



AMERICAN
LEADERSHIP
INITIATIVE

A Worker-Centric Digital Trade Agenda



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About the American Leadership Initiative

The American Leadership Initiative (ALI) is working with elected officials and other stakeholders to develop a 21st century vision and policy agenda for American global leadership, based on American interests and shared values. ALI's policy work is focused on five pillars: advancing inclusive and sustainable growth at home and abroad, pursuing smart trade policies, leading on climate, meeting the China challenge, and promoting democracy, human rights, and rule of law.

About the Authors

Dr. Orit Frenkel

Dr. Orit Frenkel is the CEO and co-founder of the American Leadership Initiative. She has 39 years of experience working on Asia, trade, and foreign policy issues. Prior to founding ALI, Orit was a senior executive with General Electric Company for 26 years. In that position, she supported GE's international public policy initiatives, including addressing the policy and business challenges posed by China, developing rules for digital trade, and policies to support sales of environmentally friendly goods. Dr. Frenkel started her career in the Office of the U.S. Trade Representative, as the Director for Trade in High Technology Products and Deputy Director for Trade with Japan. Dr. Frenkel received a Ph.D. in International Economics from The Johns Hopkins University, an M.P.P. from the University of Michigan, and a B.A. in Economics with honors from University of Maryland.

Rebecca Karnak

Ms. Rebecca Karnak is Director of Digital Projects at the American Leadership Initiative. She is also the Principal and Founder of Woodside Policy LLC. Prior to joining ALI, Ms. Karnak was Senior Director, Global Public Policy, at Dell Technologies. Ms. Karnak earned her B.A. from the Ohio State University, and her M.A. in international affairs from the Johns Hopkins School of Advanced International Studies (SAIS).

Introduction and Executive Summary

Digital technologies have created millions of new jobs and have been a lifeline for many small businesses and individuals during the COVID-19 pandemic. At the same time, new technologies have given rise to many new challenges for workers and other online users. This paper explores how to address these challenges through a worker-centric digital governance agenda.

The time is ripe for the U.S. to negotiate or join a digital trade agreement. As the American Leadership Initiative has written, the U.S. must seize this opportunity to set global internet standards of openness, transparency, and democracy, as opposed to China's increasingly influential vision of an autocratic internet that facilitates state

New digital policies and agreements must be worker-centric.

control, censorship, and surveillance.¹

China's growing technology leadership and autocratic internet standards ultimately undermine our national interests, including democracy itself.²

Developing new global internet

standards is also an important step to achieving other goals: strengthening America's economy and national security; addressing the growing role of digital technologies throughout the economy and working with our allies to provide open markets and interoperable regulations for the growing number of workers and small businesses who use digital technologies.

The Administration has pledged to reject business as usual in the trade sphere, stating that new trade policies and agreements must be "worker-centric." While this term is often used to describe more robust labor protections and provisions, it is part of a larger initiative to develop new trade policies that have not only expanded worker provisions, but also stronger environmental protections, stricter provisions regarding state-owned enterprises and subsidies, and other policies that will allow the balance of benefits from trade agreements to accrue more to workers and less to large corporations.

New digital policies can be crafted to fit into this "worker-centric" framework – policies that will address workers' needs in a shifting economy, whether as part of a stand-alone agreement or part of a larger bilateral or plurilateral agreement.

A worker-centric digital agenda must start with **Investing in U.S. Workers and Communities**. For American workers to reap the benefits of digital technologies, we must ensure that all citizens have equal access to digital technologies and training. The U.S. must address its deep digital divide, which drives economic inequality, and has only widened over the past 18 months as working, studying, and engaging in services online have skyrocketed. This divide hits women, Black, LatinX, and other underserved communities especially hard. Closing it will involve providing all citizens access to digital devices and broadband and making digital training accessible to all workers, especially those who are currently unemployed or in low-wage jobs and seeking to increase their skills.

We should modernize Trade Adjustment Assistance (TAA) to meet the needs of digital workers who lose their jobs due to trade. It should be made permanent and should cover the full range of service workers, from truck drivers to call center workers to those service employees tied to a factory which moves overseas. Finally, TAA should

emphasize digital training, in order to equip workers for the new economy.

Facilitating access to technology and training for workers and small businesses is an important way to build a more inclusive economy.

The digital economy has introduced a new category of independent contract workers, called gig workers or digital platform workers, who provide on-demand work, services, or goods. Global gig-economy transactions are forecast to grow by 17 percent annually to around \$455 billion by 2023.³ Gig workers typically lack health care and other traditional employee benefits.

Policymakers must ensure that they have labor rights and protections, and access to

the same benefits as traditional employees. A U.S.-led, worker-centric trade agreement should have guidelines for such basic rights and protections and should include a collaboration mechanism among trade partners to share best practices and policy development for the gig economy.

In addition to investing in workers, **Enabling Small Business Development** is critical. Small businesses are major U.S. economic drivers and employers. In 2020, 60.6 million employees worked for small businesses – almost half of the U.S. private sector workforce – and digital transformation has been especially rapid for small- and medium-sized businesses (SMEs).⁴ The U.S. must invest in small businesses.

Facilitating access to technology and training for small business owners is an important way to build a more inclusive economy.

In addition to a robust domestic agenda, **Leveraging Digital Trade Policies to Benefit Workers** involves adjusting digital trade policies to address workers' needs at home and abroad. An inclusive digital trade policy must expand stakeholder representation in setting policy and bring in small business and labor representatives to refocus priorities and create worker-centric outcomes.

