



GLOBAL DATA ALLIANCE

TRUST ACROSS BORDERS

May 2023

Americas Partnership for Economic Prosperity (APEP) Consultations
Global Affairs Canada
Trade Negotiations – North America (TNP) / Americas Branch (NDS)
John G. Diefenbaker Building
111 Sussex Drive
Ottawa, Ontario K1N 1J1

Attn: APEP-Consultations-PAPE@international.gc.ca

The Global Data Alliance¹ congratulates the Government of Canada on its decision to join discussions regarding the Americas Partnership for Prosperity (APEP) together with like-minded Western Hemisphere economies.²

The Global Data Alliance 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. While Alliance member companies have a range of interests in the APEP negotiations, this submission focuses exclusively on the cross-border data aspects of the negotiations.

GDA members are headquartered and operate primarily in Canada and the United States, supporting tens of millions of jobs and investing hundreds of billions of dollars into the North American economy. GDA member companies' ability to transfer data securely and responsibly across the Americas is critical to their operations and investments across North America and beyond.

Given that industries like agriculture, logistics, and manufacturing capture an [estimated 75% of the value of cross-border data transfers \(just one aspect of a digital economic framework\)](#),³ we reiterate our view expressed to Canada in other negotiating contexts that these negotiations should address the cross-border digital interests of diverse Canadian industries and their workers, including in the automotive,⁴ clean energy,⁵ finance,⁶ healthcare,⁷ logistics,⁸ software, and telecommunications sectors.⁹

These negotiations present an opportunity for Canada to advance strong cross-border data standards built on the US-Mexico-Canada Agreement, which represent the most advanced cross-border data policy provisions in any international agreement. We recommend that Commerce support 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 Canada and many IPEF partner countries. 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 IPEF context. Additionally, the USMCA articles apply across all sectors of the economy, including financial services. Finally, the USMCA disciplines are enforceable.

As reflected in the GDA's Dashboard comparing USMCA with Digital Economy Partnership Agreement (DEPA) and several other agreements,¹⁰ these features of the USMCA are not fully reflected in other agreements, such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) or the DEPA.

As indicated in the GDA Cross-Border Data Policy Principles,¹¹ maintaining these robust standards in the IPEF would make the agreement even more attractive for future acceding countries and as a model for future digital economy agreements. Finally, we include for your reference the following [links](#), which we hope will be helpful:

Model Digital Trade Provisions

We have developed these provisions in consultation with our member companies, and many of them are modelled on language from the US-Mexico-Canada Agreement and similar agreements.

- GDA's [Model Provisions on Cross-Border Access to Information](#)¹² / [BSA's Model Provisions on Cross-Border Data Transfers and Digital Trust](#)¹³

Model Analytical Resources

These analytical resources offer up-to-date legal analysis of recent DEAs signed by Australia, Canada, Chile, Japan, Korea, Mexico, New Zealand, Singapore, and the EU, UK, and US (among other countries).

- [Dashboard: Trade Rules on Cross-Border Data Transfers](#)¹⁴
- [Explanatory Table: Trade Rules On Cross-Border Data Transfers](#)¹⁵
- [Frequently Asked Questions: Trade Rules on Cross-Border](#)¹⁶
- [Comparison Table: Type 1 And Type 2 Agreement Rules on Data Transfers](#)¹⁷

The Global Data Alliance welcomes the opportunity to provide this submission and would welcome the opportunity to consult with you in the future.

Sincerely,

Joseph Whitlock
Joseph Whitlock
Executive Director
Global Data Alliance

¹ 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>

² Global Affairs Canada, Join the discussion: consulting Canadians on the Americas Partnership for Economic Prosperity (APEP) (May 2023), at <https://www.international.gc.ca/trade-commerce/consultations/apep-pape/index.aspx?lang=eng>

³ Global Data Alliance, *Facts and Figures* (2020), at: <https://globaldataalliance.org/downloads/gdafactsandfigures.pdf>

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

⁵ Global Data Alliance, *GDA Website – Energy* (2022), at: <https://globaldataalliance.org/sectors/energy/>

⁶ Global Data Alliance, *GDA Website – Finance* (2022), <https://globaldataalliance.org/sectors/finance/>

⁷ 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/>

⁸ Global Data Alliance, *GDA Website – Supply Chain Logistics* (2022), <https://globaldataalliance.org/sectors/supply-chain-logistics/>

⁹ Global Data Alliance, *GDA Website – Telecommunications* (2022), <https://globaldataalliance.org/sectors/telecommunications/>

¹⁰ See Global Data Alliance, *Dashboard of Trade Rules on Data Transfers* (2020), at: <https://www.globaldataalliance.org/downloads/gdadashboard.pdf>

¹¹ See Global Data Alliance, *Cross-Border Data Policy Principles* (2021), at: <https://globaldataalliance.org/downloads/03022021gdacrossborderdatapolicyprinciples.pdf>

¹² *Model International Agreement Provisions re Cross-Border Access to Information* (globaldataalliance.org), <https://globaldataalliance.org/wp-content/uploads/2023/02/01312023gdaagmtinfoaccess.pdf>

¹³ *US: BSA Model Digital Trade Provisions on Cross-Border Data and Digital Trust*, <https://www.bsa.org/files/policy-filings/02242023cbdtrade.pdf>

¹⁴ <https://globaldataalliance.org/wp-content/uploads/2023/02/02082023gdatradedashboard.pdf>

¹⁵ <https://globaldataalliance.org/wp-content/uploads/2023/02/02082023gdaexplanatorytable.pdf>

¹⁶ <https://globaldataalliance.org/wp-content/uploads/2023/02/02082023gdafaqtraderulescbdt.pdf>

¹⁷ <https://globaldataalliance.org/wp-content/uploads/2023/02/02082023gdacomparisoncbdt.pdf>