

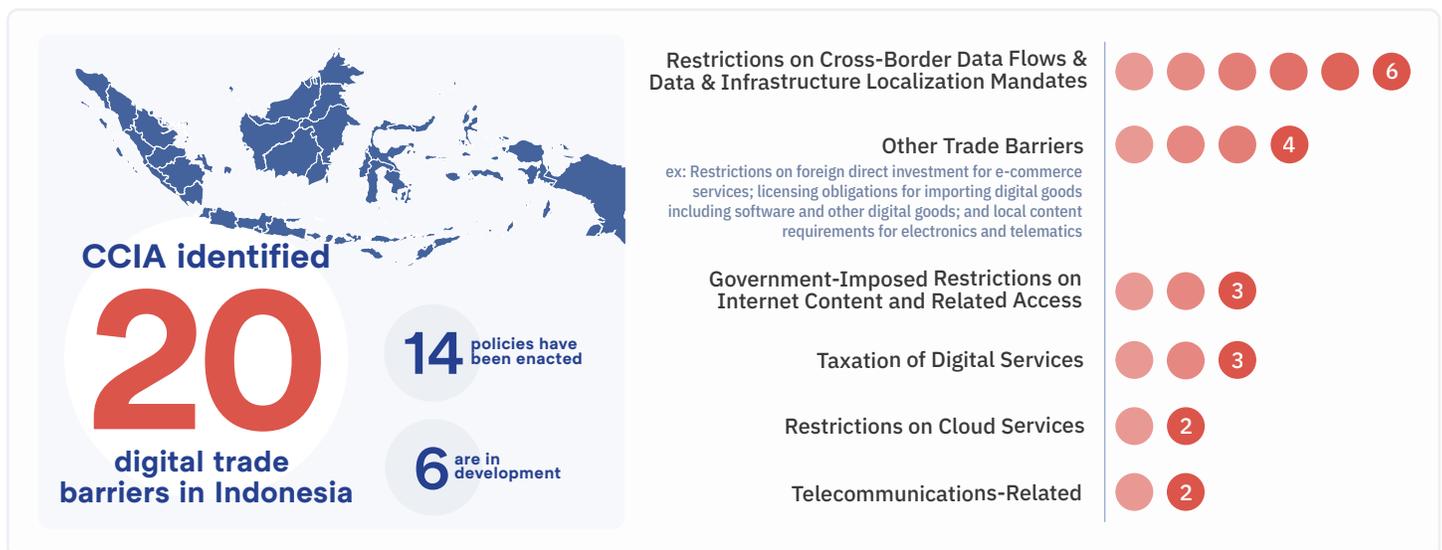
KEY THREATS TO DIGITAL TRADE 2023

Indonesia

The United States and Indonesia have a longstanding economic relationship reflected by cooperation through the Trade and Investment Framework Agreement struck between the two countries in 1996 and the multilateral Indo-Pacific Economic Framework.

Digital services drive U.S. exports in this mutually beneficial relationship. **The United States generated \$1.44 billion in exports of digital services to Indonesia in 2021, representing 75.8% of all U.S. services exports to Indonesia.** The United States ran a \$1.14 billion surplus in trade in digital services in 2021, and the country’s profile reflects enormous growth potential of the online services sector in the country—the country’s [use of the internet](#) grew from just 25% of the 273 million person population in 2016 to 62% in 2021. However, Indonesia has pursued an aggressive digital agenda that harms U.S. exports and threatens the internet ecosystem through a range of protectionist policies designed to support local industries:

- 1** Indonesia has imposed strict local registration requirements for internet companies through several pieces of legislation and other licensing regulations that have resulted in the government gaining a heavy-handed ability to control expression online; undermine encryption and digital security; and hinder foreign e-commerce providers. The Indonesian government has [blocked](#) companies that do not comply with these regulations.
- 2** The government has tightened its grip over the free flow of data and access to the market for foreign online services and cloud services providers through a nesting doll of restrictive data policies and strict requirements for local data centers for the public sector and financial services.
- 3** Indonesia has adopted an ever-expanding collection of rules and regulations with the goal of extracting revenue from U.S. and foreign online services suppliers to redistribute either to local incumbents or for the government itself. These policies have taken the shape of digital services taxes and customs declarations; local ownership requirements for submarine cables; and forcing online platforms to pay news companies for the ability to distribute any of their content.



