

# IPEF, “DIGITAL TRADE” AND THE FUTURE OF WORK

**Trade Justice Education Fund  
September 14, 2022**

Patrick Woodall  
Research & Policy Director  
AFL-CIO Technology Institute

**TECH**  
INSTITUTE  
AFL-CIO

# DIGITAL COMMERCE & DIGITAL TRADE

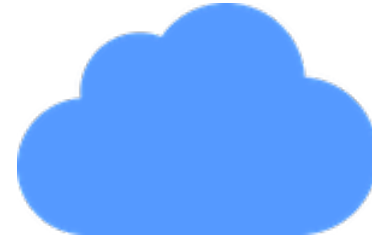
# WHAT IS DIGITAL COMMERCE & DIGITAL TRADE



E-commerce



downloads



Cloud computing



E-mail

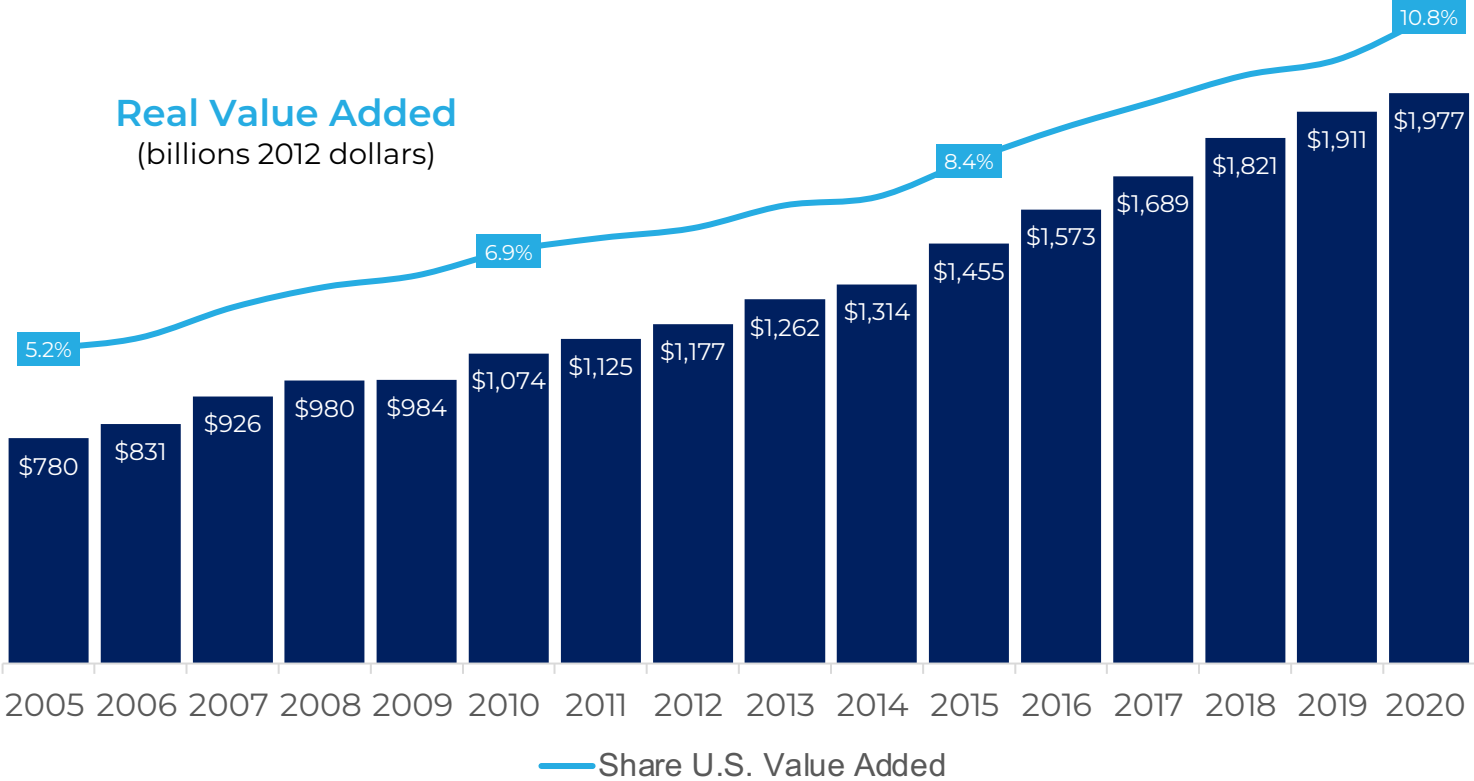


Apps



Big Data

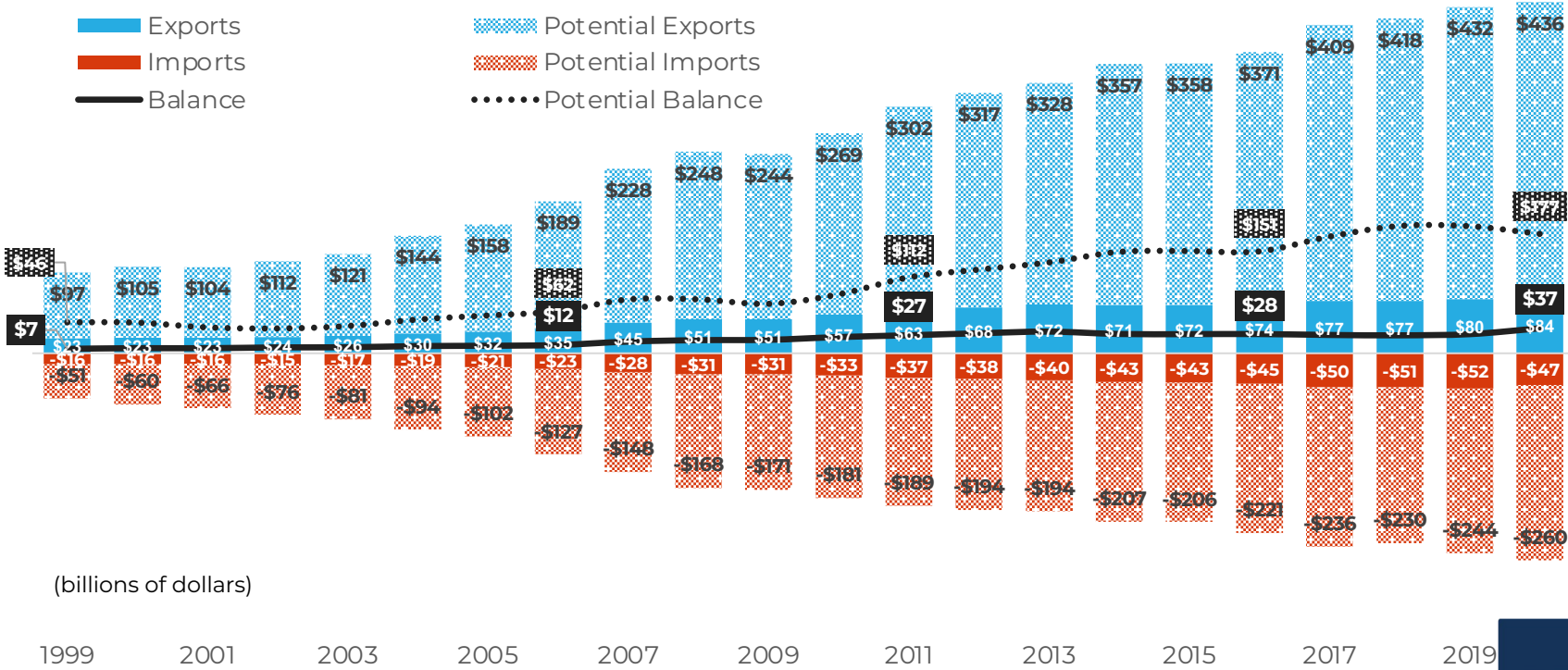
# HOW BIG IS THE U.S. DIGITAL ECONOMY



Source: BEA; digital excludes hardware.



