



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

### UPDATES

FEBRUARY 10, 2023

#### RECENT POLICY DEVELOPMENTS

##### EMEA

**EU – Political Agreement on EU Internal Rules on E-evidence:** EU policy makers have reached a [political agreement](#) on rules that will make it possible for judicial authorities in the EU to request subscriber, traffic, or content data directly from service providers in another European Member State. Non-EU headquartered service providers, who provide their services in the EU, will be requested to appoint legal representatives and designate responsibility for e-evidence requests. There will be a mandatory deadline of 10 days to respond to a e-evidence production order. In emergency cases, the deadline may be reduced to eight hours. Several procedural steps must be completed in the European Parliament and European Council as a prerequisite for formal adoption. Once the EU internal rules on e-evidence are approved, they will also constitute the basis for a full resumption of negotiations for a EU-US CLOUD Act Agreement. Such negotiations and a successful outcome would add additional safeguards for government access to data situations and further strengthen EU US data flows.

**EU – EU Data Act:** On February 9, 2023, the Industry, Research, and Energy Committee adopted its position on Regulation on harmonized rules on fair access to and use of data (Data Act). The Act's provisions on international data transfers of non-personal data have not changed substantially from the initial draft, and continue to state that data processing service providers must take technical, legal and organizational measures to prevent the international transfer or governmental access to non-personal data which would breach national or EU law. In particular, under the adopted position, the EU Commission would be able to adopt a list of jurisdictions where the transfer of such data could create a conflict with European Union legislation Union law. The GDA has continued to advance its view that the EU should clarify this statutory text to avoid difficulties in judicial or administrative implementation in the future.

**EU – EDPB Agenda for February 14-15 Plenary Meeting:** The European Data Protection Board (EDPB) has issued its [agenda for its February 14-15 plenary meetings](#). The meetings will include a significant focus on cross-border data policy and investigatory matters, including discussions and updates on:

- Guidelines 05/2021 on the Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR (after public consultation)
- Guidelines 07/2022 on certification as a tool for transfers (after public consultation)

- Follow-up to the Art. 65 binding decision 5/2022 on the dispute submitted by the Irish DPA regarding WhatsApp Ireland Limited – discussion
- EU - U.S. Data Protection Framework – state of play
- Collection of information regarding large-scale cross-border inquiries - information from the European Commission

**EU – GDA submission on the New Agenda for EU relations with Latin America and the Caribbean.** On February 9, 2023, the GDA responded to the EU Commissions [call for evidence](#) on the New Agenda for EU relations with Latin America and the Caribbean (LAC) contributing to the trade pillar, with a focus on certain digital trade and cross-border data flow aspects. The GDA reiterated that in the ongoing and future bilateral, regional, and multilateral negotiations with the LAC, it is critical to guarantee free flow of cross-border data, underlining relevant priority areas:

- Cross-Border Transfer of Information by Electronic Means: Across all sectors, including financial services, Parties shall not prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for business purposes.
- Location of Computing Facilities: Across all sectors, including financial services, Parties shall not impose requirements to use or locate computing facilities in their own territory as a condition for conducting business. Various types of localization measures would breach this broader obligation.
- Custom Duties: Parties shall not impose customs duties on electronic transmissions.
- Cybersecurity Risk Management: Parties shall adopt frameworks to manage cybersecurity risk. In connection with certification requirements for cybersecurity, Parties shall refrain from data localization mandates or other measures that undermine cybersecurity.
- Personal Data Protection: Parties shall adopt a framework to protect personal information. Parties shall promote mechanisms to ensure interoperability of such legal frameworks, and to ensure that data can be transferred across borders.

**EU – Schrems II Enforcement by DPAs:** On January 17, 2023, the [Finnish Deputy Data Protection Ombudsman \(DDPO\)](#) gave its first decision regarding the use of Google Analytics by three libraries in the capital region of Helsinki. The DDPO determined that the city of Helsinki, Espoo and Kauniainen should be given reprimands because library webpage user data was transferred to the United States via Google Analytics without the libraries having implemented appropriate safeguards to protect the transferred data. The decision reasoned that Google Analytics stores and reads data collected through cookies placed on the user’s browser and the collected data is then transferred to Google servers located in the United States. This decision follows decisions or statements by DPAs in:

- Spain ([December 15, 2022](#))
- Denmark ([September 21, 2022](#); [September 8, 2022](#); [August 8, 2022](#); [July 2022](#), [January 2022](#))
- Austria ([Oct. 2021](#), [April 2022](#)),
- Germany ([Berlin DPA](#))
- France ([CNIL ruling](#))
- Guernsey ([DPA ruling](#))

- Italy ([Garante June 23 ruling](#)), and
- The Netherlands ([Dutch DPA statement](#)).

