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Challenges and Legal Implications of Personal Data Protection in Bilateral Trade Agreements

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Abstract
The rapid expansion of international digital trade has significantly increased cross-border data flows, creating legal complexities regarding personal data protection within bilateral trade agreements. This study aims to analyze the legal challenges and implications arising from balancing personal data protection standards with bilateral free trade commitments. Utilizing a normative legal research methodology with conceptual and comparative approaches, the findings indicate that primary challenges stem from jurisdictional overlaps, disparate regulatory adequacy standards, and threats to national data sovereignty. The legal implications demand the formulation of mutual recognition mechanisms, re-conceptualization of data transfer clauses, and a balanced safeguard between digital economic growth and individual privacy rights. Harmonizing data protection frameworks in bilateral agreements serves as a crucial instrument to prevent data misuse without hindering international commerce velocity.

Keywords: Personal Data Protection, Bilateral Trade Agreements, Cross-Border Data Flow, Legal Implications, Digital Trade

A. Introduction

The rapid globalization of the digital economy has fundamentally transformed the landscape of international commerce. Today, data is no longer merely an operational byproduct; it has become the lifeblood of modern trade, facilitating cross-border services, e-commerce transactions, financial transfers, and supply chain management. As nations increasingly rely on cross-border data flows to drive economic growth, the intersection between international trade agreements and national data governance has emerged as one of the most complex battlegrounds in modern jurisprudence. Aaronson, S. A., & Leblond, P. (2023).

In response to growing privacy concerns, governments worldwide have enacted stringent legal frameworks to safeguard personal data, such as the European Union's General Data Protection Regulation (GDPR) and Indonesia's Law No. 27 of 2022 on Personal Data Protection (UU PDP). While these domestic and regional regulations aim to protect individuals' fundamental right to privacy, they frequently collide with the liberalizing objectives of bilateral trade agreements (BTAs). BTAs are traditionally designed to reduce trade barriers and facilitate the seamless flow of goods and services. However, restrictions on data transfers, local data residency mandates, and divergent privacy standards are increasingly perceived as non-tariff barriers to trade. Azmeh, S., & Foster, C. (2024).

This tension creates a critical legal dilemma: how can states honor their international commitments to free trade without compromising their sovereign duty to protect citizens'

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personal data? Bilateral trade agreements, by their nature, require a delicate balance between economic integration and regulatory autonomy. Disparities in data protection standards between trading partners can lead to jurisdictional conflicts, regulatory uncertainty for multinational enterprises, and potential vulnerabilities in data subject protections during cross-border transfers. Bradford, A. (2023).

Consequently, examining the challenges and legal implications of personal data protection within bilateral trade agreements is both timely and essential. This paper explores the key legal friction points, including jurisdictional overlaps, adequacy assessments, and data localization requirements. Furthermore, it analyzes how modern bilateral trade frameworks can integrate robust privacy safeguards without stifling digital trade innovation, ultimately proposing mechanisms for legal harmonisation and mutual recognition. World Trade Organization. (2023).

B. Research Method

1. Research Type and Approach

This study employs a normative legal research methodology (doctrinal legal research) to examine the legal principles, norms, and regulatory frameworks governing personal data protection within bilateral trade agreements (BTAs). Yakovleva, S. (2023). To provide a comprehensive legal analysis, three primary research approaches are utilized:

a. Statutory Approach (*Statute Approach*): Analyzes relevant binding legal instruments, including bilateral free trade agreements, national data protection laws (e.g., EU GDPR, Indonesia's PDP Law No. 27/2022), and international trade instruments (such as WTO/GATS provisions).
b. Conceptual Approach (*Conceptual Approach*): Investigates key legal concepts including data sovereignty, individual privacy rights, cross-border data transfer mechanisms, and the classification of privacy regulations as non-tariff barriers to trade.
c. Comparative Approach (*Comparative Approach*): Examines and contrasts how different jurisdictions and trade frameworks balance data protection mandates against trade liberalization commitments. Zhao, Z., & Liu, X. (2025).

2. Sources of Legal Materials

The data for this qualitative legal research consists entirely of secondary data categorized into three tiers of legal materials:

a. Primary Legal Materials: Authoritative and legally binding instruments, including:
   1) Bilateral Trade Agreements and Comprehensive Economic Partnership Agreements (CEPAs).
   2) National privacy legislations and regulatory standards.
   3) International treaties and multilateral trade framework provisions (e.g., GATT/GATS general exceptions, CPTPP digital trade chapters).
b. Secondary Legal Materials: Non-binding legal literature providing analysis and commentary, including peer-reviewed law journals, academic monographs, policy reports (from OECD, UNCTAD, and WTO), and expert legal opinions.
c. Tertiary Legal Materials: Reference tools used to clarify legal terminology, such as legal dictionaries, encyclopedias, and official multi-lingual trade glossaries. Burri, M. (2024).

