

Digital Policy Hub – Working Paper

# Trade in Data: Rapid Flows, Lagging Policy

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# Trade in Data: Rapid Flows, Lagging Policy

Fabrice Blais-Savoie

## Bottom Line Up Front

Data has revolutionized the global economy. Its intangible nature and the central role played by major multinational corporations have propelled its regulation to the global sphere. Three principal regional policies affect Canada's trade-in-data regulatory environment: the World Trade Organization (WTO) Joint Statement Initiative on Electronic Commerce (JSI on E-commerce), the European Union's Data Act and Data Governance Act, and the Canada-United States-Mexico Agreement (CUSMA). The three take slightly different approaches, but they all fall short in recognizing the technical particularities of data that set its trade apart from traditional trade in services. Despite challenges in the global trade environment and pressures from the United States, there is great potential in the current policy environment for developing foundational regulation on trade in data that meets economic goals while also protecting national security and individual rights.

### Key Points

- Data is inherently intangible and transient; its value is in what it captures, not itself. It cannot be regulated as a singular, traditional item.
- Existing policies on data mobility – the CUSMA, the WTO JSI on E-commerce and the European Union's Data Act and Data Governance Act – approach data regulation from an antiquated perspective, but lay some important foundations and provide fora for shaping future regulation.
- The challenges facing the international trade system can be leveraged for developing novel regulation, divergent from traditional policy and more adapted to trade in data's technical constraints.

## Recommendations

- **Recognize the incompatibility of the current trade paradigm with data:** Due to the technical idiosyncrasies of data as well as the regulatory challenges to valuating data, avoid tariffs and border-level restrictions. Take inspiration from existing trade rules in labour rights, environmental rights and telecommunications from the CUSMA.
- **Ensure a secure, free and safe data economy:** Utilize the momentum behind concerns about cross-border “right portability” — a term encompassing the EU concept of “data adequacy” and the WTO's “cross border data rights” — and about national security to mandate the tracking of data sets through metadata and labelling.
- **Prepare for the evolving trade ecosystem and looming negotiations:** During the CUSMA review and in WTO negotiations, leverage the United States' interest in controlling data flows to China as an avenue for broader regulation on rights and data. As was the case with goods in the 1940s, the first — critical — step is the establishment of technical and bureaucratic capacity upon which to build value-based rules.



# Introduction

Data has revolutionized, and will continue to revolutionize, the economy. Between 2010 and 2022, the information and communication technology (ICT) services sector has grown almost twofold (World Bank 2024, 26), while exports in digital services have grown almost two and a half times.<sup>1</sup> In the coming decade, with the advent of artificial intelligence, this sector is set to grow even faster (Organisation for Economic Co-operation and Development [OECD] 2024, chapter 2). Despite pressing domestic challenges facing governments attempting to protect their citizens' privacy while ensuring they benefit from the productivity gains, the intangibility of data has propelled its regulation to the international sphere. The advent of the data economy has also precipitated an ongoing shift away from trade in goods toward trade in services. The Bretton-Woods system, the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) were all designed in a context of containers and physical shipments. How can policies adapt to leverage the data economy? To answer this question, this working paper will define the data economy, separate from the service economy and the digital economy. It will then provide a short overview of current multinational regulatory initiatives and highlight the barriers to policy change that exist both internationally and in North America. It will conclude with recommendations targeted at enabling the cooperation required for governing trade in data. It will be made clear that the current approach of regulating data as a typical service poorly accounts for data's unique structure and value.

## The Data Economy

Before discussing the data economy, it is necessary to disaggregate it from the services economy and the digital economy. These three economies overlap and cascade: the data economy is a subdivision of the digital economy, which is itself a segment of the services economy (see Figure 1). Thus, the data economy obviously includes data storage and computing services, but also cryptocurrencies, financial prediction and modelling tools, as well as knowledge and digital education (examples from OECD 2022).

As economies (services, digital, data) increase in specificity, they also increase in divergence from the traditional trade ecosystem. The traditional goods-based system, governed by the GATT, expected a clear physical link between the provider, the product and the consumer, and all three to exist within the borders that would be crossed. Trade in services departed from this by suggesting that the product could be intangible, but both the provider and the consumer had a physicality; its regulation came with the establishment of the WTO, following the Marrakesh Agreement.<sup>2</sup> Then, the digital economy further pushed the concept of trade in services, widening the distances between provider and consumer and growing its scale (Nicholson and Noonan 2014; Ahmedov 2020). Regulation followed, slowly, mostly in regional agreements (Meltzer 2019). The data economy has further widened this distance and done away with the

