Security Level: Public

Trends in International Rule-Making for the Digital Economy

TFMA: Seizing Global Trade Opportunities and Minimizing Global Trade Threats

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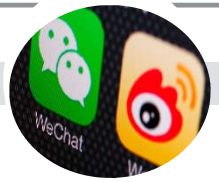
Mapping the Digital Economy

The Digital Economy Defined

"The ecosystem comprising goods, products, services, platforms and solutions that are either instrumental to or avail themselves of online connectivity."

Digital Trade Defined

"Cross-border provision of goods, products, services and solutions that are instrumental to or avail themselves of online connectivity."

	1 Infrastructure	2 Services	3 Platforms & Ecosystems	4 Devices
				
What?	> Telecommunications networks and connectivity infrastructure; > Optical fiber, cables, switches, signal amplifiers, servers, data centers, satellites, wireless base stations, mobile telephone towers, antennas, routers, modems, range extenders and other equipment that brings connectivity to our homes, offices and devices.	> Information, communications and computing services; > Comprises everything from banking to retail to booking and paying for travel and accommodation, to finding and booking someone to clean your apartment and someone else to take you to your next appointment.	> The result of multi-device connectivity, meaning we now connect to the internet with two or more devices and expect seamless operability; > Results in a winner-take-all competitive dynamic where the economics of network effects plays a very important role.	> Traditionally desktops or laptops > Mobile telephones are portable super-computers capable of almost any functionality; > Wearables (watches, headphones), VR goggles, AR glasses becoming more prominent, > Trend moving towards the Internet of Things, the Internet of Vehicles and the Internet of Everything.
Who?	> Few large equipment vendors working with carriers; > 1000s of smaller players manufacturing and selling individual components.	> Telcos who invest in build, operate and lease access to their networks; > Millions of other providers from Citibank to Uber and across many other sectors.	> Google and Android versus Apple and iOS; > WeChat and Alibaba in China; > Amazon, Microsoft.	> The future belongs to those who can make all of the devices users want; > And connect them seamlessly with ecosystems that they either own or control.

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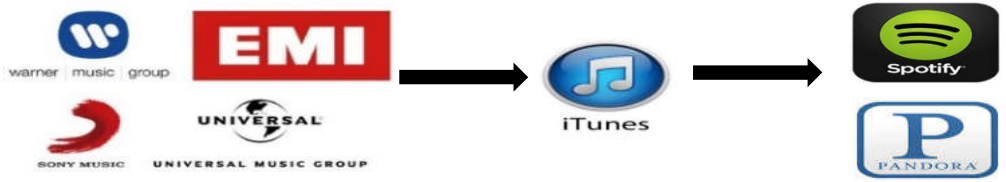
Innovation and Disruption in the Digital Economy

The digital economy is not only difficult to define, but is also in a constant state of flux and is always evolving.

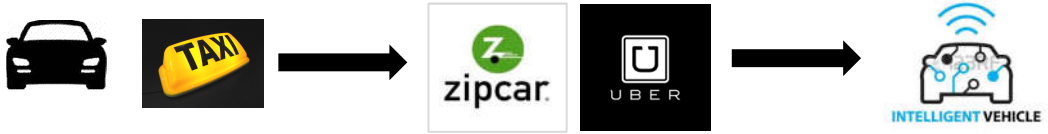
The record label business was first disrupted by iTunes which itself suffered disruption by music streaming services.



Card issuers have been challenged by online payment systems.

Global travel and tourism industry has been repeatedly shaken up by online platforms.

Individual transport solutions reshaped by ICT industry.



The emergence of competing operating systems has led to the rise of a winner-take-all dynamic.

