ITI Comment on the World Bank’s Concept Note for “Data for Better Lives”

June 30, 2020


The Information Technology Industry Council (ITI) is the leading global association for technology companies. Our members are headquartered around the world, operate globally, and span the range of the tech sector, including companies that specialize in hardware, software, internet services, cybersecurity, and beyond. We take a global perspective with our comments, drawing on the deep international experience of our members.

The World Development Report 2021’s focus on data for development is timely considering data is one of the key areas where the World Bank is supporting governments’ efforts to achieve the Sustainable Development Goals (SDGs) and the 2030 Agenda for Sustainable Development. While unleashing the benefits of data supports reaching each of the SDGs by 2030, strengthening data governance will be absolutely critical for many SDGs, including but not limited to good health and well-being (3); quality education (4); industry, innovation and infrastructure (9); and sustainable cities and communities (11). Achieving these ambitious goals will require catalyzing efforts across public and private sectors as well as collaborating through public-private partnerships to make the most of their respective strengths.

More broadly, data – and its movement across borders – plays an increasingly fundamental role in driving innovation, economic growth, and inclusivity in our society. Cross-border data flows increased by 45 times between 2005 and 2015.\(^1\) Studies estimate that about 75 percent of the value added by data flows on the internet accrues to “traditional” industries, especially via increases in growth, productivity, and employment.\(^2\) The United Nations Conference on Trade and Development (UNCTAD) has estimated that 50 percent of all traded services are enabled by the technology sector, including by cross-border flows of information.\(^3\) The macroeconomic impact of these trends has been well-documented, with estimates that cross-border data flows have increased current global GDP by at least 10 percent.\(^4\) For consumers and companies of all sizes, across all industries, data flows and digital technologies have fundamentally changed domestic commerce and international trade.

---

This international economic transformation raises new and compelling policy questions with respect to data governance and inclusivity. In crafting sustainable solutions to these questions, it is important to acknowledge that the concept of the data-driven economy is increasingly synonymous with the global economy. Though digital policies may emanate from a single country or region, their application to data and data-driven technology imbues them with inherently global implications. For this reason, international cooperation in the development of compatible approaches to data governance has never been more important to ensuring that the broadest range of individuals can derive value from data and digital technology.

Our members appreciate the opportunity to discuss the many policy and technical factors that contribute to the role of data in realizing development objectives. Technology and data offer new tools to address poverty, reduce or eliminate barriers to participating in the global economy, generate new industries, and create jobs; all of which foster inclusive growth and ultimately contribute to the achievement of development outcomes. Sound policy and regulatory approaches can work in tandem to facilitate that movement and provide governments with the tools and parameters necessary to mobilize data for development and appropriately address legitimate public policy concerns without hindering innovation, growth, or consumer access to information.

**Mobilizing Data for Development**

As described by the Concept Note, the World Development Report 2021 (WDR 2021) intends to explore two questions: one, “how can data contribute to development?”; and two, “what kind of environment is needed to support the creation and reuse of data?” Our members are uniquely positioned to contribute to this report because of their dedication to data-driven innovation and their global experience in the issues of governance, law, policy, and infrastructure that foster environments conducive to technological innovation.

**Deriving Benefits from Data-Driven Innovation**

Today, emerging economies are actively participating in the data-driven economy, and that participation is expected to continue to grow as more individuals and businesses in emerging economies come online. We agree with the Concept Note’s assertion that the value of data is largely untapped. The question that follows is how best to translate online participation and data into inclusive growth for traditionally underserved populations living in low- and middle-income economies. Below we have laid out select examples of how data can contribute to transitioning populations out of poverty.

1. **Public data identifies trends and gaps that can contribute to better public policymaking.** The first step to transforming lives is identifying the factors or circumstances that contribute to the status quo. As fundamental as it may seem, policy conversations around data often bypass the basic fact that data-driven solutions are only useful insofar as policy challenges and goals are clearly defined. Open public data sets enable government, industry, and non-governmental actors to develop and apply different tools in order to determine if correlation

---

exists between indicators and outcomes, and subsequently develop policies to address the often-multidimensional hardships present in a community. For example, employing web scraping techniques and cross-referencing national statistics can improve preparedness and relief efforts by helping governments to predict and track trends in unemployment and food insecurity; UN Global Pulse frequently publishes case studies where institutions achieve better development outcomes by employing new analytical capabilities based on large data sets. In another application, micro-level data can help to better understand female participation in agricultural production, and subsequently inform policies to address gender gaps that may exist in access to capital, labor, land, market opportunities, or other resources.

Once policymakers have decided upon an approach and moved forward with implementation, many governments, multilateral institutions (including the World Bank Group), and non-profit organizations can simultaneously implement rigorous monitoring and evaluation (M&E) plans in order to assess the project’s outcomes using qualitative and quantitative means, and to ensure that future endeavors can benefit from lessons learned. M&E increases accountability and transparency between organizers and participants, promotes better resource allocation, and improves real-time decision-making, all of which contribute to improved development outcomes and demonstrate the returns on data.