# U.S. DIGITAL AND POTENTIAL DIGITAL TRADE FLOWS

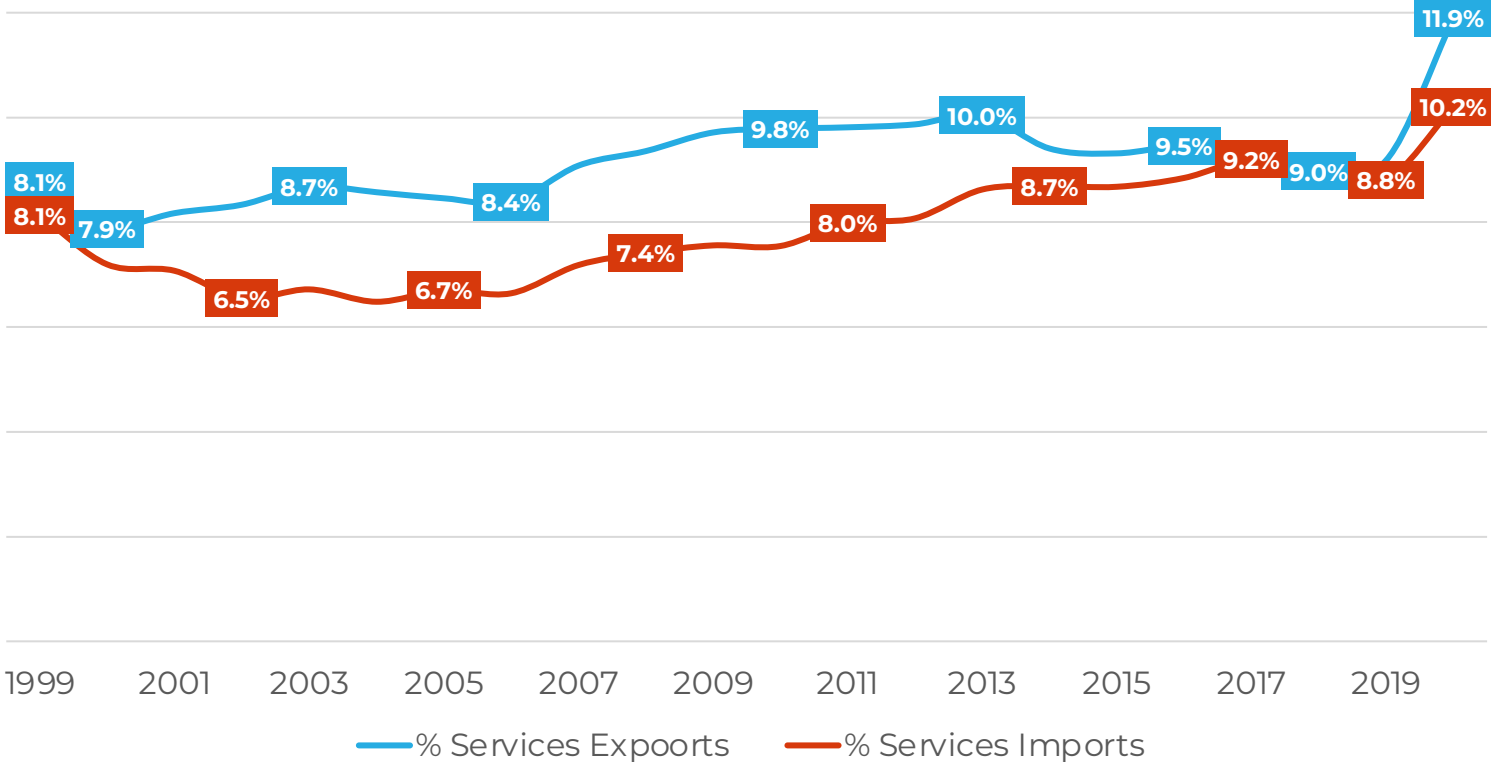


(billions of dollars)