**EU – Justice Commissioner Specifies the Deadline for Adoption of the Adequacy Decision for the US and Reiterates the Importance of Further Concrete Actions by US Intelligence Agencies.** On January 25, the EU’s Justice Commissioner underlined the importance of data transfers to transatlantic cooperation and provided an update on the EU process for adopting the draft US adequacy decision. The next step in the process will be the European Data Protection Board’s issuance of a non-binding opinion by February 2023. After that, the European Parliament is likely to express its position through a non-binding resolution. The vote by the European Union Member States will be the last step before the European Commission can adopt the adequacy decision.

The Commissioner previously announced that the adoption is to be expected by the end of July 2023. In addition, the Commissioner stated that the draft adequacy decision will only enter into effect after the US Executive Order enhancing safeguards for US signal intelligence activities and implementing acts by the Attorney General is fully implemented in the United States: “We need a full implementation of the new US legal framework”, the Commissioner stated, specifying that the US intelligence agencies have to update their policies and the US Attorney General has to designate the European Economic Area as an organization that can benefit from the redress system.

**Germany – DSK Decision re Third Country Transfers:** In a [decision dated January 31, 2023](#), the Union of German Data Protection Authorities (“DSK”) addresses access to personal data by governmental authorities in third countries. The DSK states that the mere risk that a third-country parent company or authorities of the third country in question could directly instruct an EU-based company to transfer personal data to that third country is not sufficient to qualify as data transfer within the meaning of Art. 44 et seq. GDPR. If such risk, however, is to be assumed when choosing a processor, it may lead to an assumption that this processor lacks reliability, unless the processor and/or the controller have taken additional measures to provide sufficient guarantees within the meaning of Art. 28(1) GDPR. DSK recommends that a detailed assessment of such risks should include:

- The results of an examination with regard to an extraterritorial applicability of the relevant third country law;
- An assessment as to whether the law or practice of the third country may affect the data processing agreement;
- Risk of the parent company instructing the EEA-company to transfer data to the third country;
- Whether the processing agreement allows for processing on the basis of third country law;
- Any assurance given by the parent company about how they are planning to deal with conflicting legal requirements;

A processor may not be deemed to be reliable if the assessment shows that the processor is unable to provide sufficient guarantees and/or that such guarantees cannot be secured through technical and organizational measures.

**Russia – New Data Transfer Restrictions:** On March 1, 2023, under the [Amendment to Law No. 152 \(Bill No. 101234-8\)](#), new Russian cross-border data transfer restrictions will come into effect. Among other things, the Act requires data controllers to notify and obtain *ad hoc* approval from authorities before transferring personal data outside the country. In addition, the Act states that Russian data protection regulations apply to data transferred in other jurisdictions.

**Russia – List of Adequate Jurisdictions:** On March 1, 2023, [Russia's list of adequate jurisdictions will come into effect](#). The list is published by Roskomnadzor, the Federal Service for Supervision of Communications, Information Technology and Mass Media of Russia. The list contains 89 foreign countries which (according to Roskomnadzor) fulfil an adequate security level for cross-border data transfer. Prerequisites for inclusion on the list include: (1) a comprehensive privacy law; (2) an authorized data protection agency; and (3) an enforcement framework for violations of personal data regulations.

**United Kingdom – GDA Comments re UK-Korea Trade Negotiations:** The GDA submitted [comments to the United Kingdom in relation to UK-Korea trade negotiations](#). Those comments recommended that the UK ensure that cross-border data outcomes in the Korea trade negotiations that are consistent with prior UK digital trade agreements, including in relation to:

- Cross-Border Transfer of Information by Electronic Means: Across all sectors, including financial services, Parties shall not prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for business purposes.
- Location of Computing Facilities: Across all sectors, including financial services, Parties shall not impose requirements to use or locate computing facilities in their own territory as a condition for conducting business. GDA's draft provisions include illustrative examples of several types of localization measures that would breach this broader obligation.
- Custom Duties: Parties shall not impose customs duties on electronic transmissions.
- Cybersecurity Risk Management: Parties shall adopt frameworks to manage cybersecurity risk. In connection with certification requirements for cybersecurity, Parties shall refrain from data localization mandates or other measures that undermine cybersecurity.
- Personal Data Protection: Parties shall adopt a framework to protect personal information. Parties shall promote mechanisms to ensure interoperability of such legal frameworks, and to ensure that data can be transferred across borders.