2. **Data supports improved health and education outcomes for poor populations.** Technology can often provide “first point of access” to populations living in remote areas who may not have access to locally available health or education services. Through telemedicine and distance learning, what were previously inaccessible public goods can improve the lives of underserved populations living in remote areas through data-based connectivity. When natural disaster strikes, agencies can apply artificial intelligence (AI) and machine learning algorithms to satellite images and cross-reference national weather data to more effectively deploy resources for humanitarian relief efforts. The global response to the current public health crisis has demonstrated beyond the shadow of a doubt the value of maintaining open public data sets – such as the U.S.-led COVID-19 Open Research Dataset, the largest machine-readable dataset of scholarly research about COVID-19, SARS-CoV-2, and the Coronavirus group – that enable researchers around the globe to stay up to date with the latest findings in real time and apply AI and data mining techniques to identify new leads in the efforts to stymie the virus.

In an example tied to SDG target 16.9, some 1.1 billion people around the world lack legally recognized identification, which can inhibit a person’s ability to access health services, enroll in educational opportunities, or benefit from the justice system. Establishing means of digital identification can unlock significant improvements in service delivery and whole-of-government approaches to alleviating multi-dimensional poverty, including by providing

---

6 [https://www.unglobalpulse.org/projects/](https://www.unglobalpulse.org/projects/).
individuals with the access to government services and information that they need most. There is also the inherent outcome of improving the future collection of data and thereby increasing the likelihood that forthcoming policymaking benefits from more inclusive data collection and analysis.

3. **Data facilitates access to poverty-alleviating financial services for underserved individuals and micro, small, and medium enterprises (MSMEs).** Data plays a critical role in facilitating new means of access to credit as well as customizing products and services to better meet the needs of underserved populations, both as individuals and businesses. Mobile banking makes it possible for a Kenyan agricultural worker to access her account from the field, instead of spending time and resources to visit a brick and mortar bank in Nairobi. From data generated by her mobile activity, she may be able to establish a digital history to qualify for a loan with low Know Your Customer (KYC) requirements. Digital payments also provide first-time records of economic activities for MSMEs, allowing them to establish credit history and thereby capitalize on benefits of financial inclusion, including access to loans to grow their operations and create new jobs. These innovative, data-driven processes are transformational for poor people, and women in particular, who need to rely on technology to overcome unique barriers to entry in comparison to peers with existing legal identity or credit histories. Furthermore, promoting greater financial inclusion supports transitioning businesses from the informal economy into the formal economy, which can support tax administration, improve access to legal and occupational health protections for workers, and facilitate better representation and engagement in public forums for business operators and employees.

4. **Data promotes innovation, productivity, and business efficiency, especially for MSMEs, and thereby promotes economic growth.** Leveraging data – as well as the goods and services that depend on data – streamlines recurring processes and facilitates opportunities for optimizing operations, regardless of the nature of the business. For example, assisted by drone-based mapping and weather statistics, farmers can benefit from analyzing trends to increase yields without accelerating degradation of the land. Data flows can also provide farmers with real-time access to market prices and other information to inform sales and planting decisions. Both of these applications reduce a farmer’s exposure to risk and build resiliency, two factors that are essential to achieving sustainable development outcomes. Similarly, many of the data-driven goods and services used by local businesses support development outcomes by filling market gaps, facilitating entrepreneurship, and enabling analysis across data sets. For example, scalable cloud services help to reduce the costs of maintaining information technology (IT) infrastructure for MSMEs and support broader engagement with cross-border data flows and digital technologies that might otherwise be inaccessible in certain economies. Through reliance on cross-border data flows, and cloud services in particular, MSMEs can from their inception participate in global value chains that generate better jobs, expand access to new markets, and ensure the protection of personal information.
**Comments on the Concept Note’s Approach to Data**

Before discussing specific policy recommendations, we would like to provide general comments about the Concept Note’s approach to data. Data has always existed, whether maintaining a sales ledger to make better-informed future purchase orders or monitoring population growth through a census to anticipate new demand for public services. The digitalization of data and associated technologies, however, has spurred several important changes in how we are able to interact with data, including to enable the cost-efficient creation, collection, transmission, storage and processing of a sheer volume of data unprecedented in the analog world. Relatedly, the value we are able to derive from data via big data analytics and other new tools has also changed, provided economic actors are able to analyze or otherwise process such data to derive insights and other usable information. This data value proposition is further accelerated when multiple economic actors are able to use and re-use the same set of base data to create and derive value in many different ways.