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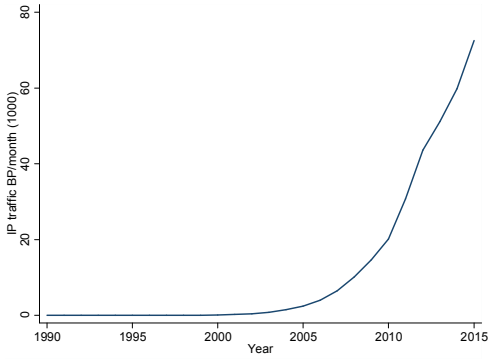
The End of Silofication

Services, data flows



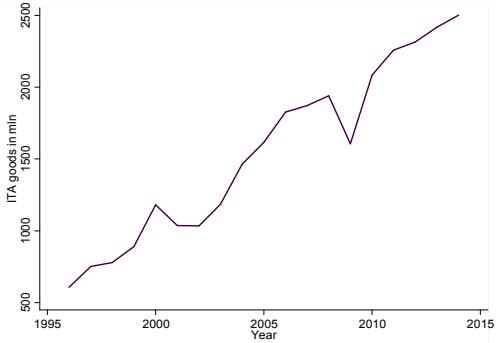
- Cross-border bandwidth used has grown 45 times since 2005;
- Half of cross-border services trade enabled by connectivity and ICT;
- Global E-commerce turnover exceeds US$1tn, equivalent to Australia's GDP, growing 3x faster than Chinese economy.

- End of "silos" between goods, services, IP, and data;
- Holistic trade policy approach
- Servification of manufacturing. 3D printing, IoT, cloud.

Convergence & complementarity

Need for new rules

Digital goods and manufacturing



- Trade in digital goods (ICT items) grew from 5% of global trade to 25% since ITA-I (20 years);
- South-south trade bigger than north-north;
- Trade in digital intangible products also growing.

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The Risks of Internet Fragmentation

United States

Highest share of internet companies and the most aggressive at pursuing its interests in an "open internet".

Latin America

Brazil drawing recent criticism for its regulatory interventions but starting to become more engaged at the WTO.

Europe

The EU has protectionist measures, largely focused upon privacy, data localization and antitrust measures.

Africa

Africa still on the "wrong" side of the digital divide despite recent advances in mobile broadband.

Russia

Russia continues to attract criticism for data localization laws and perceived pursuit of more local content in its digital economy.

India

India quickly moving to become a major market for internet companies and an emerging power in the digital economy.

China

China continuous to face the risk of a trade dispute for its "Great Firewall" and other measures incl. "indigenous innovation", "secure and controllable" policies.

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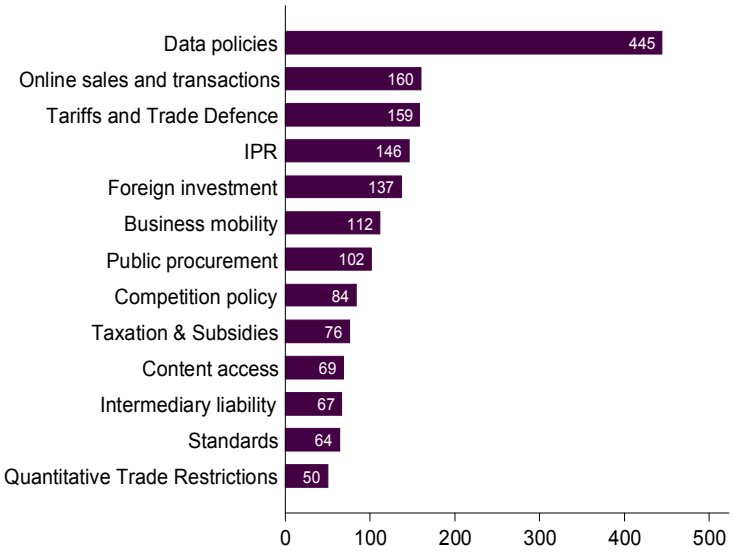
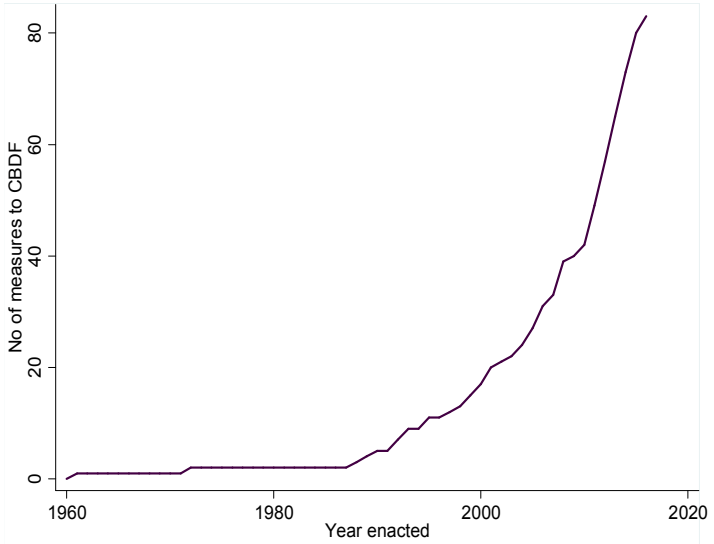
The Rise in Digital Protectionism

