



# AI, Generative AI, and Trade Agreements—

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# Overview: AI and trade

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AI is everywhere and AI is widely used.

Generative AI is also now everywhere. It is built on neural networks which use large language models to generate something new.

Algorithms to fuel AI are based on a mix of public, personal and proprietary data. Lots of ownership/control and privacy questions (Was the AI trained on copyrighted data? Or personal data accessed without permission?)

Also concerns about interoperability, transparency, data sovereignty and values.

Concerns in developing world about expropriation of resources and paying additional rents to big tech companies.

# Leads to Two big questions:

What are policymakers trying to govern?

Which of these governance issues requires international coordination within trade agreements?

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The high risks of the technology? (autonomous weapons?)

Liability—who is liable if the technology hurts a person or persons?

The uses of the technology (can it be used to provide therapy or legal advice?)

The business practices or policies that firms use to supply the technologies (e.g. free services in return for personal data)?

The data utilized to create the generative AI service? (e.g. webscraping Linked-In)

Which of these need to be coordinated internationally? How can they be coordinated?

Are trade agreements the right place?



# To understand AI, we need to talk about data and cross-border data flows

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**Easy/cheap to store, move across borders**

**Easy to share, reuse but increasingly hoarded by governments and firms.**

**Can be simultaneously a commercial asset and public good. This gets lost in trade agreements.**

**Essential to national security and economic growth**

**Foundation of wide range of services yet no one knows how to govern it.**



# AI in the world

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Global market for AI huge and growing

2 countries--China and US -94% of all AI funding, 70% of researchers, 90% of the market capitalization of the world's largest digital platforms.

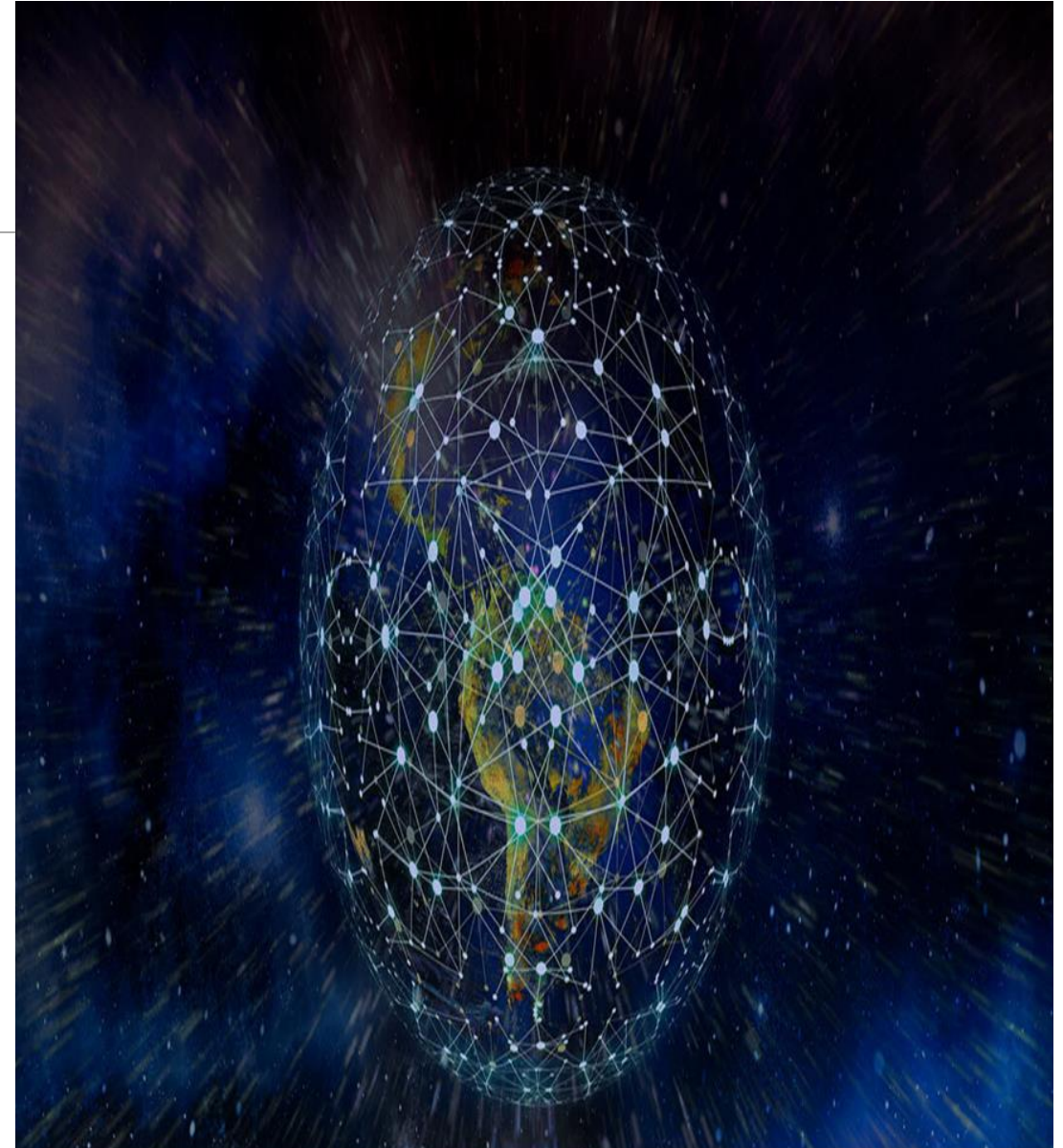
These platforms not only lead on AI, but control data collection through control of platform services, submarine cables and satellites, data storage and data analysis.

