



**Asia-Pacific
Economic Cooperation**

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Summary Report - Digital Trade Policy Dialogue



**Digital Trade Policy Dialogue
18 May 2021**

Summary of the Digital Trade Policy Dialogue
May 17/18, 2021
Webex Event

On the margins of the Second Senior Officials' Meeting (SOM 2), the United States with support of New Zealand held a Digital Trade Policy Dialogue on the margins of APEC's Committee on Trade and Investment meeting. This Dialogue covered key issues including cross border data flows, data transfer mechanisms and their impact on these data flows, and the role of trade agreements in addressing issues surrounding digital trade and e-commerce.

The event opened with welcome remarks from Carrie Esko, the Director for APEC Affairs at the Office of the United States Trade Representative (USTR), and Peter Martin, the Lead Adviser for APEC New Zealand at the New Zealand Ministry of Foreign Affairs & Trade. Both emphasized the critical role that cross border data flows play in business and commerce. They also stressed the need for open and secure data flows to support a digitally enabled recovery from the COVID-19 pandemic, emphasizing the crucial role of organizations like APEC to foster shared understandings of these issues.

Panelists in the first session focused on the growth of cross-border data flows and its role in the development of new technologies. Michael Di-Paula Coyle, Head of International Trade Policy at IBM, described the development of emerging technologies like Artificial Intelligence and Quantum Computing, and that restrictive measures like data localization and high ICT tariffs are a hindrance to open and secure cross border data flows. He called upon APEC to ensure that the right policies are in place to build trust and confidence among stakeholders. In addition, Eunice Huang, Head of Asia Pacific (APAC) Trade Policy at Google, spoke about the critical role of cross border data flows in collecting data for the development of new technologies such as machine learning. Ms. Huang highlighted the technology's application in translation functions, which can facilitate outreach from businesses to consumers located overseas, and in medicine, where machine learning has been used to forecast COVID-19 outbreaks and monitor vaccine rollout. Participant feedback included questions surrounding the impact of restrictions on cross border data flows on different types of businesses, especially MSMEs, as well as the examination of regulatory frameworks and cooperation on AI.

Session 2 highlighted various data transfer mechanisms and their impact on cross-border data flows. The session opened with Javier Lopez Gonzalez, Senior Trade Policy Analyst & Senior Economist at the Organization for Economic Co-operation and Development (OECD), who provided an overview of the various approaches economies are taking to manage cross border data transfers and minimize the growing patchwork of rules and regulations. These approaches include plurilateral arrangements, like non-binding arrangements (OECD Privacy Guidelines), trade agreements (USMCA), and unilateral mechanisms (standard contracts), which have seen a rise in complementarity and commonalities between them, as well as convergence, where these instruments combine both data flow provisions with minimal regulation and robust privacy requirements. Christopher Hoff, Deputy Assistant Secretary at the US Department Commerce, then emphasized interoperability and security as top US priorities for data flows. He reaffirmed the critical role of APEC, citing data transfer mechanisms such as the APEC Cross Border Privacy Rules (CBPR) system as an example in which APEC can strengthen the data ecosystem and harmonize legal and regulatory frameworks. Evelyn Goh, Director of International Policy and Strategy at Infocomm Media Development Authority in Singapore, continued the conversation by discussing the various ways in which economies can facilitate these cross-border flows and minimize

uncertainty among private and public sector stakeholders. Ms. Goh examined Singapore's approach to enabling trusted data flows where Singapore leverages instruments like multilateral agreements, such as the APEC CBPR system, and bilateral cooperation tools, such as Memorandums of Understanding (MOU) between economies. These instruments aid in harmonizing the regulatory framework and thus minimize uncertainty for businesses operating in multiple jurisdictions. She also discussed the wider ASEAN regulatory framework, calling for an emphasis on contractual tools like model contractual clauses, which are a baseline set of contractual clauses for transferring data in ASEAN, as well as certifications, which can verify if a business is certified in a specified data protection standard. These certifications create trusted flows of personal data within ASEAN and a valid legal basis for personal data transfer.

Georgetown Law professor, Anupam Chander, followed up by delving into shortcomings of the General Data Protection Regulation (GDPR), a regulation in EU law on data protection and privacy. Professor Chander elaborated on the high variable costs that governments and businesses must pay for both the compliance to and enforcement of cross border data transfers. He pointed to the EU-US Privacy Shields and EU-Japan Adequacy Decisions as models for interoperability because they offer choice, promote accountability, and provide additional safeguards for sensitive data. The session ended with a brief word from Osamu Onodera, Senior Official and Deputy Director-General for Trade Policy at Japan's Ministry of Economy, Trade and Industry, who noted the importance of cross border data flows, underlined the concept of "data free flow with trust", and reaffirmed APEC's role as an incubator of ideas and contributor to consensus building.

The third and final panel examined how current trade agreements address issues surrounding digital trade and e-commerce, and how APEC can play a facilitative role. Amy Stuart, Director of WTO E Commerce at Australia's Department of Foreign Affairs and Trade, deliberated on how both businesses and consumers have a vested interest in data protection standards. Free trade agreements that incorporate rules such as data source code protection or digital interoperability give consumers more choices on payment options in addition to protecting businesses' privacy and intellectual property, leading to more connectivity and open trade. Tetsuya Watanabe of the Japan-based Research Institute of Economy, Trade, and Industry (RIETI) highlighted how strategic competition and geopolitical tensions have led to restrictive regulations and technological decoupling, resulting in a fractured and digitally divided global economy. APEC has a key role to play in convening officials, businesses, consumer groups, and specialists from various backgrounds to help governments balance privacy, intellectual property, consumer protection, and competition policy with innovation. Next steps include holding a second digital trade policy dialogue on the margins of the APEC Third Senior Officials' Meeting (SOM 3), where APEC can continue to discuss these issues to promote the facilitation, harmonization, and security of cross-border data flows.