A worker-centric digital agreement must include robust funding for trade capacity building (TCB) to ensure that workers abroad can reap trade benefits. Refining mechanisms to administer TCB funding can ensure the money allocated is actually used. Funding should be available to upgrade labor standards and expand access to technology and training for lower-income trade partners.

In keeping with the Administration's commitment to putting workers at the center of trade policy, future digital agreements must also contain language committing the parties to uphold the highest labor standards in the digital sector. At home, the U.S. should use Generalized System of Preferences (GSP) review requirements to foster responsible uses of technology which uphold human and worker rights.

Because digital technology access and inclusion are as important as market access, the U.S. should promote them to all underserved populations. A worker-centric trade agreement should recognize the importance of facilitating digital economy opportunities by removing barriers to participation for minorities, women, rural populations, and other traditionally disadvantaged socioeconomic groups.

While small businesses are a substantial – and growing – part of the digital economy, they often have trouble leveraging trade agreements because of the pacts' complexity. Making digital agreements work for SMEs, including by simplifying and digitizing trade formalities, is an important component of a worker-centric digital agreement. Small businesses have challenges navigating fragmented global regulations, so leading globally on digital governance is a key way the U.S. government can support domestic small businesses. Incorporating sustainability in our trade agreements is also a key Administration priority. A digital trade agreement should encourage the greening of supply chains and data centers and encourage sharing best practices regarding using digital technologies to promote sustainability.

China has been engaged in non-market practices in its Digital Silk Road Initiative to sell its digital technologies throughout the developing world. A digital agreement must create disciplines for subsidies and state-owned enterprises, practices used by China, and copied by many other countries.

Digital Provisions to Secure Networks and Protect Workers must be the heart of a worker-centric digital trade agreement, creating governance provisions that will foster technologies' responsible use and protect workers while supporting their needs and those of other online users.

Online privacy has become an urgent worker concern as employers increasingly use Artificial Intelligence, facial-recognition, and other technologies to monitor their employees' activities and automate their supervision. The U.S. needs federal privacy legislation, and a digital agreement must protect workers' privacy and data. Trade agreements should encourage governments to develop balanced regulations so that the use of new, emerging technologies is transparent, explainable, fair, and human-centric.

Cybersecurity has never been more important as COVID-19 has forced more work, health care, and schooling online. Strengthening U.S. cyberprotection means investing in a better talent pipeline and training those workers for the future. Moreover, cooperation across organizations – and borders – is essential to mitigating digital security risk and should be strengthened in future digital agreements.

Keeping the internet a safe and trusted medium is critical to our democracy and its values. A worker-centric digital trade agenda must ensure that data flows and data governance are mutually reinforcing in order to build trust in the digital economy. It should protect

the movement of data across borders, for example, and companies' ability to store it without using local data centers. The agenda must also ensure that robust security and privacy standards protect data flows and must set benchmarks – based on democratic and human rights principles – for law enforcement access to them.

We need a smarter approach for promoting effective content moderation practices and minimizing harmful and abusive online content.

We must also develop principles for protecting data flows with countries that do not adhere to democratic data governance norms. In particular, the U.S. and its trading partners should have a process to guard against the export of personal data to third parties or third countries that are likely to use this data to harm people.

Ongoing U.S. debates about extremist speech online and keeping the internet a safe and trusted medium are critical to our democracy and its values. New challenges in foreign markets have also emerged as governments misuse technology regulations to surveil political dissidents, suppress speech, and undermine human rights. We need a smarter approach for promoting effective content-moderation practices and minimizing harmful and abusive online content, while continuing to promote free expression and robust political discourse abroad. The U.S. should include language similar to the Christchurch Call and G-7 Internet Safety Principles in digital agreements, along with commitments to ensure that technology is never used to violate human rights or repress workers.⁵

Keeping the internet a safe and trusted medium is critical to our democracy and its values.

Finally, in order to protect workers and citizens online, digital agreements must include provisions that address unsolicited messages, consumer fraud, and other online harms. Both the Digital Economic Partnership Agreement (DEPA) and the U.S.-Mexico-Canada Agreement (USMCA)

address this issue, and U.S. policymakers should strengthen those provisions to include enforceability language and the ability to redress damages.

Increasing inequality, combined with America's experience during the COVID-19 pandemic, have heightened societal and political anxieties about the impacts of technology and trade. Both have delivered tremendous benefits to U.S. and global society, but these have not been equally shared. The Biden-Harris Administration's focus on worker-centric trade is an opportunity to develop a complementary digital trade agenda. Combined with a strong domestic program which includes investing in a robust social safety net, education, 21st century workforce development, and policies to upgrade U.S. technology competitiveness, this new trade framework can help create a more equitable future for U.S. workers, build digital standards that will create a safe environment for workers and businesses, and launch a global digital governance agenda that promotes shared values of equity and democracy.

Summary of Recommendations for a Worker-Centric Digital Agenda

Investing in U.S. Workers and Communities

Equity, Access, and Inclusion

- Make a historic investment in America's connectivity to close the digital divide, including by subsidizing internet access and equipment-access for low-income families. Upgrade the U.S. broadband network.
- Increase federal spending on digital training programs, especially for workers who are unemployed or in low-wage jobs. Design programs to be accessible to women, people of color, and individuals from other marginalized groups, which are traditionally under-represented in digital training.
- Enact the National Apprenticeship Act, which the House passed in February, authorizing \$3.5 billion for bolstering U.S. apprenticeship programs. Focus apprenticeships on digital as well as traditional skills. Develop high-tech apprenticeships in consultation with employers and provide incentives for digital companies to develop such programs.
- Enact federal legislation to make community college more affordable for low-income families, as well as create incentives for companies to partner with community colleges on digital-skills training.
- Increase funding to Minority Serving Institutions and Historically Black Colleges and Universities for STEM and computer science training, to promote apprenticeships for their graduates.

