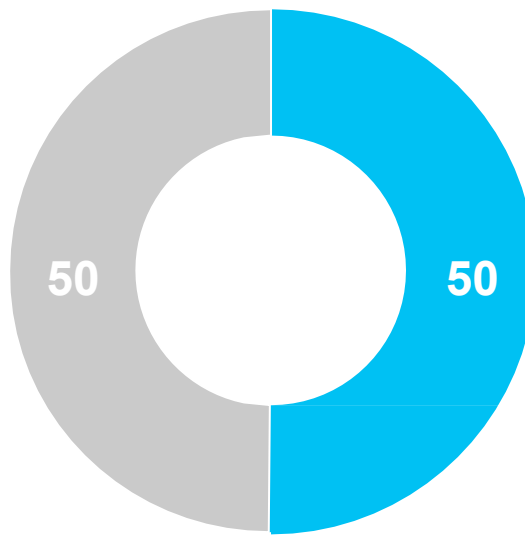
Themes

- ▶ **In the 21st century, all trade is digital**
 - ▶ Companies use and need cross-border data flows to function – for **manufacturing, services, goods trade, value chains**
 - ▶ Almost every service has a **digital wrapper**
 - ▶ **Blocking data flows stops trade and penalizes national competitiveness**
- ▶ Digital trade flows have a **larger impact on GDP growth than trade in goods** (McKinsey, 2016)

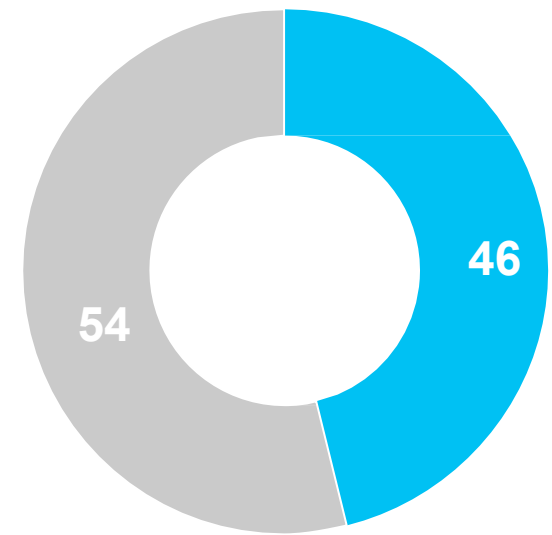
Percentage of selected cross-border flows that were digital as of 2014 (McKinsey, 2016)



Goods



Services



Calls

SOURCE: McKinsey & Company, from AliResearch; TeleGeography; UNCTAD; McKinsey Global Institute analysis

The digital economy

- ▶ Increasingly means the mobile internet, accessed via smart devices, apps and platforms, connected to the cloud
- ▶ 2015 broadband subscriptions: 3.5B mobile vs. 800M fixed (ITU) – mobile internet is how the next billion people get online
- ▶ Apps use cloud-based data aggregation, processing, redistribution to users - data flows to/from data centers
- ▶ Digital infrastructure services are also essential:
 - ▶ Distribution platforms
 - ▶ Payment solutions
 - ▶ Advertising/other ways to monetize apps and services



▶ Maasai farmer checking cellphone

WITA - May 13, 2016 - Digital Trade

WTO and digital trade: **GATT**

- ▶ Liberalization of digital infrastructure and consumer hardware via tariff cuts + national treatment
- ▶ Information Technology Agreement 1996 + 2015
 - ▶ Duty elimination through binding tariff concessions
 - ▶ Computers, telephones, software, infrastructure, semiconductors ... \$trillions in increased trade and infrastructure buildout
 - ▶ ITA = national signal of desire to be connected and to participate in connected value chains
- ▶ **GATT non-discrimination rules**
 - ▶ Ban on local content requirements that destroy economies of scale and break global value chains

