

ETNO Reflection document on Data Flows in Trade Agreements

Brussels, June 2017

ETNO members support the inclusion into Trade Agreements of provisions to ensure the flow of data across international borders. Indeed, it is widely^{1,2} acknowledged that without data flows today's trade would simply not be possible; the same applies to some of the modern digital solutions offered by ETNO members such as cloud and IoT services.

ETNO members welcome the recent EC Communication "Exchanging and Protecting Personal Data in a Globalised World"³, which acknowledges that "*From its inception, EU data protection legislation has provided several mechanisms enabling international data transfers. The primary purpose of these rules is to ensure that when the personal data of Europeans are transferred abroad, **the protection travels with the data.***" - a fundamental principle that ETNO supports.

The position of ETNO members is that data flow provisions in the context of a trade agreement must pursue the following objectives: (1) allow the flow of data with commercial partners; (2) avoid protectionist measures that could hamper the flow of data; (3) ensure that EU trade partners take a serious commitment applying the highest standards in the protection of personal data, respecting the other partner's privacy framework.

When drafting and negotiating texts on data flows as part of trade agreements, it is of utmost importance to ensure the elimination of any forms of barriers, either data or physical infrastructure localization obligations. At the same time, it is essential that local privacy frameworks are fully respected by international service providers: a law that protects personal data and treats equally all service providers – local and foreign –, cannot be regarded as a protectionist measure. It is also important to note that the levels of privacy protection cannot be bargained in the context of a Trade Agreement: the purpose of data flow provisions in these types of deals has the sole objective of ensuring a proper framework for the flow of data across borders, in line with the respective mandates given to the European Commission by the European Council.

Finally, to ensure trust in the digital economy, EU and its Trade Partners should pursue a common understanding on data privacy, recognizing industry best practices and frameworks for the movement of data and working to make them interoperable, collaborating in international fora to develop a global framework for data flows across borders.

¹ "Digital globalization: The new era of global flows", McKinsey Global Institute, February 2016

² "No Transfer, No Trade", National Board of Trade, 2014

³ "Exchanging and Protecting Personal Data in a Globalised World", European Commission, Feb 2017