



# *Overview of Digital Trade Rules*

September 2019



# Evolution of U.S. Digital Trade Rules

- 1998 – WTO Customs Duties Moratorium
- 2003 – US-Singapore FTA
- 2004 – US-Australia FTA
- 2009 – US-Korea FTA
- 2018 – USMCA
- 2019 – WTO Joint Statement Initiative (negotiations)



# Examples of Digital Trade Rules

- Customs duties moratorium
- Non-discriminatory treatment of digital products
- Personal information protection
- Cross-border transfer of information
- Location of computing facilities
- Source code
- Open government data



# Examples of Digital Trade Barriers

- Restrictions on Cloud Computing Services
- Data Localization Requirements
- Filtering and Blocking of Legitimate Websites
- Tariffs on Digital Products
- Restrictions on Digital Advertising Services

- FACT SHEET ON 2019 NATIONAL TRADE ESTIMATE: Key Barriers to Digital Trade



# Customs Duties Article

1. No Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products transmitted electronically.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on digital products transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

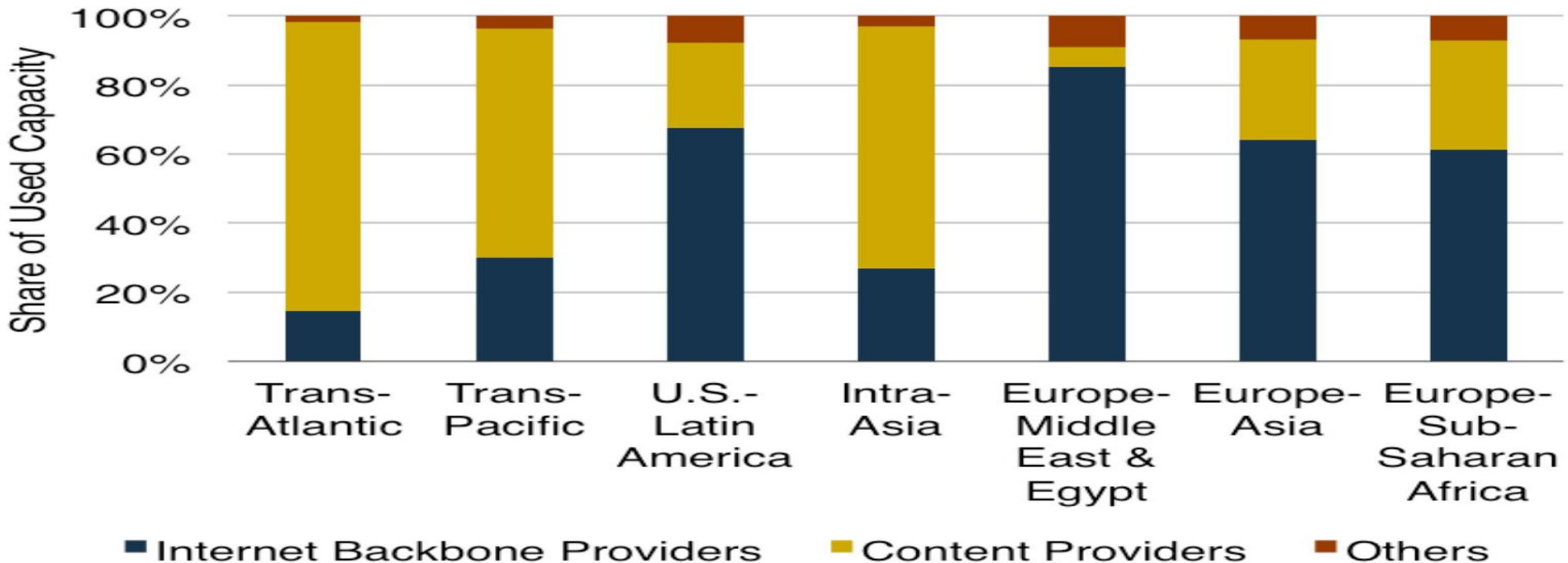
*“Digital product” means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically.*



# Potential Impact of Duties on Data

2018

Used International Bandwidth by Route, 2018



Source: Telegeography



# Digital Products Article

No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.

*“Digital product” means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically.*



# Personal Information Protection Article

1. Each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of digital trade.
2. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote interoperability between these different regimes.
3. The Parties recognize the importance of ensuring compliance with measures to protect personal information and ensuring that any restrictions on cross-border flows of personal information are necessary and proportionate to the risks presented.





