

Digital Trade Principles for the Post-COVID Age

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COVID-19 has created unprecedented disruptions in the global economy, the full impact of which will not become clear for years to come. Companies of all sizes are grappling with how to conduct business, reach customers, and maintain supply chain operations in the face of national lockdowns and travel restrictions. Individuals have had to self-isolate and alter their most intimate and personal interactions with family members and friends to meet quarantine and social distancing requirements. And governments are rethinking how to resolve manufacturing and supply chain vulnerabilities, jumpstart economic growth, and deliver essential services, such as education and healthcare, without risking the well-being of their citizens.

The result is that this pandemic has accelerated what was already well underway – the digitization of the global economy. Increased Internet access and data flows were fuelling this transformation long before the present crisis. Before the pandemic, cross-border data flows [made](#) a bigger contribution to global GDP than trade in manufactured goods. But today, virtual engagement and interactions have become the new norm. Between the start of the COVID-19 crisis and May of this year, demand for broadband communication services increased at a record pace, with some operators [reporting](#) a 60 percent increase in Internet traffic compared to before the crisis.

Digital Trade Vulnerabilities and Data Sovereignty

Paradoxically, even as the Internet and cross border data flows have become more essential, there are increasing calls for “data sovereignty,” mirroring renewed criticism of free trade and [globalization](#). Concerns by governments and individuals about the safety, security, and use of data, underscores the urgent need for new approaches to engender trust and confidence in the digital economy.

Trade agreements are an essential component in this effort. Indeed, facilitating digital trade and ensuring a safe and secure data economy are not mutually exclusive. For the past decade, negotiators have made significant progress in developing new trade provisions to facilitate cross-border data flows and protect underlying intellectual property, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the US-Japan Digital Trade Agreement, the Digital Economy Partnership Agreement, and the US-Mexico-Canada Agreement.

In parallel, there are renewed efforts to enhance cybersecurity, privacy, and data protection cooperation between governments and the private sector, such as the Data Free Flows with Trust Initiative launched by Prime Minister Shinzo Abe at the 2019 G-20. As a result, digital trade has become a central feature of efforts by negotiators and regulators to meet the challenges and opportunities of a data-driven global economy.

A Post-COVID Digital Trade Agenda

In this context, the European Commission’s consultation for a renewed trade strategy comes at a pivotal moment. European policymakers have the opportunity to develop the digital trade “rules of the road” that will govern the post-COVID global economy. To support this consultation, the IBM Policy Lab is recommending digital trade principles designed to strike the balance between safeguarding innovation and engendering trust. These principles draw on both existing disciplines enshrined in recent agreements and new concepts related to emerging technologies, such as 5G.

Central to any digital trade agenda should be three core principles:

- 1. Enable the Free Flow of Data:** As global digital integration accelerates, companies of all sizes must be able to move data securely across borders to maintain operations, reach customers, and compete. Trade agreements must include specific provisions protecting (1) the movement of data across borders and (2) the ability of companies to operate without requiring them to use local infrastructure or build expensive and redundant data centers.
- 2. Protect Source Code and Algorithms:** As data-driven solutions, such as Artificial Intelligence (AI), become more ubiquitous, trade agreements must prohibit Parties from requiring companies to hand over source code and algorithms as a condition for accessing the market.
- 3. Ensure technology choice and encourage open digital architectures^[1]:** Companies of all sizes should be able to utilize the technology that works best and suits their needs. The use of closed architectures prevents interoperability and diminishes competition, limiting the ability of companies to benefit from the most cost-effective, secure, and innovative technologies. Trade agreements should protect technology choice and encourage the widespread use of open architectures to drive innovation in key technologies, including cloud computing, AI and 5G telecommunications.

While it is impossible to predict what the future holds, it is clear that data-driven technologies are becoming more essential to our daily life and work. Leadership from policymakers and trade negotiators in developing the next generation of digital trade principles will help ensure these technologies are used responsibly and with clear purpose. This example can set standards for future bilateral and multilateral agreements that will create the environment of trust essential for the digital economy to deliver growth, innovation, and prosperity.

[1] Open architectures are design specifications for hardware or software components that any manufacturer or developer can use to develop components that can easily interoperate with components developed by other manufacturers and developers.

