

THE GEORGE W. BUSH INSTITUTE – SMU ECONOMIC GROWTH INITIATIVE  
AT  
THE GEORGE W. BUSH INSTITUTE  
THE CENTRAL AMERICA PROSPERITY PROJECT

# THE NORTHERN TRIANGLE IS READY FOR A DIGITAL TRADE AGREEMENT WITH THE UNITED STATES

MATTHEW ROONEY

MANAGING DIRECTOR, GEORGE W. BUSH INSTITUTE - SMU ECONOMIC GROWTH INITIATIVE

ANDREA DURKIN

ADVISOR, GEORGE W. BUSH INSTITUTE - SMU ECONOMIC GROWTH INITIATIVE

FEBRUARY 2021



GEORGE W. BUSH  
INSTITUTE

### ABOUT THE GEORGE W. BUSH INSTITUTE:

Housed within the George W. Bush Presidential Center, the George W. Bush Institute is an action-oriented, nonpartisan, policy organization with the mission of developing leaders, advancing policy, and taking action to solve today's most pressing challenges. Through three Impact Centers — Domestic Excellence, Global Leadership, and an Engagement Agenda — the Bush Institute delivers measurable results that save and improve lives.

To learn more, visit [www.BushCenter.org](http://www.BushCenter.org).

### GEORGE W. BUSH INSTITUTE – SMU ECONOMIC GROWTH INITIATIVE:

The Bush Institute – SMU Economic Growth Initiative combines the public policy expertise of the George W. Bush Institute and the academic expertise of SMU. The joint initiative draws from economic policy-making experience at the highest levels and from cutting edge academic research to identify ideas for promoting innovation, entrepreneurship, and faster, more inclusive growth through global competitiveness and sound immigration policy.

## EXECUTIVE SUMMARY

The governments of El Salvador, Guatemala, and Honduras will be renovating and modernizing their digital economy governance frameworks over the next two years. The George W. Bush Institute – SMU Economic Growth Initiative believes that these Northern Triangle countries would strongly benefit from entering into an agreement with North America that emulates the digital trade chapter of the U.S.-Mexico-Canada Agreement and incorporates the kinds of regulatory cooperation and capacity building approaches embodied in other new digital economic partnership agreements.

The Bush Institute – SMU Economic Growth Initiative tested this concept with Central American partners by conducting a negotiation simulation toward a U.S. digital trade memorandum of understanding with the Northern Triangle. The results we describe in this report show that these countries are ready and willing:

- The direction of laws and regulations under development in all three countries is broadly in line with the core digital trade provisions in the most recently concluded agreements, including USMCA, the U.S.-Japan Digital Trade Agreement, and the Digital Economy Partnership Agreement.
- Northern Triangle countries seek to achieve interoperability through compatible technical and regulatory standards.
- The countries have identified specific areas where trade capacity building and regulatory cooperation under a digital trade agreement would provide critical support to current domestic policy and legal initiatives.

## INTRODUCTION

In 2018, the Bush Institute – SMU Economic Growth Initiative launched the [Central America Prosperity Project](#) (CAPP). Under CAPP, the Bush Institute – SMU Economic Growth Initiative invited a select group of proven and emerging leaders from El Salvador, Guatemala, and Honduras—the three nations of the Northern Triangle – to develop action-oriented strategies to achieve inclusive growth regionally by leveraging the advantage of economic integration.

After several convenings, CAPP participants, representing nonprofit organizations, the private sector, the media, and academia, united around a single, powerful approach they perceived would offer expansive [benefits](#) to the region’s citizens, businesses, and governments: **accelerate the region’s digital transformation.**

The Bush Institute – SMU Economic Growth Initiative hosted roundtables in each country to examine the technical and commercial requirements, the social context for digitalization, and the state of policy and regulatory infrastructure to support balanced growth of the digital economy. Our final [recommendations](#) suggested a digital framework for the Northern Triangle include the following: expand key e-government services, improve broadband and spectrum allocation throughout the region, foster high-tech ecosystems, and invest in a digital-ready workforce.

Success in each of these areas requires that each country **establish a comprehensive digital governance framework.** Our focus, therefore, turned to how we could advance regional efforts to modernize digital laws and regulations in line with emerging international standards.

*“Digital transformation represents a strong opportunity for the region to overcome its historically stubborn obstacles to governmental, societal, and economic stabilization and growth. Conversely, if El Salvador, Guatemala, and Honduras fail to digitize, they risk exclusion from modern global value chains, diminished investment opportunities, a widening social welfare gap, and sustained levels of outmigration. Governments could also miss a critical window to develop an open architecture that ensures the region’s digital infrastructure stimulates growth and competitiveness through trade facilitation and regional economic integration.*

*We found this to be a strong rationale prior to the COVID-19 pandemic. Governments should now do everything possible to hasten digitalization as a critical and immediate priority — not despite the current circumstances but because of them.”*

*– A Digital Strategy for Competitiveness and Integration  
in the Northern Triangle, Bush Institute – SMU  
Economic Growth Initiative, June 2020*

## THE COUNTRIES MUST MOVE FAST

Leaders in government and in the private and civil society sectors know that globally competitive industries and workers are adopting, and adapting to, digital technologies and data-driven innovation. Digital platforms are particularly valuable to small- and medium-sized businesses, connecting them to customers worldwide.