Trade Adjustment Assistance

- Enact legislation making TAA permanent.
- Focus on the community impact of losses from trade, recognizing that besides the individual trauma of losing a job, community-level effects include economic stagnation, rising substance abuse, and increased violence.
- TAA should cover the full range of service workers, from truck drivers to call center workers to those service workers tied to a factory that moves overseas.
- Emphasize digital training to equip workers for the new economy.

Independent Contract Workers

- Enact policies that provide more flexible income-support programs, relocation assistance, and training grants, along with portable benefits – tied to the worker rather than the employer.
- Promote guidelines for digital platform workers' basic rights and craft a mechanism for collaboration among trade partners on gig economy best practices and policy development.

Enabling Small Business Development

- Invest in digital training and infrastructure (per recommendations in the previous section) to make it easier for SMEs to use technology to run their businesses.
- Improve SME access to global markets by driving regulatory coherence and transparency in foreign markets.

Leveraging Digital Trade Policies to Benefit Workers

Expanding Stakeholder Engagement

- Expand the current digital Industry Trade Advisory Committee (ITAC) to incorporate representatives from labor, small businesses, and other diverse voices.
- ITAC 8, the current digital economy committee, is primarily made up of tech representatives, even though all sectors comprise the digital economy. Add a committee to the ITAC system, with representatives from across sectors and interests, which focuses on digital governance.
- Institute a program to promote a wider range of participation in the ITAC system through training, and support.
- Include the U.S. Secretary of Labor as a permanent member of the National Security Council, who can weigh in on trade and foreign policy from the perspective of the labor force.

Trade Capacity Building (TCB)

- Prioritize TCB in a digital agreement to include provisions for both labor and access to technology.
- Reevaluate the mechanisms by which the U.S. Government administers funds for trade capacity building, with the goal of using a greater percentage of funds that are already allocated.

Generalized System of Preferences (GSP)

- Add to GSP eligibility requirements that countries foster responsible uses of technology which uphold human and worker rights.

Digital Inclusion

- Expand access to technology for traditionally marginalized groups – not just market access – through a digital agreement.

Labor Provisions

- Expand USMCA provisions prohibiting the import of goods “from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor,” to include digital service workers, such as those in call centers, and mandate cooperation for the identification and movement of such goods.
- Incorporate provisions to combat human rights abuses and gender-based violence.
- Adopt a rapid-response labor mechanism in a digital agreement.

Small- and Medium-Sized Enterprises

- Promote paperless trading and require the legal frameworks governing electronic transactions to be consistent with internationally-developed models.
- Simplify and digitize trade formalities to lower small and medium-sized enterprises’ barriers to entry.

Sustainability Provisions

- Include commitments in a digital agreement for greening the supply chain, exploring carbon border-adjustment mechanisms for digital trade, and given data centers’ growing emissions footprint, collaborating on research on emerging green technologies.

Subsidies and State-Owned Enterprises

- Advance new disciplines around subsidies and state-owned enterprises, like those in USMCA, to benefit U.S. workers.
- Require both that SOEs operate in accordance with commercial considerations and that governments treat competitors in a non-discriminatory manner.

Digital Governance Provisions to Secure Networks and Protect Workers

Privacy, Data Protection, and Employee Surveillance

- Prioritize passing strong and comprehensive federal privacy legislation – though trade agreements should not wait on such action to push high privacy standards.
- Work to rebalance the employee surveillance privacy deficit and bring more transparency to the opaque practices regarding employee monitoring and data collection and use.

Securing Digital Infrastructure and Cybersecurity

- Build on existing USMCA and DEPA provisions to increase cybersecurity protection for private sector infrastructure in a new digital agreement.
- Commit parties in a new digital agreement to cooperate on cyber workforce development, with an emphasis on expanding diversity.

Data Flows with Trust

- Protect the movement of data across borders and companies' ability to operate without having to use local infrastructure or build redundant data centers in foreign jurisdictions. Also build in mechanisms to ensure that robust security and privacy standards protect data flows, setting standards for government or law enforcement access to data based on guiding democratic and human rights principles in the U.S. CLOUD Act and EU E-Evidence Regulation.
- Both in U.S. domestic policy and in a new digital agreement, guard against the export of personal data to third parties or third countries that are likely to use it to harm people.

Algorithms, AI, and Emerging Tech

- Encourage governments to develop balanced regulations which prioritize risk-based frameworks for governing AI to ensure that new, emerging technologies are used transparently, explicably, fairly, and in a human-centric manner.
- Build on AI language in DEPA, the U.S.-EU Trade & Technology Council declaration, and the Singapore-Australia Memorandum of Understanding.

Content Moderation and Foreign Censorship

- Promote free expression and counter censorship in any new policies or trade agreement provisions, upholding core democratic values.
- Advance language in a new digital agreement similar to the Christchurch Call and G-7 Internet Safety Principles to ensure that technology is never used to violate human rights or repress workers.

Competition Policy

- Address competition issues in a worker-centric digital agreement by facilitating cooperation among parties on unfair data collection and surveillance practices, among other practices that impact competition in the internet sector, in parallel with U.S. domestic efforts.

Consumer Protection

- Strengthen language in USMCA that requires parties to “adopt or maintain” consumer protection laws which “proscribe fraudulent and deceptive commercial practices that cause harm or potential harm to consumers engaged in online commercial activities.”
- Drive cooperation between nations’ consumer protection agencies.

A Worker-Centric Digital Agenda

Investing in U.S. Workers and Communities

While digital technologies have created millions of new jobs and have been a lifeline for many small businesses and individuals, especially during the COVID-19 pandemic, the new economy has also created new labor challenges which must be addressed.