WTO and digital trade: **GATS**

- ▶ GATS lets a government commit that a service is open to foreign competition on non-discriminatory basis
- ▶ Annex on Telecommunications 1994 applies when there is a GATS commitment
- ▶ Understanding on Commitments in Financial Services 1994: optional package of commitments including rights to data transfer for ordinary business
- ▶ Extra telecom commitments negotiated 1997
- ▶ But GATS classification scheme stuck in 1991 and *can't be modernized*
- ▶ Market access negotiations for new services now in FTAs

WTO and digital trade: **E-commerce**

- ▶ 1998: policy-level “E-commerce moratorium” to “continue ... current practice of not imposing customs duties on electronic transmissions”
 - ▶ Renewed at each WTO Ministerial; widely complied with
- ▶ E-Commerce Work Programme:
 - ▶ Workshops on digital trade and development
 - ▶ As technology catches up, a place to discuss issues that unite developed and developing countries
- ▶ 2007 Draft Understanding on scope of “Computer and Related Services”
 - ▶ CRS includes wide range of cloud-based services – but not the layers above or below

WTO and digital trade: **Disputes**

- ▶ *US – Gambling (2005):*
 - ▶ “Principle of technological neutrality”
 - ▶ Commitment to allow cross-border supply of a service includes *all* means of delivery including online, unless otherwise specified
- ▶ *China – Publications and Audiovisual Products (2009):*
 - ▶ Dynamic interpretation of GATS commitment for “sound recording distribution services” to include electronic distribution of digital recordings
- ▶ *China – Electronic Payment Services (2012):*
 - ▶ Commitment for “all payment and money transmission services” includes all services (including online services) essential to delivering these services

FTA e-commerce chapters 2001-

- ▶ US FTAs since 2001
 - ▶ Services/investment commitments, exceptions, NCMs also apply to **services delivered or performed electronically**
 - ▶ FTA chapters on cross-border services let firms supply services without a local presence e.g. cloud-based services
 - ▶ Non-discriminatory treatment for “digital products” of a Party
 - ▶ Subject to NCMs; excludes subsidies, broadcasting
 - ▶ *Permanent* elimination of duties, fees, charges on imports or exports of digital products via electronic transmission
- ▶ Some non-US FTAs also have e-commerce chapters

TPP – E-commerce and data (1)

The first trade agreement in which digital trade and digitally-powered value chains are a key policy priority

- ▶ Chapter 14 – E-commerce:

- ▶ Same commitments as before, *plus*:
- ▶ Each Party must allow cross-border **data transfers** for conduct of business of a covered person and may not require a covered person to use or locate **computing facilities** in its territory as condition for doing business there
- ▶ Manufacturing and all services (except financial services)
- ▶ *But* Parties can impose limitations to achieve “legitimate public policy objective”, if not applied in arbitrary/unjustifiable manner, and restrictions not greater than required to achieve objective

TPP – E-commerce and data (2)

- ▶ **E-commerce chapter enhances **trust**, requiring TPP Parties to:**
 - ▶ Have a legal framework for user privacy protection
 - ▶ Have online consumer protection laws
 - ▶ Have measures to ban or minimize spam
 - ▶ Have legal framework for e-commerce that meets UN standards; allow transactions to use e-signatures
- ▶ **Also encourages TPP Parties to:**
 - ▶ Allow paperless trade administration; allow commercial negotiation for international internet connection; cooperate on cybersecurity and to help SME access
- ▶ **No Party may require transfer or access to source code for mass-market software as condition for its sale/use (with some exceptions)**

TPP – more on digital issues:

- ▶ **Financial services** chapter:

- ▶ Commitments for business-related data transfers; no protection against data localization mandates

- ▶ **Telecom** chapter:

- ▶ Parties to ensure major telecom suppliers provide interconnection, leased circuit services, co-location (or virtual co-location), access to facilities – under reasonable terms and conditions, on timely basis, at cost-oriented rates

- ▶ **Investment** chapter:

- ▶ bans forced tech transfers or requirements to use local technology

Thank you!

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