3. Data Collection Method

Data is gathered through documentary study (*library research*). This involves systematically identifying, collecting, cataloging, and reviewing relevant legal documents,

treaty provisions, legislative texts, and legal literature available through academic databases, official government repositories, and international trade organization portals. Chander, A., & Sun, H. (2024).

4. Data Analysis Method

The collected legal materials are processed using qualitative legal analysis techniques anchored in deductive reasoning. The analytical procedure involves:

a. Systematic and Teleological Interpretation: Interpreting trade clauses and privacy mandates according to their text, intent, and overarching purpose within legal systems.
b. Harmonization Analysis: Identifying conflicts between domestic privacy safeguards and bilateral trade commitments, and evaluating legal exceptions (such as GATS Article XIV general exceptions).

Synthesis and Conclusion: Drawing logical conclusions regarding legal implications and formulating recommended mechanisms (e.g., mutual recognition, adequacy frameworks) for legal harmonization. Chen, L., & Zhao, Z. (2025).

C. Result and Discussion

Results

1. Primary Legal Challenges in Integrating Personal Data Protection into Bilateral Trade Agreements

The intersection of domestic data privacy regimes and international trade commitments gives rise to significant legal friction. Based on the analysis of current bilateral trade frameworks and privacy legislations, three major legal challenges have been identified:

a. Fragmented Regulatory Frameworks and Standards of Adequacy: Jurisdictions maintain fundamentally different legal philosophies regarding data protection. For instance, the European Union adopts a rights-based approach treating privacy as a fundamental human right (GDPR), whereas other regimes adopt market-oriented or state-centric models. When negotiating Bilateral Trade Agreements (BTAs), establishing "adequacy" or equivalent protections becomes a central hurdle, as disparate legal thresholds hinder seamless cross-border data flows without compromising privacy guarantees.
b. Jurisdictional Conflicts and Extraterritorial Reach: Digital data cross-borders instantly, whereas legal sovereignty remains territorial. Domestic privacy statutes (such as the GDPR's Article 3 or Indonesia’s PDP Law Article 2) explicitly assert extraterritorial applicability to data controllers operating outside their national borders. This creates severe compliance overlaps and potential conflicts of law for commercial entities operating under bilateral commitments.
c. Data Localization Mandates vs. Free Flow of Data: A major source of tension in modern digital trade chapters is the proliferation of data localization laws requiring entities to store and process personal data within national boundaries. While sovereign states justify localization under the guise of cybersecurity, law enforcement access, and privacy, trade partners frequently view these requirements as discriminatory non-tariff barriers that violate market access commitments in BTAs. Cory, N., & Das, A. (2023).

2. Legal Implications for Contracting Parties and Digital Commerce

The structural misalignment between privacy laws and trade liberalization yields profound legal implications across international and national domains:

a. Interpretation of General Exceptions (The GATS Article XIV Standard): BTAs typically model their privacy exceptions after General Agreement on Trade in Services (GATS) Article XIV(c)(ii), which allows states to adopt privacy measures necessary to protect individual privacy. However, applying this exception requires satisfying a strict "necessity test" and ensuring the measures do not constitute arbitrary discrimination or disguised trade restrictions. Legally, this creates uncertainty, as states bear a heavy burden of proof to demonstrate that strict privacy protections or transfer restrictions are strictly necessary and non-protectionist.
b. Contractual Safeguards and Regulatory Uncertainty for Commercial Enterprises: Due to the absence of unified global standards, cross-border commercial transactions relying on BTAs are forced to depend heavily on private contractual mechanisms, such as Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs). This shifts the burden of regulatory compliance onto private entities, resulting in increased compliance costs, legal exposure to administrative sanctions, and regulatory unpredictability.
c. Erosion of Data Sovereignty vs. Rights Dilution: If trade agreements prioritize unconditional cross-border data flows over domestic privacy mandates, contracting parties risk diluting their citizens' fundamental privacy rights once data moves to jurisdictions with weaker enforcement mechanisms. Conversely, overly restrictive privacy clauses risk invalidating the core economic benefits of digital trade commitments under the agreement. Gao, Z., Kang, C., & Zhang, X. (2024).