The first is ensuring that all citizens have equal access to digital technology and training. Over the past 18 months, the trend towards working, studying, and engaging in services online has skyrocketed, sharpening the digital divide's impact. A quarter of the U.S. population still has no broadband internet service, with this gap disproportionately impacting minority, low income, and rural communities.⁶

The second labor challenge is the disruption that occurs as many companies go digital. The McKinsey Global Institute in 2017 estimated that up to one-third of activities in a majority of professions could be automated by 2030, "implying substantial workplace transformations and changes for all workers."⁷ The idea is that while the net number of jobs may increase, workers will experience more turbulence in the years ahead. The U.S. especially needs to increase digital training, specifically for individuals who need to learn new skills to find jobs in tomorrow's economy, including through programs like TAA.

Finally, a growing segment of digital economy workers are independent contractors, and the U.S. must develop ways to address their needs through increased social safety measures.

Equity, Access, and Inclusion

All U.S. citizens should have equal access to digital technology and training. The U.S. has a deep digital divide that drives economic inequality, disadvantaging many American workers based upon race, gender, geography, and education level. In June,

the Pew Research Center reported that roughly a quarter of adults with household incomes below \$30,000 a year do not own smartphones.⁸ And more than 4-in-10 of low-income Americans lack home broadband services or a computer. This erects economic and employment hurdles for many Americans and hampers their ability to participate in the increasingly digital economy. New policies must remedy this inequality so that all citizens can take full advantage of digital tools and opportunities.

Upgrading America's digital infrastructure and increasing access to equipment are also essential. Access to the internet is no longer a luxury, but an essential element to participating in the economy – as vital as access to electricity was a century ago. Even before the pandemic, U.S. internet infrastructure lagged behind that of other developed countries.

In addition, the internet should be more accessible to rural and low-income Americans, and we should establish programs to subsidize computers, tablets, and

All citizens should have equal access to technology and training.

smartphones for those below certain income thresholds. Each of these technologies can be found in virtually every household where the adults earn at least \$100,000 a year, with most upper-income households owning multiple devices.⁹ Those without them have difficulty accomplishing tasks that have become a necessity during COVID-19, such as doing homework or accessing telemedicine appointments.¹⁰

Gaps in access to equipment and the internet itself are especially stark for low-income Americans, a divide that hits Hispanic-Americans and African Americans hard. One-third of African Americans and Hispanics – 14 million and 17 million people, respectively – still don't have access to computers in their homes, and approximately a third of African American households and Hispanic American households lack broadband.¹¹

Several bills have been introduced in Congress to expand broadband and accelerate deployment of the FCC 5G Fund for Rural America.¹² The pending bipartisan infrastructure bill invests in universal broadband, and also ensures equal broadband access for underserved communities.¹³ Congress must move swiftly to address these needs.

In addition to ensuring extensive broadband access, we must dramatically expand opportunities for citizens to acquire the digital skills they need for today's jobs, and

tomorrow's. This is especially true for low-skilled workers, workers without a college education, workers of color and workers from other marginalized groups. We must retrain the U.S. workforce for the future economy and acknowledge that automation has and will continue to play a role in reshaping it, especially impacting manufacturing jobs.

In FY 2020, while 48 percent of Trade Adjustment Assistance petitions came from the manufacturing industry, approximately 68 percent of those who left the program got jobs in non-manufacturing sectors, coinciding with U.S. employment growth in those areas.¹⁴ Manufacturing workers and their children may not know what professions to go into. "The old model of front-loading education early in life needs to give way to lifelong learning," McKinsey & Company argued in a 2019 report on the future of work.¹⁵ Our domestic policies and trade agreements should reflect that training and education can no longer end when workers are in their 20s, but should continue through the decades.¹⁶ This includes digital training, which can vary widely, from basic computer skills to more technical coding programs.

We should invest in digital training for workers who are either unemployed, or in low-wage jobs and seeking to increase their skills. Before the pandemic, roughly 7 million U.S. jobs were unfilled, primarily because of a mismatch between worker skills and openings.¹⁷ A lack of digital proficiencies was a major reason for this gap.¹⁸ Now, as the U.S. economy has reopened, this picture is even more complicated within sectors and across geographies. Acceleration of digitization during the pandemic has even increased skill requirements for certain jobs.¹⁹

Digital companies must take a leadership role in modernizing job-training programs to develop a pipeline of skilled workers, including by developing new forms of apprenticeship and certificate programs targeted at underserved communities. This should include deliberate efforts to build partnerships involving the technology sector, community colleges, workforce boards, unions, and local employers – with the goal of making digital training and digital skills programs more accessible and useful to jobseekers from diverse backgrounds, while helping those who have been hardest hit by the pandemic.

Community colleges play a particularly important role for students, at every career stage, who need additional skills to find new – or better paying – jobs.²⁰ These institutions enrolled roughly 5.5 million students in 2018. Enacting federal legislation to make them more affordable for low-income families and to encourage creative partnerships with industry is critical. Such legislation should specify funding for digital

training and create incentives for tech companies to partner with community colleges on it. It should also include dedicated funding for Minority Serving Institutions.

Apprenticeship programs are an effective way to provide skills-training that leads to jobs. The House passed the National Apprenticeship Act, authorizing \$3.5 billion for bolstering U.S. apprenticeship programs, in February. It is awaiting Senate action.²¹ Domestic apprenticeships must be expanded to include digital skills. Such apprenticeships should be developed in consultation with employers and incentives should be provided for digital companies to foster apprenticeship programs.

