



GLOBAL DATA ALLIANCE

TRUST ACROSS BORDERS

TRENDS IN INTERNATIONAL NEGOTIATIONS ON CROSS-BORDER DATA TRANSFER AND DATA LOCALIZATION

The cross-border movement of data is essential to economic growth and development around the world. The ability to move data across borders responsibly contributes to:



A country's global connectivity and its access to the international marketplace and supply chains;



The ability of companies of all sizes to use software-enabled technologies, including cloud computing, data analytics, and digitally connected industrial processes, to create jobs, boost productivity, and reach new markets; and



The workforce's ability to remain productive through teleworking, virtual collaboration, and online training, as well as remotely delivered health care and other services.

Cross-border data transfers also foster compliance with regulatory requirements by firms engaged in services including transportation, logistics, and financial services. To secure continued access to these benefits, countries at all levels of development are negotiating international agreements on responsible cross-border transfer of data and prohibition of localization mandates.

WHAT ARE DATA LOCALIZATION MANDATES AND DATA TRANSFER RESTRICTIONS?

Data localization mandates typically require a company to store certain data, such as personal data, on local servers, whereas cross-border data transfer restrictions often place unreasonable restrictions on transferring data beyond territorial boundaries. These types of mandates and restrictions can harm the very countries implementing them as well as resident companies—suppressing economic productivity while discouraging R&D and investment. They also undermine data security and put local businesses at a competitive disadvantage.

WHICH COUNTRIES ARE NEGOTIATING TO PROHIBIT DATA LOCALIZATION MANDATES AND DATA TRANSFER RESTRICTIONS?

Dozens of countries are negotiating to ban data localization mandates and unreasonable data transfer restrictions. And for good reason: Policies that allow for the responsible transfer of data facilitate innovation, enhance productivity, and advance economic development.

Relevant negotiations include:

- **WTO Joint Statement Initiative on E-Commerce:** The Joint Statement is an ongoing negotiation among 80+ World Trade Organization (WTO) Member States, representing more than 90 percent of global trade. Countries have made numerous negotiating proposals to prohibit data localization mandates and restrictions on cross-border data transfers. Participants include Albania, Argentina, Australia, Bahrain, Benin, Brazil, Brunei Darussalam, Cameroon, Canada, Chile, People's Republic of China, Côte d'Ivoire, Colombia, Costa

Cross-border data transfers are critical to the workforce's ability to remain productive through teleworking, virtual collaboration, and online training, as well as remotely delivered health care and other services.

Although some countries have instituted measures to restrict data transfers and require data localization, many more countries—at all levels of development—are committing in international negotiations to prohibit such measures.

Rica, El Salvador, European Union, Georgia, Honduras, Hong Kong, Iceland, Indonesia, Israel, Japan, Kazakhstan, Kenya, Korea, Kuwait, Lao PDR, Liechtenstein, Malaysia, Mexico, Moldova, Mongolia, Montenegro, Myanmar, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Qatar, Russia, Saudi Arabia, Senegal, Singapore, Switzerland, Chinese Taipei, Thailand, Macedonia, Turkey, Ukraine, United Arab Emirates, United States, and Uruguay.