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



# BASICS OF DIGITAL TRADE PROVISIONS

## 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

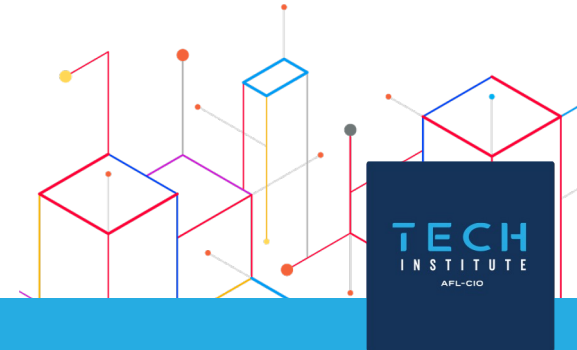
Platform liability

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

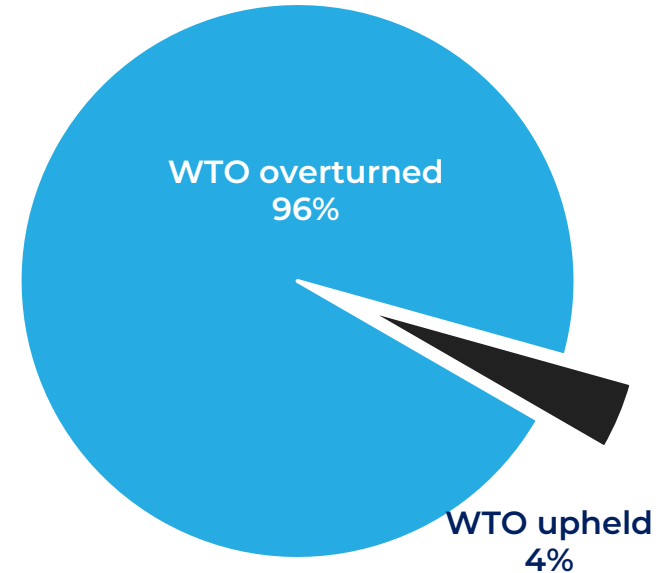
## Policy constraint caveats

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

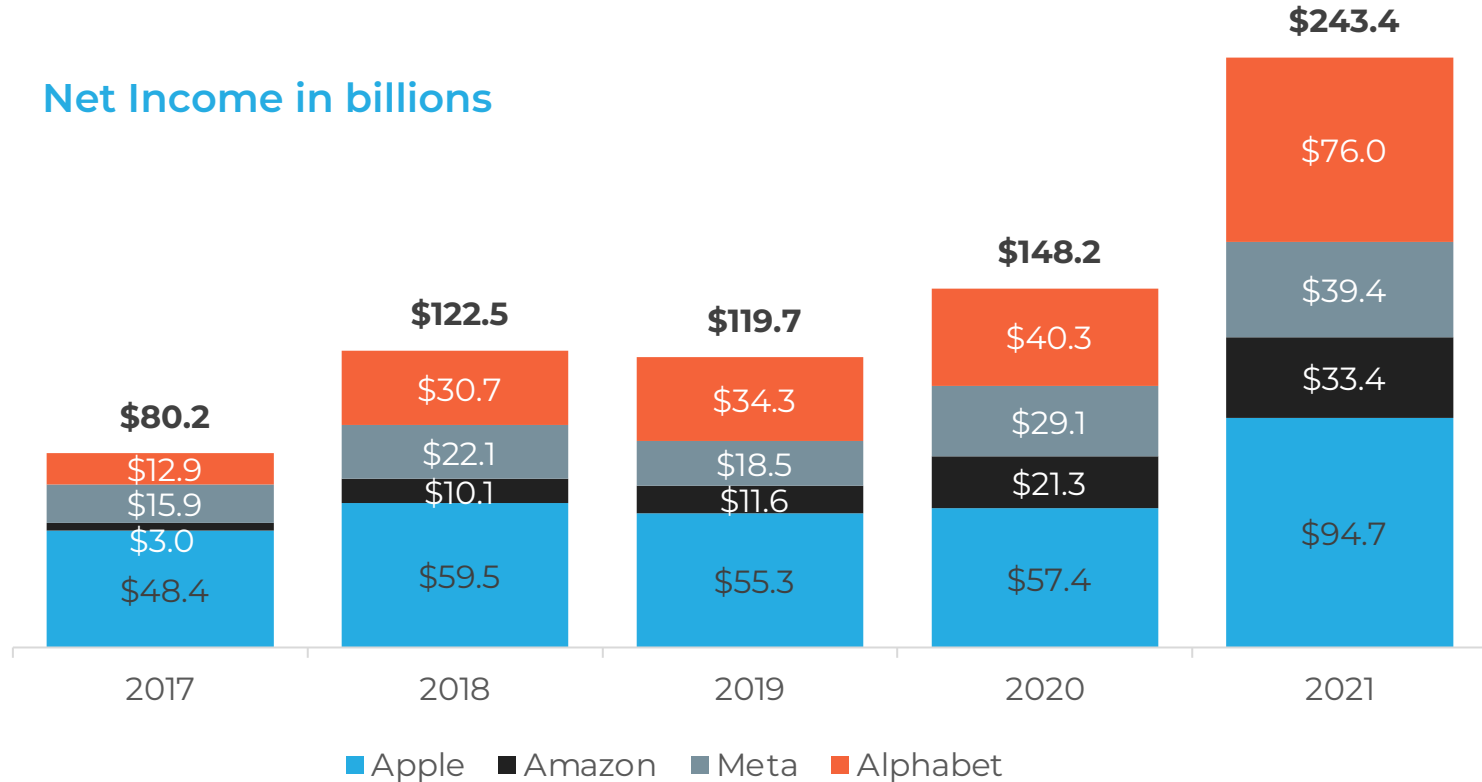