Foreign competitors have effectively used apprenticeship programs to upskill their workers and do far more than the U.S. to prepare their workforces for the future. Denmark is a world leader in supporting unemployed and displaced workers as they adjust their skills. Singapore has created new lifelong-learning benefits so its workers can continuously upskill. Germany boasts a much-heralded apprenticeship system in which 60 percent of its youth train in fields such as advanced manufacturing and IT, compared to just 5 percent in the U.S.²² It is time for the U.S. to think differently about preparing our workforce, rather than simply shielding those who may be impacted negatively from localized, downside effects of trade and automation.

Trade Adjustment Assistance

Trade Adjustment Assistance, which Congress established in 1962, provides federal assistance to workers who are adversely affected by foreign trade. It includes resources to help workers obtain skills for successful reemployment. It expired in June 2021, so an estimated 48,000 workers, primarily in service industries, will lose eligibility benefits in the middle of 2022.²³

In June, House Ways & Means Committee Democrats introduced a new bill to renew and improve TAA and it must be enacted immediately: The longer it is delayed, the more workers will lose their assistance. Data has shown the communities of color are disproportionately impacted by trade-related job losses.

The House bill significantly improves upon the original. It would: reform eligibility criteria so that all workers impacted by trade would qualify, including service workers; reauthorize the program for seven years and increasing its funding to \$1 billion annually; increase allowances for job search and relocations to \$2,000 and establishing a new \$2,000 childcare allowance; increase benefits for workers using the Health Care Tax Credit and make the provision permanent; and provide \$9 billion over seven years for community college programs.²⁴

The bill also looks beyond the individual trauma of losing a job, addressing the community-level effects of job loss, including economic stagnation, substance abuse, and increased violence. It proposes overhauling the TAA for Communities program to better target support and initiate proactive outreach in trade-affected communities. It would allocate \$5 billion over five years to generate economic development

TAA worker-training programs should emphasize digital skills, to equip workers for the new economy.

plans, as well as eliminate blight from communities, improve public services and encourage private-sector job creation.²⁵

These proposals are necessary improvements, but a new TAA should go further. First, Congress should make the program permanent. Its temporary status creates gaps for workers when it expires and makes it difficult for states

to administer. It should also cover the full range of service workers, from truck drivers to call-center personnel to those service employees tied to a factory that moves overseas. Finally, TAA worker-training programs should emphasize digital skills, to equip workers for the new economy.

Independent Contract Workers

The digital economy has introduced a new category of independent contract workers, informally called gig workers. They are typically hired to provide on-demand work, services, or goods, often through a digital platform such as an app or website. They are also called digital platform workers.

While these workers enjoy great scheduling flexibility and opportunities for supplemental income, they typically lack health care and other benefits that regular employees receive. They have prompted new policy questions and challenges. For example, categorizing drivers as independent contractors has long enabled ride-sharing platforms to avoid paying employee payroll taxes for them, taxes which in turn fund benefits like unemployment insurance programs.²⁶

Globally, gig-economy transactions are forecast to grow by 17 percent annually to around \$455 billion by 2023.²⁷ The International Labor Organization (ILO) holds that from the perspective of “decent work” in its Conventions and Recommendations, gig workers should benefit from labor and social protection rights, regardless of

contractual status with the platform.²⁸ Policymakers must ensure these workers have labor rights and protections, and access to the same benefits as traditional employees.

One idea involves “delink[ing] ... healthcare, unemployment insurance, and other vital benefits from specific forms of employment, while providing a protective labor standard for all workers that includes collective bargaining (even for self-employed workers), OSHA, and other workplace rights,” as the Data & Society Research Institute’s Alex Rosenblat has suggested.²⁹ Policies that provide for portable benefits – tied to the worker rather than the employer – and longer and more flexible income-

Gig economy transactions are forecast to grow to \$455 billion by 2023.

support programs during periods of unemployment, as well as relocation assistance and training grants, could offer stability to gig workers, as well as people who need to move between opportunities and locations.

The growth of independent contract workers is global. While each country will need to use its domestic policies to ensure that these workers benefit from labor rights and social protections, many platforms also operate across multiple jurisdictions, necessitating global policy dialogue coordination. The ILO notes that free trade agreements can be important levers of “regulatory intervention pertaining to the transnational activities of digital labour platforms. The impact of trade agreements, and especially their labour clauses, on platform workers is a matter that could receive more attention in trade negotiations than has hitherto been the case.”³⁰ In parallel with other forums that are addressing the questions of how to protect gig workers, a U.S.-led, worker-centric trade agreement could include guidelines for basic rights for digital platform workers and incorporate a mechanism for trade partners collaborating on gig economy best practices and policy development.

Enabling Small Business Development

According to a recent McKinsey survey, COVID-19 has pushed companies to accelerate their digital transformations, especially in their customer and supply chain interactions.³¹ Health care, financial and other professional services have rapidly transitioned to digital platforms during the pandemic. These transformations continue as more businesses and service providers move online to accommodate changing consumer and business needs.

This digital transformation has been especially rapid for small- and medium-sized businesses. Many SMEs started using digital tools during COVID-19 to become resilient and ensure future growth.

Small businesses are major economic drivers and employers in the U.S. economy and making investments to ensure that digital technologies and training are accessible for all small businesses will fuel their growth.