However, data should not be considered as a monolith. While the non-rivalrous nature of data means that the value of “using” data in one context does not detract from the value of using data in a second or even fiftieth application, data is also non-fungible. Different data are not necessarily interchangeable, and not all data are relevant for the same applications or outcomes. What this means in practice is that, when considering data governance regimes, governments must recognize that there are many different types of data and ensure that any policy approaches seeking to control or leverage data for specific outcomes must first clearly define what type of data they are addressing. Broad-brush approaches that intend to regulate all data at once will inevitably be overly restrictive, inefficient, and potentially detrimental to innovative sectors of the economy.

The Concept Note mentions several types of data, such as data based on public intent or private intent, personal or nonpersonal, and from traditional or new sources. ITI recommends that the WDR 2021 acknowledge the diverse types of non-personal data, including meta data, machine-to-machine communications, and anonymized and pseudonymized data, so that readers will have a more comprehensive understanding of what data comprises. However, while we encourage the WDR 2021 to recognize relevant distinctions between personal data and different forms of non-personal data, we urge it to do so as a means of underscoring the need for policy approaches that facilitate the flow of data through narrowly tailored approaches to data governance, and emphasize the fundamental value of the movement of non-personal data to a wide range of day-to-day business activities.

Furthermore, while there has generally been a significant focus on the “supply” side of data sharing frameworks, there should also be consideration of the “demand” aspects. Before data can be shared, there are a range of issues that must first be addressed, such as: what is the problem that to be solved through data sharing? Exactly what kind of data is needed, and how is it to be used? How will data be kept secure and private? What are the formats and common languages that will be utilized? It is not enough to say that data needs to be open, or that companies should volunteer to make data

---


available; for data to be useful, it must be usable. Data becomes usable after lengthy analysis of the technical and practical considerations and, perhaps more importantly, a clear statement of the problem the data sharing framework is trying to solve, what data is needed to solve that problem, and why. These questions emphasize the value of approaching data governance and infrastructure with the broad objectives of enabling interoperability and the cross-border exchange of data – rather than developing a static, unified national data system – in order to encourage the voluntary collaboration and cooperation among different entities necessary to drive innovation.

Many of the examples and opportunities throughout this comment focus on best practices for policies related to data governance in order to facilitate data-driven innovation based on third parties accessing government data. Given the significant innovation and economic benefits derived from expanded access to public data, we agree that this is an appropriate area of focus. We strongly support government-to-business (G2B) data sharing and welcome efforts to make public data more accessible. The WDR 2021 should facilitate the removal of barriers to widespread open government data use, and actively promote such use. Even if governments are making the data available, it does not mean it is easy to find and ready for use due to reasons such as lack of awareness, incompatibility of unlike data sets, and poor data quality.

Business-to-government (B2G) data sharing should only be encouraged on a voluntary basis. Governments can promote such sharing by making sure requests for the reuse of privately held data by public bodies are proportionate, balanced, and limited to the minimum extent necessary for the performance of their functions. Forcing the sharing of data would devalue data sets used by businesses to improve and provide their services, thereby dampening data innovation and creating a hostile investment environment. More broadly, it could also disincentivize both domestic and foreign organizations from operating in a given country, as they will want to preserve the confidentiality of their proprietary data. As such, the WDR 2021 should eschew the model of forced data sharing between the private and public sector considering the far-reaching and unintended negative consequences, including to competition, employment, innovation and economic growth. Further, business-to-business (B2B) data sharing should also remain in all cases voluntary, taking into account the wide array of laws and contractual obligations in various jurisdictions that businesses must navigate.

In closing, for data sharing to be sustainable, all interests – from the national interest, to the interests of private sector firms, to the interests of individual citizens, consumers and entrepreneurs – must be considered. Far from being antithetical to one another, private and public interests may be mutually reinforcing when it comes to leveraging the value of data, and policymakers would benefit from taking private interests into account and incorporating data into models for governance. As discussed above, there are many situations where the private interests regarding the use of data can fully and appropriately be harnessed to advance legislative policy objectives. It is also critical for data sharing not to negatively affect the incentives which prompted the collection of the data in the first place. There exist legitimate concerns relating to the use of private sector data to provide a competitive solution, the use of data for purposes beyond the public interest, and compensation for data sets provided.
Underscoring the Importance of Technical Assistance and Capacity Building

Recognizing that certain policies outlined in this comment can be a challenge to implement for many economies, we recommend that the World Bank work with client governments to identify areas in which continued technical assistance from other governments and industry could aid in building capacity and crafting world-class technology policy. This applies to physical infrastructure, such as installations for broadband connectivity, and soft infrastructure, such as legal and regulatory frameworks that depend on a robust institutional ecosystem to fully function. Furthermore, increasing data literacy not only within policymaking and regulatory entities but across the entire population will be critical in order for individuals and institutions alike to fully benefit from the increasingly digitalized economy.

