



GLOBAL DATA ALLIANCE

TRUST ACROSS BORDERS

4 November 2022

Cross-Border Data Provisions in the Switzerland-United Kingdom Free Trade Agreement (FTA) Negotiations

The Global Data Alliance¹ (GDA) congratulates Switzerland on the start of FTA negotiations with the United Kingdom. We respectfully submit the following comments urging both countries to provide for strong cross-border data commitments in the negotiations.

I. 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. While Alliance member companies have a range of interests in Switzerland's FTA negotiations, this submission focuses exclusively on the cross-border data aspects of the Switzerland-United Kingdom FTA negotiations. GDA member companies employ tens of thousands of workers across Switzerland in digitally-intensive industries.

GDA members welcome Switzerland's efforts to ensure that Switzerland's FTA negotiations address the cross-border digital interests of all Swiss industries and their workers, including in the agriculture, automotive, clean energy, finance, healthcare and medical technology, logistics, media (including film, music and publishing), pharmaceutical, and telecommunications sectors. Digital networks lie at the heart of today's interconnected global economy: they support jobs across Switzerland in every sector, and at every stage of the value chain in millions of transactions every day. More information to illustrate the cross border digital interests of different sectors can be found here: <https://globaldataalliance.org/sectors/>

II. Discussion

The GDA congratulates Switzerland on its commitments to develop comprehensive international rules on digital trade by supporting cross-border data flows and opposing restrictive localization requirements. Furthermore, the GDA supports Switzerland's goal to ensure best possible legal certainty in the area of digital trade through comprehensive rules within the framework of free trade agreements, bilaterally or within EFTA, and by means of active participation in the joint initiative on e-commerce within WTO.

Sharing the ambition for free digital trade and in support to the FTA negotiations with the United Kingdom, the GDA outlines several important provisions on cross border data policy matters.

III. Proposed Cross-Border Data Commitments

We encourage Switzerland to negotiate the below provisions with the United Kingdom:

- Cross-Border Transfer of Information by Electronic Means: Across all sectors, Parties shall not prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of a business.
- Location of Computing Facilities: Across all sectors, Parties shall not impose requirements to use or locate computing facilities in their own territory as a condition for conducting business.
- Custom Duties: Parties shall not impose customs duties on electronic transmissions.

These provisions, which are broadly recognized, are also embedded in the United Kingdom – European Union Trade and Cooperation Agreement, United States – Japan Digital Trade Agreement, United States – Mexico – Canada agreement, to name a few.

The GDA also supports the efforts of the countries to promote the WTO’s longstanding tenets of international law and practice in digital trade, 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 to principles of compatibility and interoperability with trading partner laws. We support the efforts of digital trade negotiators to explicitly clarify that these same core tenets apply to trade rules relating to the cross-border movement of data.

As explained above, we strongly support Switzerland’s ongoing negotiations with the United Kingdom and welcome the opportunity to provide this submission. It is of increasing importance that like-minded stakeholders cooperate to strengthen and reinforce an international policy consensus that is focused on data transfers and built on a foundation of trust.

As Switzerland continues negotiating digital trade agreement with the United Kingdom, we would like to provide the GDA’s input in the annexes of this submission:

1. **Evidentiary Support for Cross-Border Data Commitments in FTA agreements**, naming widespread evidence of cross-border access to information, knowledge, and digital tools;
2. **GDA Cross-Border Data Principles**, identifying six major pillars that can strengthen the international consensus on data transfers.

We would be happy to discuss with you the attached annexes and engage in the exchange of views. We look forward to continuing to work with Switzerland in connection with these negotiations. We thank you for the opportunity to share our views. Please do not hesitate to contact us with any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Boué', with a long horizontal stroke extending to the right.

Thomas Boué
Director General, Policy - EMEA

¹ For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/>