In 2020, 60.6 million employees worked for small businesses – almost half of the U.S. private sector workforce.³² Small businesses comprise 99.9 percent of all U.S. firms, 97.5 percent of exporters, and 40.3 percent of private sector payroll.³³ From 2000 to 2019, small businesses created 10.5 million net new jobs while large businesses created 5.6 million.³⁴ Small businesses are also a key engine for advancing women and minorities: In 2020, 31 percent of all small business owners were women and 29.3 percent of these enterprises were minority owned.³⁵ Globally, SMEs account for almost 80 percent of jobs; and about 10 million of those businesses are owned by women.³⁶

Digitalization and trade can be key SME enablers. Digitalization supports innovation and access; creates opportunities for alternative payment and risk-assessment tools; facilitates access to job-recruitment sites, task hiring, and knowledge partners; and creates mechanisms for reducing size disadvantages in international trade. The Organisation for Economic Co-operation and Development (OECD) found that wages at exporting SMEs and highly-productive SMEs are closer to those at large firms than ordinary SMEs.³⁷ More than one-third of U.S. small business owners say that without digital tools they would have had to close all or part of their business during the COVID-19 crisis.³⁸

Online tools also allowed many individuals and small businesses to launch new companies. One online platform focused on helping found and register new businesses, for example, saw a 220 percent year-over-year rise in new company registrations in April 2020, and during the first half of 2020, more businesses launched on it than in all the previous 11 years combined.³⁹

Digital tools also gave many of these businesses the opportunity to sell their products or services globally. Nine percent of small businesses export goods or services and SME exports currently account for \$541 billion and nearly 6 million U.S. jobs.⁴⁰ Yet these companies often face difficult barriers, primarily foreign regulations, tariffs and customs procedures, and payment-collection issues. Giving small businesses better access to global markets could increase U.S. GDP by \$81 billion and add 900,000 new jobs.⁴¹

Ninety-two percent of small businesses that export use digital tools for things such as online payment processing, online productivity, e-commerce, online marketing.⁴² The online marketplace Etsy, for example, announced in May that the number of active sellers on its platform rose from 2.7 million in 2019 to 4.4 million in 2020, and the share of its sales which are global shot up to 42 percent in the first quarter of 2021.⁴³

As a large part of the U.S. workforce learns to take advantage of digital tools the U.S. government can foster growth both at home and abroad by leading globally on digital governance. Regulatory requirements in foreign markets are a key barrier to U.S. SMEs taking advantage of trade agreements. Advancing a digital trade agenda is one way to support them and drive regulatory coherence and transparency in foreign markets.

In 2020, 60.6 million employees worked for small businesses – almost half of the U.S. private sector workforce.

Leveraging Digital Trade Policies to Benefit Workers

Whether as part of a broader free trade agreement, or in a bilateral or plurilateral digital agreement, new language and policies can benefit workers in the U.S. and globally.

A more equitable, worker-centric digital trade policy begins with expanded engagement and consultations in digital policy development. Bringing in different stakeholders such as small businesses and workers, will bring different policy priorities into focus. A worker-centric digital agreement must include trade capacity-building provisions to raise labor standards globally and provide greater access to technology in the developing world. Such an agreement can and should have provisions to promote digital inclusion in underserved communities and facilitate access for small businesses. Finally, it should promote sustainability as well as include disciplines on subsidies and state-owned enterprises to counter China's pervasive non-market practices in the digital sector.

Expanding Stakeholder Engagement

A worker-centric digital trade policy begins with more diverse stakeholder representation in its development. The Industry Trade Advisory Committees are a public-private partnership, managed by the U.S. Department of Commerce and the Office of U.S. Trade Representative (USTR), which engages business leaders in formulating trade policy. A worker-centric digital policy should include other voices, representing small businesses and digital workers as well as consumer groups, to paint a broader picture of the potential economic and community effects of new digital policies and agreements.

Currently, one committee covers the digital economy and is largely populated by technology company representatives. Since most industry, services, and agricultural sectors are now part of the digital economy, the various sectoral committees could be convened around the range of digital governance issues that impact their sectors. These committees too should be more diverse. Representatives of small business and labor, as well as underserved communities, should populate them – a diversification which would require concerted outreach, training, and even possibly support.

The foreign policy scholars Charles A. Kupchan and Peter L. Trubowitz recently proposed an even more ambitious way to center U.S. economic policy on workers: making the Secretary of Labor a permanent member of the National Security Council, thus giving factory, farm, and service workers a stronger voice in White House deliberations over trade and foreign policy.⁴⁴

A worker-centric digital trade policy begins with more diverse stakeholder representation.

In addition to consulting with more diverse stakeholders, we must also recognize that many American workers, particularly from historically underserved groups, have not yet been integrated into the trading system. We must do more to understand and address these barriers. The Biden Administration has committed to ensuring that the concerns and perspectives of Black, LatinX, Asian-American and Pacific Islander, and Native American workers, their families, and businesses are a cornerstone of proposed policies so as to better understand the projected impact of proposed trade policies on communities of color before pursuing them.⁴⁵

Finally, the idea of stakeholder engagement should be interpreted in the broadest sense. In 2019, New Zealand adopted a set of principles called “Trade for All,” which seeks to maximize trade benefits for the various New Zealand communities. Its first key principle promises “An open conversation with the public and key stakeholders around the future direction of New Zealand’s trade policy.”⁴⁶ The U.S. should include similar language as it develops worker-centric trade and digital agreements.

Trade Capacity Building

Trade capacity building is a critical part of the U.S. strategy to enable developing countries to negotiate and implement market-opening and reform-oriented trade agreements and to improve their capacity to benefit from increased trade. New trade agreements should include TCB for both labor and digital provisions. It can go a long way toward increasing the likelihood that trade agreement benefits will be shared by both U.S. and foreign workers. Whether for labor-related activities or technology adoption and standardization, trade capacity building will play an important role in advancing a worker-centric trade agenda, as well as a digital governance agenda based on equitable and sustainable values.