These firms often use open-source methods, but in general they rely on trade secrets to protect their algorithms and to control and reuse the data they analyze.

Dominance of these platforms  perception

AI markets =unfair

Generative AI will enhance these concerns



- Article 8.2 of **DEPA**: “In adopting AI Governance Frameworks, the Parties shall **endeavor** that these frameworks take into consideration internationally recognized principles or guidelines re. explainability, transparency, fairness and human centered values.”
- Article 27 of **Singapore/Australia** says the parties **shall cooperate**, work on internationally accepted frameworks, and collaborate on frameworks that support the trusted safe and responsible use of AI technologies.
- **UK Singapore**-- The Parties recognize that artificial intelligence ("AI") and emerging technologies, ...play important roles in promoting economic competitiveness and facilitating international trade and investment flows, and may require coordinated action across multiple trade policy areas to maximize their economic and social benefit. The parties **will endeavor to cooperate**.

What do  
trade  
agreements  
say about AI?  
Endeavor to  
cooperate



What do trade agreements say about algorithmic disclosure and standards?

- Tension between the need to protect IPR and the need to facilitate interpretability or explainability, which could help build trust in AI.

# What do they say about public data? Who controls its reuse?

- UK Singapore: ARTICLE 8.61-H  
Open Government Information
- 1. The Parties recognize that facilitating public access to, and use of, government information may foster economic and social development, competitiveness, and innovation.
  2. To the extent that a Party chooses to make government information available to the public, it shall endeavor to ensure:
    - (a) that the information is appropriately anonymized, contains descriptive metadata and is in a machine readable and open format that allows it to be searched, retrieved, used, reused and redistributed; and
    - (b) to the extent practicable, that the information is made available in a spatially enabled format with reliable, easy to use and freely available Application Programming Interfaces ("APIs") and is regularly updated.





# Where current rules do not address challenge of AI

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May make it harder to set standards for “ethical” or trustworthy AI unless universal. Need an international set of principles/standards for what is trustworthy AI vs. AI that may need direct regulation.

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Do not advance data sharing among societal entities internationally which could help solve wicked problems.

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Do not incentivize shared approaches to competition policies

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Do not clarify questions of ownership of data after a prompt or whether researcher data sets can be copyrighted or licensed.

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Do not address questions of liability for mistakes, hallucinations

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## CURRENT TEMPLATES DO NOT ADDRESS BARRIERS RELATED TO AI

Future Barriers	Market trade effect	Disguised Restriction on trade	In trade agreement
Data-sharing rules as in DMA (EU)	Violate MFN, national treatment	Maybe	No
<u>Algorithmic regulation</u> (“right to an explanation,” avoid discriminatory outcomes etc.)	Violate MFN, like-product national treatment	Maybe	No (protect public morals, social stability? w/exception?)
Competition policies	Violate MFN	Maybe	No-aspirational language
Policies to limit disinformation	Violate MFN, like product	Maybe	No
Bans of apps based on AI, such as Italy and Chat-GPT or US states and Tiktok	Violate MFN, like product	Maybe	No
Web scraping ( <u>ok in US</u> )	Violation of IPR rules Violation of privacy	Unlikely	No
Cybersecurity rules	Impede market access	Maybe	Aspirational language encouraging cooperation

# Concerns related to trustworthy AI

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- Could violate “like product” if a process standard.
- IEEE standards may not be recognized, patchwork of global/national standards.
- Requirements for Algorithmic transparency could violate USMCA/CTPPP provisions.



