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ISSUE BRIEF

Bangladesh's Draft Data Protection Act

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Over the past couple of decades, Bangladesh implemented a set of policy initiatives that laid the foundations for a thriving digital economy. The goals of the Digital Bangladesh Initiative of 2009, for instance, included increasing access to digital services throughout the country and establishing Bangladesh as a globally integrated commercial hub with a strengthened digital infrastructure. By most accounts, this initiative was enormously successful. The United Nations Conference on Trade and Development praised Bangladesh for laying an "essential foundation for a technology-driven and skill-based digital economy."[1] These reforms coincided with an economic boom in Bangladesh: since 2009, gross domestic product (GDP) per person has grown by 250 percent.

The 2022 Draft Data Protection Act (DPA), which establishes new restrictions related to the processing, storage, and transfer of data, appears to move

1 "Bangladesh Poised to Benefit from E-Commerce Boost after Laying 'Exemplary' Digital Foundation," United Nations Conference on Trade and Development, press release, April 1, 2019, https://unctad.org/press-material/bangladesh-poised-benefit-e-commerce-boost-after-laying-exemplary-digital-foundation.

Bangladesh's digital governance in a different direction. The DPA is the first data-privacy law to be proposed in Bangladesh; it follows in the wake of new digital-privacy laws passed around the world over the past several years. Provisions of the bill have been met with criticism due to the restrictions they place on digital business activity and the lack of constraints established over the government's enforcement authority.

The DPA risks undoing some of Bangladesh's hard-won economic progress by restraining sources of growth, including trade in digital services. Digital-services transactions require cross-border data flows, yet the DPA prohibits the transfer of some types of data. The DPA also raises the costs of selling digital services in Bangladesh by requiring businesses to invest in servers in the country. Because Bangladesh remains a relatively small market, costly impediments to accessing Bangladesh's consumers may lead some firms to withdraw from the market, and other businesses to avoid entering altogether.

To be sure, the expansion of the digital economy raises legitimate concerns about data privacy that governments need to address. Yet, blanket restrictions on information flows, coupled with vague enforcement provisions, are unlikely to buttress consumer protections; and they may instead erode human rights. Some fear that governments can suppress opposition through digital surveillance under the guise of data governance.

This policy brief examines Bangladesh's draft Data Protection Act. Following a brief overview of the act, it provides a framework for understanding the political tradeoffs that governments face when implementing digital-economy regulations. The article then considers how the act may influence the trajectory of Bangladesh's integration in global markets, and the country's prospects for continued growth.

The 2022 Draft Data Protection Act: A Brief Overview

The stated purpose of the Data Protection Act is to provide enhanced data security to Bangladesh's consumers through new provisions on the processing of their data. Key pillars of the 2022 draft law include the introduction of consent requirements and other data-subject rights, mandates for local data storage, restrictions on personal-data transfers outside of Bangladesh, and the establishment of a data-protection office.[2] Despite the stated objective of enhanced data privacy, the draft DPA lacks an explicit definition of the data to which it applies. This ambiguity can contribute to business uncertainty about compliance, and uncertainty tends to reduce foreign investment.

The most onerous and costly provisions in the DPA concern data-localization requirements and data-flow restrictions. Section 42 mandates that all consumer ("user created") data be stored on servers in Bangladesh. For foreign firms, that requirement can raise the costs of providing services to Bangladesh's fast-growing consumer market. With some exceptions, Section 43 prohibits the transfer of consumer data outside of Bangladesh without the authorization of the government, a requirement that significantly impedes many forms of digital trade.

The bill grants the government of Bangladesh extraordinary enforcement powers through interconnected regulatory bodies previously established by the controversial Digital Security Act of 2018. Section 35 of the DPA establishes the Data Protection Office, the enforcement body of the DPA. Yet, the Digital Security Agency, established under the Digital Security Act of 2018, will exert direct control over the Data Protection Office, with the director general of the Digital Security Agency acting as the head of the Data Protection Office.[3]

Concerns about the government's enforcement authority also stem from ambiguous terms in the draft law. Specifically, the DPA gives the government the power to issue directions to the director general of the Data Protection Office "in the interest of the sovereignty and integrity of Bangladesh, the security of the State, friendly relations with foreign States or public order" (Section 63). Concerns over possible overreach stem from the fact that these interests (namely, "sovereignty and integrity," "security," and "friendly relations") are not defined in the act, which means that the government in power can effectively enforce the DPA as it chooses. These ambiguous aspects of the bill merit further clarification in order to constrain the government's arbitrary control of information over the Internet.