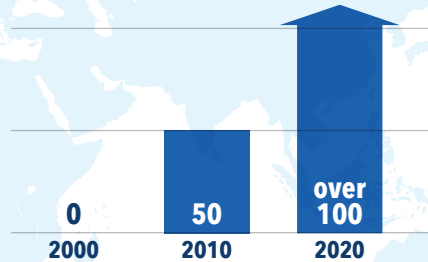
- **US-Mexico-Canada Agreement (USMCA):** The USMCA is an accord concluded by the United States, Mexico, and Canada, which prohibits localization requirements and protects the cross-border transfer of information, including personal information. The agreement also prohibits, among other things, measures that favor domestic data transfers over international data transfers; disguised restrictions on trade; and limits on data transfers that are greater than necessary. The USMCA extends these protections to all sectors. Upcoming US free trade agreement (FTA) negotiations with the [United Kingdom](#) and [Republic of Kenya](#) should follow a similar model.
- **US-Japan Digital Trade Agreement (DTA):** An accord between the world's top two developed economies, the US-Japan DTA matches the ambitious data transfer and localization standards of the USMCA, although the DTA is not subject to binding dispute settlement.
- **Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP):** Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam have agreed to prohibit localization requirements and cross-border data transfer restrictions, and have committed to binding dispute settlement. The CPTPP represents the most advanced agreement spanning the Pacific Rim. However, the CPTPP neither contains all the safeguards found in the USMCA and the US-Japan DTA, nor does it apply its data localization disciplines to the financial sector.
- **Australia-Singapore Digital Economy Agreement (DEA):** The DEA is an agreement between [Australia](#) and [Singapore](#) that goes beyond the CPTPP in applying data transfer and localization obligations to all sectors. The [Australia-Hong Kong FTA](#) contains similar provisions.
- **Digital Economy Partnership Agreement (DEPA):** The DEPA is a trilateral digital economy agreement among [Chile](#), [New Zealand](#), and [Singapore](#). This agreement reaffirms these countries' existing commitments on data transfers and data localization. The DEPA, however, does not extend these commitments to all sectors of the economy.
- **European Union (EU) draft negotiating provisions for future trade agreements:** The EU has developed draft negotiating texts for use in negotiations at the WTO and with bilateral trading partners that would commit its 27 Member States ([Austria](#), [Belgium](#), [Bulgaria](#), [Croatia](#), [Cyprus](#), [Czech Republic](#), [Denmark](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Ireland](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [the Netherlands](#), [Poland](#), [Portugal](#), [Romania](#), [Slovakia](#), [Slovenia](#), [Spain](#), and [Sweden](#)) to make certain commitments on data localization, subject to textual qualifications and self-judging exceptions frameworks. The EU is currently advancing these provisions in negotiations with countries including [Australia](#), [Chile](#), [Indonesia](#), and [New Zealand](#). Moreover, the [2020 EU Data Strategy](#) recognizes that "international data flows are indispensable for [the] competitiveness" of companies that operate in a "connected environment that goes beyond [national] ... borders," and that these companies "are increasingly faced with unjustified barriers and digital restrictions."
- **US-Singapore Joint Statement on Financial Services Connectivity:** The [US Department of the Treasury](#) and the [Monetary Authority of Singapore](#) announced in 2020 a plan to promote the international adoption of policies and rules that ensure financial service suppliers can transfer data across borders, and oppose data localization requirements. Both countries underscored, "data mobility in financial services supports economic growth and the development of innovative financial services and benefits risk management and compliance programs, including by making it easier to detect cross-border money laundering and terrorist financing patterns, defend against cyberattacks, and manage and assess risk on a global basis."

Building International Consensus



164 countries
have WTO services commitments,
often covering cross-border
supply of digital services

Sharp increase
in regional negotiations on
cross-border data transfers¹



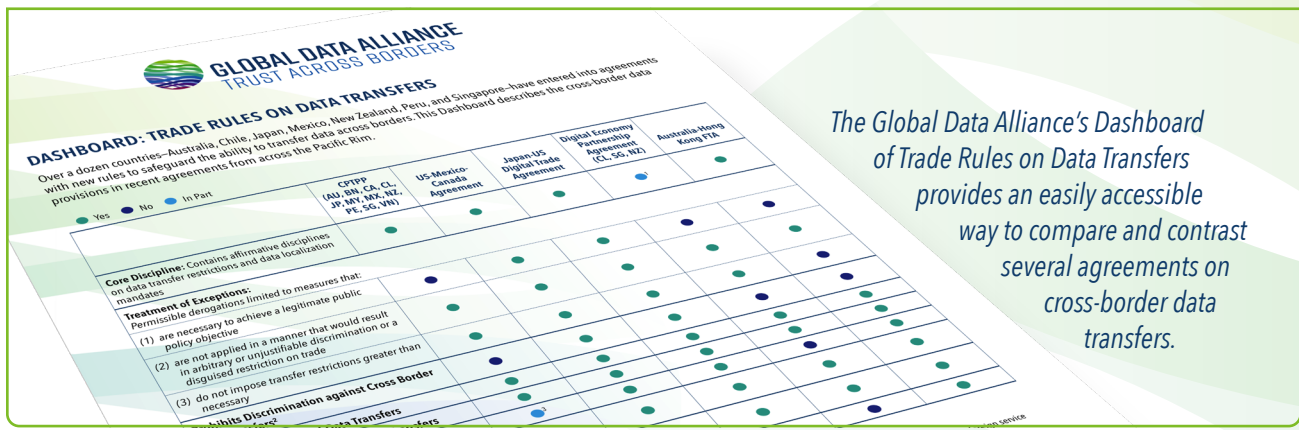
¹ As of 2010, approximately 50 countries (including 21 APEC members, 34 OECD members and various TPP negotiating parties). As of 2020, over 100 countries (including WTO members engaged in the Joint Statement Initiative e-commerce negotiations, African economies engaged in the African Continental FTA digital trade chapter negotiations, as well as the countries engaged in relevant negotiations in ASEAN, RCEP, the Pacific Alliance, and other bilateral and regional fora).