# Concerns about AI protectionism (or data protection) with generative AI

- [Italy banned, then rescinded the ban on Chat GPT](#) after the company made changes.
- [Canada's privacy commissioner](#) is investigating Chat GPT
- [Spain](#) opens an investigation into Open AI
- Britain is levying fines on personal data [misuse by Chat GPT](#)
- [Germany](#) considers banning Chat GPT
- [European consumer groups](#) call for an investigation of Chat GPT, while [European data protection](#) authorities agreed to set up a task force to cooperate and exchange information on the relationship between European laws and such chat bots.
- China puts forward new rules for LLMs like Chat GPT (translated by [DIGIChina](#) )
- [France-CNIL rules on use of personal data](#) for chatbots

## China's AI regulation on data

### Discrimination and Training Data

Article 7 of the draft Measures also impose obligations on the research and development of generative AI. Specifically, providers of generative AI must ensure data used for training and optimization is obtained through legal means, and such data must:

1. comply with requirements stipulated by the Cybersecurity Law;
2. not contain content that infringes intellectual property;
3. if it constitutes personal information, be obtained on the basis of consent from data subjects, or otherwise comply with the requirements provided under applicable Chinese laws and regulations;
4. be accurate, objective and sufficiently diverse; and
5. comply with other regulatory requirements related to generative AI released by the CAC.

Providers of generative AI must also define clear rules for data annotation and train employees involved in such annotation. (Article 8) Further, providers of generative AI should not generate discriminatory content based on the race, nationality, gender or other characteristics of the user. (Article 12)

# Implications for Data Flows?



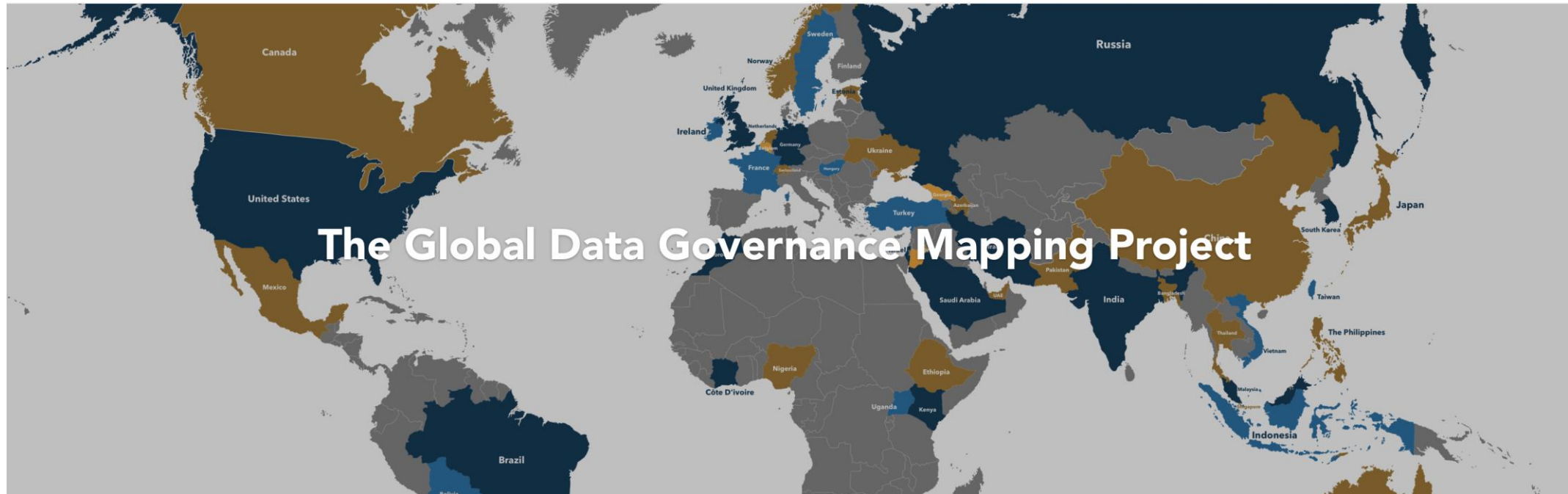
# Other issues

- GATS market access commitments for certain professions including accounting, legal services, or medical services are often tied to certification requirements or legal personhood. But Chat-GPT recently passed the bar exam—is it covered?
- TRIPS agreement does not define how to deal with AI-generated works, and individual members have taken different approaches in their domestic legislation, ranging from full protection of AI-generated works to a requirement of human creativity that effectively leaves such works unprotected.
- We are in a period of both AI and AI governance experimentation. But there is no trust or accountability without political participation –we need more interaction/understanding of US template.

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Thank you and I look forward to your comments.

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