

## Legal Aspects of Personal Data Protection in Cross-Border Data Flows within Bilateral Comprehensive Trade Agreements

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### Abstract

The rapid growth of the global digital economy has driven massive cross-border data flows, making data a highly valuable economic commodity. However, this phenomenon raises critical concerns regarding state sovereignty and the protection of personal data. This study examines the legal aspects of personal data protection within cross-border data flows under Bilateral Comprehensive Trade Agreements. Using a normative juridical research method with a statutory and comparative approach, this paper analyzes how bilateral trade agreements harmonize conflicting interests between trade liberalization and data privacy enforcement. The findings reveal that while comprehensive trade agreements increasingly include digital trade chapters to facilitate seamless data transmission, significant fragmentation remains due to differing national legal frameworks such as the stringent standards of the EU's GDPR versus the more market-oriented approaches. This study concludes that to prevent regulatory loopholes and ensure legal certainty, future bilateral trade agreements must adopt robust adequacy decision mechanisms, mutual recognition principles, and clear dispute settlement clauses that treat data privacy not as a barrier to trade, but as a foundational element of digital trust.

**Keywords:** Personal Data Protection, Cross-Border Data Flows, Bilateral Trade Agreements, Digital Economy, Legal Certainty

### A. Introduction

The rapid acceleration of the global digital economy has fundamentally transformed the nature of international commerce. In the modern era, data is no longer merely a byproduct of business transactions; rather, it has emerged as a primary economic commodity, often referred to as the "new oil" of the 21st century. The seamless transmission of information across national boundaries, clinically termed cross-border data flows, serves as the lifeblood for multinational corporations, cloud computing services, global supply chains, and e-commerce platforms. Without the ability to transfer data globally, the mechanics of international trade would experience severe stagnation. Azmeh, S., Foster, C., & Echavarria, M. (2025).

However, this unprecedented interconnectedness creates a profound legal paradox. On one hand, the optimization of the digital economy demands minimal barriers to data mobility to foster innovation and market efficiency. On the other hand, the massive and instantaneous transfer of data inherently jeopardizes state sovereignty, national security, and individual fundamental rights, specifically the right to personal data protection and privacy. When personal data crosses geographical borders, it frequently enters jurisdictions with weaker or

entirely disparate data protection standards. This regulatory mismatch leaves individual data subjects vulnerable to surveillance, data breaches, and corporate exploitation, without clear legal recourse. Belli, L., & Mitchell, A. D. (2026).

Historically, data protection was strictly confined to domestic legislation, such as the European Union's General Data Protection Regulation (GDPR) or various national privacy acts in developing countries. Nevertheless, as multilateral trade negotiations under the World Trade Organization (WTO) face prolonged gridlocks, sovereign states have increasingly turned to Bilateral Comprehensive Trade Agreements to govern their economic relations. Modern bilateral treaties are no longer limited to traditional tariffs and goods; they now extensively feature sophisticated "Digital Trade" or "E-Commerce" chapters. Within these chapters, states attempt to negotiate the boundaries of cross-border data flows. Chander, A. (2024).

This is where the critical legal conflict manifests. Bilateral comprehensive trade agreements often contain conflicting mandates. They heavily promote the liberalization of data flows by prohibiting localization requirements (provisions that force companies to store data locally). Concurrently, they contain exception clauses allowing states to enforce domestic privacy laws, provided they do not constitute a "disguised restriction on trade." This creates a highly fragmented and ambiguous international legal framework. Developing nations often find themselves caught between the market-driven, liberalized data approaches of superpowers like the United States, and the stringent, human-rights-centric data adequacy models enforced by the European Union. European Commission. (2025).

Consequently, there is an urgent need to critically evaluate how bilateral trade agreements can effectively harmonize these competing interests. Most existing legal literature either analyzes data privacy purely from a human rights perspective or evaluates trade agreements solely through an economic lens. This research aims to bridge that gap by examining the legal mechanisms through which personal data protection can be robustly guaranteed within cross-border data flows without crippling the flow of international commerce. By analyzing contemporary bilateral treaties and regulatory approaches, this study seeks to provide a comprehensive legal framework to ensure legal certainty, mutual trust, and data sovereignty in the age of global digitalization. Azmeh, S., Foster, C., & Echavarria, M. (2025).

