



# GLOBAL DATA ALLIANCE

## TRUST ACROSS BORDERS

July 13, 2022

The Honorable John Deng  
Minister without Portfolio  
The Executive Yuan  
No. 1, Sec. 1, Zhongxiao E. Rd.,  
Zhongzheng Dist., Taipei City 100009

Board of Foreign Trade  
1 Hu Kou Street  
Zhongzheng Dist., Taipei City, 10066

Dear Minister Deng,

The Global Data Alliance<sup>1</sup> congratulates you on your recent inaugural meeting with Deputy US Trade Representative Sarah Bianchi relating to the U.S.-Taiwan Initiative on 21<sup>st</sup> Century Trade (US-Taiwan Trade Initiative). We introduce through this submission the Global Data Alliance (GDA) and our priorities for the US-Taiwan Trade Initiative.

### **Introduction**

The GDA 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. GDA member companies employ tens of millions of American workers across a broad array of sectors, including aerospace, agriculture, automotive, energy, electronics, film, music and entertainment software, financial and payment services, health, logistics, retail and consumer goods, technology, and telecommunications, among others.

GDA members support 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. While Alliance member companies have a range of interests in the US-Taiwan Trade Initiative negotiations, this submission focuses exclusively on the cross-border data aspects of the negotiations.

Given that industries like agriculture, logistics, and manufacturing capture an [estimated 75% of the value of cross-border data transfers \(just one aspect of a digital economic framework\)](#),<sup>2</sup> these negotiations should address the cross-border digital interests of diverse US and Taiwan industries and their workers, including in the automotive,<sup>3</sup> clean energy,<sup>4</sup> finance,<sup>5</sup> healthcare,<sup>6</sup> logistics,<sup>7</sup> software, semiconductors, and telecommunications sectors.<sup>8</sup>

### **Discussion**

The US-Taiwan Trade Initiative negotiations present an opportunity for Taiwan and the United

States to agree on strong cross-border data standards built on the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), the US-Japan Digital Trade Agreement, and the US-Mexico-Canada Agreement (USMCA), which contains the most advanced cross-border data policy provisions in any international agreement. We recommend that Taiwan and the United States advance provisions reflective of USMCA Chapters 17 and 19.

The core obligations in USMCA Articles 19.11 and 17.17 are drafted as a prohibition on data transfer restrictions. This drafting provides a realistic reflection of the existing legal architecture in Taiwan and the United States. Other drafting formulations (such as CPTPP Article 14.11) could be misunderstood to imply that each Party must proactively establish affirmative rules indicating that cross-border data transfers are permitted.

The USMCA framework for derogations in Articles 19.11 and 17.17 also offers a more predictable legal structure than alternative formulations. These USMCA articles make clear that derogations must:

- Be necessary to achieve a legitimate public policy objective;
- Not be applied in a manner that would result in arbitrary or unjustifiable discrimination or a disguised restriction on trade;
- Not impose transfer restrictions greater than necessary; and
- Not discriminate against foreign service providers by treating cross-border data transfers less favorably than domestic ones.

The high standards applicable to data localization from USMCA (Articles 19.12 and 17.18) should also apply in the US-Taiwan trade context. Additionally, the USMCA articles apply across all sectors of the economy, including financial services. Finally, these US-Taiwan Trade Initiative disciplines should be enforceable, as they are in USMCA.

As reflected in the GDA's Dashboard comparing USMCA with Digital Economy Partnership Agreement (DEPA) and several other agreements,<sup>9</sup> these features of the USMCA are not fully reflected in other agreements, such as the CPTPP or the DEPA.

Finally, the GDA urges Taiwan and the United States to agree not to impose customs duties or other customs restrictions on electronic transmissions, consistent with USMCA Article 19.3. Both countries are already signatories of the APEC Pathfinder on Customs Duties on Electronic Transmissions, reflecting a high degree of convergence.

As indicated in the GDA Cross-Border Data Policy Principles,<sup>10</sup> maintaining these robust standards in the US-Taiwan Trade Initiative context would strengthen this initiative and the relationship between both economies.

The Global Data Alliance welcomes the opportunity to provide this submission and we look forward to continuing to work with Taiwan on this important matter.

Sincerely,

*Joseph Whitlock*

Joseph Whitlock  
Executive Director  
Global Data Alliance

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<sup>1</sup> Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

<sup>2</sup> Global Data Alliance, *Facts and Figures* (2020), at: <https://globaldataalliance.org/downloads/gdafactsandfigures.pdf>

<sup>3</sup> Global Data Alliance, *GDA Website – Automotive* (2022), at: <https://globaldataalliance.org/sectors/automotive/>

<sup>4</sup> Global Data Alliance, *GDA Website – Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

<sup>5</sup> Global Data Alliance, *GDA Website – Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

<sup>6</sup> Global Data Alliance, *GDA Website – Healthcare* (2022), <https://globaldataalliance.org/sectors/healthcare/>; Global Data Alliance, *GDA Website – Biopharmaceutical R&D* (2022), <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>

<sup>7</sup> Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), <https://globaldataalliance.org/sectors/supply-chain-logistics/>

<sup>8</sup> Global Data Alliance, *GDA Website – Telecommunications* (2022), <https://globaldataalliance.org/sectors/telecommunications/>

<sup>9</sup> See Global Data Alliance, *Dashboard of Trade Rules on Data Transfers* (2020), at: <https://www.globaldataalliance.org/downloads/gdadashboard.pdf>

<sup>10</sup> See Global Data Alliance, *Cross-Border Data Policy Principles* (2021), at: <https://globaldataalliance.org/downloads/03022021gdacrossborderdatapolicyprinciples.pdf>