TCB should include funds from the U.S. Agency for International Development for technical and regulatory training for the digital sector. In order to make TCB more effective, the mechanisms by which the U.S. government administers funds for it should be reevaluated. To date, funds allocated for capacity building are often not used by the recipient country. U.S. trade agreements are typically structured so that the recipient country must apply for the allocated funds. This process can be cumbersome, and countries may be hesitant to admit that they need help. A better solution would be for the U.S. to work with these nations to allocate the funds directly for agreed-upon goals. The USMCA’s mechanism for funding Mexico’s changing its labor laws and enforcement could potentially be a model for TCB.

Trade-related labor support has been among the highest-funded TCB categories, behind agriculture and/or infrastructure. These activities generally entail improving labor and workers’ rights; ensuring labor equity and equal access to jobs, particularly for women and vulnerable groups; building civil society and worker organizations’ capacity; eliminating forced and child labor; improving labor law compliance and governance; and assisting with workforce or human capital development.

Digital technology is an important tool for empowering women in the developing world. Women in these countries have relatively restricted access to information and

communication technologies and are 21 percent less likely to own a mobile phone, which could facilitate better education and strengthen their ability to participate in the economy.⁴⁷ Phones are also a key resource in developing countries for enabling security, mobile health care, and money transfers.⁴⁸ Technology also has great potential for closing the gender gap and empowering women in developing countries. Through educating girls in STEM and IT, it can help them pursue opportunities in these fields.

In addition to trade capacity building, the U.S. and its allies are taking steps to empower low- and middle-income countries to participate in the modern economy and benefit from digital technologies and trade. The U.S. together with the EU and their G-7 partners and the EU as part of the Build Back Better World Partnership, have launched an initiative to enable workers globally, and especially small businesses, to access opportunities in health care and digital technology.⁴⁹

Generalized System of Preferences

The Generalized System of Preferences, the largest and oldest U.S. trade preference program, eliminates duties on thousands of products when imported from designated low- and middle-income beneficiary countries and territories. As part of USTR's review

Digital technologies can empower women in the developing world.

to determine GSP eligibility, beneficiary countries must meet specific criteria regarding worker rights, intellectual property rights enforcement, and rule of law. USTR also reviews how beneficiary countries respond to petitions from interested parties. Digital provisions should be one of the review criteria, with

a requirement that countries adopt practices that foster responsible uses of technology which uphold human and worker rights.

Digital Inclusion

Digital Inclusion refers to the activities necessary to ensure that all individuals and communities, including the most disadvantaged, have access to and use of information and communication technology.⁵⁰ A new digital agreement must focus on expanding access to technology so that traditionally marginalized groups such as minorities, women, and rural communities are able to use digital tools to plug into the international marketplace, as opposed to just expanding access to markets.

The lack of broadband and the existing U.S. digital divide are part of a global phenomenon: All told, 3.7 billion people around the world lack broadband access.⁵¹ Connecting underserved communities with digital technologies is an important way of uplifting individuals by facilitating their participation in the economy and the trading system. DEPA acknowledges the “importance of digital inclusion to ensure that all people and businesses have what they need to participate in, contribute to, and benefit from the digital economy.”⁵²

A new digital agreement must focus on expanding access to technology.

The agreement goes on to recognize the importance of expanding and facilitating opportunities in the digital economy by improving access for underserved communities and low socioeconomic groups by removing barriers to participation. The signatory countries commit to taking a variety of independent and joint measures to facilitate this goal, including consulting with experts, sharing best practices, and developing programs to promote the participation of all groups in the digital economy.

A U.S. digital agreement should commit to promoting access and inclusion to all underserved populations, including Black, LatinX, Native American, rural, and low-income communities.

Over the past few years, there has been an increasing focus on the importance of gender inclusion, particularly in the developing world, where women are often the primary bread winners. The modernized Canada-Chile Free Trade Agreement, Argentina-Chile Free Trade Agreement, and Canada-Israel Free Trade Agreement all include trade and gender chapters, for example.⁵³ USMCA also calls for parties to work together to promote access to tech for persons with disabilities.

A worker-centric U.S. trade agreement should enshrine all these provisions to ensure that all workers and citizens, both foreign and domestic, have access to technology and training, as well as the economic opportunity in the digital economy.

Labor Provisions

Digital agreements such as the U.S.-Japan Digital Agreement, DEPA , and the Singapore-Australia Digital Economy Agreement lack labor provisions. In keeping with the Administration’s commitment to put workers at the center of trade policy, future

digital agreements must contain language committing the parties to uphold the highest labor standards.

USMCA incorporates the most forward-leaning labor language not only of any U.S. trade agreement but arguably of any trade pact ever. Provisions include prohibiting imports of goods “from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor” and mandatory cooperation regarding identifying and tracking the movement of such goods. These policies should be included in a digital agreement, and expanded to include digital service workers, such as those in call centers.

Other new provisions address violence against workers exercising labor rights, protection for migrant workers, and policies protecting against gender-based

employment discrimination.⁵⁴ The Biden-Harris Administration has prioritized using the U.S. trade agenda to combat human rights abuses and gender-based violence in certain regions and countries.⁵⁵

A worker-centric digital agreement should adapt provisions from USMCA in order to advance high-standard digital sector labor practices.

Lastly, USMCA incorporated new dispute settlement provisions for labor violations, notably creating a “rapid response” mechanism that supplements state-to-state dispute procedures. It provides for the enforcement of certain worker rights in individual facilities on a more

expedited basis than typical dispute-settlement cases. These provisions are especially relevant for digital-technology facilities like call centers or data centers.

A worker-centric digital agreement should adapt these provisions in order to advance high-standard digital sector labor practices.