**United Kingdom – UK Minister Announces that Data Protection Bill is Ready to Move Forward:** On January 31, Junior Digital Minister Julia Lopez confirmed that the UK Data Protection Reform Bill was “ready to go” and should soon be approved by the UK government. The minister said that the draft bill is aimed to give businesses flexibility by reducing the requirement on cookie banners, removing the need to have a specific data protection officer, and reforming obligations for businesses to make them “more proportionate”. The bill would reform the Information Commissioner's Office, which would focus on the “highest risk” activities. The minister added that the proposed reform will create a better framework for emerging technologies, which “require more flexibility than GDPR allows as they develop and what we are trying to do is gradually step away from very restrictive processes under the GDPR.”

**Saudi Arabia – Data and Privacy Regulatory Sandbox:** On February 6, 2023, the Saudi Authority for Data and Artificial Intelligence launched the [Data and Privacy Regulatory Sandbox](#). Under the launched Regulatory Sandbox, entities will be able to test their products, services, technologies or business model in a time-bound, live, and controlled environment and will receive guidance and support from the regulator regarding conformity with the data protection obligations. Applicants must be Micro, Small or Medium Enterprises (MSMEs) part of the AdTech, RegTech sector or PETS (Privacy Enhancing Technology Solutions). The solutions proposed for testing must require testing against the Personal Data Protection Regulatory Instruments, be at a level of development sufficient to be tested, and not be concurrently tested in any other sandbox. The Privacy Regulatory Sandbox aims to support and promote the development of products and services following the privacy by design requirements.

## APAC

**China – Foreign R&D Encouragement Measures:** On January 18, the State Council General Office issued [Measures for Further Encouraging Foreign Investors to Set up R&D Centers](#). These Measures were developed by the Ministry of Commerce (“MOFCOM”) and the Ministry of Science and Technology (“MOST”), and cover four areas: supporting technological innovation, facilitating R&D, encouraging utilization of international talent, and improving IP protection. We comment on two relevant aspects of the measures below:

- Cross-border data flow: The Measures call for efforts to support the lawful cross-border flow of data, and to implement the requirements of relevant laws and regulations such as the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law. Although the Measures aim “to ensure the safe, orderly and free flow of R&D data”, they appear to offer no practical relief from China’s broad, restrictive policies on cross-border data transfers.
- Outbound transfers of IP and technology import/export: The Measures assign MOFCOM and the China National Intellectual Property Administration (CNIPA) to provide guidance over all regions in developing supporting rules for outbound transfer of intellectual property rights, harmonizing relevant mechanisms, and optimizing processes. Vague language about “procedural facilitation for intra-company cross-border transfer of technology within a multinational company (MNC)” offers little insight into the prospects for companies to leverage innovations from R&D centers in China globally.

At a policy briefing, Mr. Wu Jiayi, deputy director-general of the MOST Department of Research Commercialization and Regional Innovation said that next, the MOST will publish more practical measures to actively support the development of foreign-funded R&D centers, and do more to encourage the establishment of more foreign R&D centers in regional innovation hubs including Beijing, Shanghai, Guangdong-Hong Kong-Macao region, Chengdu-Chongqing economic circle, Wuhan and Xi’an.

**India – EU-India Trade & Technology Council:** On February 6, 2023, the EU and India announced the establishment of a [new EU-India Trade and Technology Council \(TTC\)](#). The Council will be co-chaired on the EU side by Executive Vice-Presidents Vestager and

Dombrovskis, and on the Indian side by Subrahmanyam Jaishankar, Minister of External Affairs, Piyush Goyal, Minister of Commerce and Industry, and Ashwini Vaishnaw, Minister of Electronics and Information Technology. Ministerial meetings of the TTC will take place at least once a year, with the venue alternating between the EU and India. There will be three working groups, which will meet within two weeks to organize their work:

- Strategic technologies, digital governance and digital connectivity: the group will work jointly on areas of mutual interest such as digital connectivity, Artificial Intelligence, 5G/6G, high performance and quantum computing, semiconductors, cloud systems, cybersecurity, digital skills and digital platforms.
- Green & clean energy technologies: this group will focus on green technologies, including investment and standards, with emphasis on research and innovation. Areas to be explored could be clean energy, circular economy, waste management, plastic and litter in the ocean. It will also foster cooperation between EU and Indian incubators, SMEs and start-ups.
- Trade, investment and resilient value chains: the group will work on the resilience of supply chains and access to critical components, energy, and raw materials. It will also work to resolve identified trade barriers and global trade challenges by promoting cooperation in multilateral fora. It will work towards promotion of international standards and cooperation on addressing global geopolitical challenges.

The EU-India's three strands of bilateral negotiations on trade, investment and geographical indications will continue separately from the TTC. The [High-level Trade & Investment Dialogue](#) will remain the principal organ for steering these negotiations. In addition, the [EU-India High-level Digital Investment Forum](#) (DIF) may be organized on the margins of the first TTC Ministerial meeting.