While this paper focuses on data and its benefits for development, we also recognize that affordable internet access is a vital component of fully leveraging the benefits of data. While the relative price of internet connectivity has been falling over time, affordable internet remains out of reach for billions of people. Many factors affect pricing, such as the state of domestic competition among telecommunications providers, a lack of infrastructure investment, and inefficient regulatory regimes. Bringing access to data within reach through more affordable connectivity would enable poor populations to access the innumerable opportunities available through the range of digital technologies. To this end, governments should collaborate with the private sector, international institutions, and partner governments to expand access to affordable internet. As of 2019, the International Telecommunication Union (ITU) estimates that more than half of the world’s population engaged with the internet at some point during the last three months, and that the vast majority of the global population is already covered by basic mobile networks. Upgrading existing coverage to support mobile broadband connectivity – which ITU analysis found to have a greater impact to GDP output in less developed countries than a comparable increase in fixed broadband – would have an outsized impact on the billions of individuals who primarily access the internet through mobile subscriptions.

Finally, the Concept Note introduces the possibility of establishing differentiated rules or policies for developing countries. Given the inherently cross-border nature of the data-driven economy, governments should avoid risking the fragmentation associated with country or region-specific approaches to digital policy and digital trade, which could undermine the intended purpose and goals of such policies. Instead, governments, industry, and institutions should work together to support technical assistance and capacity building efforts, including through the adoption of high-standard, internationally compatible approaches to data governance that better facilitate connectivity with the global economy and opportunities for digital entrepreneurship and economic development. To that end, the World Bank should consider specifying what client governments understand to be capacity constraints in adopting and implementing the range of policies that contribute to effective data governance. Incorporating this data into the WDR 2021 would greatly accelerate efforts to overcome

capacity gaps or other potential obstacles. The private sector stands ready to support technical assistance and capacity building efforts that will unleash the possibilities of data for development and ensure that the benefits of data can be realized by all participants in the economy, consistent with the protection of important public interests.

**Policy Recommendations**

The private sector has a key responsibility in promoting the adoption of robust, effective data governance regimes in the economies in which it does business. This responsibility necessarily entails proactive engagement with governments in low-, middle-, and high-income economies to share expertise on policy approaches and directly address public policy priorities. The recommendations that follow build on decades of working with governments, industry leaders, and non-governmental organizations to develop policy that drives sustainable, ethical, and equitable growth and opportunity for all. We welcome the opportunity to continue the conversation with ITI’s regional and subject matter experts as well as our members that engage with communities throughout the world.

**Reaping the Benefits of International Data Flows**

The technology underlying the internet transfers data from one point to another based on efficiency, speed, cost, and congestion, and not the jurisdiction in which the terminals and exchange points are based. Of course, it is essential that governments – whose jurisdictions are based on borders – are able to create and enforce laws for the internet that enhance trust in the technology and establish rules of the road for just and fair administration of economic activity over the web. However, these exigencies should not obscure the fact that the borderless nature of the internet continues to be among its most essential features.

The internet is perhaps the most quintessential example of positive network effects in that it becomes increasingly more valuable as more people use it. What this means in practice is that as long as individuals have access to the internet, in principle they have immediate access to a global range of products, services, information, and potential customers that would otherwise remain out of reach. The implications of this technology for development are profound, as entrepreneurs and small business owners are no longer strictly limited to their local markets to sell their products and services.

As we note in the introduction, the flow of data across borders is essential to realizing the potential social and economic gains of the internet, and has changed the way companies do business. For example, companies of all sizes use cloud computing to procure data storage and analytics, run and update software as a service, and surge computer processing power – all scalable to the needs of the business with low upfront costs. However, cloud services are often offered across borders and, in some cases, one service can utilize computing capacity in multiple countries simultaneously. Access to cloud computing and other technologies predicated on the predictable, transparent movement of data across borders is especially relevant for entrepreneurs as these services effectively enable companies to benefit from sophisticated data management tools and systems without incurring the
higher upfront and ongoing costs associated with building standalone infrastructure.\textsuperscript{13} Indeed, companies that do not have access to these services due to restrictions on cross-border data flows are at a disadvantage relative to international competitors.\textsuperscript{14}

For companies to thrive in an internet-driven economy, they must have predictable rules for creating and enforcing trust in their use of data, and the confidence that if they comply with these rules, they will be able to transfer data across borders. Providing a stable regulatory environment enables companies to continue devoting resources to growing the business – rather than reorienting or halting operations – and to engage with policymakers to mitigate potential implementation challenges. These factors inherently support greater efficiency, leading to greater economic development through broader local investment and availability of products and services. Perhaps as important is to ensure that any such rules are implemented in the least-burdensome way possible to alleviate compliance burdens that weigh most heavily on MSMEs, especially in economies with varying levels of data literacy and technical capacity.

