IPEF, “DIGITAL TRADE” AND THE FUTURE OF WORK

Trade Justice Education Fund
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DIGITAL COMMERCE & DIGITAL TRADE
WHAT IS DIGITAL COMMERCE & DIGITAL TRADE

- E-commerce
- Downloads
- Cloud computing
- E-mail
- Apps
- Big Data
How big is the U.S. Digital Economy

Real Value Added (billions 2012 dollars)

Source: BEA; digital excludes hardware.
U.S. Digital and Potential Digital Trade Flows

Source: Bureau of Economic Analysis, Information & Communications Technology.
Digital share of U.S. Services Trade

Source: BEA, Information & Communications Technology, does not include potential ICT trade.
MILLIONS OF DIGITALLY IMPACTED WORKERS

digitally-offshorable
scheduling boss-ware
algorithmic management

productivity boss-ware
platform gig work
worker surveillance
DIGITAL TRADE DEALS

Provisions that threaten jobs & workers
Free flow of data / localization
Source code & algorithm protection
Privacy, personal information, cybersecurity
de minimus

Weak consumer protections
anti-fraud, anti-spam
Platform liability
Internet access / net neutrality

Other customs provisions
E-transactions, E-signatures
Zero tariffs on digital flows
TRADE AGREEMENTS WITH DIGITAL TRADE PROVISIONS

Existing Trade Deals

USMCA 2020

U.S.-Japan Digital Agreement 2019

TPP 2018

Regional Comprehensive Economic Partnership 2022
(Austl., Brunei, Cambodia, China, Japan, Laos, N. Zeal., Singapore, Thailand, Vietnam)

Digital Economic Partnership Agreement
(Chile, N. Zealand, Singapore; signed but not in force; Korea, China requested entry)

Singapore-Australia Digital 2020

Pending Digital Negotiations

Indo-Pacific Economic Framework (IPEF)

U.S.-UK negotiations

U.S.-EU data negotiations

WTO initiative on e-commerce

Other non-U.S. bilaterals
**CONSTRAINTS TO DIGITAL POLICY SPACE**

**Policies that affect trade by electronic means**
USMCA, US-Japan excludes procurement & financial services
US-Japan, TPP exclude services / data on behalf of government
US-Japan excludes security

**Policy constraint caveats**
Necessary and legitimate objective
Unduly restrict electronic trade
Arbitrary, unjustified, or disguised trade barrier

**Designed to lock-in unregulated digital**
Little U.S. regulatory oversight
Tech companies view any regulations as trade barriers
Fewer than 1 in 20 laws / rules upheld at WTO

**WTO record on domestic measures**
- WTO overturned: 96%
- WTO upheld: 4%

Source: Public Citizen 2021
WHAT IS AT STAKE FOR THE COMPANIES

Net Income in billions

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<th>Year</th>
<th>Apple</th>
<th>Amazon</th>
<th>Meta</th>
<th>Alphabet</th>
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$243.4
What is at Stake for Investors & Executives

Stock Price Change Since 2015

1/1/15 1/1/16 1/1/17 1/1/18 1/1/19 1/1/20 1/1/21 1/1/22

Alphabet  Amazon  Apple  Meta
PROTECTING WORKERS & JOBS
UNFETTERED FREE FLOW OF DATA & BANS ON LOCALIZATION

Free flow of data
No prohibition / restriction on cross-border data flow
Explicitly includes personal information

Prohibition on data localization
USMCA, US-Japan absolute prohibitions (finance excluded)
TPP has standard weak policy caveats

“Enabling cross-data transfer and removing barriers for data flows is essential … Barriers to digital trade exist and are growing… [including] data localization policies”
DATA PROVISIONS PUSH OFFSHORING & OUTSOURCING

“If transferring personal data were not permitted, offshoring business services to popular outsourcing destinations would no longer be possible.”
— Facebook 2021

Data processing
Call centers
Telemedicine
Government data
IPEF Members Include ILO Scofflaws & AI Ghost Workers

Widespread labor abuses in IPEF region

ITUC rates 5 IPEF countries as having no guarantee of worker rights (India, Indonesia, S. Korea, Philippines, and Thailand) 2 countries with systematic violations (Malaysia and Vietnam)

India and Philippines call center offshoring & AI ghost worker hotspots
ENFORCING CURRENT LABOR LAW
NEW PROTECTIONS FOR SOURCE CODE & ALGORITHMS

Source code & algorithms
The black box instructions that drive software, including algorithmic management and worker-monitoring boss-ware.

Digital trade protections for source code & algorithms
USMCA, US-Japan digital provisions prevent government “access” of source code or algorithms

Overly narrow investigatory caveat
USMCA, US-Japan allow governments to request source code for a “specific” inspection that may preclude industry-wide, practice-wide studies or create a Catch-22 barrier to investigation.

TPP exemptions not included in USMCA
Exemption for critical infrastructure, commercial contracts, undefined mass-market software, and requires software remedies to comply with laws.
SOURCE CODE IS ROOT OF BOSS-WARE THAT HARMs WORKERS

Algorithmic management & boss-ware
Companies increasingly using artificial intelligence systems to hire, direct and control, surveil, evaluate, and discipline workers

Artificial intelligence hiring and termination
Companies using AI to screen and assess candidates; productivity monitoring used to discipline and fire workers

Productivity metrics and algorithms
Workplace productivity metrics assign tasks and ramp up workloads to hit and exceed prior targets

Monitoring workers on and off the clock
Widespread surveillance in the workplace and increasingly AI used to monitor workers’ online presence and social media

“Promote the adoption of risk-based approaches to AI regulation”
—Google IPEF comments
DIGITAL PROVISIONS HINDER ENFORCEMENT OF LABOR LAWS

- Wage & Hour
- Workplace Safety
- Right to Organize
- Employment Discrimination
ADDRESSING EMERGING ISSUES
PROTECTING GIG WORKERS FROM ALGORITHMIC ABUSE

Task assignment

Pay algorithm

Ratings

Unaccountable deactivation
“The law gives employers a level of freedom — a pretty high level of freedom — to do surveillance, not just in the workplace but outside of the workplace”

— Workplace Fairness (NYT 2022)
Cross-border data provisions explicitly include personal data.
Data flow provisions prioritize corporate commercialization of personal data and prevent policies to safeguard data.

Weak privacy protections in “personal” info provisions
USMCA, US-Japan digital encourage digital privacy measures but — explicitly allow voluntary self-regulation — policies must be “necessary and proportionate to risks”

Protection for “users of digital trade” not people
USMCA, US-Japan protect personal information for “users,” which for workplace surveillance is likely employers not workers.

USTR flags digital privacy as trade barriers
Canada, EU, India, Israel, Indonesia, Japan, Korea, Switzerland and Vietnam.
OTHER SOURCE CODE & ALGORITHM POLICY AREAS

Civil rights
Disinformation & hate speech
Wall Street
Antitrust
WHAT WORKERS NEED FROM DIGITAL TRADE NEGOTIATIONS

- Protect critical data & workers
- Enforce labor law in digital environment
- Protect workers from emerging digital issues
- Robust digital policy space