DIGITAL TRADE PRINCIPLES:

Guidance for Trade Negotiators



ENABLE THE FREE FLOW OF DATA:

Companies must be able to move data securely across borders and should not be forced to localize data or infrastructure as a condition of doing business. Trade agreements must include specific provisions protecting (1) the movement of data across borders and (2) the ability of companies to operate without requiring them to use local infrastructure or build expensive and redundant data centers.



PROTECT SOURCE CODE AND ALGORITHMS & PROHIBIT FORCED TECHNOLOGY TRANSFERS:

Companies should not be forced to share source code and algorithms or transfer technology as a price for doing business. Trade Agreements must protect innovation by prohibiting Parties from requiring companies to hand over source code and algorithms or transfer their technology, IP, trade secrets, production processes, or other proprietary information as a condition for accessing the market.



ENSURE TECHNOLOGY CHOICE AND ENCOURAGE OPEN DIGITAL ARCHITECTURES:

Innovative companies should be able to utilize the technology that works best and suits their needs. The use of closed architectures prevent interoperability and competition, limiting the ability of companies to use the most cost-effective, secure, and innovative technologies. Trade agreements should encourage the widespread use of open architectures to drive innovation in key technologies, including cloud computing, Artificial Intelligence and 5G telecommunications and ensure companies can choose their suppliers of choice, irrespective of where they are headquartered. Parties should accord non-discriminatory treatment to the services, service suppliers, and digital products of the other Party, including for new and innovative digital products and services.



FOSTER INNOVATIVE ENCRYPTION PRODUCTS:

Encryption is a critical tool to protect privacy and security in the digital ecosystem. Trade agreements should protect innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law.



PROHIBIT DIGITAL CUSTOMS DUTIES:

Trade agreements should prohibit all customs duties for digital products. This will ensure that customs duties do not impede the flow of software, information and digitally-enabled services that drive innovation for companies and consumers.



ENCOURAGE CROSS-BORDER DATA PROTOCOLS TO ACCELERATE PANDEMIC RESPONSE AND MEDICAL RESEARCH DURING GLOBAL PUBLIC HEALTH CRISES:

Data is vital to accelerate the development of medicines and digital innovations to respond to global public health crises. Trade agreements should foster negotiation of protocols that encourage the safe and secure sharing of medical data, such as vaccine and research data, to accelerate medical research and data-driven innovations that can save lives and further promote public health before, during or after a global health crisis. Emerging data privacy and security technologies, such as anonymization, tokenization and blockchain, should be leveraged to the fullest extent possible to facilitate the exchange of sensitive health-related data in a safe, secure, and trusted manner.



PROMOTE A “REASONABLE CARE” APPROACH TO PROMOTE SAFETY, SECURITY AND WELFARE ONLINE:

Blanket liability protection for internet platform companies—which was developed at a time when the internet was in its infancy—has come under increasing scrutiny as governments around the world consider the best frameworks for reducing harmful and illegal content. National governments should modernize their laws to ensure consumer-focused internet platform companies take greater responsibility for what is posted on their websites. A “reasonable care” standard provides strong incentives for companies to limit illegal and illicit behavior online, while also being flexible enough to promote continued innovation. Trade agreements should encourage governments to work together to develop such standards.



PROMOTE TRUST IN ARTIFICIAL INTELLIGENCE AND EMERGING TECHNOLOGY:

Trust in technology is essential to ensure the safe and secure adoption of emerging technologies such as AI. Trade agreements should encourage governments to develop reasonable and balanced regulations that prioritize risk-based frameworks to govern particular uses of AI. This approach can help provide assurance to businesses and consumers that the use of emerging technologies are transparent, explainable and fair.



PROMOTE OPEN ACCESS TO GOVERNMENT-GENERATED PUBLIC DATA:

Large government data sets can enable innovation in commercial applications and services for companies and consumers. Trade agreements should encourage governments to share data sets in machine-readable and accessible forms for use by the public.



ENGENDER GREATER CONSUMER TRUST IN THE DIGITAL ECONOMY BY ENHANCING PRIVACY AND CYBERSECURITY:

Trade agreements should require Parties to adopt legal frameworks to protect personal information and promote industry best practices, international standards and other cooperative mechanisms to strengthen privacy and data protection. In parallel, agreements should encourage Parties to strengthen cybersecurity capabilities through international cooperation and adoption of risk-based approaches to cybersecurity regulation.