# Cross-border Transfer Article

1. Neither Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means, if this activity is for the conduct of the business of a covered person.
2. Nothing in this Article shall prevent a Party from adopting or maintaining a measure inconsistent with paragraph 1 that is necessary to achieve a legitimate public policy objective, provided that the measure:
  - (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
  - (b) does not impose restrictions on transfers of information greater than are necessary to achieve the objective. \*

*\*A measure does not meet the conditions of this paragraph if it accords different treatment to data transfers solely on the basis that they are cross-border in a manner that modifies the conditions of competition to the detriment of a covered person.*



# Global Trends

Global flows of trade and finance are flattening, while data flows are soaring

25

MCKINSEY  
GLOBAL  
INSTITUTE | CELEBRATING  
25 YEARS OF  
INSIGHT





# Location of Computing Facilities Article

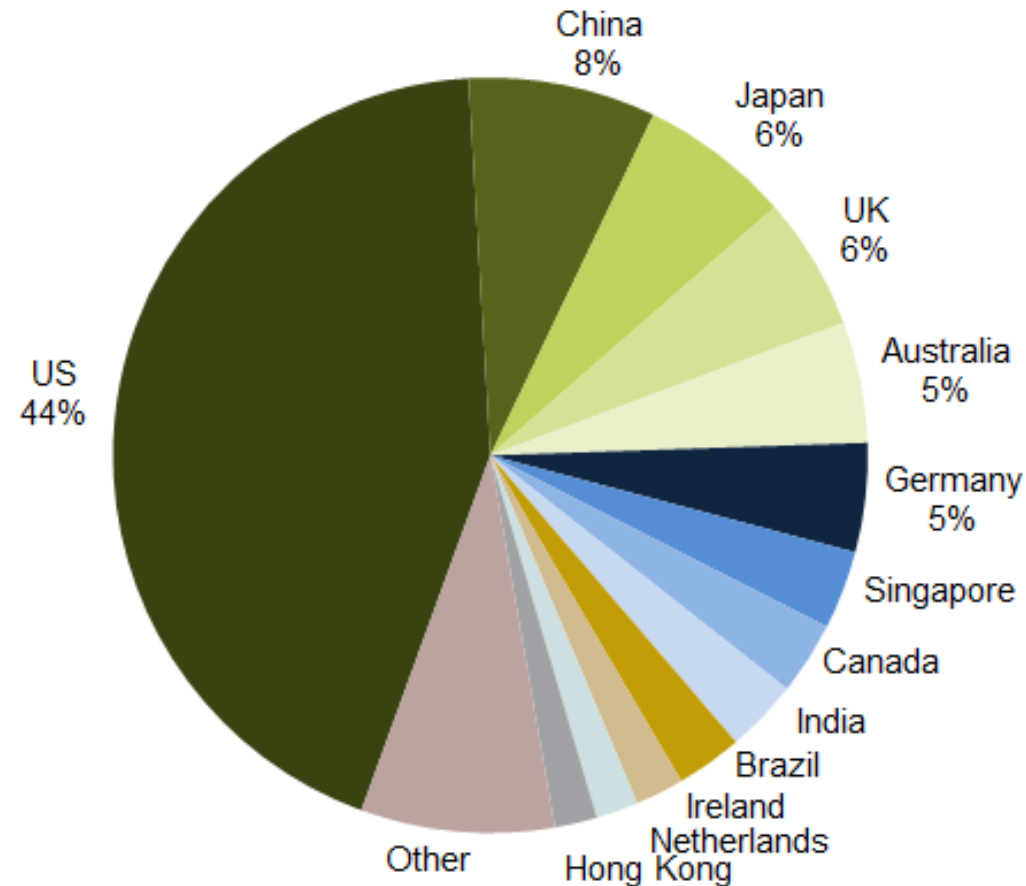
No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.



# Data Centers Go Hyperscale

## Hyperscale Data Center Operators

Data Center Locations by Country - December 2017



Source: Synergy Research Group



# Source Code Article

Neither Party shall require the transfer of, or access to, source code of software owned by a person of the other Party, or the transfer of, or access to, an algorithm expressed in that source code, as a condition for the import, distribution, sale or use of that software, or of products containing that software, in its territory.



# Open Government Data Article

1. The Parties recognize that facilitating public access to and use of government information fosters economic and social development, competitiveness, and innovation.
2. To the extent that a Party chooses to make government information available to the public, it shall endeavor to ensure that the information is in a machine-readable and open format and can be searched, retrieved, used, reused, and redistributed.



# Example of Open Government Data

## Building a One-Stop Shop for Soil Moisture Information

With a recent infusion of support from the federal government, the National Soil Moisture Network is moving ahead with its goal of integrating soil moisture data across the United States.