It follows that, in order for data to be used at scale for the benefit of the poor and the development of the economy, regulatory systems pertaining to data must be open, meaning that they establish internationally compatible frameworks to facilitate cross-border data flows, and only restrict or condition such transfers where absolutely necessary to create trust in the technology and to protect citizens. To achieve this balance, below we provide several recommendations pertaining to privacy and international data transfer mechanisms, as well as law enforcement access to data in the context of avoiding data localization policies. We would note that we do not provide recommendations pertaining to the cross-border transfer of non-personal data intentionally as at this time we are unaware of any legitimate grounds for restricting the transfer of such data over borders.

\textit{Protection of Privacy}

Privacy, together with data security, are the two foundational pillars of trust. Ensuring that individuals have the right to exercise control over the use of personal data relating to them is an essential aspect of privacy protection. ITI supports strong privacy protections and individual control rights, consistent with the legal obligations of other stakeholders, including the right to access, correct, port, delete, consent, and object to the use of personal data about themselves. In order to realize and achieve the objectives of those rights, clear guidance that factors in effectiveness, efficiency, and reasonableness should be taken into account when individuals exercise their rights.

Effective, meaningful exercise of individual control rights also depends on context. Factors such as the sensitivity of data, the risk to the person from its use, and the relative value generated by its processing should all be part of the calculation of the appropriate level and means of enabling individuals to exercise control over the use of their personal data in a particular context. While individual control mechanisms may differ in design features and deployment, and may also evolve over time, they should always provide individuals with reasonable transparency and the means to


exercise the rights laid out above to the extent they are appropriate to the context surrounding the use of that personal data.

We recommend that economies take steps to ensure their privacy frameworks do not unnecessarily restrict the processing of personal data by relying exclusively on consent, and instead offer expansive grounds for legal processing beyond consent, including the legitimate interests of the controller. In the European Union (EU), the drafters of the General Data Protection Regulation (GDPR) acknowledged the challenges inherent in consent as a legal basis and made sure to re-emphasize additional legal grounds for processing. The importance of contractual necessity, the fulfillment of a legal obligation, the protection of vital and public interests is highlighted. In addition, the GDPR also includes legitimate interests as legal grounds for processing for a data controller, such as processing for: (1) direct marketing purposes or preventing fraud; (2) transmission of personal data within a group of undertakings for internal administrative purposes, including client and employee data; (3) purposes of ensuring network and information security, including preventing unauthorized access to electronic communications networks and stopping damage to computer and electronic communication systems; and (4) reporting possible criminal acts or threats to public security to a competent authority.

**International Data Transfer Mechanisms**

A range of mechanisms exist that can provide the basis for a transparent, non-discriminatory, robust, and implementable data transfer framework. Such mechanisms include standard contractual clauses (SCC), industry codes of conduct, binding corporate rules (BCRs), consent, certifications based on global standards, independent seals, bilateral frameworks such as the U.S.-EU Privacy Shield, and multilateral frameworks such as the Asia-Pacific Economic Cooperation’s (APEC) cross-border privacy rules (CBPRs). Through the use of various transfer mechanisms, governments have demonstrated the ability to create bilateral, multilateral, and increasingly interoperable approaches to the protection of personal information in a manner that does not unnecessarily restrict the cross-border transfer of information. Given the technical nature of these policy and regulatory frameworks, officials in developing countries may benefit from capacity building programming with partner countries and international institutions to assist with the adoption and implementation of international data transfer mechanisms. Below are several examples of such mechanisms.

**European Union**

GDPR codifies a range of data transfer mechanisms widely utilized by ITI members, including consent, BCRs, SCCs, and codes of conduct. In addition, GDPR provides that cross-border data transfers may take place on the basis of certifications together with binding and enforceable commitments of the data importer to apply the certification to the transferred data. While this mechanism has yet to be operationalized, to the extent that it is done so on the basis of global, industry-driven, voluntary, consensus standards, it could serve as another non-discriminatory method of transferring personal data outside of the EU.

**Mexico**

Mexico’s data protection law incorporates provisions that address “accountability” and acknowledge that personal data often needs to travel internationally. The law also avoids uncertainty as to what
obligations and rights exist as personal data moves among data “controllers” and “data processors,” and what documentation is needed to assure fulfillment of legal responsibilities. The controller remains accountable, together with anyone to whom the data is transferred. Under Mexico’s laws, an organization that commits to anonymizing personal information can process the data and disclose it to third parties without requiring the consent of data subjects or meeting the same obligations that apply to identifiable data.

Canada

Canada’s Personal Information Protection and Electronic Documents Act (PIPEDA) is a principle-based, flexible, and forward-looking privacy regime based on the concept of accountability. PIPEDA does not prohibit organizations in Canada from transferring personal information to an organization in another jurisdiction for processing. However, organizations are held accountable for the protection of personal information transfers under each individual outsourcing arrangement.