Types of discriminatory digital trade measures and number of occurrences in global trade



Source: ECIPE Digital Trade Estimates

Rise in data localization measures (actual and anticipated)



Source: ECIPE Digital Trade Estimates
Note: CBDF is Cross Border Data Flows

Governments are clearly more Inclined to Intervene in the digital economy using a range of policy tools and regulatory instruments.

Policy and Regulatory Responses

Different Regulatory Objectives and Approaches in the Digital Economy

Objectives	**Stimulate competition**	**Protect existing jobs**	**Promote economic development**	**Maintain law and order**	**Bridge the digital divide**
	Foster Innovation	**Increase the size of the formal economy**	**Diversify the economy**	**Uphold national security**	**Create new jobs**
	Promote digital Inclusiveness	**Enable inclusive trade**	**Kick-start domestic ICT industry**	**Prevent base erosion and profit shifting**	**Attract investment**
Approaches	**Light touch approaches** Generally favored by advanced industrial countries where the digital economy is already ubiquitous.	**Interventionist approaches** Generally chosen by developing countries with prominent national security concerns or development agendas.	**Industrial Policy** Generally chosen by middle-income developing countries with their own ambitious plans for the digital economy.	**Executive agency activism** This can be in the form of lawsuits to reign in tax privileges, competition investigations or other actions.	**Tax breaks/ incentives** These can be used to either attract investment or encourage local content, but often also lead to market distortions.

Different Choke-Points and Vulnarabilities

Production

IPRs
- Legal injunctions granted on designs and SEPs
- Lack of protection of trade secrets

Subsidies
- Discriminatory subsidies for R&D

Local content requirements
- Posed by some governments on smart devices

Market access

Business mobility
- Unable to fly in experts, consultants
- Requirement to have local management

Govt. procurement
- Declared unfit for use by govt officials unless tablet is made locally or source code is handed over to government

Investment restrictions
- Foreign manufacturer banned from acquiring a video service intended to be integrated into the tablet OS

Tariffs & licensing
- Some customs do not recognize tablets as a laptops (duty free under ITA) since they lack keyboards

Inside the market

Competition, antitrust
- Some OS under anti-trust investigation

Intermediary liability
- Devices, operator they connect to, pre-installed social media apps may not be covered by liability limitations

Restrictive data privacy
- Device user data, app data forcefully localized

Standards
- Encryption on device or email protocol may be market standards but forbidden by local policing laws

Users/ecosystem

Taxation on users
- Forced local taxation on cross-border downloads of digital products (content) sold in the ecosystem

E-retail
- Limits on purchases (value, of devices, electronics via global e-commerce sites

Content access limitations
- Globally pre-installed mapping or VoIP apps forbidden

Examples of: goods trade barriers | Cross border data flow barriers | General/horizontal barriers

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Declarations of Principle on Internet Governance

1998 Blueprint for Action on Electronic Commerce

- Affirms leading role of private sector;
- Seeks to limit government's role to providing a legal and regulatory environment that is predictable, transparent and consistent;

APEC Privacy Framework

- Recognizes the right of members to set their own rules;
- But seeks to promote mutual recognition of privacy regimes.

1980 Privacy Principles and 2013 Update

- Guidelines on the Protection of Privacy and Transborder Flows of Personal Data;

2011 Recommendations

- Promote and protect global free flow of information; open, interconnected internet;
- Promote competition in high-speed networks, services, privacy at global level;
- Limit intermediary liability;
- Co-operation to promote internet security.

