

# Facilitating Different Forms of Investment

*Future Global Trade Regime and Investment Seminar + E15 Japan Launch*

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# Classical Forms of (Foreign Direct) Investment

- **Greenfield** – Build a new factory, plant, facility
- **Equity participation** – buy a stake in an existing entity
- **Joint Venture** – Establish a new company in collaboration with a (domestic) partner



# International Rule Making the “Old” Way

Bilateral Investment Treaties (BITS) generally concerned with such issues as:

- Fair and equitable treatment for foreign investors and their investments
- Non discrimination in the treatment of investments and compensation for losses
- Due process protections and appropriate compensation in the event of expropriation
- Guarantees on the right to expatriate earnings and profits
- Investor-State dispute settlement – ISDS mechanisms (generally international arbitration)

Trade rules (on investment) in the WTO’s General Agreement on Trade in Services:

- Rules on investment found predominantly in horizontal parts of countries’ schedules and in mode 3 commitments on market access and national treatment
- A number of other disciplines in GATS are likewise applicable to mode 3 service suppliers (investors) irrespective of whether specific commitments have been made (MFN, transparency, domestic regulation)

Investment Chapters in FTAs typically go beyond BITS obligations and include issues like:

- Performance requirements (minimum export percentages, local content requirements and technology transfer)
- More detailed provisions on expropriation, loss, transfers, ISDS
- Commitments tabled on a negative list basis with non-conforming measures explicitly scheduled,

# Investment Flows in the Digital Economy

## Greenfield



Apple Store Hangzhou



Huawei Customer Experience Center Brussels

## Equity participation/ acquisition



Apple Invests \$1 billion in Didi, Uber's rival in China



Google acquires smart thermostat maker Nest for \$32 billion

## Joint venture/ seed capital



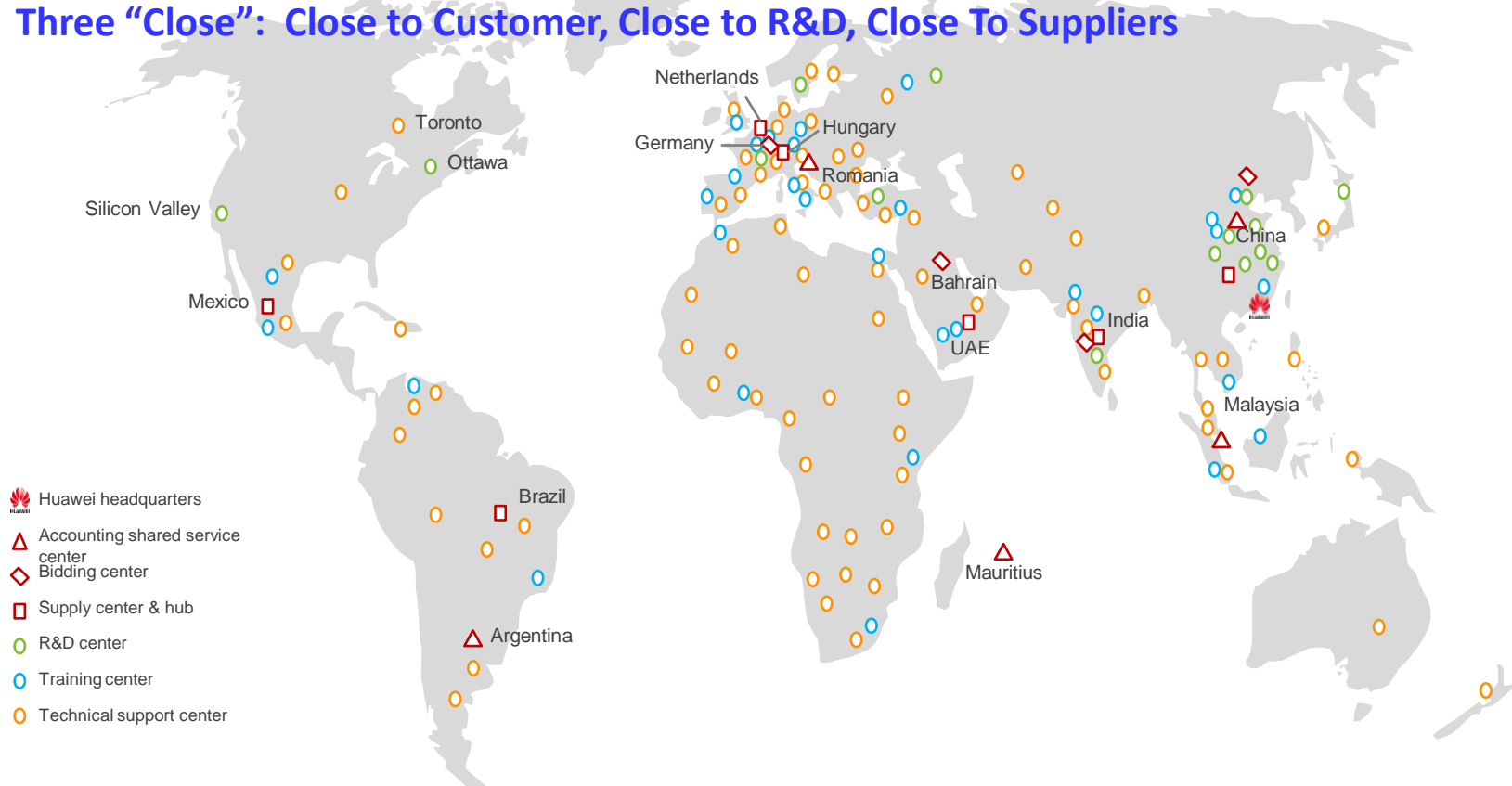
Qualcom forms JV with Chinese province of Guizhou to design and sell server chips