## WTO record on domestic measures



Source: Public Citizen 2021

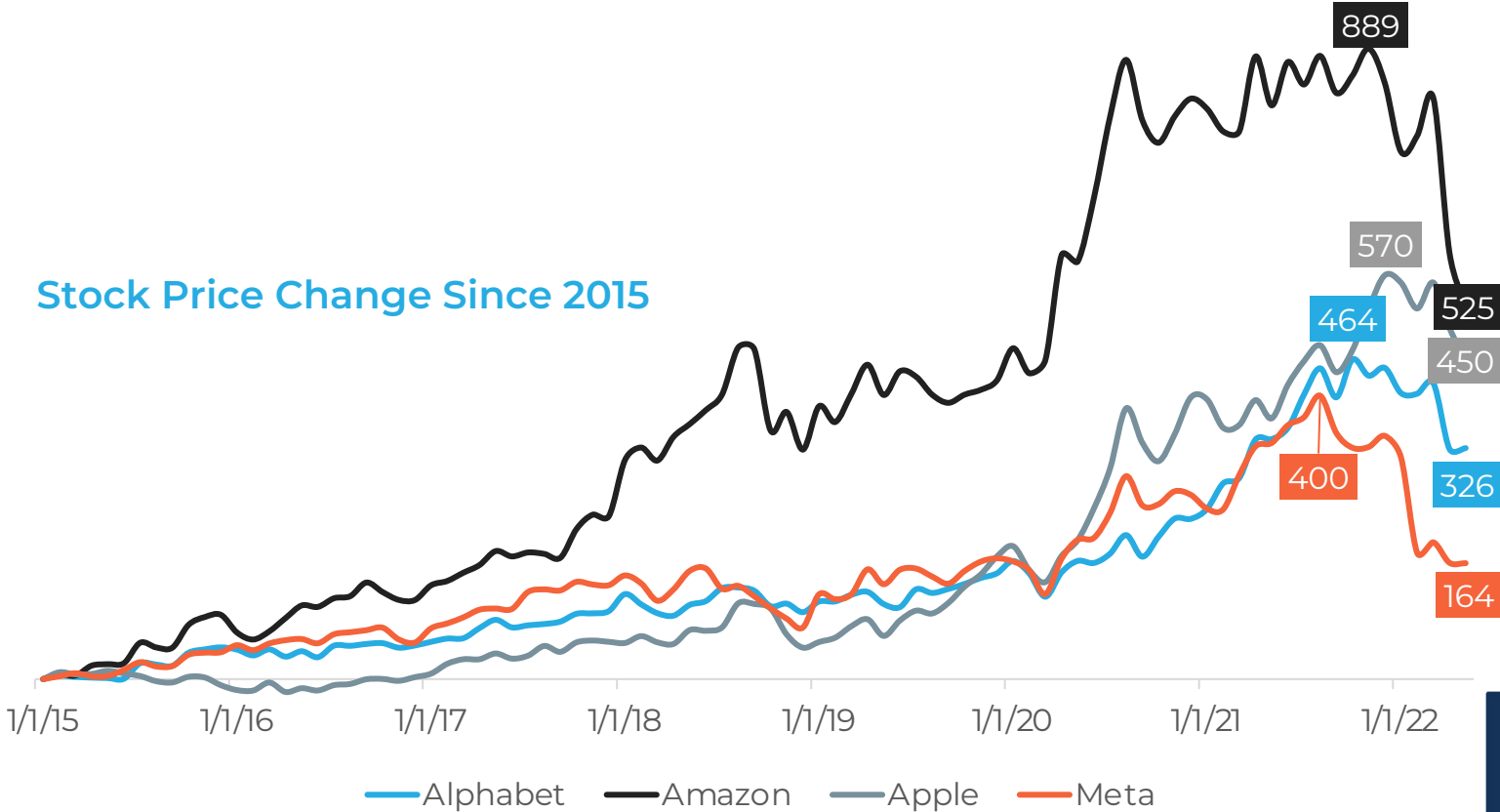
# WHAT IS AT STAKE FOR THE COMPANIES

Net Income in billions



# WHAT IS AT STAKE FOR INVESTORS & EXECUTIVES

Stock Price Change Since 2015



# 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”



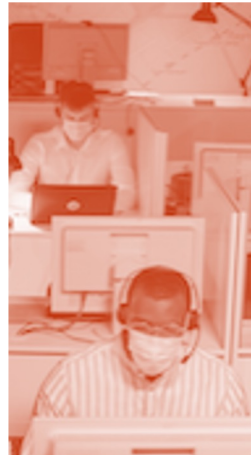
# DATA PROVISIONS PUSH OFFSHORING & OUTSOURCING