## B. Research Method

This study employs a normative legal research method (doctrinal legal research) to examine the legal complexities of personal data protection within cross-border data flows under bilateral trade agreements. Normative legal research focuses on analyzing "law as it is written in the books" (*jus scriptum*), treating legal science as a prescriptive and applied discipline that evaluates legal norms, principles, rules, and international treaty structures. Belli, L. (2024).

To provide a comprehensive analysis, this research utilizes three distinct analytical approaches:

- a. **Statutory and Treaty Approach:** This approach involves analyzing international legal instruments, specifically the digital trade and e-commerce chapters within selected contemporary Bilateral Comprehensive Trade Agreements (e.g., EU-Japan EPA, USMCA, or regional frameworks like DEFA), as well as national data protection laws such as the European Union's General Data Protection Regulation (GDPR) and Indonesia's Personal Data Protection Law (UU PDP).
- b. **Conceptual Approach:** This approach moves beyond existing legislation to examine the underlying legal doctrines, principles of data sovereignty, and the philosophical balance between the right to privacy and the principle of free trade liberalization.
- c. **Comparative Approach:** This approach compares the regulatory frameworks of major global economic blocs (such as the market-driven approach of the United States, the

rights-based approach of the European Union, and the state-centric model of China) to identify how different bilateral agreements handle data privacy fragmentation. Burri, M. (2021).

### **Data Sources and Collection Techniques**

Since this is a normative study, the data used consists entirely of secondary data divided into three categories of legal materials:

- a. **Primary Legal Materials:** Authoritative legal texts that possess binding legal force. This includes international conventions (such as WTO/GATS provisions), bilateral comprehensive economic partnership agreements (CEPA/FTAs), national statutes concerning data privacy, and relevant international arbitral or court rulings.
- b. **Secondary Legal Materials:** Publications that explain, analyze, or critique the primary legal materials. This includes peer-reviewed law journal articles, academic textbooks on international economic law, legal commentaries, research reports from international organizations (such as UNCTAD, OECD, and the WTO), and official working papers.
- c. **Tertiary Legal Materials:** Directives that provide assistance or clarification for primary and secondary materials, such as legal dictionaries, encyclopedias, and authoritative legal indices. Greenstein, S., & Wu, T. (2026).

The data collection technique used in this study is a comprehensive literature review and documentary study. Legal texts, treaties, and relevant academic literature are gathered, systematically cataloged, and selected based on their relevance to cross-border data transmission and bilateral trade jurisprudence. Greenleaf, G. (2024).

### **Method of Data Analysis**

The collected legal materials are analyzed using a qualitative-deductive analysis method. The analysis does not utilize statistical or quantitative data. Instead, legal materials are systematically interpreted through legal hermeneutics, grammatical interpretation, and systematic legal reasoning. The deductive process begins by analyzing global international trade and data privacy norms (the general premise) and then applies them to the specific mechanisms found within bilateral comprehensive trade agreements (the specific premise) to draw logical, normative conclusions regarding legal certainty, regulatory gaps, and future framework recommendations. MacDonald, E. R. (2025).

## **C. Result**

### **1. The Typology of Digital Trade Chapters in Contemporary Bilateral Comprehensive Trade Agreements**

The legal landscape governing cross-border data flows within Bilateral Comprehensive Trade Agreements (CTAs) reveals a significant evolution from traditional trade rules. Historically, international trade agreements were silent on data mobility. Svantesson, D. J. B. (2024).

However, contemporary CTAs increasingly incorporate sophisticated and standalone "Digital Trade" or "E-Commerce" chapters. Based on the analysis of primary legal materials such as the United States-Mexico-Canada Agreement (USMCA), the EU-Japan Economic Partnership Agreement (EPA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) this study identifies two dominant, yet competing, treaty typologies:

- a. **The Market-Led/Liberalization Typology:** Exemplified by the USMCA and CPTPP, this model prioritizes the free flow of data as a default economic rule. Treaties adhering to this typology explicitly prohibit member states from imposing data

localization requirements (forcing foreign companies to build local data centers) and ban restrictions on cross-border electronic transmissions.