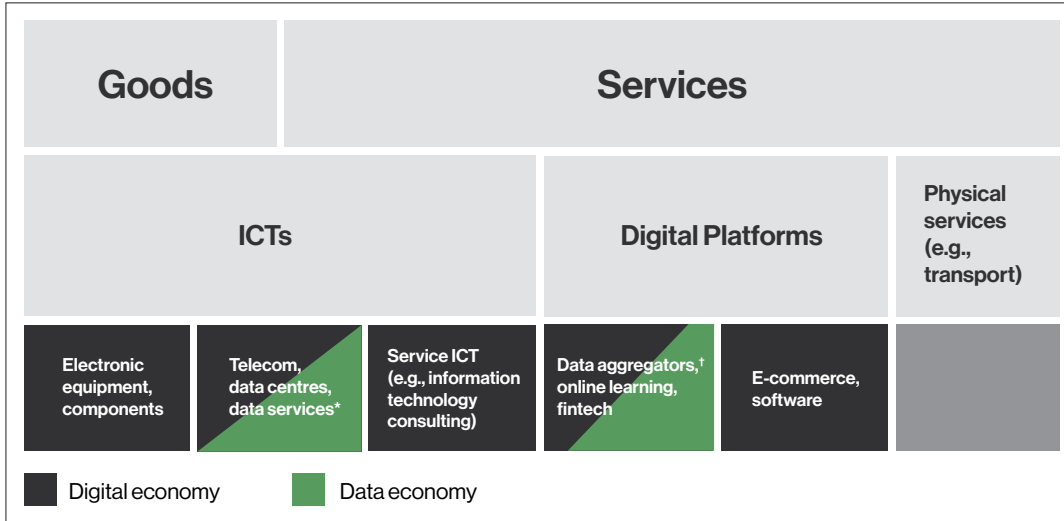
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<sup>1</sup> See [https://data360.worldbank.org/en/indicator/UNCTAD\\_DE\\_DIG\\_SERVTRADE\\_ANN\\_EXP](https://data360.worldbank.org/en/indicator/UNCTAD_DE_DIG_SERVTRADE_ANN_EXP).

<sup>2</sup> *Agreement Establishing the World Trade Organization*, 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995).

concept of producer; all are producers, all are consumers, the same product can be used by all, repeatedly: data is the ultimate non-rival product (Jones and Tonetti 2020).

Figure 1: The Data Economy



Source: Author, inspired by World Bank (2024, figure 2.1).

Notes: \*Includes compute services, algorithms, database designs, etc.; †includes social media, search engines, web crawlers, etc.

Much of the digital economy can be managed by rules of trade in goods or services. Overly simplified: e-commerce vendors or platforms — such as Amazon — mostly deal with packages; software and information technology consulting are effectively traditional services, where one act or licence is exchanged for a fee. Data is different. It has no inherent value: each data set is unique and must be contextualized and transformed. It serves as the foundation for services, which can be granted without the data ever commercially crossing a border.

## International Policy Landscape

Despite the novelty of the data economy, some policy exists internationally, mostly limited in scope to plurinational, not international, agreements. For Canada, the most notable policies are the WTO Joint Statement Initiative on Electronic Commerce (JSI on E-commerce),<sup>3</sup> the European Union’s Data Act and Data Governance Act (collectively, EU data acts<sup>4</sup>), and the Canada-United States-Mexico Agreement (CUSMA).<sup>5</sup> Globally, a few other policies exist, such as the Digital Economy Partnership Agreement between Chile,

3 WTO, *Joint Statement Initiative on E-commerce: Stabilized Text* (5 December 2024), WTO Doc WT/GC/W/955 [JSI on E-commerce], online: <[www.wto.org/english/tratop\\_e/ecom\\_e/joint\\_statement\\_e.htm](http://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm)>.

4 See, respectively, EU, *Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act)* [2023] OJ, L 2023/2854, online: <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202302854](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302854)>; *Regulation (EU) 2022/868 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act)* [2022] OJ, L 2022/152, online: <<https://eur-lex.europa.eu/eli/reg/2022/868/oj>>.

5 *Agreement between the United States of America, the United Mexican States, and Canada*, 1 July 2020, Can TS 2020 No 15 [CUSMA], online: <[www.canlii.org/en/ca/laws/stat/sc-2020-c-1/latest/sc-2020-c-1.htm](http://www.canlii.org/en/ca/laws/stat/sc-2020-c-1/latest/sc-2020-c-1.htm)>.