Adapting to life during COVID-19, digital business-to-consumer sales and business-to-business transactions were turbocharged by streaming; cloud computing; online financial services; and online shopping, payment, and logistics planning. Many governments in emerging economies reduced or eliminated fees associated with e-banking and e-payment systems to facilitate mobile cash transfers and promote contactless payments.

As more transactions move online, governments and businesses see a heightened need for consumer protections against fraudulent online selling practices, infringement of intellectual property rights, and misuse of personal information.

## A REGIONAL AND GLOBAL CONVERSATION

Each country in the Northern Triangle has been working to develop regulations to govern digital transactions and online platforms. Since the region's societies and economies are small and highly connected, El Salvador, Guatemala, and Honduras embrace the value of a unified strategy and collaborative approach to regulation to encourage interoperability, attract higher investment in digital technologies, and strengthen the resiliency of digital systems.

As national and regional regulations evolve around the world, multilateral forums like the World Trade Organization are discussing how to ensure national approaches are compatible to bridge the digital divide across countries. El Salvador, Guatemala, and Honduras should become active participants in international initiatives and negotiations, including on e-commerce in the WTO. They should also become observers of key regional efforts such as the Pacific Alliance's effort to create a regional digital market in Chile, Colombia, Mexico, and Peru.

## THE NORTHERN TRIANGLE IS READY FOR DIGITAL TRADE PROVISIONS

### DIGITAL TRADE AGREEMENTS SUPPORT DOMESTIC REFORMS

Differing approaches to digital governance in large consumer markets can pose significant access barriers for companies across all goods and services sectors, particularly smaller businesses and those in developing economies. Yet, digital trade provisions are not an attempt at sameness.

Instead, they provide a framework for domestic legal and regulatory approaches that adhere to a core set of international principles. These include nondiscrimination, transparency, and a commitment to regulate in ways that are risk-based and that do not unduly restrict trade. Trade agreements increasingly include provisions for regulatory cooperation. Recent digital trade memoranda of understanding – similar to a digital trade chapter in a free trade agreement – also include trade capacity-building commitments.

It is because El Salvador, Guatemala, and Honduras are in the midst of developing their digital policy and legal frameworks, and because trade capacity building would be timely to support domestic reforms, that the time is right for the United States to negotiate a digital trade agreement with the Northern Triangle.

## IN A SIMULATED NEGOTIATION, THE NORTHERN TRIANGLE PROVED READY

In an innovative approach, the Bush Institute – SMU Economic Growth Initiative conducted a simulation to assess the readiness of El Salvador, Guatemala, and Honduras – individually and regionally – to commit to the most rigorous digital trade provisions in effect today.

To create a baseline text, we combined elements from the U.S.-Mexico-Canada Agreement, the U.S.-Japan Digital Trade Agreement, and the Digital Economy Partnership Agreement (DEPA) signed in June 2020 by New Zealand, Singapore, and Chile. A group of “civilian” negotiators from each of the three Northern Triangle countries, many of whom are former government trade negotiators or have long been involved in trade negotiations representing the private sector, agreed to participate in an online, structured negotiation simulation along with former U.S. trade negotiators representing the United States in the exercise. The organizations included the most prominent think tanks in Central America – FUSADES, FUNDESA, and Fundación Eléutera – as well as key business associations including COHEP and ANEP.<sup>1</sup>

It should be noted that none of the participants represented an official view or position of their governments, but all are well-placed to reflect current thinking in their respective countries.

The simulation comprised online analysis by participants and two live, virtual negotiation sessions. Below are the topline results:

## SIMULATING A DIGITAL TRADE NEGOTIATION: KEY OUTCOMES

- The direction of laws and regulations under development in all three countries is broadly in line with the core digital trade provisions in the most recently concluded agreements, including USMCA, the U.S.-Japan Digital Trade Agreement, and the DEPA.
- Obligations that compel alignment with the principles of international legal frameworks such as the *UNCITRAL Model Law on Electronic Commerce 1996* are viewed favorably and seen as helpful to the development of domestic regulatory frameworks
- El Salvador, Guatemala, and Honduras agree that prioritizing more widespread use of electronic authentication and e-signatures are important cornerstones of their digital economies and desire regulatory exchanges focused on implementation, for example, through discussions on performance standards.

