



## **Global Data Alliance Submission to the International Trade Select Committee, UK House of Commons – Call for Evidence on Digital Trade and Data**

February 2021

### **INTRODUCTION**

The Global Data Alliance ([globaldataalliance.org](http://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 include BSA members and American Express, Amgen, AT&T, Citi, ITB360, LEGO, Mastercard, Medtronic, Panasonic, Pfizer, RELX, Roche, United Airlines, Verizon, Visa, UDS Technology, and WD-40 Company. These companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, media, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.

Cross-border data flows enable the digital tools and insights that are critical to increasingly digitally-enabled trade. With 75% of the value of data transfers globally accruing to traditional industries like agriculture, logistics, and manufacturing,<sup>1</sup> companies of all sectors increasingly rely on the ability to transfer data responsibly around the world to:

- design, create, and export new products and services;
- enhance business processes and increase productivity;
- ensure seamless global customer experience and reach new customers;
- protect consumers from fraud and counterfeit products;
- access global supply chains;
- enhance productivity through teleworking, virtual collaboration, and online training;
- improve health and safety, and promote social good; and
- engage in research, development, and innovation.<sup>2</sup>

The Global Data Alliance welcomes the opportunity to offer the following evidence to the House of Commons' International Trade Select Committee. Our targeted approach to this consultation is consistent with the objectives of the Global Data Alliance, which focuses exclusively on issues related to cross-border data flows. We have, therefore, only provided answers to those questions amenable to our coalition expertise and focus, and we are not, for this reason, addressing all the questions in the consultation.

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<sup>1</sup> [Internet matters: The Net's sweeping impact on growth, jobs, and prosperity](#), McKinsey Global Institute, 2011

<sup>2</sup> Primer "Jobs in all sectors depend on cross-border data flows" <https://globaldataalliance.org/downloads/infographicgda.pdf>

## **WHAT ARE THE MAIN BARRIERS FACED BY UK BUSINESSES ENGAGING IN DIGITAL TRADE?**

The ability of UK companies – from micro, small, and medium-sized enterprises (MSMEs) to multi-national corporations – to access global markets and to offer and sell their services and products abroad depends upon cross-border access to data and cloud-enabled digital technologies. Companies of all sizes and sectors rely on the movement of data to foster innovation and economic development, create jobs, and promote productivity, safety, and environmental responsibility. Data comes in various, sometimes cumulative, categories such as operational data generated by machine processes, non-personal data and personal data, structured and unstructured data. The nature of the data is an important determination to set the right framework for protecting, processing and transferring the data.

Companies can better leverage data when they are not limited by location: data moving seamlessly across offices and locations means that colleagues based in different countries can work on common projects; a company can analyze data of its production facilities across different countries to improve production cycles, supply-chain and maintenance schedules, leading to better resource allocation and lower costs. That is true for companies of all sizes and all economic sectors.

Data transfers are instrumental to UK objectives of growth, innovation and competitiveness, to its recovery post-COVID-19 and to building resilience to face future challenges. Trade policy plays an important role in helping create a favorable environment.

However as trade becomes increasingly digitally-enabled, some governments continue to advance policies that increase barriers to digital trade, by blocking the cross-border transfer of information (impacting both personal and non-personal data), mandating data localization, closing digital markets, interfering with the free flow of information and ideas, and undermining online economic opportunities to the detriment of domestic and foreign citizens, consumers, and companies alike.

The cost of unreasonable data transfer restrictions and data localization mandates must not be underestimated. Such measures have consequences in terms of jobs, exports, and investment. For both local UK enterprises and foreign-invested enterprises, such measures disrupt operations; raise the costs and challenges of providing services and manufacturing goods; and make it harder to invest and keep local workers employed. Among other things, such measures effectively deprive end-users of advanced and cost-effective products and services, putting them at a competitive disadvantage compared with companies in other countries. A recent study shows that the aggregate cost to UK companies of no EU adequacy decision to support personal transfers from the EU and EEA into the UK could range between £1 billion and £1.6 billion.<sup>3</sup>

The UK should continue to support policies and initiatives – domestically and globally – that safeguard the ability to transfer data across borders with appropriate safeguards and discourage its trading partners from imposing data localization requirements that restrict trade.