New Zealand and Singapore, which mandates data flows but allows for considerable domestic restrictions; the African Union’s Digital Transformation Strategy, which provides limited implementation details but emphasizes right-based ideals and capacity development; and the G7/G20 Data Free Flow with Trust initiative, which sets ambitious, voluntary, goals for global cooperation but has stagnated since its adoption in 2020. While these latter three policies may hold some insight into different approaches, they will be omitted for brevity and to maintain the focus on the Canadian case.

While the three policies selected are diverse in scope and type, they also provide a useful overview of different regional approaches: the CUSMA covers North America; the EU acts cover Europe and “adequate third countries,” including Canada; and the WTO agreement, although initiated by Singapore and Australia, covers the Global South, particularly Asia. Furthermore, despite these policies all generally aiming to promote digital trade, their approach to data mobility differs (see Table 1). The EU acts put a strong emphasis on rights and regulating large players, while the CUSMA prohibits most types of market intervention, and the WTO JSI provides guidance for development and cooperation. Nevertheless, in all three cases, trade in data is generally treated as traditional trade. The EU acts, while not trade agreements per se, have the most comprehensive approach, including regulation on data marketplaces and data mobility, but neither act discusses the particularities of data localization and usage such as geo-redundant storage, distributed computing and inference<sup>6</sup> (Canadian Centre for Cyber Security 2020; Amazon Web Services, n.d.). This means that little policy exists on how to treat data existing in multiple jurisdictions, how to value data or how to manage data derivatives.

**Table 1: Major Data Mobility Policies Affecting Trade in Data by Common Aspects**

Agreement	Prohibits Customs Duties?	Rights Portability?	Mandates Data (Re-)sale?	Data Ecosystem Interoperability?	Implementation Support?
WTO JSI on E-commerce	✓	✓	✗	✓	✓
EU data acts	✗ *	✓	✓	✓	✗
CUSMA	✓	✗	✗	✓ †	✗

Source: Author.

Notes: \*“The EU is in favour of permanently prohibiting customs duties on electronic transmission” (European Commission 2025a). †Only for public telecommunication services.

## WTO E-Commerce

The WTO’s JSI on E-commerce is likely the most ambitious initiative for regulating the digital economy. However, despite being a WTO initiative, it does not have buy-in from all members. The stabilized text proposal, from February 2025, only had 71 co-sponsors, a step down from the peak of 91 discussion participants, which itself only represented

<sup>6</sup> Inference allows the creation of a secondary data set from one or multiple unrelated data sets, for example, GDP being inferred from Google trends (Woloszko 2024), and pregnancy status being inferred from purchase history and demography (Duhigg 2012).

54 percent of WTO members.<sup>7</sup> The associated information booklet also explicitly acknowledges cross-border data flows as an outstanding issue to be discussed further.<sup>8</sup> Nevertheless, while its central aim is not trade in data, the JSI sets forth two notable rules: it prohibits customs duties (tariffs) on “electronic transmissions” (article 11.3), and it explicitly permits data rights to apply on cross-border transfers, akin to the EU data adequacy rules (article 25; hereinafter referred to as “right portability”).<sup>9</sup> The outright prohibition of customs duties is a departure from traditional WTO texts, which merely encouraged a reduction of duties and the removal of “high tariffs.”<sup>10</sup> The inclusion of right portability is key to enabling trade in data, as sovereignty and geography quickly become meaningless when data travels, is fragmented and transformed, or repackaged. This principle somewhat mirrors the way manufacturers currently produce an item in one country and label it according to rules in multiple market countries. Inversely, in the case of data, it would be labelled with metadata (“tagged”) where it is produced and then stored in any country with the appropriate rights carried along. This approach bypasses some of the concerns associated with the intangibility of data but can only be applied if countries agree to enforce the “tagging” in their domestic data centres and data markets. This need for enforcement makes a global initiative through the WTO invaluable. Even if more lenient, it could mandate the technical foundation upon which countries could then build rules.

## EU Data Act and Data Governance Act

The European Union’s Data Act and Data Governance Act are the most thorough pieces of plurinational trade in data regulation. Complementary to the personal data-focused General Data Protection Regulation (GDPR), they regulate the use and sharing of commercial data. They mandate data sharing between companies (with some exceptions) and prohibit the creation of barriers by data providers (e.g., proprietary standards, fees). Most interestingly, the Data Governance Act establishes the concept of data markets as “data intermediaries,” designing a de facto certification system for companies. Through this certification process, it mandates neutrality, forbidding data markets from utilizing the data on their marketplace for purposes other than sale, and ensures interoperability between platforms.<sup>11</sup> These steps are prerequisites for the creation of a reliable global data market and mirror similar steps leading to the boom of stock exchanges during the nineteenth century (Michie 2006, chapters 3, 4). These data marketplaces also minimize enforcement costs by allowing a burden sharing between the public and private sectors.