- **Other Negotiations:** Beyond the negotiations discussed above, countries are engaged in a range of bilateral or regional trade negotiations that may address the issues of cross-border data transfers and data localization to some extent. These negotiations and agreements include:
 - **The Regional Comprehensive Economic Partnership (RCEP)** negotiations among (at its inception) 10 ASEAN Member States along with Australia, People's Republic of China, India, Japan, Republic of Korea, and New Zealand.
 - **The Pacific Alliance**, a regional trade agreement that includes Chile, Colombia, Mexico, and Peru, with other prospective members considering participation.
 - **The African Continental Free Trade Area**, an FTA signed by 54 African Union countries, in which plans for a digital trade chapter negotiations were announced in early 2020.

Many of the countries above have also made non-binding commitments outside of the trade agreement context not to unduly restrict data transfers or to require data localization. These include the following:

- **2020 G20 Ministerial Statement on Trade and Digital Economy:** Building on long-standing efforts to promote cross-border data transfers, in June 2020, the following G20 members (Argentina, Australia, Brazil, Canada, People's Republic of China, the European Union, France, Germany, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, and the United States) issued a [ministerial statement](#) that underscored, "[c]ross-border flow of data, information, ideas and knowledge generates higher productivity, greater innovation, and improved sustainable development."
- **OECD Privacy Framework and other OECD Cross-Border Data Initiatives:** In July 2013, the OECD Council adopted a revised [Privacy Framework](#) and a revised [Recommendation Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data](#). The Framework

Forward-looking economies are negotiating to ensure access to cross-border data transfers, which provide benefits—enabling remote work, creating jobs, and promoting productivity, safety, and environmental responsibility—through 21st century technologies like cloud computing, blockchain, data analytics, and artificial intelligence.



The Global Data Alliance's Dashboard of Trade Rules on Data Transfers provides an easily accessible way to compare and contrast several agreements on cross-border data transfers.

"recommends that Member countries demonstrate leadership and commitment to the protection of privacy and free flow of information at the highest levels of government." The 34 OECD Member countries are Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD has also been a leader in analyzing the benefits of cross-border data transfers to economic growth and development, issuing [numerous economic studies and reports](#) on the subject.

- **APEC Cross-Border Data Transfer Initiatives:** The 21 APEC member economies (Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia,

Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Republic of Korea, Chinese Taipei, Thailand, the United States, and Vietnam) have contributed to cross-border data transfer rules through negotiation of the APEC [Privacy Framework](#) and the APEC [Cross-Border Privacy Rules System \(CBPRs\)](#), as well as ongoing work under the Internet and Digital Economy Roadmap. Originally issued in 2005 and updated in 2015, APEC's [Privacy Framework](#), helps "avoid[] the creation of unnecessary barriers to information flows." [CBPRs](#) is a certification system that (1) offers an independently verifiable and enforceable mechanism to protect privacy, and (2) promotes cross-border data transfers by providing a single framework for the bilateral or regional exchange of personal information.



As outlined above, open and innovative economies are seeking to maximize their own participation in the global digital economy by negotiating international agreements that prohibit data localization mandates and data transfer restrictions. As countries undertake these negotiations, it will be important to negotiate robust outcomes that extend enforceable and effective disciplines across all sectors of the economy. Doing so promises meaningful rewards as those economies, businesses, and workforces with cross-border access to new and emerging software solutions and technologies will be best positioned to compete and thrive in today's 21st century economy.

About the Global Data Alliance

The Global Data Alliance (globaldataalliance.org) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, electronics, energy, financial and payment services, health, consumer goods, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.