APEC Cross-Border Privacy Rules

APEC endorsed a Privacy Framework in 2005 and adopted an update in 2015, establishing an interoperable approach to data protection and promoting the free flow of information in the region. The Framework is an accountability-based privacy system that can be implemented in different economies via or alongside their own privacy legal and regulatory regimes. APEC also developed and approved an enforceable co-regulatory tool for enabling cross-border data transfers while protecting privacy consistent with the Framework, called the Cross-Border Privacy Rules (CBPRs), which are flexible enough to be adopted on a broad scale and are gaining traction across the region. The principle of “accountability,” a key underpinning of CBPRs, makes the original data collector legally “responsible” for data by making sure the obligations of the data controller follow the data as it crosses borders. The United States, Mexico, Canada, Japan, South Korea, and Singapore are already participating in the CBPRs, while the Philippines, Chinese Taipei, and Australia have all taken steps to participate, and other APEC economies have signaled their interest in joining. Operationalization of this system relies on certification bodies and third-party trust programs, backed by domestic enforcement.

Ultimately, interoperability and mutual recognition of these frameworks will help prevent a patchwork effect. ITI encourages governments and organizations to determine how their privacy laws, regulations, and certification schemes could support a broader adoption of common frameworks; for example, a certification under one framework could serve as certification to a given law or other related frameworks.

Deterring Against Data Localization in Favor of Open Systems

The Concept Note raises data localization as one of the legal and economic issues related to the creation, collection, and use of data. Technological innovation has driven growth and revolutionized all economic sectors, creating unimagined goods and services and offering new opportunities for companies large and small. In response to the rapid and profound changes brought about by technology, some governments have implemented forced localization policies – essentially, policies that require part or all of companies’ business operations to take place within their borders – in an effort to promote economic growth, advance privacy and security, or protect local firms and
industries. Based on our global experience, however, we have found data localization policies to be ineffective in addressing cybersecurity and law enforcement data access concerns, while also stifling business and economic development and establishing unnecessary barriers to trade.

Cybersecurity

Implementing data localization policies inhibits the effectiveness of several stages of the data lifecycle described in the Concept Note by creating a “single point of failure,” which puts data at risk, reduces efficiencies, and creates additional costs that may be passed on to customers. Localization mandates also affect the ability of companies to provide best-in-class data protection, which is premised on data fragmentation and storage in multiple locations. For instance, “sharding” is a common practice to protect data from hacking or misuse. It involves splitting up data sets and distributing them among a number of different servers, which ensures that even if one server were to be compromised, the overall dataset is not compromised. Creating and using de-centralized and end-to-end encrypted services that do not store all data in one place increases security and protects data from potential risks. Centralizing all information into a single server in one country, in contrast, would greatly increase the risk of data compromise.

Law Enforcement Access to Data

Governments investigating criminal and terrorist activity increasingly require extraterritorial access to electronic evidence, including data, and in some cases, have used this as a rationale for data localization. To address this global problem, increase public safety and security, and make investigations and prosecutions more efficient, we encourage governments to expand investment in cross-border data request mechanisms for law enforcement and counterterrorism purposes. In particular, we encourage participation in and investment in bilateral Mutual Legal Assistance Agreements or Treaties (MLAA/MLATs) to increase the efficiency, effectiveness, and scalability of this tool for cross-border investigations. This is another area in which partner governments should offer technical assistance, as many developing economies may have little experience with the negotiation of such bilateral agreements.

An increasingly viable solution, and perhaps a preferable pathway to governments without existing MLATs, is to leverage existing multilateral agreements, and contribute to the development of new ones, where possible. Any globally scalable solution to combatting cybercrime must involve cross-border and preferably multilateral mechanisms to enable such cooperation. There are several noteworthy examples, including the EU draft E-Evidence Directive, the Budapest Convention on Cybercrime, the Financial Action Task Force on Money Laundering (FATF), Interpol’s Cybercrime Center in Singapore, and the U.S. Clarifying Lawful Overseas Use of Data (CLOUD) Act. We support governments continuing to prioritize global law enforcement coordination to better address these issues.

Additionally, we believe that governments’ use of data must be subject to clear, rule-of-law processes that protect the privacy of individuals and businesses’ confidential and proprietary information. We recognize that, as the Concept Note states, many countries may have under-developed institutional environments, but want to emphasize the conditions conducive to providing law enforcement assistance and the opportunities for other governments to support further capacity building. In the
first instance, governments should seek to obtain data necessary for legitimate criminal or other investigations from customers, who have full access to their data. If customers are unavailable or unresponsive and a valid court order based on clear law enforcement needs is obtained, service providers may be able to provide access to certain data without violating their contracts or legal obligations. Additionally, we recommend ensuring that other sectors, such as financial services, will not be subject to duplicative requirements if sector-specific requirements already exist.

Companies are often able and willing to provide law enforcement assistance to governments, provided that certain legal thresholds are met, such as due process considerations, and the request is consistent with the company’s policies, including their commitments to customers via Terms of Service or contracts. Providing clear requests with all relevant information and supporting evidence as well as legal documentation can help ensure a timely response, perhaps more effectively than efforts to “compel” companies to turn over data upon the government’s request.