**Indonesia – Regulation 190:** The Ministry of Finance has issued MOF Regulation No. 190/PMK.04/2022, on the Transfer of Self-Consumed Imported Goods (Regulation 190). Under the regulation, an importer of intangible goods, i.e., software or other digital goods via electronic transmission, must submit a customs declaration and pay the relevant import taxes and customs duties through an online portal, within 30 days of a transaction. Indonesia previously stated in a WTO paper that it was developing a mechanism for the imposition of customs duties on electronically transmitted digital goods. English translation [here](#).

**Indonesia – MSME Digitalization:** A new report published by the Indonesia Services Dialogue in cooperation with the Indonesia Ministry of Cooperatives and MSMEs highlights how the use of digital tools by Indonesian micro business is associated with higher revenue and profits, a bigger customer base and expanded work force. The report underscores the practical value of digitally enabled services and goods to Indonesian small business - and the benefits of a system that allows for easy access to such products, including imports. The study, entitled “Digital Adoption and Dependency on Digital Goods and Services in MSMEs – a Survey of MSMEs in Java and Bali,” polled 764 MSMEs from February-August 2021. Among other things, it found that after MSMEs started using digital goods and services, they saw revenues and profits increase by an average of over 20% on a monthly basis, with the typical consumer base increasing by 31% and the average work force expanding by 3 employees. More than 90% of MSMEs surveyed reported using digital products or services or marketing. The main reason cited for using digital products or services was to tap more customers. More than half of those surveyed use digital products and services for business operations (61%) and delivery of goods

or services offered (59%). The use of digital goods and services was associated with a 20% decrease in marketing costs and 17% decline in delivery costs.

**Japan – Data Free Flow with Trust Workstream in the G7:** The GDA is working closely with private sector partners, such as the World Economic Forum (WEF), and public sector stakeholders in G7 economies, on the “Data Free Flow with Trust” workstream. The GDA also issued a [Statement of Support for the DFFT Agenda](#) in 2023. That Statement included the following elements (among others):

- “We support Japan’s call for greater international cooperation to ensure interoperability among national systems affecting data across borders.
- We welcome Japan’s proposed “Institutional Arrangement for Partnership” involving policy experts, companies, universities, and other relevant entities.
- We endorse Japan’s recommended international base registry of regulations on data transfers and data localization. To this end, we also share a list of selected data transfer restrictions and data localization requirements that impact GDA members (Appendix).
- We support the reaffirmation of core tenets of international law in the context of DFFT, namely: (1) the freedom to pursue necessary public policy objectives; (2) the renunciation of discrimination against non-national persons, products, services, or technologies; (3) the commitment to minimize trade-restrictive effects; and (4) due consideration for trading partner laws through interoperable legal frameworks. We urge Japan to recognize these tenets as four “pillars of trust” supporting the proposed *Institutional Arrangement for Partnership* on DFFT.”

The GDA has also shared with Japan our recent legal analyses of Digital Economy Agreements; GDA compilations of cross-border data barriers in priority markets; and inventories of cross-border data regulations in over 100 markets around the world. The GDA plans to develop a formal proposal to share with Japan re the design, operation, and substantive focus of the [Institutional Arrangement for Partnership](#). We also plan to develop draft language regarding a Foundational Charter in line with the [GDA Cross-Border Data Policy Principles](#).

**Korea – Cloud Security Assurance Program.** On January 31, Korea’s Ministry of Science and ICT (MSIT) published the finalized *Public Notice on Cloud Security Assurance Program* (Public Notice). Under the Public Notice, the systems of administrative agencies and public institutions (collectively, public institutions) will be classified into three grades — “High”, “Medium”, and “Low” — depending on the sensitivity of data handled. However, Cloud Service Providers continue to be required to ensure that all public sector data must be physically located in Korea. GDA’s recent submission on the CSAP can be accessed here: [Korea: GDA Comments on Proposed CSAP Amendments](#)

**Malaysia – Data Transfer Provisions in Digital Economy Cooperation Agreement with Singapore:** On January 30, 2023, the Singapore Minister for Trade and Industry and the Minister of International Trade and Industry of Malaysia signed a [Framework of Cooperation in Digital Economy and Green Economy](#). The Framework aims to increase cooperation between the parties on the digital economy and includes additional sectors for collaboration that are not outlined in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). Under the signed

Framework of Cooperation, the parties will enable cross-border data transfers. The Framework specifies that both countries will recognize and use the APEC Cross-Border Privacy Rules System (CBPR) and the ASEAN Model Contractual Clauses in order to ensure the protection of personal data and enable its transmission.