The following sections profile the most problematic policies that concern the technology industry in Indonesia:

Restrictions on Cross-Border Data Flows and Data and Infrastructure Localization Mandates Affecting Digital and Cloud Services

On September 20, 2022, Indonesia's Parliament [ratified](#) its **Personal Data Protection Bill**, which differentiates the responsibilities between data controllers and data processors. Data controllers must ensure that any data flows must only go to countries which have equivalent or higher standards of data protection. However there are no guidelines on assessing the level of data protection across countries, which are set to be the subject of further regulations to dictate the implementation of cross-border data transfers. The law also applies extraterritorially if the data has any legal consequences in Indonesia or to its citizens. This applicability covers more processing activities than typically seen in other data frameworks, and could make it challenging to determine the personal data that falls within scope and could conflict with requirements for data protection in other jurisdictions.

On October 10, 2019, Indonesia issued **Government Regulation 71/2019** to regulate the activities of Electronic System Operators (ESOs), generally defined as any person, government administrator, business entity, or member of society that provides, administers, and/or operates an electronic system individually or collectively for users. GR 71 amends Indonesia's previous regulations (GR 82/2012), and allows private sector ESOs to store systems and data outside Indonesia, subject to certain restrictions. However, GR71 **requires data localization for public sector ESOs**, which creates market access barriers for U.S. cloud service providers servicing the Indonesian public sector market.

Furthermore, the implementing [regulations](#) for GR71 continue to present significant barriers to digital trade and inhibit the ability of U.S. firms to participate in the e-commerce market in Indonesia. The **Ministry of Communications Circular 4/2022** requires public sector organizations to obtain clearance from the ICT Ministry and the Ministry of State Apparatus Utilization and Bureaucratic Reform for any IT procurement to ensure maximum utilization of the state-built National Government Data Center to store data. This requirement presents a challenge for cloud adoption by public agencies and poses additional barriers and operational costs to U.S. cloud services providers.

Financial service regulators have the authority to further regulate financial sector data in compliance with GR 71. The amended regulations issued by the Indonesian financial regulator, the Otoritas Jasa Keuangan ("OJK"), allow some financial data to be transferred and stored outside of Indonesia with approvals from the respective regulator. The Bank of Indonesia has incrementally allowed some financial payments to be processed offshore subject to their approval (**Regulation No. 22/23/PBI/2020**) domestically. OJK has also incrementally allowed some electronic systems to be processed offshore in the banking (**Regulation No. 11/POJK.03/2022**) and non banking financial services, including insurance, multi-financing, and lending-based technology (**Regulation No. 4/POJK.05/2021**), with their approval.

Further, while The Bank of Indonesia has adopted a risk-based approach in its payment regulations, it still considers cloud services as a high risk activity, which requires financial institutions to seek its approval before moving workloads to the public cloud (**Regulation No. 22/23/PBI/2020**). Meanwhile, with **Regulation No. 11/POJK.03/2022**, the OJK only requires banks to submit approvals if the data center is located offshore. There is no need to submit approvals for cloud use in-country, thus explicitly discriminating against cross-border data processing.

Local Presence and Licensing Requirement for E-Commerce Providers

In December 2022, Indonesia's Ministry of Trade re-issued a new version of a 2020 [proposal](#), **Regulation No. 50**, that would [impose](#) a de facto local presence requirement for e-commerce suppliers (Article 25.2, requiring establishment of an exclusive, dedicated representative). The rules, if adopted, would also direct the prioritizing of local goods and services (Article 21), and empower the government to demand data about the company and associated business actors.