## CUSMA

The CUSMA, at the time of its adoption, pushed trade regulation of emerging economic sectors to an unprecedented level. From labour rights (e.g., sectoral minimum wage)

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7 See [www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm); *JSI on E-commerce*, *supra* note 3.

8 See [www.wto.org/english/tratop\\_e/ecom\\_e/information\\_on\\_agreement\\_ecom.pdf#page=12](http://www.wto.org/english/tratop_e/ecom_e/information_on_agreement_ecom.pdf#page=12) at paragraph 4.27.

9 *JSI on E-commerce*, *supra* note 3.

10 See WTO (2001, paragraphs 16, 50, 31(iii)); *General Agreement on Tariffs and Trade*, 15 April 1994, 1867 UNTS 187, 33 ILM 1153 (entered into force 1 January 1995) [GATT 1994], art. XXVIII bis, online: <[www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art28\\_bis\\_oth.pdf](http://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art28_bis_oth.pdf)>.

11 *Data Governance Act*, *supra* note 4, chap. 3.

to competition rules and environmental rights (Gagné and Rioux 2022, chapters 1, 9, 10, 11), its trade-level regulation of national concerns provides a useful template for the data space. Furthermore, the agreement’s relevance both in the North American context studied here and in the current trade debates between Canada and the United States make it a mandatory inclusion. However, despite its lauded innovations, it remains much more sparse in discussing the data economy than the other two policies discussed here. Nevertheless, the agreement’s chapters 18 (“Telecommunications”) and 19 (“Digital Trade”) provide explicit guidance for “value-added services” in the data space. They strictly mandate the free flow of commercial data and prohibit data localization requirements. Interestingly, the agreement’s rules on value-added data services clash directly with the EU Data Act. While the European Union mandates very large providers to sell some types of data to small companies at cost, the CUSMA explicitly prohibits any requirement that a company “cost-justify its rates.”<sup>12</sup> Overall, the CUSMA puts a strong emphasis on free flows, minimizing barriers and preventing government intervention. This hands-off approach has allowed the agreement to remain mostly relevant, if limited in its application. An update will be necessary to prevent data misuse and to design more specific enforcement and tracking mechanisms.

## Challenges, Barriers and Pressures

### The Second Trump Administration

President Donald J. Trump’s administration has been particularly vocal about its perceived unfairness of existing trade rules (see, for example, Trump 2025a, 2025c; The White House 2025b). While its demands have focused heavily on trade in goods, it has shaken trust in the entire system and the United States’ important trade in services export surplus is certain to be a major point of tension with many of its partners during negotiations (Bickenbach, Görg and Liu 2025; Evenett 2024). Furthermore, the administration has pressured partners, notably Canada, to remove barriers to digital trade (European Commission 2025b; The White House 2025a; Department of Finance Canada 2025), and, despite its earlier commitment to the negotiations, the United States has opted not to join the WTO stabilized texts on e-commerce (although this was during the Biden administration; see Horseman 2024).

While the Trump administration’s departure from traditional American approaches to trade complicates foresight, its policy proximity to Project 2025 — a comprehensive report providing guidance for a 2025 Republican presidency to consolidate executive power, drafted by the Heritage Foundation (Dans and Groves 2023, 21; Sheppard Sellam 2025) — and the recent consultations on the CUSMA provide some insight. In Project 2025, data rules are mostly addressed from a security and intelligence perspective. In the chapter on intelligence, Dustin J. Carmack (2023) points to Executive Order 14086 — the order instating the Data Protection Framework (DPF) to align US rules with the GDPR — as an explicit example of the United States capitulating to EU pressures. Carmack also explicitly states that data flows to Russia and China should be tightened (*ibid.*, 226).

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<sup>12</sup> CUSMA, *supra* note 5, art. 18.14.2.b.ii.

Since entering office, the Trump administration has been relatively quiet on the topic of data flows but has asked for “a review of all Biden national security decisions within 45 days, including the DPF” (Wulff Wold 2025). Although this review started on January 20, 2025 (Trump 2025b), as of early March 2026, the outcome remains unknown and the DPF remains in force. While the relative discretion of the DPF might have saved it, the high-profile CUSMA review is unlikely to get a pass. The publicly released contributions to the American consultation on the CUSMA review, while not official government statements, provide some insight into the Washington perspective. The Information Technology and Innovation Foundation echoes Project 2025 language by emphasizing the importance of data free flow and the rejection of “digital sovereignty” (Balbontin and Ezell 2025), while the Center for Strategic and International Studies expects intense discussions on the digital trade chapter (Bitar, Hernandez-Roy and Wayne 2025). In sum, the Trump administration appears likely to double down on the current pro-market design of the CUSMA, while proposing additional measures related to flows with China.