2 "The Data Protection Act, 2022," Government of the People's Republic of Bangladesh, July 16, 2022.

3 Ali Riaz, "How Bangladesh's Digital Security Act Is Creating a Culture of Fear," Carnegie Endowment for Peace, December 9, 2021, *https://carnegieendowment.org/2021/12/09/how-bangladesh-s-digital-security-act-is-creating-culture-of-fear-pub-85951*.

What Explains Governments' Approaches to Data Governance and Digital Trade?

The DPA has an extraterritorial application that affects aspects of digital trade between Bangladesh and other countries. Digital trade refers to the cross-border exchange of services and goods, enabled by digital technologies such as the Internet and online platforms. Digital trade often requires the cross-border transfer of personal data for activities such as online payments or digital advertising. Personal-data localization mandates and cross-border data-flow restrictions, such as those that appear in the DPA, can, therefore, inhibit digital trade.

Digital-privacy laws such as the DPA are part of a set of regulatory decisions that governments must confront as the digital economy expands. These laws have important implications for trade relationships between countries. Based on my forthcoming book, "Digital Globalization: Politics, Policies, and a Governance Paradox," here I provide a framework for understanding some of the tradeoffs that policymakers face in the development and implementation of digital trade policy.[4]

While the rationale for digital trade policies differs across countries, governments tend to respond to a common set of political and economic forces. These include the interests of their citizens and firms, and the pressures brought to bear by global diplomatic obligations and multinational investment.

Additionally, institutional context helps shape governments' data-governance regulations and their applications. Absent institutional safeguards, governments may overreach in their surveillance of citizens in efforts to detect threats to national security or to dampen political opposition. Some regimes may monitor and sanction possible sources of political resistance under the auspices of digital "security."

A desire to avoid surveillance by authorities in other countries motivates some governments' data-governance regulations. For example, law-enforcement officials in the United States often seek access to data abroad under information-sharing protocols such as mutual legal-assistance treaties or the Cloud Act, which compels companies to share information. Some governments respond with local storage requirements or data-transfer restrictions under the often-misguided presumption that these laws will shield domestic data from the surveillance of foreign authorities.

Turning to domestic political motivations for data governance, a central tradeoff governments face involves the balance between data privacy and innovation. Governments interested in protecting data privacy may limit or restrict cross-border data flows, as does the DPA. Correctly applied, some regulations can, and do, keep consumer information more secure. The risk in this approach, however, is that data-flow restrictions stifle innovation in the digital economy. Advances in digital services can increase consumer welfare and economic productivity at lower prices. Strict privacy regulations and restrictions on data transfers can hamper innovation, lower product quality, and reduce productivity.

Next, I outline the considerations of key stakeholders in the context of developing countries, highlighting the interests of consumers, firms, and civil society in turn.

Consider first the interests of citizens with respect to digital governance. The average consumer in digital markets is interested in access to low-cost digital services, applications, and platforms. Younger consumers, in particular, are accustomed to purchasing services and networking with peers online. As nearly 70 percent of the population of Bangladesh is under the age of thirty-five, policies that improve connectivity and digital infrastructure are beneficial to that country's young consumer base. With these goals in mind, policies that raise the costs of digital trade, such as localization and data-flow restrictions, are unlikely to be popular.

To be sure, some consumers object to the ways businesses track individuals' online activities. Consumers are increasingly aware that companies build consumer profiles based on clicks, likes, and personal communication, and that firms monetize this surveillance activity by creating personalized advertising. Surveys indicate that digital privacy is a concern among a majority of global consumers.[5] Citizens agitated by digital surveillance may hold favorable views of laws such as the DPA, to the extent that they believe its implementation will protect their privacy and make their data more secure.

4 Stephen Weymouth, "Digital Globalization: Politics, Policies, and a Governance Paradox," Cambridge University Press (Elements Series in International Political Economy), Forthcoming.

5 "Global Data Privacy: What The Consumer Really Thinks," Global Data and Marketing Alliance and Acxiom, March 2022, *https://globaldma.com/wp-content/uploads/2022/03/GDMA-Global-Data-Privacy-2022.pdf*.

Turning to the interests of businesses, there is significant variation in firms' support for digital trade restrictions. This variation depends on companies' ability to compete in global digital markets.

