



## Comments on Canada's Accession to the Digital Economy Partnership Agreement

May 3, 2021

The Global Data Alliance<sup>1</sup> welcomes the opportunity to provide these comments at the request of Global Affairs Canada<sup>2</sup> regarding Canada's prospective accession to the Digital Economy Partnership Agreement (DEPA), negotiated amongst Chile, New Zealand, and Singapore. The DEPA is globally recognized as an innovative 21<sup>st</sup> Century agreement, and we strongly support Canada's accession.

As the DEPA has been negotiated among a group of forward-thinking economies, we also support Canada's discussing with the existing DEPA Parties the possibility of upgrading aspects of the current agreement to achieve an even greater level of ambition in several respects – in particular relating to cross-border data transfers, data localization, and the applicability of these rules across all sectors of the economy.

### I. Introduction

The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data privacy and security and that rely on the ability to transfer data responsibly around the world. GDA members have significant operations based in Canada, invest hundreds of millions of dollars into the Canadian economy, and have many thousands of Canadian employees. Data transfers are critical to our activities across Canada in all sectors, from aerospace and advanced manufacturing to transportation and telecommunications. Cross-border data transfers enable the digital tools and insights that are critical to enabling our Canadian operations to create jobs, boost efficiency, drive quality, and improve output.

Canada's prospective DEPA accession negotiations present an opportunity for Canada and its DEPA partners to update certain existing DEPA rules. In relation to the agreement's international commercial aspects, the most important disciplines are those relating to cross-border data transfers and data localization. In that regard, we believe that Canada is well-positioned to advance USMCA standards – the most advanced cross-border data policy provisions in any international agreement – in the DEPA.

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<sup>1</sup> 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. Alliance members include BSA members and Abbott, American Express, Amgen, AT&T, Citi, ExxonMobil, FedEx, ITB360, LEGO, Lumen, Mastercard, Medtronic, Panasonic, Pfizer, RELX, Roche, UDS Technology, United Airlines, Verizon, and Visa. These companies 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. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

<sup>2</sup> See Government of Canada, Canada's possible accession to the Digital Economy Partnership Agreement (2021), at: <https://www.international.gc.ca/trade-commerce/consultations/depa-apen/index.aspx?lang=eng>

## II. Discussion

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 in the DEPA Parties). Other drafting formulations 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.

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 DEPA and several other agreements,<sup>3</sup> these features of the USMCA are not fully reflected in other agreements, such as the DEPA. As indicated in the GDA Cross-Border Data Policy Principles,<sup>4</sup> updating DEPA in this respect would make the agreement even more attractive for future acceding countries and as a model for future digital economy agreements. We encourage Canada to work with the DEPA Parties to explore ways to upgrade this agreement in these ways.

## III. Conclusion

The Global Data Alliance welcomes the opportunity to provide this submission to inform Canada's negotiations to accede to the Digital Economy Partnership Agreement. We look forward to continuing to work with Global Affairs Canada on this important matter.

Sincerely yours,

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<sup>3</sup> See Global Data Alliance, *Dashboard of Trade Rules on Data Transfers* (2020), at: <https://www.globaldataalliance.org/downloads/gdadashboard.pdf>

<sup>4</sup> See Global Data Alliance, *Cross-Border Data Policy Principles* (2021), at: <https://globaldataalliance.org/downloads/03022021gdacrossborderdatapolicyprinciples.pdf>