**Singapore – Digital Partnership and Digital Trade Principles with the EU:** On February 12, 2023, the EU and Singapore signed [the EU-Singapore Digital Partnership \(EUSDP\)](#) ([EU Announcement here](#)). The EUSDP is a non-binding framework that sets out areas of bilateral digital cooperation between the EU and Singapore. These include core issues in the cross-border digital economy such as digital trade facilitation, trusted data flows, electronic payments, and standards and conformance; as well as new and emerging areas such as Artificial Intelligence, digital identities, and 5G/6G. Under the EUSDP, the EU and Singapore have also established a Digital Partnership Council at the Minister-level to steer the EUSDP's progress and implementation, as well as identify new areas of cooperation in future. Both sides also launched a set of [Digital Trade Principles](#), which is described as the first step towards a legally binding digital trade agreement between the EU and Singapore.

**Singapore – Green-Digital Economic Partnership with Vietnam:** On February 9, 2023, Singapore and Vietnam signed a [Memorandum of Understanding \(MoU\)](#) establishing the [Green-Digital Economic Partnership](#). The MoU aims to increase collaboration between the parties through cooperation in various fields, including infrastructure, digital innovation, connectivity, and information technology and telecommunications.

**Singapore – Fintech & Digital Trade Collaboration with Abu Dhabi:** On February 7, 2023, Singapore's Infocomm Media Development Authority (IMDA) and Monetary Authority of Singapore (MAS) are working with the Abu Dhabi Global Market (ADGM) on Phase II of the exchange of digital trade documents. In addition, it was announced that the NUS Asian Institute of Digital Finance and ADGM Academy are [collaborating on Fintech solutions by carrying out joint research on problems facing the financial services sector](#).

**Vietnam – Resolution 13 (Personal Data Protection Decree):** The Vietnamese government issued [Resolution No. 13/NQ-CP \(Resolution 13\)](#) to approve the latest version of the draft Personal Data Protection Decree (draft Decree), a draft that has not been made public. Reports on the matter did not comment on developments related to provisions on cross border data transfers in the draft Decree. From our experience with other decrees under the Law on Cybersecurity, the Vietnamese authorities are unlikely to make these drafts public. The next version released publicly is in all likelihood the final promulgated Decree.

Process-wise, Resolution 13 approves the content of draft Decree, completing another step in the legislative process. Thereafter, the Ministry of Public Security is required to prepare an updated version of the draft Decree and submit it to the National Assembly Standing Committee for approval. While no official timeline was provided, our source estimates that the Decree could be issued as early as March 2023. It is not clear whether there would be a grace period, but the same source estimates that the Decree could take effect as early as July 2023.



## WESTERN HEMISPHERE

**Cuba – Data Transfer Provisions in Personal Data Protection Bill:** On February 21, 2023, the cross-border data transfer provisions of the [Personal Data Protection Law \(Ley 149\)](#) will come into force. The Act limits data transfers outside the country to the following five bases: (1) international judicial cooperation, (2) exchange of medical data when necessary for the treatment of the data subject, (3) bank or stock exchange transfers under international treaties, (4) transnational crime prevention, and (5) international transfers of personal data as outlined in Article 66.

**US – AFL-CIO Digital Trade Agenda:** On February 7, 2023, the AFL-CIO (the largest US labor organization) issued a [Digital Agenda](#). Among other things, the Report focuses on:

- [Data Localization](#). The report says trade agreements should allow for data related to critical infrastructure or sensitive personal information, among other categories, to be kept onshore.
- [Data Transfers](#). The report says the lack of restrictions on cross-border data flows has given rise to offshoring of back-office, call center, data processing, telemedicine and other jobs.
- [Source Code](#). The report critiques USMCA’s provisions on government access to source code and algorithms.

**US-Kenya Trade Negotiations:** On February 3, 2023, the [US and Kenya held “conceptual discussions” about their trade and investment partnership negotiations](#). The areas that the two sides have proposed for negotiations include (1) agriculture, (2) anti-corruption, (3) digital trade, (4) environment and climate action, (5) good regulatory practices, (6) micro, small, and medium size enterprises, (7) protecting worker’s rights and protections, (8) supporting the participation of women, youth, and others in trade, (9) standards collaboration, (10) trade facilitation and customs procedures, and (11) services domestic regulation.

**US-Japan Partnership on Trade:** On February 2-3, 2023, the United States and Japan held the third round of meetings of the [United States-Japan Partnership on Trade](#), which was launched in November 2021 to strengthen the United States-Japan trade relationship by advancing bilateral collaboration on trade-related topics and issues of common interest, as well as to securing regular, ongoing engagement to address bilateral trade issues. topics discussed included "digital economy", with a focus on "continuing to coordinate efforts to respond to several third-country regulations that present concerns in light of our shared commitments to harnessing the opportunities of the digital economy in a way that supports the interests of users and providers."