3. Strategic Legal Mechanisms for Harmonization and Mutual Recognition

To reconcile the tension between data protection mandates and trade liberalization commitments, future and existing BTAs must incorporate structured legal mechanisms. Girot, C. (2025).

Table 1 Resume Mechanism Legal and Impact

Mechanism	Legal Function	Impact on Bilateral Trade
Mutual Recognition Agreements (MRAs)	Formally acknowledges that both contracting parties provide equivalent levels of data protection despite procedural differences.	Reduces compliance friction for businesses while preserving domestic privacy safeguards.
Standardized International Transfer Frameworks	Integrates interoperable cross-border transfer rules directly into the BTA digital trade chapters (e.g., Cross-Border Privacy Rules / CBPR).	Establishes predictable legal standards for multinational data controllers and processors.
Proportionality-Based Exception Clauses	Clarifies and updates trade exception clauses to explicitly permit legitimate domestic privacy policy objectives.	Prevents abuse of privacy laws as disguised protectionism while preserving genuine regulatory autonomy.

Discussion

1. The Conceptual Friction: Fundamental Right vs. Commercial Commodity

The underlying conflict between personal data protection and bilateral trade agreements stems from a fundamental divergence in legal philosophy. Modern data privacy laws, particularly those modeled after the EU's General Data Protection Regulation (GDPR) and reflected in instruments like Indonesia's Law No. 27 of 2022 on Personal Data Protection, treat personal data governance as an extension of fundamental human rights specifically the rights to privacy and personal autonomy. Under this rights-based paradigm, state intervention is necessary to restrict processing and cross-border transfers to prevent rights violations. Svantesson, D. J. B. (2024).

Conversely, bilateral trade frameworks operate on a commercial paradigm where data is classified as a service vector, asset, or trade commodity. Trade agreements aim to minimize market entry barriers, enforce non-discrimination rules (National Treatment and Most-Favored-Nation status), and ensure the uninterrupted flow of services across borders. Swedish National Board of Trade. (2025). Consequently, when a state enacts domestic laws restricting cross-border data transfers such as requiring prior approval, adequacy determinations, or strict data subject consent trading partners frequently categorize these privacy safeguards as discriminatory non-tariff barriers to trade. This ideological divide creates systemic legal uncertainty, forcing states to constantly justify their fundamental rights protection against international trade obligations. UNCTAD. (2024).

2. Extraterritoriality, Conflict of Laws, and Data Localization

The global nature of digital networks clashes directly with traditional principles of territorial sovereignty. Domestic data protection statutes increasingly assert extraterritorial jurisdiction, applying to offshore entities processing data belonging to domestic residents regardless of where the servers reside. When two nations execute a bilateral trade agreement, these overlapping jurisdictions generate significant conflicts of law for commercial enterprises. Irion, K. (2023).

This jurisdictional friction is most pronounced in the debate surrounding data localization mandates. Host nations frequently mandate that personal data must be stored or processed on local servers, citing cyber sovereignty, effective law enforcement access, and national security concerns. However, modern digital trade chapters routinely prohibit data localization as a condition for conducting business. This paradox leaves multinational entities caught in a regulatory trap: complying with a host state's domestic localization statute risks violating bilateral trade commitments, while adhering strictly to trade liberalizing provisions risks severe administrative penalties and enforcement actions under domestic privacy laws. John, J. (2026).

3. Testing the Limits of General Exceptions: The GATS Article XIV Legacy

Historically, states relied on "General Exceptions" clauses modeled after Article XIV(c)(ii) of the General Agreement on Trade in Services (GATS) to defend domestic privacy protections against trade breach claims. Under GATS Article XIV, a trade restriction is permissible if it is "necessary to secure compliance with laws or regulations, relating to the protection of the privacy of individuals." Kaddorah, A. (2023).

However, applying this legacy exception standard in modern bilateral trade disputes reveals severe legal shortcomings:

a. The High Burden of the "Necessity Test": Dispute settlement panels interpret "necessity" narrowly. A defending state must prove that no alternative, less trade-restrictive measure was reasonably available to achieve its privacy objectives. In practice, satisfying this legal threshold is exceptionally difficult when opposing parties argue that contractual guarantees or technical safeguards (e.g., encryption) could achieve similar protection without restricting data flows.

b. The Chapeau Standards: Even if a privacy measure passes the necessity test, it must satisfy the "chapeau" of Article XIV by demonstrating that the law is not applied in a manner that constitutes arbitrary discrimination or a disguised restriction on international trade. Mitchell, A. D., & Mishra, N. (2023).