Joint Statement of the G20 2016

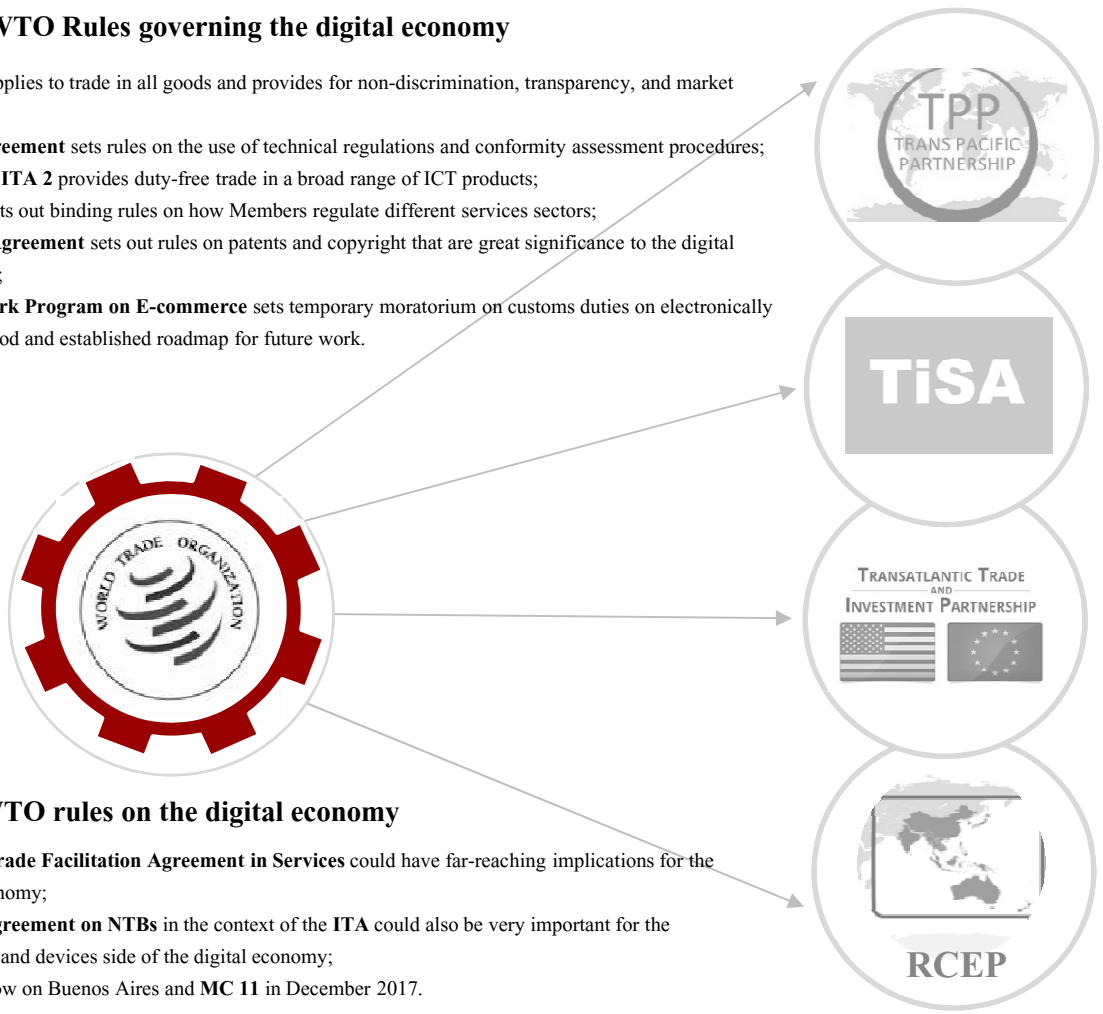
- Upheld the principle of the free flow of data;
- Endorsed a blueprint on innovative growth affirming the importance of preserving the global nature of the internet as an engine for growth, and expressed the G-20's commitment to the free flow of information, ideas, and knowledge across borders, freedom of expression, and the multi-stakeholder approach to internet governance;
- Work continued by Germany 2017.