Multinational companies will favor data governance that enables them to reach new customers and build efficient global supply chains. Notably, the vast majority of e-commerce is business to business, so digital trade openness is consistent with the interests of companies that engage in the purchase and sale of digital services from other firms. Thus, most globally engaged firms across nearly all sectors will oppose restrictions, such as localization, that raise the costs associated with providing services to foreign consumers and businesses. In some instances, higher compliance costs associated with onerous data-governance regulations will prevent businesses from entering new markets. Bangladesh's proposed DPA heightens this risk.

To achieve their policy objectives, businesses and their affiliated trade associations lobby against new impediments to digital trade, such as local-storage requirements or data-flow restrictions. Consider the stance of the Global Data Alliance (GDA), a cross-industry trade association administered by BSA/the Software Alliance, the leading industry association for software. In September 2022, the GDA issued public comments on the Bangladesh DPA.[6] The group expressed support for the goal of improving data-protection standards. However, the GDA called for significant amendments to the draft DPA. It strongly opposed the cross-border data restrictions and local-storage requirements established in Articles 42 and 43.

The policy objectives of firms competing against the largest tech companies are more mixed. One the one hand, small and medium-sized enterprises (SMEs) could benefit from open flows of data, because digital technologies enable even the smallest firms to trade goods and services at very low cost. Digital trade barriers, such as data-localization measures and data-flow restrictions, raise compliance costs, and are particularly onerous for SMEs with limited resources. The promise of reaching new markets outside the country should lead some SMEs to oppose digital trade restrictions that raise the costs of participating in the global economy.

On the other hand, some local businesses may perceive digital governance as availing certain protectionist benefits, at least in the short term. Smaller domestic firms focused on their local markets may, therefore, favor new digital trade barriers that shield them, to some degree, from the competition of multinational firms. Localization and data-flow restrictions would increase the costs of market entry for offshore firms, potentially providing an element of protection that could allow some local firms to compete. A complicating factor, however, is that these short-term gains may come at the expense of longer-term development and integration of Bangladesh's digital economy.

Another important set of stakeholders are civil-society organizations. Many of these institutions advocate for consumer-privacy protections and warn against the power of the largest tech companies.

Even so, a variety of civil-society groups have expressed vocal opposition to the draft DPA. Amnesty International issued a statement calling the DPA "a dangerous bill that is aimed at usurping people's right to privacy in Bangladesh."[7] Part of the concern stems from vague terminology in the draft that could enable government overreach and misuse, depending on how the law is interpreted and enforced.[8]

Concerns about the DPA also stem from its association with the Digital Security Act (DSA), which is viewed by some as a tool for silencing government critics. Following the death of writer Mushtaq Ahmed while in custody for publishing an article critical of the Bangladeshi government's COVID-19 response, the UN High Commission for Human Rights called for an overhaul of the DSA.[9] Ahmed was among eleven people arrested under the DSA for COVID-19 "misinformation" or for criticizing the government response to COVID-19. Some groups fear that the DPA could be similarly deployed to surveil and charge future critics of the government.

6 "Comments to the People's Republic of Bangladesh on the Cross-Border Policy Implications of the Draft Data Protection Act of 2022," Global Data Alliance, September 2022, *https://globaldataalliance.org/wp-content/uploads/2022/09/09072022gdabgdpa.pdf*.

7 "Bangladesh: New Data Protection Bill Threatens People's Right to Privacy," Amnesty International, April 27, 2022, *https://www.amnesty.org/en/latest/news/2022/04/bangladesh-new-data-protection-bill-threatens-peoples-right-to-privacy*.

8 Syed Ejaz Kabir, "Why Are Our Digital Laws so Troublesome?" Daily Star, December 20, 2022, *https://www.thedailystar.net/opinion/views/news/why-are-our-digital-laws-so-troublesome-3200866*.

9 "Bangladesh: Bachelet Urges Review of Digital Security Act Following Death in Custody of Writer," United Nations Human Rights Office of the High Commissioner, March 1, 2021, https://www.ohchr.org/en/2021/03/bangladesh-bachelet-urges-review-digital-security-act-following-death-custody-writer.

What's at Stake? Quantifying the Costs and Benefits of the DPA

Bangladesh stands to gain from open digital trade, due to a large population with the skills to meet the demand for digital services abroad. Bangladesh is located in a growing regional hub for digital trade. Export of digital services from Asia grew at a rate of 21 percent between 2005 and 2019, compared to an average of 12 percent globally.[10] The information and communication technology sector in Bangladesh grew 40 percent following the Digital Bangladesh Initiative, which aimed to promote access to new markets for SMEs and boost exports and employment in information and communication technology.[11]

Bangladesh finds itself at a critical policy juncture. It can embrace the gains from integrating into the global digital economy, linking its growing consumer population and its businesses to online consumers, platforms, and business networks abroad. Or it can prioritize control over information and data flows by enacting restrictions on cross-border transactions and mandating data localization.