- b. **The Rights-Centric/Regulatory Typology:** Exemplified by modern European Union agreements, this model subordinates trade liberalization to the fundamental right of privacy. While it facilitates data flows, it embeds strict "carve-outs" ensuring that commercial treaty provisions cannot undermine domestic data protection standards, such as those mandated by the General Data Protection Regulation (GDPR). UNCTAD. (2025).

The statutory analysis indicates that both typologies rely on the legal architecture of Article XIV of the General Agreement on Trade in Services (GATS). This allows states to adopt regulatory exceptions to protect individual privacy, provided that such measures do not constitute a "disguised restriction on international trade" or "arbitrary discrimination." World Trade Organization. (2026).

## 2. Regulatory Fragmentation and the Crisis of Jurisdictional Competence

The primary legal conflict arising from cross-border data flows in bilateral treaties is the fragmentation of jurisdictional enforcement. When personal data is transmitted across borders under the auspices of a bilateral trade pact, it frequently transitions from a high-protection jurisdiction to a low-protection jurisdiction. This creates severe regulatory loopholes and undermines domestic enforcement mechanisms. Aaronson, S. A. (2022).

<b>Treaty Component</b>	<b>The Market-Led Model (e.g., USMCA)</b>	<b>The Rights-Centric Model (e.g., EU-Pacts)</b>
Primary Objective	Maximizing data mobility and economic efficiency.	Safeguarding fundamental human rights and privacy.
Data Localization	Strictly prohibited to reduce corporate costs.	Allowed if domestic privacy standards cannot be met abroad.
Enforcement Focus	Self-regulation and corporate accountability.	State-led regulatory oversight and heavy penalties.

This research identifies a "jurisdictional clash" where multinational corporations utilize the liberalized clauses of trade agreements to bypass stringent national privacy acts. For instance, while a domestic law (such as Indonesia's *UU PDP* or the EU's *GDPR*) mandates that data controllers remain liable for data breaches abroad, the cross-border data flow provisions in trade agreements often lack clear cross-border enforcement protocols. Consequently, when a data breach occurs in a foreign jurisdiction, data subjects face immense legal hurdles in seeking remedies due to the territorial limitations of domestic data protection authorities (DPAs). Alstyne, M. V., & Brynjolfsson, E. (2021).

## 3. Harmonization Mechanisms: Adequacy Decisions, Mutual Recognition, and Trust Architecture

To resolve the legal friction between trade liberalization and privacy enforcement, contemporary bilateral comprehensive agreements are developing transitional legal mechanisms. The analysis shows that successful data protection within global trade reliance cannot depend solely on domestic enforcement; it requires international structural trust. Bygrave, L. A. (2023).

- a. **Adequacy Decision Frameworks:** This mechanism conditions the free flow of data on a formal legal finding that the recipient country offers an "essentially equivalent" level of data protection. This study notes that comprehensive agreements are increasingly utilizing bilateral adequacy assessments as a bridge, allowing seamless data transfers without compromising regulatory standards.
- b. **Mutual Recognition Agreements (MRAs) and Cross-Border Privacy Rules (CBPR):** A growing trend in modern bilateral pacts is the adoption of multilateral or bilateral certification frameworks, where states recognize each other's privacy certification systems. If a business complies with the recognized regional standard, it is legally permitted to transfer data across borders.
- c. **Incorporation of Smart Enforcement Clauses:** To prevent trade agreements from creating regulatory vacuums, next-generation bilateral treaties are introducing mandatory cooperation clauses between national Data Protection Authorities. These clauses legally oblige foreign states to cooperate in cross-border investigations, evidence gathering, and the enforcement of penalties against corporate violators. Chander, A. (2024).

The findings demonstrate that incorporating robust, binding data privacy safeguards directly into the text of bilateral trade agreements rather than treating privacy as a mere exception to trade creates a superior legal equilibrium. It fosters a predictable legal environment that ensures economic continuity for digital commerce while firmly upholding individual digital sovereignty and data protection. Ciuriak, D. (2023).