**US – GDA Special 301 Submission:** On January 30, the GDA submitted its comments to USTR under the Special 301 Annual Review of IP Protection and Enforcement Worldwide. The 50-page GDA submission included the following main points:

Failing to attend to data-related barriers to innovation threatens many IP-related priorities – from engaging in cross-border R&D, to protecting brands, to investigating IP infringement, to conducting comprehensive prior art searches.

Likewise, with so many patented or copyrighted innovations functionally dependent upon satellite or other cross-border data communications (e.g., IoT software applications in the aerospace, automotive, and agricultural machinery sectors; music and video streaming services that disseminate licensed film or music content), cross-border data transfer restrictions make it difficult, if not impossible, for innovators and creators to sell or provide support to their IP-protected products abroad – interfering with their ability to enjoy the benefits of their IP rights abroad. In each of the foregoing examples (and many others), innovation and market access-limiting data localization mandates and data transfer restrictions impact IPR holders in respect of the availability, acquisition, scope, maintenance, enforcement, and enjoyment of IP rights.

The Global Data Alliance urges USTR to attend to the growing threat to global innovation and IP protection presented by unfair market access barriers in form of cross-border data transfer restrictions and data localization mandates. We look forward to your questions and comments.

The submission covered the following major issues:

- A. Cross-Border Data Transfers, Innovation, and Intellectual Property
- B. Cross-Border Data Transfers and the Innovation Lifecycle
  - 1. Data Transfers and Core Innovation
  - 2. IP Acquisition, Registration, and Maintenance
  - 3. IP Enforcement and Brand Protection
  - 4. IP Commercialization
- C. Data-Related Market Access Barriers that Impact Innovation and IP
- D. Conclusion

**US – Texas Security Plan for Prohibited Technology:** On January 26, Texas Governor Abbott announced a [“Security Plan for Prohibited Technology,”](#) which would ban downloads of a certain applications on any device issued by the State of Texas. Prohibited applications include those produced by Kaspersky, ByteDance Ltd., Tencent Holdings Ltd., Alipay, CamScanner, and WeChat.

**US – Cross-Border Data Restrictions in Massachusetts Internet Bill of rights (HD 3245):** On January 20, 2023, an Act establishing an [Internet Bill of Rights \(HD 3245\), which includes data transfer restrictions](#), was introduced in the House of Representatives of the Commonwealth of Massachusetts. Under the Act, the cross-border data transfers would be allowed to jurisdictions that provide an adequate level of protection. The Attorney General would have the authority to assess the level of protection and data security the foreign jurisdictions provide, and it would be required to review adequacy decisions every four years. In the absence of an adequacy decision, the entities would be able to transfer data based on binding corporate rules, standard data protection clauses and codes of conduct approved by the Attorney General or approved certification mechanisms alongside binding and legally binding and enforceable commitments.

**US – Legislative Updates:** In the first few weeks of 2023, several bills have already been proposed in Congress that would likely have direct or indirect impacts on cross-border data transfers. Several have also been reviewed and approved by the House Subcommittee on

Innovation, Data, and Commerce. Overall, these bills would restrict, or impose new notification requirements for, data-related transactions involving China or other countries of concern. The bills are summarized below:

- HR 750, the “[Chinese-owned Applications Using the Information of Our Nation Act of 2023](#)” or the “CAUTION Act of 2023” ([PDF](#)). Requires notification of any person who uses, accesses, or downloads an app the use of which is prohibited for Government-owned devices;
- HR 742, the “[Telling Everyone the Location of data Leaving the US Act](#)” or the “TELL Act” ([PDF](#)): Requires notification of any person who uses, accesses, or downloads an app or website that stores data in China.
- HR 784, the “[Internet Application Integrity and Disclosure Act or the ‘Internet ID Act’](#)” ([PDF](#)): Requires notification of any person who uses, accesses or downloads an app or website that is owned – in whole or part – by a public or private Chinese entity;
- HR 813, the “[Global Investment In America Jobs Act](#)” ([PDF](#)). This bill, which is generally positive, seeks to promote foreign direct investment in the United States as a means of enhancing US competitiveness.

**US – Outbound Investment Review:** Media reports indicate that the US government is continuing to explore new restrictions on US investment in China, with a focus on quantum computing, artificial intelligence and semiconductors. Media reports that, at an interagency meeting on the plan in December convened by National Security Adviser Jake Sullivan, the Treasury Department sought more time to discuss it with US partners. A formal EO might issue sometime in late Winter or early Spring. [Axios article here](#), [WSJ here](#).