---

<sup>1</sup> FUSADES is the Fundación Salvadoreña para el Desarrollo Económico y Social, FUNDESA is La Fundación para el Desarrollo de Guatemala, COHEP is Consejo Hondureño de la Empresa Privada, ANEP is the Asociación Nacional de la Empresa Privada of El Salvador.

- Although interoperability of technical and regulatory standards is a common goal, participants recommend formal mechanisms for regulatory cooperation to share information and best practices: for example, measures to protect personal information. Another example provided was that some Central American countries do not recognize common software such as DocuSign as equivalent to domestic procedures for signature authentication.
- Central American representatives welcomed provisions regarding consumer and personal information protections. They would like to see such provisions go a step further to require parties to make judicial remedies available to individuals whose rights are compromised. They noted that aspirational language would help promote domestic reforms.
- Central American representatives cited no current concerns with a key U.S. industry demand that governments may not require computing facilities to be physically located in their territory or that network elements must be certified or approved as a condition for conducting business in that territory. Similarly, the Central Americans felt their governments would agree to provisions prohibiting the transfer of or access to proprietary source codes and algorithms as a condition for import, distribution or sale in Central America. This is a topic of great sensitivity for American software companies operating in major emerging markets. However, there are certain specific practices in Central America that could be in conflict with these commitments and would need to be reviewed in the context of both domestic reforms and free trade agreement negotiations. For example, Guatemala requires the data center of entities issuing certain commercial invoices to be located in Guatemala.
- Enhancing trade and investment opportunities for small and medium enterprises was a high priority for the Central Americans. They sought to include provisions designed, among other things, to improve the digital capabilities of small and medium enterprises and foster greater cooperation among digital startups in each of the parties.
- Adopting the DEPA approach, the Central Americans would like to include capacity building and cooperation provisions that enumerate specific areas where technical information exchanges would support their domestic regulatory reforms. Areas cited included encryption technologies to ensure confidentiality in data flows, response to cybersecurity incidents, best practices to improve government services through digital tools, municipal-level approaches to “smart cities,” and exchanges regarding the protection of free speech on digital platforms.
- Innovatively, the Central Americans also proposed the following:
  - A Digital Talent Exchange Program to enable young Salvadorans, Guatemalans, and Hondurans to receive digital skills training in the United States in anticipation of growing employment demands in Central America.
  - Private sector collaboration to develop model contracts, guidelines and self-regulation around key aspects of digital trade such as consumer and personal information protections.
  - A Digital Economic Dialogue with participation by researchers, academics, and industry and other public stakeholders to promote the benefits of the digital economy, receive input relevant to the functioning of the digital MOU, and ensure the agreement is modernized in a timely way – in keeping with swift-moving developments in digital technologies.

- The group perceived at least three areas that will merit deeper focus:
  - Customs duties: Northern Triangle representatives were in favor of eliminating customs duties, fees, and other charges on digital products transmitted electronically across borders. However, they felt domestic conversations should be held to ensure that internal taxes, fees, or charges are not used to circumvent the benefit of this commitment. The group notes that its authorities may sympathize with views expressed by India and South Africa, for example, that argue against making permanent the WTO moratorium on tariffs on digital goods, citing loss of potential customs revenues.
  - Cross-border data flows: The Central Americans did not express concerns regarding commitments enabling the transfer of information between computer servers across national borders. However, participants note that many countries impose restrictions at the sectoral level (e.g., regarding the handling of health records). As well, Central American businesses must comply with the more restrictive General Data Protection Regulation, under which personal data acquired in the European Union may only be transferred if the EU is satisfied that the data will be accorded equivalent privacy protection in the foreign country. As domestic regulations are further developed, the many differences in global approaches should be kept in mind.
  - Interactive computer services: Provisions regarding interactive computer services in trade agreements are designed to prohibit parties from treating platforms such as Google or Amazon as “information content providers,” thereby relieving them of certain civil liabilities. Although Central American participants did not cite concerns, we note that the Mexican government requested three years after the USMCA entered into force to comply.

## CONCLUSION

One of the benefits of free trade agreements, including new standalone MOUs on digital trade, is to provide a scaffolding that supports domestic regulatory initiatives while facilitating global transactions.

As the governments of El Salvador, Guatemala, and Honduras evolve their digital economy governance frameworks over the next two years, we believe the time is right to negotiate a tailored digital trade MOU. It should combine the core provisions of USMCA’s digital trade chapter but expand on regulatory cooperation. That includes capacity building designed around the principle that ensures stakeholders have input on implementation and will benefit from opportunities created by the agreement.

Digital trade negotiations would complement the valuable technical assistance being provided by organizations including the Inter-American Development Bank, the U.S. Agency for International Development, and the U.S. Development Finance Corporation and support a holistic U.S. approach to promoting a strong Central American digital economy.