## **WHAT OPPORTUNITIES DOES DIGITAL TRADE PRESENT FOR UK BUSINESSES?**

Data flows enable all sectors of the economy, from farming, fisheries, and mining; to services of all types; to the manufacturing industries. They also support cross-border access to e-

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<sup>3</sup> New Economics Foundation and UCL European Institute, “The Cost of Data Inadequacy: The economic impacts of the UK failing to secure an EU data adequacy decision” [https://www.ucl.ac.uk/european-institute/sites/european-institute/files/ucl\\_nef\\_data-inadequacy.pdf](https://www.ucl.ac.uk/european-institute/sites/european-institute/files/ucl_nef_data-inadequacy.pdf)

commerce platforms, purchasers, suppliers, and other commercial partners allow local MSMEs to engage in international transactions and create jobs at home.

In sectors from automotive and agriculture to advanced manufacturing and chemical products, cross-border data transfers provide benefits across functionalities through the use of digital technologies:<sup>4</sup> they enable companies to innovate, create jobs, and promote productivity, safety, and environmental responsibility; innovative companies leverage cross-border data flows to mitigate fraud and identify the sources of counterfeit and infringing products and services, thereby better protecting their brands, customers and intellectual property; powerful software-driven technologies help expand a manufacturer's strategic options, enabling companies to create new kinds of jobs, drive quality, and improve output.

We provide some examples below:

- Airlines use aircraft information collected during flights through sensors to increase efficiency—for fuel consumption, for instance. In addition, sensors can send aircraft information to servers on ground in real time, allowing local crews to utilize data analytics to help predict upcoming maintenance priorities immediately upon landing, thereby increasing safety and decreasing equipment downtime. This predictive maintenance creates local jobs in many sectors from parts supply, to mechanic engineers, among others;
- Manufacturing, logistics, and retail industries can benefit from digital transformation and comprehensive process innovations by adopting digital edge technologies such as software-as-a-service, Internet of Things (IoT), Artificial Intelligence and machine learning, real-time sensing technologies, and advanced analytics. Integrating these technologies can enhance the value chain within a company's cross-border operations by optimizing production plans, supply and demand prediction, lead times, and store inventory management;
- Detecting payment fraud offers one of the clearest examples of the benefits of cross-border data flows. Effective fraud mitigation depends on cross-border data flows as it demands sophisticated monitoring of historical payment transaction information and global or multi-country data sets;
- The free movement of data around the world helps brands identify the sources of counterfeit and infringing products. Companies rely on data from e-commerce sites, country registrars, and export and import records to aid them in their efforts to detect and take action against such products.

## **WHAT APPROACH(ES) SHOULD THE UK TAKE TO NEGOTIATING DIGITAL AND DATA PROVISIONS – INCLUDING THOSE CONCERNING THE FREE FLOW OF DATA, PROTECTION FOR PERSONAL DATA, NET NEUTRALITY, DATA LOCALISATION, AND INTELLECTUAL PROPERTY – IN ITS FUTURE TRADE AGREEMENTS?**

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.

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<sup>4</sup> <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf>

Cross border data transfers are also critical at every stage of the innovation life cycle, and in all facets of IP legal frameworks. This includes:

- 1) Early stages of innovative and creative processes, including basic research and development (R&D), initial conception, and design; For example, in semiconductor design as well as biopharmaceutical research, basic R&D depends upon access to globally sourced research materials from laboratories and research institutions from across the world, as well as collaboration, joint research, and the exchange of ideas and knowledge among teams of inventors, designers, authors, and other creators and innovators in different countries;
- 2) The acquisition, maintenance, and enforcement of IP rights; Applicants must be able to transfer information across borders in order to apply for patent, copyright, trademark or other rights in a coordinated manner with IP office authorities in different countries. Access to data from multiple countries – such as prior art references – is also an integral part of the patent application examination process. Data localization mandates and data transfer restrictions that prohibit the transfer of “important,” “critical,” or “sensitive” data (e.g., under Chinese measures discussed below) create uncertainty regarding the future ability to transfer information and data necessary to these procedures for the acquisition, registration, and maintenance of IP rights; and
- 3) The ongoing enjoyment and commercialization of those IP rights; In today's global marketplace, IP infringement is increasingly complex and globalized, requiring sophisticated investigatory tools. No IP enforcement program can be effective without the ability to trace – on a cross-border basis – counterfeiting, commercial scale piracy, and other illicit activities with insights and information derived from foreign source countries, distribution hubs and networks, and end-user markets. Data localization measures and unnecessary data transfer restrictions directly interfere with the ability to investigate and counteract transnational IP infringing activities.

