

# **Developing Trade Rules for Digital Economy and Internet Governance**



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## Expansion of restrictive measures

- Restriction of cross-border data flow
- Mandatory data storage in local server (data localization)
- Prohibition of data processing abroad
- Review of source code for security objective
- Specification for related goods/equipment

### Variety of aspects in restrictive measures

<b>types of measures</b>	law/regulation/decreed, guidelines, standards, licensing requirement, practice, strategy, roadmap and blueprint, etc.
<b>targeted data</b>	personal/non-personal, publicly funded, etc.
<b>targeted player</b>	Internet service provider/Platformer/OTT provider, telecommunication provider/financial institution, etc.
<b>specific sectors</b>	financial, telecommunication, health, etc.

# Examples of existing measures and drafts



## Examples of measures in specific countries in Asia

<b>China</b>	<ul style="list-style-type: none"><li>- Cybersecurity Law (June 2017)</li><li>- Draft Encryption Law under public comment from July 2017</li><li>- Provisional network products and services licensing regulation (June 2017)</li><li>- Internet equipment and security list published in June 2017</li></ul>
<b>India</b>	<ul style="list-style-type: none"><li>- White Paper on Data Protection Framework under public comment until Jan 2018</li><li>- National Telecom M2M Roadmap (May 2015)</li><li>- FDI Policy prohibits investment of B2C e-commerce</li></ul>
<b>Indonesia</b>	<ul style="list-style-type: none"><li>- Draft Regulation on OTT service (Aug 2017)</li><li>- Personal Data Protection Regulation (Dec 2016)</li><li>- Indonesia Bank Circular regarding E-money Operation (June 2014)</li></ul>
<b>Vietnam</b>	<ul style="list-style-type: none"><li>- Draft Cybersecurity Law (June 2017)</li><li>- Law on Network Information Security (July 2016)</li><li>- Circular on management, provision and usage of information of websites and social networks (Oct 2014)</li></ul>

# Mapping measures “policy objectives” “policy area” “sector” x “different data”



## Policy objectives

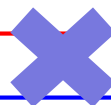
Privacy
Consumer Protection
Culture
Freedom of Expression
Intellectual Property
Competition
Cybersecurity
Domestic industry

## Policy areas

Government procurement
Investment
Movement of natural persons
Tariffs and quantitative restrictions
Standards and conformity assessment

## Sectors

Telecommunication
Finance
Health



## Different data

Measures targeting/applicable to personal data
Measures targeting/applicable to non-personal (business) data
Measures not targeting but relating to data

# Now working on Mapping measures

“different data” x “policy objectives” “policy area” “sector”



Measure ID	Measure Name	Protection of Privacy		Protection of Consumers		Protection of Cultural Freedom of Expression		Protection of Intellectual Property		Maintenance of Competitive Environment		National Security		Protection of Domestic Industry		Government/Public Procurement		Investment Protection/Promotion/Management		Movement of Person		Tariffs/Quantitative Restrictions		Standards and Conformity Assessment		Telecommunication		Financial		Health		Other	
		Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area	Year	Policy Area		
1.1	保護	2019年	プライバシー保護	2019年	消費者保護	2019年	文化表現の自由	2019年	知的財産保護	2019年	競争環境の維持	2019年	国家安全	2019年	国内産業の保護	2019年	政府調達・公共調達	2019年	投資保護・投資促進・投資管理	2019年	人の移動	2019年	関税・数量制限	2019年	基準認証	2019年	電気通信	2019年	金融	2019年	健康	2019年	その他

(\* ) METI’s Study Project for Regulatory Measures on Digital Trade - Report in Japanese will be ready in March 2018

# TPP Chapter 14 Electronic Commerce



Most advanced set of agreement on e-commerce;  
incorporating fruits from previous multilateral and plurilateral discussions and negotiations

