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**G20 MAKES DECLARATION OF ‘DATA FREE
FLOW WITH TRUST’: SUPPORT AND
DISSENT**

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G20 makes declaration of 'Data Free Flow With Trust': *Support and dissent*

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Since he introduced the term at the January 2019 Davos World Economic Forum, Japanese Prime Minister Abe has hoped to make the concept of 'Data Free Flow with Trust' (DFFT) one of the centerpieces of Japan's hosting of the 2019 G20 Leader's Summit in Osaka, Japan. The Summit on 28-29 June 2019 produced two declarations which may have a long-term effect on global data privacy rules, but their significance is far from certain due to their vague terms, and to the number of significant countries that are as yet staying outside of the processes that have been established.

The *G20 Osaka Leaders' Declaration*,¹ endorsed by all G20 leaders, includes a section 'Innovation: Digitalization, Data Free Flow with Trust' (arts.10-12, 3 of 43), is very bland, but refers to the challenges of data privacy in the context of IP rights and cybersecurity:

Cross-border flow of data, information, ideas and knowledge generates higher productivity, greater innovation, and improved sustainable development, while raising challenges related to privacy, data protection, intellectual property rights, and security. By continuing to address these challenges, we can further facilitate data free flow and strengthen consumer and business trust. In this respect, it is necessary that legal frameworks, both domestic and international, should be respected.

It also says that the leaders 'commit to a human-centered approach to AI, and welcome the non-binding *G20 AI Principles*,² drawn from the Organization for Economic Cooperation and Development (OECD) *Recommendation on AI*.' The OECD AI recommendations³ have been criticised as too narrow.⁴

The *Osaka Declaration on Digital Economy*⁵ was made by 24 countries, including the US, China, Russian, the EU, Latin American and east Asian countries.⁶ However four potentially significant countries did not participate: India, Egypt, Indonesia and South Africa. The Osaka Declaration was downgraded to a secondary event in order to avoid singling out the four countries that had yet not signed on, according to Japanese diplomatic sources.⁷ The

¹ *G20 Osaka Leaders' Declaration*, June 2019
<https://g20.org/pdf/documents/en/FINAL_G20_Osaka_Leaders_Declaration.pdf>

² *G20 AI Principles*, Annex to Minister Statement on Trade and Digital Economy, June 2019 <https://g20trade-digital.go.jp/dl/Ministerial_Statement_on_Trade_and_Digital_Economy.pdf>

³ OECD Principles on Artificial Intelligence, 22 May 2019 <<https://www.oecd.org/going-digital/ai/principles/>>

⁴ Roger Clarke 'Evaluation of the OECD's AI Guidelines' (Draft, 22 May 2019) <<http://www.rogerclarke.com/EC/AI-OECD-Eval.html>>

⁵ Osaka Declaration on Digital Economy <https://www.meti.go.jp/press/2019/06/20190628001/20190628001_01.pdf>

⁶ Argentina, Australia, Brazil, Canada, China, the European Union, France, Germany, Italy, Japan, Mexico, Republic of Korea, Russian Federation, Saudi Arabia, Turkey, United Kingdom, United States, Spain, Chile, Netherlands, Senegal, Singapore, Thailand, and Viet Nam.

⁷ Satoshi Sugiyama 'Abe heralds launch of 'Osaka Track' framework for free cross-border data flow at G20' *The Japan Times*, 28 June 2019, <<https://www.japantimes.co.jp/news/2019/06/28/national/abe-heralds-launch-osaka-track-framework-free-cross-border-data-flow-g20/>>

signatories declared the launch of the 'Osaka Track', described as 'a process which demonstrates our commitment to promote international policy discussions, *inter alia*, international rule-making on trade-related aspects of electronic commerce at the WTO'. They confirmed their 'commitment to seek to achieve a high standard agreement with the participation of as many WTO Members as possible', noting that 78 WTO Members are 'on board' with the Joint Statement on Electronic Commerce issued in Davos on 25 January 2019. They resolved to aim for substantial progress in the negotiations by the 12th WTO Ministerial Conference in June 2020. Abe has announced Japan will organize a meeting of 'Osaka Track' participants, possible as early as July 2019.⁸