**Economic Development**

Furthermore, data localization has already proven detrimental to economic development. While some economies may be able to self-sustain with data localization policies in place, small economies risk being excluded from the critical development benefits data can bring and even large countries will ultimately find their growth stifled. Any regulatory measures restricting data flows will therefore also have detrimental consequences for trade and economic development. These consequences are likely to be particularly acute for MSMEs, as data-restrictive policies affect access to a range of cost-efficient digital technologies, including cloud and over-the-top (OTT) communication services that small businesses rely on to reach new markets. Last year’s World Development Report estimated that by removing restrictive data policies, the productivity of domestic companies that have incorporated digital technologies would improve on average by about 4.5 percent, and the productivity of domestic companies engaged in trade in services by about five percent. At the macroeconomic level, one prominent study assessing the impact of recently proposed or enacted data localization legislation in seven economies estimated negative GDP impacts in each instance: Brazil (-0.2%), China (-1.1%), EU (-0.4%), India (-0.1%), Indonesia (-0.5%), Korea (-0.4%), and Vietnam (-1.7%). As such, the World Bank should caution against data-restrictive policies and instead emphasize the importance of open systems that foster data-driven innovation, better protect datasets, and support greater connectivity with the global economy.

**Incorporating Trade Commitments Fit for the 21st Century Global Economy**

The Concept Note rightly asserts that the rise in data-driven businesses creates opportunities for new entrants in global trade. Increasingly, in both developed and developing countries, we are seeing the broad emergence of “born global” firms, whose operations are often borderless from their inception thanks to internet-based business models, reliance on digital tools and technology, and access to international data, platforms, and customers. This connection between digital trade and entrepreneurship, and the importance of policy actions to enable the digitalization of

---


entrepreneurship and the use of digital technology, have been noted as key in fostering inclusive development.\textsuperscript{17}

At the same time, the rise of digital protectionism, whether in the form of data localization requirements or other measures inhibiting the movement of data or access to goods and services over the internet, has a direct impact on the ability of individuals and firms in developing countries, and smaller markets in particular, to leverage the social and economic benefits of data both within and beyond their borders.\textsuperscript{18} This trend has informed the need for strong trade policy tools, in addition to internationally compatible approaches in areas such as privacy and cybersecurity, as a means of ensuring that digital policies do not unnecessarily inhibit digital trade, limit development opportunities, or otherwise curtail access to productivity-enhancing goods or services.

Existing models of strong trade tools include the digital trade provisions, and specifically the data-related provisions, contained in the U.S.-Mexico-Canada Agreement (USMCA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and other regional and bilateral agreements that take the approach of prohibiting data localization and restrictions on cross-border data flows while providing narrowly-tailored exceptions for measures necessary to achieve legitimate public policy objectives.\textsuperscript{19} Our support for such provisions stems from their operational utility as tools to counter data-restrictive measures whose aims are principally protectionist, mercantilist or otherwise inconsistent with the principles of transparency and non-discrimination. This is particularly important in the context of digital trade and the cross-border movement of data as such measures not only have a detrimental impact on individual economic actors, but damage the entire global innovation ecosystem.\textsuperscript{20}

Similarly significant is what these data-related trade policy provisions do not do. The strongest digital trade provisions do not, and should not, regulate or circumscribe appropriate privacy or cybersecurity practices. They are compatible with the world’s most robust data protection regulatory frameworks which, as we note above, generally provide for multiple transparent, non-discriminatory mechanisms for the outbound transfer of personal data, and do not inhibit the development of regulatory frameworks intended to achieve legitimate public policy objectives related to cybersecurity, privacy, public safety, or other areas of public interest. On the contrary, modern digital trade provisions include commitments to maintain legal frameworks for the protection of personal information and collaborative, risk-based approaches to cybersecurity threats. Governments and the private sector alike have a responsibility to provide technical assistance necessary to understand and apply such trade policy commitments within the context of distinct legal and political systems. However, in contrast to some ambitious trade policy commitments in other areas, there are not compelling policy rationales or development-based limitations to the adoption of modern digital trade provisions.


\textsuperscript{18} See \url{https://www.centerforfinancialinclusion.org/data-globalization-vs-data-localization}.

\textsuperscript{19} Accompanying provisions stipulating consideration relevant international principles and guidelines, such as the OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013), are also useful in promoting compatible regulatory regimes.


\begin{center}
\includegraphics[width=0.3\textwidth]{ITI_promoting_innovation_worldwide.png}
\end{center}
Trade policy tools also play a key function in preventing the emergence of new classes of barriers to digital trade likely to have an outsized impact on emerging markets. For more than two decades the World Trade Organization’s (WTO) moratorium on the imposition of customs duties on electronic transmissions has essentially ensured that countries cannot apply tariffs to cross-border data flows, and this commitment has been replicated in a wide range of bilateral and regional trade agreements. Arguments against the prohibition of customs duties on electronic transmissions have suggested that an increase in digital trade, and corresponding reduction in physical goods trade, will result in a reduction in revenue for countries in which duty collection constitutes a meaningful portion of national finances.