## ANNEX: MORE ABOUT THE CAPP DIGITAL TRADE SIMULATION

Participants negotiated a fictitious Memorandum of Understanding assuming roles as representatives from El Salvador, Guatemala, Honduras, and the United States. Delegates simulated the positions of agencies within each government and represented views of private sector stakeholders.

The negotiation text combined key “hard commitments” from the USMCA and U.S.-Japan Digital Trade Agreement as well as components drawn from the Digital Economy Partnership Agreement signed by Chile, Singapore, and New Zealand. To focus the exercise, the articles included were understood as comprising part of a larger agreement.

**Negotiation Proposals**

NOTE: There is a limit of six negotiations that can run during a simulation. Double click to edit.

<b>Customs Duties</b> Eliminate and avoid duties, fee and charges on e-commerce.	<b>E-Transactions / E-Signatures</b> Adopt legal framework consistent with UNCITRAL and allow e-signatures.	<b>Protection of Information</b> Adopt legal frameworks to protect consumer and personal information.
<b>Cross-Border Data Flows</b> Avoid unnecessary restrictions on cross-border data flows.	<b>Data Localization / Source Code Transfer</b> Prohibit data localization and source code transfer as a condition of trade.	<b>Interactive Computer Services</b> Limit liability for interactive computer service providers.

*“2020 has been an inflection point for humanity and particularly developing countries whose economies have been strongly damaged by the COVID-19 pandemic, which stopped the normal way business was conducted. The negotiation of a digital trade MOU with the United States is a great opportunity to upgrade CAFTA, would help us coordinate internally, and bring different stakeholders to the table.”*

– Claudia Umaña Araujo, Vice President of FUSADES

Articles covered nondiscrimination, customs duties, electronic transactions and e-signatures, consumer and personal information protections, cross-border data flows, location of computing facilities, source code transfer, interactive computer services, and cybersecurity, among others.

Participants were given a starting text developed by the chair of the negotiations (a role played by the Bush Institute – SMU Economic Growth Initiative). They were asked to use a new digital platform called Consensus Learning® to develop their positions, evaluate and track the positions of their counterparts, and analyze the status of negotiation proposals.

consensus LEARNING

CAPP DIGITAL TRADE MOU

Matt Rooney

Start Date: 11/30/2020 | End Date: 12/19/2020

**Notifications**  
Schedule notifications to share new information, prompt activity, and remind participants of upcoming deadlines. Participants will receive them as alerts on their dashboards, and have the option to receive text alerts.

DESCRIPTION	RELEASE DATE	RELEASE TIME
Chair's Text is now available in our shared Google folder. Note there are three new proposed articles reflecting input from the Parties.	12/11/2020	10:00 AM
New Chair's text will be issued TOMORROW - we've got some 12/10/2020 interesting proposals. Still time to get your suggestions to the Chair by end of day.	12/10/2020	12:11 PM
U.S. Delegation has proposed modifications to the text - see shared Google folder or click on Documents in the menu.	12/14/2020	12:58 PM
Dear Delegates: We look forward to our Zoom negotiation session TOMORROW morning 11am EST/10am CST. Each delegation will be invited to make a brief opening statement.	12/14/2020	3:47 PM

Participants were encouraged to provide proposals and feedback to one another as well as to the chair, who then circulated a revised version of the text that formed the basis of two separate virtual negotiation sessions held on Dec. 15 and Dec. 18, 2020.

**Data Localization / Source Code Transfer** | SUPPORT

Prohibit data localization and source code transfer as a condition of trade.

**Assess Progress on Proposal**  
How are negotiations going around this objective? Do you see a viable path to consensus?  
We see path to consensus, but need to verify that the national law complies with this article. We are in the early stages of the creation of the Data Protection Law and waiting for a Cybersecurity law with the IDB technical assistance. Could consider proposing that the MOU includes a Cybersecurity art. such as 19.15 in USMCA

**Assess Your Counterparts**  
Where do you think the other participants stand? Drag and drop each card - including your own - to update this section regularly as the negotiations evolve. Use the cards to record notes on your meetings. This is your visual snapshot -- share and compare at your discretion.

Unknown	Support	Oppose	Neutral
<p>Guatemala</p> <p>Add a comment...</p> <p>0</p>	<p>El Salvador</p> <p>As Ministry of Economy we support the text but further consultations are required</p> <p>2</p>	DRAG CARD HERE	DRAG CARD HERE
<p>Honduras</p> <p>Add a comment...</p> <p>0</p>	DRAG CARD HERE		



GEORGE W. BUSH  
INSTITUTE

[BUSHCENTER.ORG](http://BUSHCENTER.ORG)

2943 SMU BOULEVARD | DALLAS, TEXAS 75205