## GLOBAL

**APEC –** The United States will be hosting the first [Senior Officials Meeting in Palm Springs, CA](#) in the latter half of February 2023. GDA staff will be engaging at APEC in two contexts:

- GDA will speak at the [APEC Digital Trade Policy Dialogue on February 22, 2023](#). The panel will focus on how to build a conducive regulatory environment for digital trade through foundational policies/regulations to effectively regulate digital activities in a coherent, cross-sectoral, and cross-jurisdictional manner. This session will give an overview of the challenges that face policymakers and regulators in growing and enabling digital trade, from restrictions to the free flow of data; lack of foundational frameworks, such as data protection and privacy; as well as application of taxation and tariff frameworks in the age of digital platforms and data. GDA’s intervention on Good Regulatory Practices in the digital environment will be drawn from the the [GDA Cross-Border Data Policy Principles](#).
- GDA will present at the [APEC Digital Economy Steering Group on February 19, 2023](#) to introduce a proposal for a funded APEC workstream focused on convergence of data protection and privacy frameworks across the Asia-Pacific.

**Americas Partnership for Economic Prosperity:** On January 27, twelve Western Hemisphere economies held a virtual ministerial of the [Americas Partnership for Economic Prosperity \(APEP\)](#) – Barbados, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador,

Mexico, Panama, Peru, Uruguay, and the United States. (The initial participants did not appear to include important Western Hemisphere economies such as Argentina or Brazil, or Bolivia, Paraguay, or several Caribbean and CAFTA-DR economies). The White House announcement identifies five pillars of negotiation: stimulating regional investment, resilient supply chains, upgrading the “basic bargain” of economic security in market economies, stimulating clean energy and sustainability, and ensuring inclusive trade. On the subject of trade and digital the Announcement states as follows:

- “Our longstanding trade and commercial relationships will serve as the foundation for our efforts to expand the benefits of sustainable, inclusive, and responsible trade to all... [seeking] to increase collaboration on customs, trade facilitation, logistics, and good regulatory practices; address non-tariff barriers; and promote sustainable quality investment.”
- “We intend to promote trade that advances workers’ rights and economic security and elevates the role of the self-employed, entrepreneurs, and micro-, small-, and medium-sized enterprises to support supply chain diversification.”
- “We seek to build an environment of trust and confidence in the digital economy, and to advance secure and resilient digital infrastructure and platforms. We also intend to foster an inclusive digital economy by taking concerted steps to close the digital divide, promote digital-enabling skills, and leverage digital tools, digital literacy, and technology to meet our goals.”
- “We aim to leverage opportunities for co-investment in the region with allies and partners from outside of our hemisphere and to strengthen connections and business ties among diaspora entrepreneurs in the Americas and the Caribbean. This will help to encourage private sector investment that meets environment, social, and governance criteria, while promoting financial inclusion, creating decent jobs, and improving the livelihoods of individuals from all backgrounds, including those in underserved communities.”

**Global CBPR Forum** – The United States and other partner economies will hold a workshop on the Global Cross Border Privacy Rules (CBPR), entitled “Facilitating Cross-Border Data Flows in Southeast Asia.” [Registration link here.](#)

**UNCTAD:** On February 16, UNCTAD will issue the first regional edition of its flagship Digital Economy Report. The Report will examine the development and policy implications of the emerging digital economy in the Pacific. The presentation of the report will be followed by reflections by the H.E. Ms. Mere Falemaka, Ambassador and Permanent Representative, Pacific Island Forum Permanent Delegation to the United Nations, on challenges and opportunities related to digital development in the Pacific, and the importance of building inclusive digital economies. Register for the publication event [here.](#)

**UN – Privacy Enhancing Technologies Guide:** The [Statistics Division of the UN](#) Department of Economic and Social Affairs has published a new [Guide on Privacy-Enhancing Technologies for Official Statistics](#). The guide presents methodologies and approaches to mitigating privacy risks when using sensitive or confidential data, which are collectively

referred to as privacy-enhancing technologies (PETs). National Statistics Offices (NSOs) are entrusted with data that has the potential to drive innovation and improve national services, research, and social benefit. Yet, there has been a rise in sustained cyber threats, complex networks of intermediaries motivated to procure sensitive data, and advances in methods to re-identify and link data to individuals and across multiple data sources. Data breaches erode public trust and can have serious negative consequences for individuals, groups, and communities. This document focuses on PETs that protect data during analysis and dissemination of sensitive information so that the benefits of using data for official statistics can be realized while minimizing privacy risks to those entrusting sensitive data to NSOs.

