



Cross-Border Data Policies under the Australia-UK Free Trade Agreement

June 17, 2020

The Global Data Alliance¹ congratulates the governments of Australia and the United Kingdom on their recently announced prospective bilateral Free Trade Agreement (FTA) negotiations, and welcomes the opportunity to provide comments on the negotiations. The Alliance urges both countries to negotiate an FTA that includes, among other digital trade rules, robust provisions that require countries to promote responsible movement of data across borders and refrain from implementing rules mandating broad data or infrastructure localization requirements.

I. Introduction

The Global Data Alliance is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. Alliance companies rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive.

Negotiating progressive data transfer rules is of paramount importance in any trade negotiation. Cross-border data transfers are already estimated to contribute trillions of dollars to global GDP.² 60 percent of global GDP is expected to be digitized by 2022, with growth in every industry driven by data flows and digital technology.³ Furthermore, 75 percent of the value of data transfers accrues to traditional industries like agriculture, logistics, and manufacturing.⁴ Across every sector of the economy, and at every stage of the production value chain, data

¹ 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 member companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. The Alliance is open to companies in all sectors that transfer data across borders for business purposes and that support data responsibility. See Global Data Alliance, *About the Global Data Alliance* (2020), at <https://www.globaldataalliance.org/downloads/aboutgda.pdf> (English).

² See Global Data Alliance, *Cross-Border Data Transfers Facts and Figures* (2020), at <https://www.globaldataalliance.org/downloads/gdafactsandfigures.pdf>.

³ *Id.*

⁴ *Id.*

transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes to create jobs, boost efficiency, drive quality, and improve output.⁵

The ability to transfer data across borders also directly contributes towards important policy objectives relating to the protection of privacy, security, and regulatory compliance.⁶

Australia and the United Kingdom are natural partners to establish ambitious and forward-looking FTA provisions on core cross-border data transfer and data localization matters. Both countries are recognized global leaders in advancing technological innovation, in growing data-driven trade and prosperity, and in building trust in the digital economy. Both countries also consistently receive high marks in comparative measures of digital openness:

- Australia and the United Kingdom were found to be relatively more open to foreign trade in digitally traded services than other OECD countries on average in the *OECD's Digital Services Trade Restrictiveness Index* (Digital STRI).⁷
- Australia and the United Kingdom received the fifth and fourth highest rankings among 24 economies in the *BSA Cloud Computing Scorecard*, which benchmarks the policy environments for cloud computing readiness in key global economies.⁸
- Australia and the United Kingdom received the sixth and second high rankings on the Tufts University *Ease of Doing Digital Business* index.⁹

II. Discussion

The Australia-UK FTA presents an important opportunity for both countries to enshrine their shared commitment to cross-border data transfers and open digital trade in an ambitious, high-standard trade agreement that meets or exceeds the standards of previous free trade agreements, such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) or the Australia-Hong Kong FTA.¹⁰

⁵ See Global Data Alliance, *The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector* (2020), at <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf> ; See Global Data Alliance, *Jobs in All Sectors Depend Upon Data Flows* (2020), at <https://www.globaldataalliance.org/downloads/infographicqda.pdf>

⁶ Global Data Alliance, *Position Paper on Cross-Border Data Transfers & Data Localization* (2020), at <https://www.globaldataalliance.org/downloads/02112020GDACrossborderdata.pdf>. The ability to move data across borders responsibly also contributes to: (1) a country's global connectivity and its access to the international marketplace and supply chains; (2) the ability of companies of all sizes to use software-enabled technologies, including cloud computing, data analytics, and digitally connected industrial processes, to create jobs, boost productivity, and reach new markets; (3) the workforce's ability to remain productive through teleworking, virtual collaboration, and online training, as well as remotely delivered health care and other services; (4) the ability of companies to comply with regulatory requirements in sectors ranging from transportation and logistics to financial services.