Government-Imposed Restrictions on Internet Content and Related Internet Access Barriers

In December 2020, the ICT Ministry [issued Ministerial Regulation 5/2020](#) on private electronic systems operators (“ESO”s) without stakeholder consultation. Under the new framework, local and foreign ESOs are required to register with the government and appoint local representatives to respond to government demands for access to data and information. ESOs are expected to comply with demands for data access for supervisory and law enforcement purposes' within 5 days.

The process for registering and subsequent punishment for failing to do so is excessively opaque and difficult to understand, and the procedure behind when the law would be enforced lacked transparency. The law stated that ESPs would be given 6 months of transition time to register in Indonesia’s database. However the ICT Ministry did not provide guidance until June 14, when the government sent around a [“Circular Letter”](#) that [stated](#) that the six month grace period started on Jan. 21, 2022, so ESOs had to comply by July 20, 2022. The regulatory uncertainty led to several major U.S., French, and Japanese companies failing to register and being [blocked](#) in Indonesia, such as Yahoo, PayPal, Valve, Nintendo, Ubisoft, and others, although several of these companies were eventually unblocked. The arbitrary nature of this requirement is evident from the fact that only a small fraction of global sites that fall within the scope of this requirement have been required to register.

Once registered, ESOs must comply with [strict timelines](#) for [content removal](#)—24 hours for “prohibited content and information” removal requests and 4 hours for “urgent” removal requests. Vague definitions under the new Regulation open companies up for significant consequences, from fines and/or service restrictions. [Civil society groups](#) have also raised concerns with aspects of the Regulation.

Indonesia’s **excessive content takedown requests and internet shutdowns** bring significant commercial harm for U.S. firms and implicate broader concerns of freedom of expression online. The government shut down the internet in Indonesia twice in 2021 amid protests according to [Access Now](#), while Meta [reported](#) services disruptions for 14 days across the same period. The U.S. International Trade Commission [estimated](#) \$82.2 million in economic losses in Indonesia due to the shutdown of the internet in 2019 affecting Facebook, Instagram, YouTube, and Twitter between 2019-2021.

Required Filing of Customs Declarations for ‘Intangible Goods’

On January 14, 2023, Indonesia’s Ministry of Finance [issued Regulation No. 190/PMK.04/2022](#) to require entities importing intangible goods such as software and other digital products transmitted electronically to file a Customs declaration. The Regulation requires a Customs declaration to be made within 30 days of an entity receiving payment for the importing of intangible goods through Customs’ online declaration portal with numerous details about each transaction including country of origin, sender information, and import information. The regulation went into effect on January 14, 2023, but how it will be administered is unclear— for example, if every download of an app on a mobile phone will trigger a customs filing requirement. Should the WTO moratorium fail to renew, customs duties under PMK 190 on digital goods would be charged in addition to the non-resident VAT imposed on the utilization of digital taxable goods and services in August 2020 ([Perppu 1/2020](#)).

Forced Revenue Transfers, Algorithmic Transparency, and User Data from Digital Platforms to News Publishers

In February 2023, the Ministry of ICT introduced a draft Presidential regulation that would mandate digital platforms to enter into revenue sharing agreements with news publishers for any presence of news content on their platforms. Under this regulation, Indonesia’s Press Council would establish the rules of engagement and simultaneously oversee mediation or arbitration if any disputes materialize—an authority they do not have under the country’s Press Law. The draft regulation would also direct digital platforms to share and disclose algorithm changes to news publishers and disclose commercially sensitive user activity to news publishers. [Local outlets](#) have reported that the proposed law was drafted by the Press Council in tandem with media organizations, calling into question the objectivity of the draft, and noting that it is targeted at 2 US companies.