**WTO JSI Digital Trade Negotiations:** Following up on the January 20 joint statement of the co-convenors of the [WTO plurilateral e-commerce negotiations](#), the GDA plans to engage in the following activities in the coming weeks:

- Share with WTO negotiating delegations the GDA's Model Trade Agreement Provisions on Cross-Border Data, Data Localization, and Customs Duties on Electronic Transmissions, as well as Model Provisions on the Protection of Personal Data & Privacy, and the Protection of Cybersecurity
- Schedule additional WTO Digital Delegation Meetings with Delegations for the United Kingdom, the European Union, and other participating economies

**WTO E-Commerce Moratorium / E-Commerce Work Programme:** The GDA is considering undertaking the following advocacy program on these two important topics in the first half of 2023. We welcome your views on each of these proposals:

- Update the Global Industry Statement on the E-commerce Moratorium with an addendum focused on Impacts on MSMEs.
- Develop a Frequency Asked Questions document on the subject of the E-Commerce Moratorium
- Develop new sectoral industry statements focused on the E-Commerce Moratorium and business software, film and television, and publishing.

## RECENT GDA PUBLICATIONS

On February 9, 2023, GDA published its Frequently Asked Questions document, and related dashboards and tables, that compare and contrast different Digital Economy Agreements (DEAs). Links below:

- [Frequently Asked Questions: Trade Rules on Cross-Border](#)
- [Explanatory Table: Trade Rules On Cross-Border Data Transfers](#)
- [Dashboard: Trade Rules on Cross-Border Data Transfers](#)
- [Comparison Table: Type 1 And Type 2 Agreement Rules on Data Transfers](#)

On February 10, 2023, GDA published new Issue Pages and Sectoral Pages on its website. This includes the following:

- [Cross-Border Data Transfers & Cybersecurity](#)
- [Cross-Border Data Transfers & Data Analytics](#)
- [Cross-Border Data Transfers & Economic Development](#)

- [Cross-Border Data Transfers & Environmental Sustainability](#)
- [Cross-Border Data Transfers & Innovation](#)
- [Cross-Border Data Transfers & Regulatory Compliance](#)
- [Cross-Border Data Transfers & Privacy](#)
- [Cross-Border Data Transfers & Small Businesses](#)
- [Medical Technology](#)

## MEDIA AND OTHER PUBLICATIONS

### China

China Briefing, [China Has a New Plan to Strengthen its Data Economy](#)  
Lexology, [Transfer of data and localization laws affect China](#)

### EU

JDSupra, [EU Takes Step Toward Approval of EU-US Data Privacy Framework](#)  
JDSupra, [Privacy Shield 2.0 What's Next for International Data Transfers?](#)  
Lexology, [EU court strengthens individual rights for information on recipients of personal data](#)  
  
Lexology, [EU Digital Partnerships with Asia: A New Path Towards Enhanced Digital Collaboration and Opportunities](#)  
Lexology, [The EUs Proposal on the Transparency and Targeting of Political Advertising](#)  
Lexology, [The Novelty Brought by the New Personal Data Protection Act](#)  
Lexology, [Unpacking Digital Data Laws Across Europe: Addressing the Digital Markets Act](#)

### Germany

IAPP, [Inside Germany's take on proposed Data Act](#)

### India

Business Standard, [Digital India Act to be more principle-based](#)  
The Economic Times, [Data Centres India: Data centre companies call for reciprocity in data flow](#)  
The Economic Times, [Data localisation was never a mandate in India](#)  
The Hindustan Times, [New personal data protection bill 'at the earliest': Govt to SC](#)

### Sweden

Euractiv, [Swedish presidency tries to close in on the Data Act](#)

### Turkey

Lexology, [Data localisation requirements in Turkiye](#)

## **Ukraine**

Mondaq, [Coming Soon: GDPR-like Privacy Regulation In Ukraine](#)

## **UK**

Atlantic Council, [Biden's call to modernize US tech policy would pay transatlantic dividends](#)

IAPP, [UK-US data flows council convenes, sets 2023 deliverables](#)

Lexology, [UK's first data adequacy decision in effect with South Korea](#)

## **US**

Lexology, [Third Time's the Charm? Towards a New Regime for EU-US Personal Data Transfers](#)

Mondaq, [International Data Transfers To The US: Update](#)

## **Vietnam**

Lexology, [Data Localisation Rules in Need of Further Guidance](#)

## **Global**

IAPP, [World Economic Forum releases paper on global data flows](#)

Lexology, [OECD Declaration on Government Access to Personal Data](#)

Lexology, [Protecting children from harmful content online - a global perspective](#)

World Economic Forum, [We must protect cross-border data flows — here's why](#)