Consensus: Internet should be open, freely accessible and governed by a plurality of stakeholders (multi-stakeholder governance)

Trade Rules Old and New

Existing WTO Rules governing the digital economy

- **GATT** applies to trade in all goods and provides for non-discrimination, transparency, and market access;
- **TBT Agreement** sets rules on the use of technical regulations and conformity assessment procedures;
- **ITA and ITA 2** provides duty-free trade in a broad range of ICT products;
- **GATS** sets out binding rules on how Members regulate different services sectors;
- **TRIPS Agreement** sets out rules on patents and copyright that are great significance to the digital economy;
- **1998 Work Program on E-commerce** sets temporary moratorium on customs duties on electronically traded good and established roadmap for future work.



- Updated and new disciples on a whole range of areas relevant to the digital economy (see next slide);
- Ratification appears unlikely due to U.S. hostility to the deal.

- New market access commitments and clarification of existing rules on cross-border trade in services;
- Also an annex on e-commerce closely resembling TPP;
- Now suspended due to negotiating deadlock and the new U.S. administration.

- Talks on a whole range of mostly NTMs;
- Now completely on hold following deadlock and due to the Trump transition.

- Now the most important forum where new rules on the digital economy are being discussed;
- Chance for China to lead and fill the vacuum anticipated by a reduced U.S. engagement in the region.

Future WTO rules on the digital economy

- Possible **Trade Facilitation Agreement in Services** could have far-reaching implications for the digital economy;
- Possible **agreement on NTBs** in the context of the **ITA** could also be very important for the equipment and devices side of the digital economy;
- All eyes now on Buenos Aires and **MC 11** in December 2017.

The TPP: Dead but not Forgotten

Telecommunications

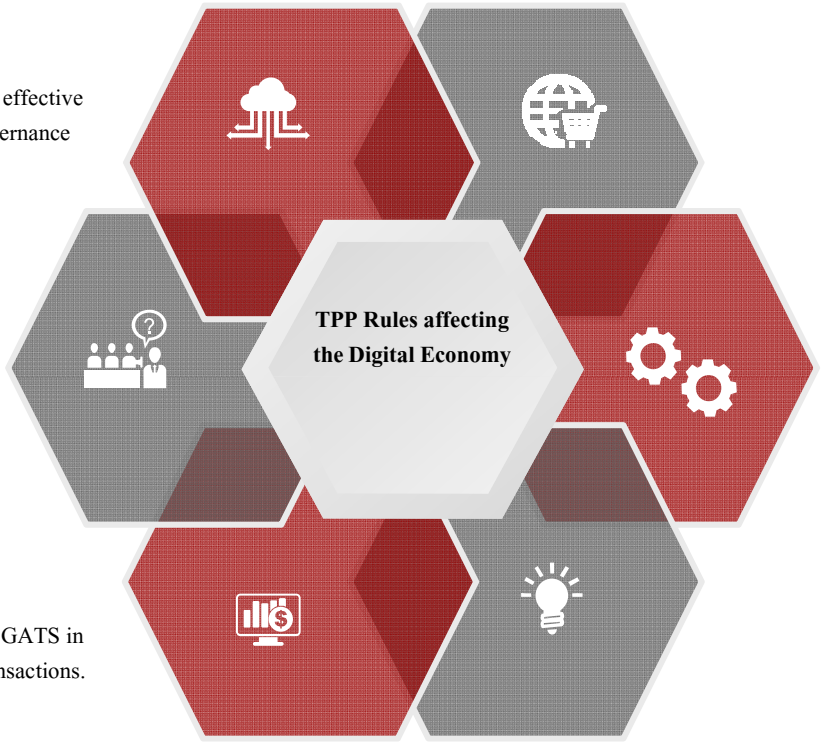
Obligations in the area of facilitating effective competition and good regulatory governance principles.

Regulatory Cooperation

Could limit
the ability to erect NTBs or otherwise use regulation to tilt the playing field against foreign suppliers or operators.

Cross-Border Trade in Services

New chapter could go further than the GATS in limiting constraints to digital trade transactions.



Rules on E-Commerce

Whole new chapter on e-commerce (see next slide) containing negotiating outcomes in many areas internet companies have been calling for.

Technical Barriers to Trade

New rules in the TBT Chapter which seek to minimize the burden of conformity assessment procedures and an ICT annex with rules on EMC and encryption.