## D. Discussion

### 1. The Theoretical Conflict: Economic Liberalism vs. Digital Sovereignty

The legal friction examined in this study reflects a deeper ideological clash between two fundamental doctrines in international law: Economic Liberalism and Digital Sovereignty (Human Rights-Centric Approach). Under the doctrine of economic liberalism, which underpins global trade bodies like the WTO and the architectural design of most Comprehensive Trade Agreements (CTAs), data is viewed as a dynamic economic asset. The restriction of its movement is interpreted as a non-tariff barrier to trade that threatens market efficiency. This perspective aligns with the "free flow of data" principle, which argues that data should transcend national borders just as goods and services do under globalized supply chains. Kuner, C. (2023).

Conversely, the concept of digital sovereignty posits that states possess the inherent right to regulate the digital sphere within their territorial boundaries to protect national security and the fundamental rights of their citizens. From a human rights perspective, personal data is an extension of the human persona, intertwined with the right to privacy. Therefore, it cannot be treated merely as an uninhibited commercial commodity. Leblond, P. (2022).

When bilateral trade agreements prohibit data localization such as the provisions found in the USMCA they effectively restrict a sovereign state's ability to mandate that data controllers keep sensitive personal information within domestic jurisdiction. This creates a regulatory deficit. While the state retains the nominal authority to pass data privacy acts, its territorial enforcement capability is structurally weakened the moment data crosses its borders into a foreign legal vacuum. Voon, T. (2023).

### 2. Deconstructing the Flaws of Article XIV GATS as a Safeguard Mechanism

Historically, negotiators of bilateral CTAs have relied on the general exceptions clause, modeled after Article XIV of the General Agreement on Trade in Services (GATS), to balance trade and privacy. Article XIV allows states to enforce domestic measures necessary to protect equitable privacy rights, provided these measures do not constitute "arbitrary or unjustifiable

discrimination" or a "disguised restriction on international trade." Mitchell, A. D., & Mishra, N. (2022).

However, this study argues that the GATS Article XIV framework is highly inadequate for the modern digital economy for several reasons:

- a. **The High Burden of Proof:** In international trade disputes, the burden of proof is placed on the defending state to prove that its privacy measure is "necessary" and the "least trade-restrictive" option available. This creates a chilling effect, where states might hesitate to enforce strict privacy regulations out of fear of being sued in international trade tribunals.
- b. **Economic Bias of Trade Tribunals:** Tribunals adjudicating trade disputes (such as WTO panels or investment arbitral tribunals) are structurally designed to prioritize trade liberalization. They lack the institutional expertise to properly weigh the human rights dimensions of data privacy against commercial losses.
- c. **Anachronistic Nature:** The GATS framework was drafted in 1995, long before the advent of big data, cloud computing, cross-border algorithmic profiling, and generative AI. Applying a 20th-century trade exception to 21st-century data vulnerabilities creates severe legal anachronisms. Perez-Asinari, J. (2024).

### 3. The Proliferation of "Data Cartels" and the Marginalization of Developing Nations

A critical systemic issue discussed in this research is the geopolitical fragmentation caused by differing bilateral treaty models. The global digital economy is currently dividing into distinct "data blocs" or "data cartels": the US market-driven model, the EU rights-centric model, and the Chinese state-centric model. Streinz, T. (2021).

When superpowers negotiate bilateral comprehensive agreements with developing nations, they often engage in a form of regulatory imperialism. For instance, developing nations wishing to sign trade agreements with the United States are pressured to accept strict prohibitions on data localization. Concurrently, if those same developing nations wish to maintain trade and data alignment with the European Union, they must secure an "adequacy decision," which often requires implementing strict data localization or equivalence protocols. World Bank. (2021).

This forces developing nations into a state of legal dilemma. They are caught between competing international commitments, leading to domestic legal uncertainty and rendering their local Data Protection Authorities (DPAs) functionally toothless against multinational tech conglomerates. Cory, N., & Dascoli, L. (2021).