The UK approach must therefore reflect that digital economy increasingly enables goods and services trade, helps build resilience and recovery, and further transforms and grows the economy. The UK should continue to support modern provisions on free flow of data in its bilateral and plurilateral agreements, in alignment with United States–Mexico–Canada (USMCA) provisions. The USMCA trade agreement goes further than the CPTPP in providing explicit, detailed protections for the free flow of data and prohibitions on data localization, including financial services, and serves as a model for agreements on digital trade. Not only will this contribute to UK's competitiveness globally, it could also encourage other countries to adopt similar rules and set an important precedent for future trade negotiations around the world.

### **WHAT DOES THE UK-JAPAN AGREEMENT INDICATE ABOUT THE UK'S APPROACH TO DIGITAL TRADE AND DATA PROVISIONS IN FUTURE TRADE NEGOTIATIONS?**

The UK-Japan Comprehensive Economic Partnership Agreement helpfully includes robust provisions on cross-border data transfers, personal information protection, mechanisms to promote interoperability among privacy law frameworks, and transparent access to government information, while also limiting data localization mandates. It is noteworthy that these provisions apply on a cross-sectoral basis, including for the financial sector, making this agreement a forward-looking precedent that the UK should seek to emulate in its other digital trade negotiations.

## **WHAT OBJECTIVES SHOULD THE UK HAVE WHEN NEGOTIATING DIGITAL AND DATA PROVISIONS DURING ITS ACCESSION TO THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP)?**

The Global Data Alliance welcomes the UK's formal request the launch of accession negotiations to CPTPP. This agreement represents the most advanced agreement spanning the Pacific Rim. An accession to CPTPP would bring benefits to UK citizens and UK economic operators across the board. It would also benefit service providers and manufacturers that rely on data analysis, AI, and cloud computing services to grow, in particular in industries with a high-technology competitive advantage, including financial, transport and health sector.

CPTPP members have agreed to prohibit localization requirements and cross-border data transfer restrictions, and have committed to binding dispute settlement. With regards to financial services however, the agreement does include the commitment to allow financial institutions of the other parties to “transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution’s ordinary course of business,” but the applicability of this section is uncertain as it leaves each party to determine who is a “financial institution.”

While the CPTPP should eventually seek to apply its disciplines preventing data localization to all sectors including the financial sector, the Global Data Alliance supports the UK ambition to accession. The UK should also consider becoming a member of the APEC Cross Border Privacy Rules (CBPR), which under the CPTPP, is an acceptable data transfer mechanism.

## **WHAT DOMESTIC AND INTERNATIONAL LAW IS RELEVANT TO THE GOVERNMENT’S APPROACH TO DIGITAL TRADE?**

As we look specifically at the international movement of data, data privacy – in the commercial arena and vis-a-vis government access to data – is one of its main anchors in domestic policy. It is often argued that data localization and data transfer restrictions are necessary to ensure that companies process and use data consistent with a country’s data protection laws. This is not the case. In reality, organizations that transfer data globally should implement procedures to ensure that the data is protected even when transferred outside of the country. Where differences exist among data protection regimes, governments should create tools to bridge those gaps in ways that both protect privacy and facilitate global data transfers. Taking into account widely accepted privacy principles and industry best practices, governments should also aim to ensure that privacy frameworks are interoperable and allow for the seamless flow of data across borders.

The UK Data Protection Act 2018 builds on commonly accepted data privacy principles and provides organizations with a toolbox of instruments and safeguards that they can use to transfer personal data to third countries. The UK Government must ensure that the UK applicable privacy regime, in particular as it relates to government access to data, is compatible with other privacy frameworks applicable around the world by encouraging the use of existing globally recognized durable and flexible transfer tools that offer long-term legal certainty rather than requiring the use of new UK-only mechanisms.

On the international scene, the UK should remain a prominent thought-leader supporting convergence of privacy frameworks and forward-looking digital trade rules across regions. The UK should continue to promote multilateral initiatives such as the 2020 [G20 Ministerial Statement on Trade and Digital Economy](#) and the OECD Privacy Framework and other OECD

Cross-Border Data Initiatives.<sup>5</sup> At WTO level, the UK should continue to actively promote a high level of ambition in the Joint Statement Initiative on e-commerce which holds promise of common and forward-looking data transfers rules across more than 80 countries. Last but not least, as the UK hosts the 2021 G7 Summit, it should consider using this platform to advance discussions on digital trade and movement of data across like-minded countries.

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<sup>5</sup> [Revised Privacy Framework](#) and a revised [Recommendation](#) Concerning Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.