“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

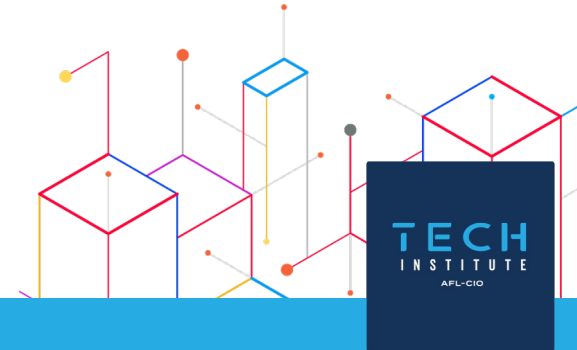
USMCA, US-Japan digital provisions prevent government “access” of source code or algorithms

## 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

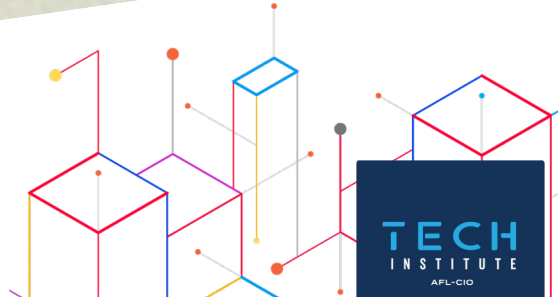
Workplace productivity metrics assign tasks and ramp up workloads to hit and exceed prior targets

## Monitoring workers on and off the clock

Widespread surveillance in the workplace and increasingly AI used to monitor workers' online presence and social media

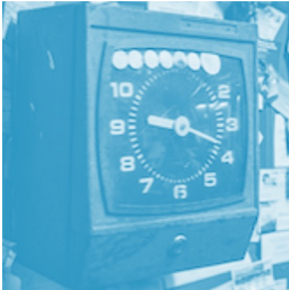


“Promote the adoption of risk-based approaches to AI regulation”  
— Google IPEF comments



# DIGITAL PROVISIONS HINDER ENFORCEMENT OF LABOR LAWS

## Workplace Safety

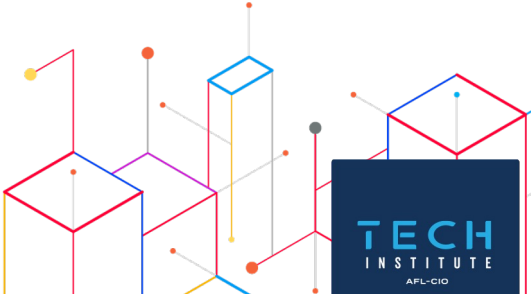
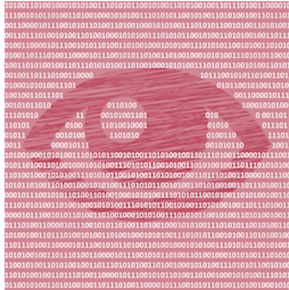


## Wage & Hour

## Employment Discrimination



## Right to Organize



# ADDRESSING EMERGING ISSUES

# PROTECTING GIG WORKERS FROM ALGORITHMIC ABUSE



Task assignment



Pay algorithm

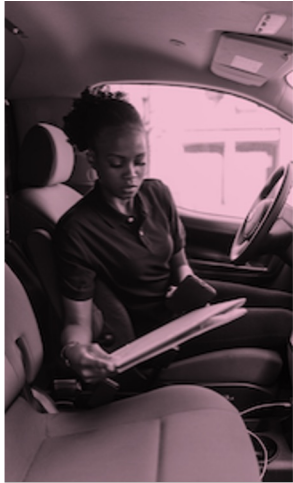


Ratings



Unaccountable deactivation

# PROTECTING WORKERS FROM SURVEILLANCE



Vehicle  
telemetry



Workplace  
cameras



Handheld  
equipment



Biometric &  
thermal imaging



Keystroke & call  
monitoring

“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)



# DIGITAL TRADE WEAK PRIVACY PROTECTIONS

## 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



TECH

INSTITUTE

AFL-CIO

[pwoodall@afclotechinstitute.org](mailto:pwoodall@afclotechinstitute.org)