### 4. Towards a Synthesis: Designing Next-Generation "Data-Trust" Clauses

To bridge the gap between economic liberalization and digital privacy, this study proposes a paradigm shift in how bilateral comprehensive trade agreements are drafted. Rather than treating data protection as an *exception* to trade rules (the GATS model), it must be integrated as a *structural condition* of digital trade. Elsig, M., & Klotz, S. (2022).

Next-generation bilateral treaties must transition toward a "Data-Trust Architecture". This can be achieved through three concrete legal reforms:

- a. **Mandatory DPA Cooperation Protocols:** Treaties must include binding annexes that legally compel foreign states' regulatory bodies to cooperate in cross-border enforcement. If a data breach involving Indonesian citizens occurs in a US-based cloud server, the treaty should grant the Indonesian DPA the legal standing to cooperate directly with US authorities to penalize the violating entity.
- b. **Interoperable Privacy Certifications:** Bilateral agreements should promote the mutual recognition of regional data privacy standards (such as aligning ASEAN Cross-Border Privacy Rules with the EU GDPR frameworks). This ensures that businesses can move

data seamlessly, not because the rules are bypassed, but because both jurisdictions share a high standard of trust.

- c. **Dedicated Digital Trade Dispute Settlement Panels:** Future CTAs should establish specialized dispute settlement panels comprised of both international trade experts and data privacy jurists. This guarantees that when a dispute arises, the balance between economic continuity and fundamental human rights is evaluated with equal legal gravity. European Commission. (2025).

Ultimately, international economic law must recognize that robust data protection is not an impediment to international commerce. On the contrary, in an era plagued by systemic cyber vulnerabilities and corporate data mining, robust legal protections are the very foundation of consumer trust, which is the ultimate driver of a sustainable global digital economy. Fasan, O. (2023).

## **E. Conclusion and Suggestions**

### **1. Conclusion**

This study concludes that the intersection of personal data protection and cross-border data flows within Bilateral Comprehensive Trade Agreements (CTAs) presents a profound structural conflict between economic liberalization and digital sovereignty. The traditional international trade framework, which relies heavily on the outdated GATS Article XIV exceptions, is no longer capable of addressing the complexities of the modern digital economy. Under current practices, the market-led treaty model often exposes individuals to severe regulatory vacuums when data leaves domestic borders, as it prioritizes unrestricted data mobility over privacy enforcement. Conversely, the rights-centric model creates regional fragmentation and forces developing nations into a state of legal dilemma amidst competing geopolitical data blocs. The findings demonstrate that data protection should no longer be viewed as a non-tariff barrier or a mere exception to trade rules. Instead, establishing a robust, interoperable legal architecture within the text of comprehensive trade pacts is the only viable mechanism to guarantee both international economic continuity and individual digital rights.

### **2. Suggestion**

Based on the comprehensive legal analysis conducted in this research, the following recommendations are proposed for future treaty negotiations and policy formulations:

- a. **Adopt a "Data-Trust" Architecture in Future CTAs:** State negotiators must shift from using passive exception clauses to actively embedding binding privacy standards within the "Digital Trade" or "E-Commerce" chapters of bilateral treaties. Data liberalization should be legally conditioned upon the recipient country maintaining equivalent privacy standards.
- b. **Establish Mandatory Cross-Border DPA Cooperation:** Bilateral agreements must include enforceable legal protocols that compel domestic Data Protection Authorities (DPAs) to cooperate internationally. This includes granting extraterritorial investigative powers, sharing evidence, and facilitating the cross-border enforcement of sanctions against multinational corporations that violate privacy laws.
- c. **Promote the Harmonization of Regional Privacy Certifications:** States should utilize bilateral comprehensive agreements to bridge the gap between divergent regional frameworks (such as aligning the ASEAN Cross-Border Privacy Rules with the EU's GDPR). Mutual Recognition Agreements (MRAs) should be implemented to ensure that compliance with a recognized regional standard guarantees lawful, uninterrupted data transmission.
- d. **Form Specialized Digital Trade Dispute Panels:** Future trade pacts must establish specialized dispute settlement mechanisms that include both international trade jurists

and data privacy experts. This ensures a balanced, legally sound adjudication process that treats fundamental human rights and economic interests with equal gravity.

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