India is refusing to support this Davos e-commerce initiative, its Commerce and Industry Minister, Piyush Goyal, arguing in Osaka that 'developing countries need time and policy space to build deepest understanding of the subject and formulate their own legal and regulatory framework before meaningfully engaging in e-commerce negotiations'.⁹ Goyal reiterated India's policy favouring data localisation, reflecting the Modi government's policy that data is a national asset, not primarily an individual right, as set out in its draft e-commerce policy.¹⁰

With attention now turning to the WTO, three countries, Chile, New Zealand and Singapore, have announced a new set of trade negotiations, the Digital Economy Partnership Agreement (DEPA), at the June APEC meeting. Their joint Ministerial statement said¹¹ that, as 'small, outward facing, trade dependant countries', they sought to 'establish new international approaches for digital trade issues' including cross-border data flows. They said that 'this new agreement will generate new ideas and approaches that can be used by members in the WTO negotiations'.¹²

Conclusions: Anything new?

'Data Free Flow with Trust' may be a new label, but it is not a new concept when applied to data privacy, even if it is new in relation to IP or cybersecurity. The idea that free flow of personal data could only be guaranteed by trust between countries has been around since at least 1980. It appeared in the original OECD privacy Guidelines and Council of Europe data protection Convention as trust induced by adherence to minimum standards of data protection. Agreement on what constitutes the 'minimum standards' has been the problem. It is not clear why shifting discussions back to a WTO forum will have any effect in relation to data privacy, although it might in relation to IP and cybersecurity.

The new element is the number of countries introducing data localization policies and laws (in varying forms), which can affect all three areas of concern because they are not necessarily limited to personal data. India and Indonesia's general data privacy laws are still in draft, but they already have data localization laws. So do China and Russia, but they signed the Osaka Track statement, indicating that participation does not signal any particular view about data

⁸ 'G20 leaders' joint declaration again omits 'protectionism' *The Japan News*, 30 June 2019 <<http://the-japan-news.com/news/article/0005843262>>.

⁹ Aditi Agrawal 'Piyush Goyal at G20: Data is a sovereign asset, free trade can't justify its free flow' *Medianama*, 11 June 2019

¹⁰ For a summary see Sneha Johari 'India's Draft Ecommerce Policy is really a Digital Economy Policy, impacts the whole ecosystem' *Medianama*, 26 February 2019 <<https://www.medianama.com/2019/02/223-india-draft-e-commerce-policy/>>

¹¹ From the InfoJustice blog <http://infojustice.org/archives/41119> (the APEC page has disappeared).

¹² NZ Foreign Affairs and Trade 'Digital Economy Partnership Agreement (DEPA) negotiations' <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/digital-economy-partnership-agreement-depa-negotiations/>>

localization. The Joint Statement¹³ by the leaders of the BRICS countries (both those that did not sign on to the Osaka Track), stressed the centrality of the WTO to a rules-based multilateral trading system, in contrast but otherwise there was no explicit 'BRICS solidarity' evident. India's Piyush Goyal said that data was a 'new form of wealth', important for development, and there was a need to take into account the requirements of developing countries within WTO discussions rather than outside them.¹⁴ There are no longer any simple division on these issues, but rather a global fragmentation of views.

¹³ *Joint Statement on BRICS Leaders' Informal Meeting on the margins of G20 Summit, 28 June 2019* <<http://pib.nic.in/PressReleaseDetail.aspx?PRID=1576270>>; Signed by the leaders of Brazil, Russia, India, China and South Africa.

¹⁴ 'G20 summit: India does not sign Osaka declaration on cross-border data flow' < <https://scroll.in/latest/928811/g20-summit-india-does-not-sign-osaka-declaration-on-cross-border-data-flow>>