- WTO (customs duties moratorium 1998-), OECD, UNCITRAL (model laws) , APEC (blue print, steering committee, guideline and understandings)
- FTAs after Australia-Singapore (2003)
- Japan-U.S. Trade Principles for ICT Services (Jan 2012)

## Major Provisions of TPP E-Commerce Chapter

- No imposition of customs duty on electronic transmission; permanent obligation (14.3)
- Non-discriminatory treatment (NT and MFN) of digital products (14.4)

*we call “Three Principles of TPP”*

- **Free flow of data**; cross-border transfer of information by electronic means (14.11)
- No requirement of localization of computing facilities; **prohibition of data localization requirement** (14.13)
- No requirement of transfer of or access to **source code** (14.17)
- Maintain consumer protection laws for online consumer protection (14.7)
- Maintain personal information protection law (14.8)

# TPP Chapter 14 Electronic Commerce



## Challenges remain in TPP E-commerce Provisions

- ✓ Some “Best Endeavor” provisions  
not legally binding; non-discriminatory practice for consumer protection (14.8(3)), paperless trading (14.9), cooperation (14.15)
- ✓ Exceptions give large discretion to member countries  
e.g. “Legitimate public policy objective” exception for data free flow (14.11) and data localization (14.13)
- ✓ Whether covering new business models or emerging issues  
e.g. govern C2C transactions in addition to B2B and B2C
- ✓ Whether providing sufficient dispute resolution  
online dispute resolution (ODR) may be one of the answers
- ✓ Private sectors’ contribution for rule making is built-in (14.15 (e))  
Concrete steps are required to encourage private sectors

Large discretion of each member’s government  
effective implementation possible?

# Upgrading set of rules



WTO (1995), Telecom/financial (1997) => TPP (2016)

## Experience of upgrading a set of rule in trade agreements

WTO telecommunication agreement with reference paper

WTO financial service agreement (1997), etc.

WTO and FTA negotiations

dialogue and other channels

study and works by APEC, OECD,  
other international fora

Latest set of Chapters of Telecommunication and Financial Services in FTAs

TPP (2016) => TPP plus or Digital Trade Agreement (202X)

## TPP E-commerce Chapter

WTO and FTA negotiations

dialogue and other channels

study and works by APEC, OECD,  
other international fora

Private sector contribution

**Future package of trade rule governing E-commerce and Digital Trade**



# Different functions of fora for e-commerce and digital trade rule development



## Bilateral economic cooperation between the US and Japan

- TPP plus taking into account of latest situation of new measures such as restriction to OTT providers, requirement for encipher, etc.

## Other FTAs and dialogue such as RCEP, Japan-China-Korea(\*), etc. for Japan

- Aim progressive liberalization and upgrading towards TPP level provision
- Consider other members' "legitimate public policy objective and measures not greater than are required to achieve the objective"

## WTO

- Continues to be important; many agreements and Councils/Committees are relevant to data related measures  
e.g. GATS, GATT (exceptions, tariff, TBT, government procurement, etc.)
- New initiative on electronic commerce declared by Ministers in Dec 2017; exploratory work toward future WTO negotiations (1st QR of 2018 - )

(\* ) METI's Study Project on "Japan-China-Korea trade and investment development and policy dialogue" - Report in Japanese will be ready in April 2018

# Different functions of fora for e-commerce and digital trade rule development



## APEC

- One of the best fora for the US-Japan cooperation, as innovator for soft tools such as CBPR and new trade agenda such as ITA.
- 2018 APEC PNG focus “Harnessing Inclusive Opportunities, Embracing the **Digital Future**”; concrete outcome is expected.
- Different positions among APEC economies

## Private participation

- Business groups and associations
  - German automobile association – guideline to categorize data into 5 groups
  - e-commerce associations – providing code of conduct, ODR, etc.
  - Keidanren (Japan Business Federation) – announcing position papers
- APEC Business Advisory Council (ABAC)
- E15 Initiative digital economy working group



Thank you very much.