## Bruised Multilateral Trade Instruments

Beyond the challenges brought by the Trump presidency, the international trade system has been limping along for a few years (Goldberg and Reed 2023). The WTO dispute resolution system has been hindered by the lack of its Appellate Body, despite an attempt by 18 members (excluding the United States) to develop a replacement,<sup>13</sup> and the number of regional agreements rising rapidly while the Doha Round has failed to progress meaningfully.<sup>14</sup> The increasing emphasis given to security and sovereignty, while damaging for the WTO environment, provides an important momentum for negotiating rules of trade in data, with a focus on transnational rights. As it did with previous trade rules, the WTO can create a global minimum, upon which other rules can be designed (most explicitly for intellectual property; see, for example, Kur 2016; Lester 2011).

# Governing Trade in Data’s Technical Idiosyncrasies

Neither treating data as purely a rights and sovereignty concern — as the United States and the European Union have done — or as purely a trade concern — as the WTO and the CUSMA have done — can provide a satisfactory regulatory answer. While the United States’ concerns over data misuse by adversaries may be justified, its emphasis on security leaves the actual trade of data vulnerable. The current wording used in both the CUSMA and the United States’ negotiations with the European Union imply a plan to treat data as similar to other services, where the product is singular and traded as such. Similarly, the European Union, despite the greater thoroughness of its Data Act and Data Governance Act, treats data as a singular item, with privacy risks, and data markets as auction houses where data points are exchanged, rather than seeing data as a transient set. Nevertheless, the European Union recognizes and attempts to tackle the challenges

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<sup>13</sup> See [www.wto.org/english/tratop\\_e/dispu\\_e/mpia\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/mpia_e.htm).

<sup>14</sup> See <https://rtais.wto.org/UI/Charts.aspx>; [www.wto.org/english/tratop\\_e/dda\\_e/update\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/update_e.htm).

emerging from the extreme concentration of the data economy and its capture by a few corporations.<sup>15</sup>

The tendency of current regulation to treat data as a relatively traditional service is a major weakness. Data does not necessarily need to cross borders for its value to be traded. The original data collected might be transformed several times before usage, and the same data set may exist in multiple locations simultaneously, in whole or fragmented. These technical particularities may make the current regulations ineffective as they mostly treat data as a singular product. One data transaction may or may not involve data movement, from one or multiple jurisdictions, and it may or may not involve the sharing of the original data. Therefore, technical measures must be taken to ensure that rules can follow data and the appropriate rights and controls can be enforced.

## Conclusion

The regulation of trade in data remains marginal, but the push for digital trade has provided it with attention. As it stands, different ecosystems appear to be emerging, with little consensus, creating siloes. The regulation must refocus to tackle data's unique nature. Diverging interests mean that a single ecosystem is unlikely, but rules on how data is tracked beyond transformation must be established.

If the CUSMA is renegotiated — rather than reviewed — in 2026, or within the WTO negotiations, Canada must strive to develop rules on data identification as a first step for ensuring right portability and allowing for regulation to apply to data as it is splintered, transformed or computed.

## Recommendations

- **Recognize the incompatibility of the current trade paradigm with data:** Due to the technical idiosyncrasies of data as well as the regulatory challenges to valuating data, avoid tariffs and border-level restrictions. Take inspiration from existing trade rules in labour rights, environmental rights and telecommunications from the CUSMA.
- **Ensure a secure, free and safe data economy:** Utilize the momentum behind cross-border right portability<sup>16</sup> and national security concerns to mandate the tracking of data sets through metadata and labelling.
- **Prepare for the evolving trade ecosystem and looming negotiations:** During the CUSMA review and in WTO negotiations, leverage the United States' interest in controlling data flows to China as an avenue for broader regulation on rights and data. As was the case with goods in the 1940s, the first — critical — step is the establishment of technical and bureaucratic capacity upon which to build value-based rules.

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<sup>15</sup> See Ciuriak (2020); [www.un.org/fr/desa/data-economy-path-prosperity-or-dystopian-future](http://www.un.org/fr/desa/data-economy-path-prosperity-or-dystopian-future).

<sup>16</sup> In the European Union, "data adequacy"; in the WTO, "cross border data rights." See the "WTO E-Commerce" section of this working paper, above, for further details.

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