Xiaomi was launched in 2010 with initial funding from Tamasek, Qualcomm and other venture capital investors.

# New Hybrids: Globalized Resource Deployment and Localized Business Operations

Huawei is a industry leader with an international value chain, using global best practices:  
Three “Close”: Close to Customer, Close to R&D, Close To Suppliers



- Operations in **170+** countries; **176,000+** employees comprising **160+** nationalities worldwide; **72%** localization rate.
- Huawei's global value chain allows the smooth transfer of capabilities around the world, develops and retains talent in local countries, and creates jobs and economic opportunities.

# International Rule-Making for the Digital Economy



- New rules on e-commerce
- New rules on encryption and electromagnetic compatibility
- New rules on cross-border supply of services

- Long-overdue updating of the ITA to take into account technological developments since 1997

- Ambitious market access commitments in cross-border trade in services and mode 3
- E-commerce annex

- Already the biggest trade relationship in the digital economy
- Ambitious agreement with comprehensive market access and investment liberalization
- E-commerce, NTBs, and privacy to be important issues tackled

- Contemplating disciplines on e-commerce and online payments
- Ambitious aims to achieve greater services market integration and more liberal investment regimes

# How to Facilitate Different Forms of Investment

Some examples of policies that help facilitate investment in the digital economy:

- Keep negative lists and non-conforming measures to an absolute minimum
- Regulatory impact assessments for any new measures or legislative acts
- Technology neutrality of laws, regulations and measures
- Data localization obligations to be kept to an absolute minimum
- Don't impose joint venture, performance requirements or technology transfer obligations to such an extent that they undermine the business case for investing
- Tackle systemic issues that reduce investor certainty and raise investment risk profiles (rule of law, corruption, arbitrary taxation policies)
- Protect IP irrespective of the nationality of rights holders
- Allow access to the internet to be as easy, open, unrestricted and inexpensive as possible
- Tackle legacy policies and rules that undermine the creation and maintenance of a level playing field for all economic actors irrespective of their nationality (non discrimination)

# Speaker:



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