Intellectual Property

Safe harbor provisions that limit the liability of ISPs in cases of copyright infringement.

BASELINE

- TPP is the outcome of many years of painstaking compromises.
- Although the TPP is likely dead the negotiating outcomes may endure.

FORECAST

- Many believe the compromises achieved will have lasting impact.
- TPP rules already being used as starting point in 3[illegible] country FTAs.

New Rules on E-Commerce

TPP E-Commerce Chapter: An Industry Wish List of New Rules

No Customs Duties

Permanent moratorium on customs duties for electronically downloaded products (music, books, games); Implications for 3D printing?

Non-Discrimination

Equal treatment to all digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party.

Access to and Use of the Internet

Hortatory language on recognizing the benefits of consumers having access to and use of services and applications of their choice and being able to use devices of their choice to access the internet.

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Cross-Border Information Transfer

Obligations to allow the cross-border transfer of information provided it's for business purposes but subject to exceptions (legitimate public policy objective) with similar language to the GATT Art. XX Chapeau.

Localization of Computing Facilities

Basic ban on data localization, subject to a similar exceptions clause to cross-border information transfer.

Mandatory Disclosure of Source Code

Basic ban on requiring suppliers to disclose source code, but limited in scope to mass-market software and excludes software for critical infrastructure.

Compatibility of Privacy Regimes

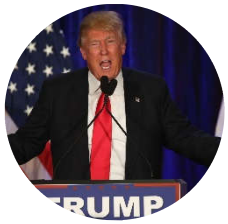
Duty to adopt a domestic data privacy regime in accordance with international "principles and guidelines"; transparency requirements; compatibility of different privacy regimes.

Despite its dwindling prospects, the TPP establishes rules that are likely to serve in future

The Promise of Chinese Leadership

Brexit, The Trump Presidency and the Rise of Populism

- Brexit fractures EU;
- Years of painstaking negotiations ahead for the UK and EU;
- Negative impact on TTIP
- Outcomes still very uncertain.

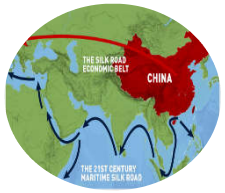


- Trump kills TPP;
- Future of NAFTA uncertain;
- TTIP in the freezer;
- TiSA also on hold;
- Future level and nature of US global leadership uncertain.

- Elections in France, Italy and Germany in 2017;
- Unmistakable rise in populism;
- Validity of the post WWII economic order called into question.

- Represents new challenges for China;
- But also an opportunity to exercise leadership.

One Belt One Road



RCEP

- Initiatives like One Belt One Road and RCEP now in the spotlight;
- The chance to influence new rules currently in the making.

Living in an Ideal World

Characteristics of an Optimal Trade and Investment Regime

Market Access

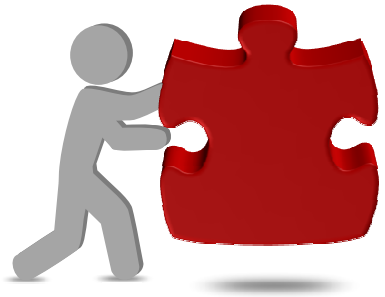
- Have an open and non-discriminatory trade and investment regime.
- Limit investment reviews to only the most clearly strategic assets.
- Limit the use of the nation security exception to the most clear-cut cases.

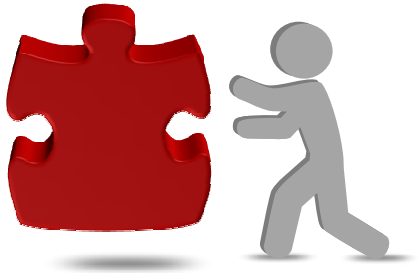
National Treatment

- Treat foreign economic operators and investors the same as domestic actors in all areas of policy, regulation and legislation.
- Allow foreign operators and investors to join local business associations

Partnership

- When contemplating far-reaching changes to the trade, investment or business climate consult first with business and the private sector
- Work together with the private sector in enacting and implementing policy and regulatory reforms





Cross-cutting issues

- Skills
- Infrastructure and logistics
- Predictability of the trading and investment climate | Ease of doing business | Rule of law

Thank you

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