



New opportunity for Indo-Pacific digital trade

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Key points

- There is a new opportunity for Quad countries to establish rules for free and trusted digital trade, among themselves and within the Indo-Pacific.
- Responses to the Indo-Pacific Economic Framework (IPEF) and APEC Cross-Border Privacy Rules (CBPR) have been muted.
- But recent domestic developments in Quad countries, especially India, have reduced the obstacles to the adoption of the Data Free Flow with Trust (DFFT) concept.

Policy recommendations

- Jointly develop principles and standards for DFFT, building on efforts such as G7 Digital Trade Principles.
- Establish expert working groups to examine interoperability of data/privacy regimes.
- Leverage Quad trade dialogues to advocate for DFFT provisions in bilateral and regional trade agreements over the next one to two years.

Digital trade and the Quad

The Quad should support the development of rules that enable the free flow of trusted data in the Indo-Pacific. This would accord with the Quad's emergence as a *de facto* technology alliance¹ as well as with its role in supporting inclusive connectivity, developing rules that are fair and robust, and providing public goods.² Encouraging middle power participation would increase the size of the digital network, lowering costs and increasing prosperity. This would also counter the false narrative that the Quad's goal is 'China containment only'.

The development of regulations for digital trade in the Indo-Pacific has been hampered by competition between countries, regional blocs and institutions. The rules for Cross-Border Data Transfers (CBDT) in the region are balkanised.³ Responses to the Indo-Pacific Economic Framework (IPEF) and APEC Cross-Border Privacy Rules (CBPR) have been muted.⁴ However, recent regulatory changes in Quad states have created a new opportunity to advance this agenda.

Data Free Flow with Trust (DFFT)

The DFFT concept is intended to enhance cross-border data flows while allowing states to continue protecting personal and sensitive data. DFFT does not seek to harmonise or bypass existing laws; rather, each country explains its own rules in a way that is understandable to the others and defines what is needed for interconnection. DFFT is supported by the OECD's metrics-based evidence gathering for standards and best practice. It has been infused into numerous trade agreements, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP). The G7 Vision

for Operationalising DFFT was released in 2023 and the Ministers' Declaration endorsed the establishment of the Institutional and Arrangement for Partnership (IAP), backed by the Global Data Alliance.⁵ DFFT is continuously evolving to meet data-sharing needs and enable CBDT.

DFFT and regulatory evolution in Quad countries

Japan and Australia

Japan was the first to champion DFFT and did so as an outward-facing policy. Japan's domestic institutions and policies, such as Digital Transformation (DX) and the Digital Agency and Personal Information Protection Commission (PIPC) are now less of a hindrance, and the PIPC is removing stovepipes that had fragmented Japan's domestic digital ecosystem⁶.

The Australian Government has also made substantive progress on making data more open and accessible. Australia's data security policies are consistent with DFFT. Consequently, a Japan-Australia DFFT framework has been achievable for some time.

The United States

United States (US) hesitancy about DFFT has waned. Washington's regulatory approach is largely defined by its market-led data protection policy, which does not view privacy as a fundamental right. It would be helpful if the US had a national data privacy-security law. Yet, according to one former official, this is not a barrier to DFFT as "the US already regulates the core sectors deemed essential"⁷. This is evident in the 2022 US-Japan Digital Free Trade Agreement (DFTA), which accommodated Washington's preference for "sufficient and reasonable" data protections by balancing the "free-flow" with "trust"⁸. DFFT is therefore compatible with the US approach to digital trade.

India

Recent reforms have reduced barriers to Indian adoption of DFFT. The fourth iteration of the draft Digital Personal Data Protection Bill (DPDP Bill) is on Parliament's 2023 monsoon session agenda⁹. The amended DPDP Bill allows for the transfer of personal data outside India. The references to "friendly relations with foreign States" in the legislation would give New Delhi the power to specify countries where the personal data of Indians can reside¹⁰. Also, following stakeholder feedback, a revised version of the CBDT Bill was released in March 2023 that could include an "allowed-by-default model"¹¹. Ambiguities remain in the DPDP Bill with respect to permissions and the central government's "extensive powers"¹². It nevertheless signals New Delhi's new openness to CBDT and could provide a strong legal basis for digital trade within the Quad.

The way forward

To capitalise on this new opportunity, the Quad members should jointly develop a set of principles and standards for data governance, building on efforts such as the G7 Digital Trade Principles. They should then establish an expert working group to examine interoperability of data/privacy regimes. Subsequent Quad dialogues should be leveraged to advocate for DFFT provisions in bilateral and regional trade agreements. Model contract clauses and compliance tools that companies can use to ensure responsible CBDT should then be developed. Quad countries could then establish one to two pilots for mutual recognition frameworks for data protection certification mechanisms and regimes. At the same time, the Quad should promote the adoption of international data transfer mechanisms such as APEC's CBPR. These developments should be backed by funding for training programs, exchanges and technical assistance to support DFFT capacity building in emerging economies. Finally, Quad working groups would be leveraged to advocate for interoperable norms on emerging tech such as the Internet of Things (IoT) and artificial intelligence (AI).

Conclusion

The Quad states' regulatory stances are closer in alignment than before, making a DFFT-CBDT arrangement not only desirable, but also feasible. As data and emerging technologies transform governance and society, the Quad's technology remit is increasingly its core value proposition. I propose that Quad members should pursue agreements that enhance trust in digital trade, including the strengthening of its wider diplomatic goals. To achieve this, mutual recognition of heterogeneous data regimes and cooperative approaches is paramount.

About the author

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About this paper

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About the Quad Tech Network

The Quad Tech Network (QTN) is an initiative of the NSC, delivered with support from the Australian Government. It aims to establish and deepen academic and official networks linking the Quad nations – Australia, India, Japan, and the United States – in relation to the most pressing technology issues affecting the future security and prosperity of the Indo-Pacific.

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Notes

- ¹ The White House, “FACT SHEET: Quad Leaders’ Tokyo Summit 2022”, May 23, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-quad-leaders-tokyo-summit-2022/>.
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- ³ UNCDF, “The role of cross-border data flows in the digital economy”, *UNCDF Policy Accelerator*, June, 2022, <https://policyaccelerator.uncdf.org/policy-tools/brief-cross-border-data-flows>.
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