Given these stringent legal hurdles, relying solely on legacy WTO-style exception clauses in bilateral trade agreements exposes domestic privacy laws to legal challenge, creating a chilling effect on state regulatory autonomy. Mühlhoff, R., & Ruschemeier, H. (2024).

4. Strategic Pathways for Bilateral Regulatory Convergence

To resolve these legal tensions without compromising either consumer privacy or digital commerce growth, future bilateral trade agreements must transition from confrontational trade exceptions toward proactive regulatory interoperability. OECD. (2025). Modern trade practice highlights three actionable legal mechanisms:

a. Bilateral Adequacy Frameworks and Mutual Recognition: Trading partners should embed expedited adequacy assessment procedures directly within trade agreements. By establishing mutual recognition mechanisms based on shared baseline privacy principles, states can facilitate free data flows while ensuring that data transferred across borders receives equivalent levels of legal protection. Kelsey, J. (2024).
b. Incorporation of International Standards and Certification: Integrating recognized regional and international cross-border privacy mechanisms such as the Global Cross-Border Privacy Rules (CBPR) system or Standard Contractual Clauses (SCCs) into bilateral digital trade chapters provides commercial entities with clear, legal compliance pathways, replacing arbitrary localization requirements with verifiable accountability. Macenaite, M., & De Hert, P. (2024).

Self-Executing Privacy Exceptions: BTAs should replace outdated GATS exception language with explicit digital trade clauses that recognize privacy protection as a legitimate public policy objective (*ratio legis*), granting states broader discretionary latitude to enforce data protection regulations without triggering trade sanctions, provided such laws apply equally to domestic and foreign entities. Mansour, R., & Qadan, S. (2024).

D. Conclusion and Suggestions

1. Conclusion

The intersection of personal data protection and international trade within bilateral trade agreements (BTAs) represents a critical juncture in contemporary jurisprudence. This study demonstrates that the primary legal friction stems from an underlying philosophical divide: domestic data protection frameworks operate on a rights-based paradigm aimed at safeguarding individual privacy and data sovereignty, whereas bilateral trade agreements operate on a market-liberalization paradigm designed to ensure the unimpeded cross-border flow of services and digital commerce.

The key legal challenges identified include fragmented regulatory standards, jurisdictional overlaps resulting from extraterritorial enforcement, and the contentious status of data localization mandates, which trading partners often view as discriminatory non-tariff barriers to trade. Furthermore, the analysis reveals that traditional trade dispute defense mechanisms specifically general exception clauses modeled after GATS Article XIV are increasingly ill-equipped to resolve modern digital trade disputes due to the restrictive interpretation of the legal "necessity test."

Ultimately, failing to reconcile privacy mandates with trade liberalization commitments creates a dual risk: it either leaves domestic privacy rights vulnerable to dilution during cross-

border transfers or subjects commercial enterprises to severe regulatory uncertainty, compliance costs, and potential trade sanctions. Achieving a balance between protecting individual fundamental rights and facilitating international digital commerce is therefore vital for the future of bilateral trade relations.

2. Suggestion

To address these legal challenges and establish a sustainable framework for cross-border data flows, the following measures are recommended:

a. For Policy Makers and Trade Negotiators:
   1) Incorporate Bilateral Adequacy and Mutual Recognition Mechanisms: Future BTAs should explicitly feature streamlined adequacy assessment procedures and Mutual Recognition Agreements (MRAs). Establishing baseline equivalency between trading partners enables secure cross-border data transfers while preserving domestic privacy safeguards.
   2) Modernize General Exception Clauses: BTAs must transition away from outdated WTO-style exception language toward self-executing digital trade clauses. Negotiators should incorporate explicit terms recognizing personal data protection as a legitimate public policy objective, granting states regulatory latitude based on principles of necessity and proportionality rather than strict trade prohibition.

b. For International Regulatory Bodies and Standardizing Organizations: Promote Interoperable Compliance Frameworks: Digital trade chapters in BTAs should integrate internationally recognized mechanisms such as the Global Cross-Border Privacy Rules (CBPR) system and standardized transfer clauses to create unified, verifiable compliance pathways across different legal jurisdictions.

c. For Commercial Enterprises and Corporate Actors: Adopt Proactive Data Governance Frameworks: Businesses engaged in cross-border trade must implement multi-jurisdictional compliance architectures, utilizing Binding Corporate Rules (BCRs) and robust encryption standards to mitigate exposure to conflicting data protection statutes and enforcement risks.

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