One potentially harmful effect of digital trade restrictions is the reduction in business profits. Studies find that the risk is particularly high for smaller firms, such as those that populate Bangladesh's digital-services economy.[12] One analysis found that the negative impact of enhanced data protection on profits was twice as large for small tech companies as for other firms. For small firms, localization mandates may prohibitively raise the costs of entry, as well as the costs of transferring data out of the country, stifling their ability to grow.

Digital trade restrictions also appear to significantly reduce trade between countries. Much like restrictions on goods trade such as tariffs, digital trade impediments raise the costs of trade and lower consumer welfare. A Centre for Economic Policy Research study found that countries with higher cross-border data-flow restrictions trade fewer services over the Internet.[13] A study by the Information Technology and Innovation Foundation found that data-transfer restrictions are associated with reductions of trade in services and goods. The most data-intensive industries, such as telecommunications and finance, are the hardest hit, but nearly all industries show reductions in trade volumes according to their estimates. A Robert Schuman Centre for Advanced Studies Research found similarly adverse effects on the productivity of downstream firms in sectors that depend on data in their production process.[14]

Zooming in on Bangladesh, two recent studies point to strong negative economic effects of data-localization and data-transfer restrictions as proposed in the DPA. One analysis from the Research and Policy Integration for Development group finds that the DPA will reduce GDP by between 0.6 and 0.9 percent, and cause a massive decline in digital-services exports—a projected drop in the range of 29 to 44 percent.[15] This translates into significantly fewer jobs in Bangladesh's export sector following the passage of the DPA. Another study forecasts that, over five years, the DPA will reduce the level of trade volumes in Bangladesh by 6 percent, and imports by 7.7 percent.[16]

These outcomes would certainly impede Bangladesh's development-agenda goal of becoming "a globally integrated regional economic and commercial hub."[17] The da-

10 Nigel Cory, Luke Dascoli, and Ian Clay, "The Cost of Data Localization Policies in Bangladesh, Hong Kong, Indonesia, Pakistan, and Vietnam," Information Technology and Innovation Foundation, December 12, 2022, *https://itif.org/publications/2022/12/12/the-cost-of-data-localization-policies-in-bangladesh-hong-kong-indonesia-pakistan-and-vietnam*.

11 "Digital Bangladesh for Good Governance," Government of the People's Republic of Bangladesh, February 2010.

12 Chen examined how Europe's data law, the General Data Protection Regulation, affected the performance of firms in sixty-one countries. The results varied depending on the size of the business. Chinchih Chen, Carl Benedikt Frey, and Giorgio Presidente, "Privacy Regulation and Firm Performance: Estimating the GDPR Effect Globally," Oxford Martin Working Paper Series on Technological and Economic Change, January 2022.

13 Janez Kren, Erik van der Marel, and Martina F. Ferracane, "The Cost of Data Protectionism," Centre for Economic Policy Research, October 25, 2018, *https://cepr.org/voxeu/columns/cost-data-protectionism*.

14 See also: Martina Ferracane and Erik van der Marel, "Do Data Policy Restrictions Inhibit Trade in Services?" Robert Schuman Centre for Advanced Studies Research, 2019; Kren, et al., The Cost of Data Protectionism."

15 "Impact of Cross-border Data Flow Restrictions on Bangladesh Economy," Research and Policy Integration for Development, 2022, *https://www.rapidbd.org/wp-content/uploads/2022/07/Impact-of-Cross-Border-Data-Flow-Restrictions-on-Bangladesh-Economy-Report-Two.pdf*.

16 See: Cory, et al., "The Cost of Data Localization Policies in Bangladesh, Hong Kong, Indonesia, Pakistan, and Vietnam," Table 3.

17 "Bangladesh Rapid eTrade Readiness Assessment," United Nations Conference on Trade and Development, 2019, *https://unctad.org/system/files/official-document/dtlstict2019d6_en.pdf*.

ta-localization and transfer restrictions embedded in the DPA appear inconsistent with Bangladesh's development initiatives. The onerous restrictions and conceptual ambiguities in the current draft of the DPA threaten trade, jobs, and economic growth—just as Bangladesh is set to reap the benefits of digital globalization.

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