Public interest, consumer advocacy, and civil society groups as well as media companies and legal experts have all raised concerns on similar proposals introduced in other jurisdictions, noting potential risks interfering with content moderation practices, including those used to promote information quality, remove hate speech and fight misinformation online; and undermine efforts to support media diversity and incentivize news media innovation.

Taxation of Digital Services

Indonesia [issued Regulation No.17/PMK.010/2018](#) (Regulation 17) in 2018. The Regulation amends Indonesia's Harmonized Tariff Schedule (HTS) Chapter 99 to [add](#): "Software and other digital products transmitted electronically." This makes Indonesia the only country in the world that has added electronic transmissions to its HTS. This unprecedented step to imposing customs requirements on purely digital transactions will impose significant and unnecessary compliance burdens on nearly every enterprise, including many SMEs. If a tariff rate (currently zero) is specified, the policy would conflict with Indonesia's commitment under the WTO's [moratorium](#) on customs duties on electronic transmissions, dating back to 1998 and most recently reaffirmed in June 2022. Left unchecked, Indonesia's actions will set a dangerous precedent and may encourage other countries to violate the WTO moratorium.

In March 2020, Indonesia introduced **tax measures targeting digital services** as part of an emergency economic response package. One of these taxes applies to e-commerce transactions carried out by foreign individuals or digital companies with a significant economic presence. Per reports, the significant economic presence will be determined through the companies' gross circulated product, sales and/or active users in Indonesia. Companies determined to have a significant economic presence will be declared permanent establishments and as a result subject to domestic tax regulations. If this determination of permanent establishment conflicts with an existing treaty, such as the U.S.-Indonesia tax treaty, then a new "[electronic transaction tax](#)" (ETT) would apply to income sourced from Indonesia. While structurally different from digital services taxes adopted in some European countries, the tax is similarly concerning insofar as it looks to unilaterally increase U.S. firms' tax payments in the region by departing from long-standing international taxation norms. U.S. companies were cited as targets of these tax measures.

Telecommunications-Related Barriers

The Minister of Fisheries and Marine Affairs issued a **Decree 14/2021** [mandating](#) that all subsea cables in Indonesian waters need to follow 14 prescribed routes and land at 4 pre-determined main landing points in Manado, Kupang, Papua and Batam. More than half of existing cables are located outside these prescribed corridors, and there is limited justification for companies to follow such routes and landing points. Further, different ministries interpret the landing points differently, and industry reports a lack of clarity over the process to propose new corridors. This restricts the ability of U.S. cloud and infrastructure services providers to determine the best business case for such landings and gives preferential treatment to domestic providers, creates significant business uncertainty, and serves as a hindrance to [U.S. strategic and economic interests](#) in the Indo-Pacific region.

Further, the ICT Ministry issued **Regulation No. 5/2021** that requires:

1. Foreign operators to partner with a local network operator that has been operational for five years and completed 100 percent of construction commitments for the first five years.
2. The local partner to be part of the consortium.
3. A minimum of 5% stake by the local partner.
4. Obligation to land in Indonesia.

Such requirements are significant market barriers for U.S. providers to establish their business operations in Indonesia, and a significant disincentive to developing resilient and secure submarine cable facilities.



Criminal Code

After a decade-long revision process, the Parliament passed a new Criminal Code on December 6, 2022, which could increase liability for digital platforms, including provisions relating to religious blasphemy, insulting the President and the Vice President, and expressing views counter to the national ideology (Pancasila). Corporations are now subject to criminal law under the code. The draft includes provisions subjecting corporations to criminal law, meaning business decisions, administrative issues, and negligent behavior could be penalized criminally (Article 45- Article 50). There is much ambiguity and uncertainty about the interpretation of the clauses and how they will be enforced (i.e., if all Indonesian laws applicable to individuals will then be applied to corporations). Detailed provisions will be stipulated in the implementing regulations. The new provisions could potentially impact how platforms moderate content for topics such as misinformation and slander (such as insults to the President and Vice President).