However, even putting aside significant questions around the administrability of duties on electronic transmissions, these arguments tend not to address their significant developmental and economic consequences. A recent study published by the Organisation for Economic Co-operation and Development (OECD) found that the application of tariffs to electronic transmissions would primarily burden domestic consumers and would detract from consumer welfare and export competitiveness benefits afforded by electronic transmissions.  

A separate study determined that the loss in both gross domestic product and domestic tax revenue would be many times higher than any increase in tariff revenue for a range of developing countries. Given the direct cross-border impact of tariff policies, broadened acceptance of their prohibition would engender both greater digital export opportunities as well as domestic consumer and economic benefits for emerging markets.

A growing recognition of the importance of digital trade for development has informed an increasing role of developing countries both in defining and broadening the acceptance of strong digital trade commitments. A range of developing economies are active participants in the WTO E-Commerce Joint Statement Initiative, under which 84 WTO members are advancing efforts to reach agreement on new rules governing digital trade. In addition to the CPTPP mentioned above, developing economies are actively pursuing discussions of digital trade and e-commerce in the context of bilateral and regional trade negotiations as well. Of particular note, in April 2020, African Union (AU) leaders assented to the negotiation of an E-Commerce Protocol as part of the next phase of African Continental Free Trade Area (AfCFTA) negotiations. Developing countries should capitalize on these and other initiatives in defining and broadening the acceptance of strong provisions on digital trade, while exploring mechanisms for building capacity for data driven trade and the implementation of robust frameworks for the protection of personal information.

Addressing Tax Challenges Arising from Digitalization

As the global economy continues to digitalize, there have been many conversations around how the global tax system should evolve in a way that reflects how companies engage with different markets while respecting long-standing international tax principles. As noted above, developing countries in

---


23 In collaboration with over twenty international partners, ITI developed priority recommendations for the WTO E-Commerce Initiative in October 2019: https://www.itic.org/dotAsset/f2de6c22-e286-47d2-aca7-ba34830e462c.pdf.

particular have expressed concerns about potential loss of revenue associated with digitalization. The OECD recently reiterated its intent to reach consensus by the end of 2020 on the tax challenges arising from the digitalization of the global economy, and the Inclusive Framework has made clear the objective of reaching a multilateral solution as a means of avoiding a patchwork of unilateral digital taxation measures.

To the extent that any elements of the ongoing OECD negotiations extend into 2021, it is imperative that the World Bank’s consideration of digital taxation in this report does not preempt efforts undertaken by the Inclusive Framework – which now features nearly 140 countries – in the event that deadlines shift in response to the ongoing global public health crisis or other factors. The World Bank should encourage countries to refrain from introducing unilateral measures and instead pursue a sustainable, multilateral solution to relevant tax challenges identified by the OECD and participating governments. The introduction of unilateral tax measures conflicts with the OECD’s ongoing work in support of realizing a global tax framework and injects uncertainty into the broader economy, which increasingly depends on the flows of data and digital goods and services. In May 2020, ITI reaffirmed commitment to the OECD project and presented recommendations for a final agreement. We encourage the World Bank to consider the document, which outlines ITI’s principles for a stable, cohesive global tax framework, as a reference for evaluating current and future policy proposals to address tax challenges from the digitalization of the economy.

While global attention has focused on digital services taxes and other discriminatory unilateral measures, there are models for adopting non-discriminatory domestic taxation measures that generate revenue for a government and follow well-established international tax norms. As governments consider, introduce, and implement taxation measures, the World Bank should stress the importance of providing open consultations and undertaking economic impact assessments to ensure that digital tax policies do not inadvertently inhibit growth of the increasingly digitalized economy. This is especially critical as policymakers continue to develop expertise in these issues and advances in technology increasingly expand access to goods and services. Taking deliberate steps to exchange views with stakeholders on taxation measures helps governments to achieve their policy objectives, ensures adherence to international best practices, and strengthens trust and accountability between the government and all impacted parties. Of particular importance, consultation throughout policy development and implementation periods can help to minimize the inevitable impacts to local consumers and the businesses – especially small and medium-sized businesses – that depend on domestic access to productivity-enhancing goods and services.

Additional Resources

ITI regularly releases white papers and other thought leadership that contribute to the broader discourse and provide guidance to policymakers. In addition to the topics covered in detail above, ITI has published recommendations on a range of topics, including 5G Policy Principles and 5G Essentials for Global Policymakers, the Framework to Advance Interoperable Rules (FAIR) on privacy, and WTO E-Commerce, to name a few. We encourage the World Bank to reach out with questions as it considers different aspects of data for development.