⁷ See Janos Ferencz, *OECD Digital Services Trade Restrictiveness Index*, Organisation for Economic Cooperation and Development, (2020), at www.oecd-ilibrary.org/deliver/16ed2d78-en.pdf?itemId=%2Fcontent%2Fpaper%2F16ed2d78-en&mimeType=pdf

⁸ BSA | The Software Alliance BSA Cloud Computing Scorecard (2018), at https://cloudscorecard.bsa.org/2018/pdf/BSA_2018_Global_Cloud_Scorecard.pdf

⁹ Tufts University, Fletcher School, *Ease of Doing Digital Business Index* (2019), at https://sites.tufts.edu/digitalplanet/files/2019/11/Ease-of-Doing-Digital-Business-2019_2020.pdf

¹⁰ See Global Data Alliance, *Dashboard – Trade Rules on Data Transfers* (2020), at <https://www.globaldataalliance.org/downloads/gdadashboard.pdf> (containing a comparative analysis of the cross-border data transfer provisions in several recent digital trade agreements).

Both Australia and the United Kingdom should capitalize on this historic opportunity to build a strong economic relationship that leverages the benefits provided by the responsible free flow of data between both countries. The Global Data Alliance urges both countries to include digital trade provisions that:

- Obligate the Parties to permit the cross-border transfer of data while protecting personal information; and
- Prohibit data localization requirements.

We further describe several key commitments for the Australia-UK negotiations below.

Free Movement of Data Across Borders: The Agreement should obligate governments to refrain from imposing barriers to the cross-border transfer of data. Recognizing that a government may seek, for public policy purposes including privacy or security, to adopt or maintain measures that are not consistent with this obligation, the Agreement should stipulate that any such measures not discriminate against foreign service providers; must not constitute a disguised restriction on trade; and must be necessary to achieve the specific objective. Furthermore, if a Party treats domestic data transfers differently from cross-border data transfers, such differential treatment must not result in less favorable treatment to a foreign service provider. Where appropriate, countries should also work together to create trust-based frameworks that are interoperable and support the seamless movement of information across borders. Finally, a dispute settlement mechanism also must be available to allow close scrutiny and enforcement of measures that derogate from the cross-border data transfer obligation.

No Localization Requirements: The Agreement should preclude governments from using data localization requirements as a market access barrier in any sector of the economy. For example, a government should not require that a data center be built inside its borders as a condition for doing business in its territory.

The Agreement should prohibit a government from requiring, as a condition of doing business, that a service provider use or locate computing facilities in its territory. Recognizing that a government may seek, for public policy purposes including privacy or security, to adopt or maintain measures that are not consistent with this obligation, the Agreement should stipulate that such measures must not discriminate against foreign service providers or constitute a disguised restriction on trade, and must be narrowly tailored to achieve the specific objective. A dispute settlement mechanism also must be available to allow close scrutiny and enforcement of measures that derogate from this obligation.

Financial Services: Rules specific to any specific sector, such as financial services, which have in past agreements been addressed in separate chapters of free trade agreements, must be substantially the same as the rules of general applicability on cross-border data flows and localization.

This approach is consistent with the joint statement, recently issued by the United States and Singaporean governments¹¹, through which both governments recognize the benefits of rules that ensure that financial service suppliers can transfer data across borders, and that refrain

¹¹ US Department of the Treasury, *United States – Singapore Joint Statement on Financial Services Data Connectivity* (Feb. 2020), at <https://home.treasury.gov/news/press-releases/sm899>

from requiring data or infrastructure localization. The Australia-UK FTA provides an important opportunity to ensure this approach will also apply to policies regulating financial data flows between Australia and the United Kingdom.

III. Conclusion

The Global Data Alliance welcomes the opportunity to provide this submission regarding the Australia-UK trade negotiations. Please do not hesitate to contact us with any questions. Should you have any additional questions or comments, please contact Mr. Brian Fletcher (BrianF@bsa.org). We look forward to working with you.

Yours faithfully,

Brian Fletcher

Brian Fletcher

Director, Policy – APAC

BSA | The Software Alliance