Small- and Medium-Sized Enterprises

As discussed earlier, although SMEs are a large and growing part of the digital economy, they have had a difficult time taking advantage of trade agreements, which are complex and often geared toward multinational companies. Making digital agreements work for SMEs is an important component to a worker-centric agenda.

Again, USMCA contains the most comprehensive language to date advancing SMEs' interests. Chapter 25 has provisions strengthening cooperation between the countries and sharing best practices. In addition, the Cross-Border Trade in Services chapter benefits SMEs by eliminating the unnecessary requirement to open a foreign office as a condition of doing business.

DEPA is also a vehicle for cooperating among partners on digital economy issues, enabling SMEs to test ideas with DEPA counterparts. In addition, DEPA's trade-facilitation provisions promote paperless trading and require that DEPA partners' legal frameworks governing electronic transactions be consistent with internationally-developed models. This can be critical for minimizing bureaucratic delays, red tape, and inefficiencies at borders. Simplifying and digitalizing routine interactions has helped sustain international trade despite the COVID-19 pandemic and also lowers the barrier to entry for small and medium-sized enterprises.⁵⁶

A worker-centric trade agreement should contain similar provisions, as well as transparency mechanisms, to enable SMEs to reap the benefits of trade and the digital economy.

Sustainability Provisions

The Biden-Harris Administration has made climate change a top priority, and U.S. Trade Representative Katherine Tai has infused this focus into the Administration's trade agenda. In her Earth Day speech in April, Tai talked about how trade is an important tool to combat climate change and reach global sustainability goals and she has emphasized that the Administration's climate initiative should be a part of all new trade agreements – presumably including digital agreements.⁵⁷ Some related technologies, like data centers, have significant carbon footprints, accounting for 2-3 percent of the world's electricity consumption – a figure projected to grow to 13 percent by 2030.⁵⁸ While some U.S. technology companies have made extensive commitments to greening their supply chain, more work remains to be done.

Sustainability provisions in a digital trade agreement could include commitments to green supply chain and to explore carbon border adjustment mechanisms for digital trade, as well as requirements to collaborate on emerging green technology research.⁵⁹

Subsidies and State-Owned Enterprises

While China has been the global leader in subsidizing its State-Owned Enterprises, especially in the digital and technology sectors, other countries have also supported their own companies, especially those which are government-owned. New disciplines around subsidies and SOEs, like

those in USMCA, can benefit U.S. workers. USMCA Chapter 22 expands on existing definitions for state-owned enterprises to include indirect ownership or control. It requires such companies to operate in accordance with commercial considerations and for governments to provide non-discriminatory treatment

of competitors. Indeed, the Biden Administration is considering a new investigation into Chinese subsidies and their damage to the U.S. economy.⁶⁰ Disciplines around subsidizing and operating these enterprises are particularly important in the digital space, where U.S. and Chinese companies compete in third-country markets, with Chinese companies offering prices well below market values.

Disciplines around subsidies and state-owned enterprises are particularly important in the digital space.

Digital Governance Provisions to Secure Networks & Protect Workers

Existing digital agreements have a range of important provisions designed to create interoperable standards and ensure responsible use of technologies. This section examines these provisions and proposes new ones, with an eye toward including language that will harness these technologies for good, while protecting and workers and other digital consumers.

Privacy, Data Protection, and Employee Surveillance

Employers and workers enjoy many benefits from deploying new technologies in the workplace. Digitization enables workers to perform their jobs remotely, saving commute time and connecting workers across time zones and locations – and more crucially, helping millions of workers to continue earning a living during COVID-19

pandemic. Cross-border data flows played a key role in protecting workers by enabling rapid vaccine development and driving a coordinated public health response to the pandemic. Digital tools that connect workers on industrial worksites and in the field can provide useful data and keep workers safe

Online privacy, however, remains a concern. It has become increasingly urgent for the U.S. to enact federal privacy regulation, both to protect individual and worker rights and to create clear standards for any business or organization that uses personal data. Privacy concerns have become even more acute as employers increasingly use myriad technologies to monitor their staff's activities, as well as to automate their supervision. As the Center for Democracy and Technology notes, "Bossware allows companies to monitor workers' physical movements and pace of work in unprecedented detail."⁶¹ Employers can track body shifts and facial expressions through webcams, and software can evaluate whether people are paying attention – with consequences for those who are not meeting certain standards.⁶²

Workers are not always aware of being tracked or how their data is used.

Moreover, workers are not always aware of either how they are being tracked or how the tracking data is used by the employer, creating a power imbalance between employee and employer, as well as between employer and government regulator

Standards for tracking and for legitimate use of tracking data are not well defined, making it difficult to prevent abuse or even to pass on benefit to employees. Harvard Business Review surveyed thousands of workers across 13 countries in 2019 and found that workplaces which lose employee trust suffer negative impacts to business – not to mention workforce health and well-being. "Data can unlock people's potential and boost business performance, but these aren't prizes worth having if they diminish fairness and trust," the authors concluded.⁶³

In 2020, Cisco surveyed thousands of adults in 12 countries around the world. They found that workers are concerned about privacy protections built into their work tools, with many saying that figuring out what companies were actually doing with their data was too difficult.⁶⁴ While employers are responsible for monitoring and protecting what happens on their networks, federal authorities should work to rebalance the privacy deficit in terms of employee surveillance and to bring more transparency to these opaque practices. Further research is required on the health ramifications of employee surveillance, and improvements made to both the standards for reasonably conducting

it and the legal privacy protections keeping employers from stepping over common-sense limits. Workers and governments should have fair access to employer data sets, which are used to make decisions that impact the public and employee quality of life.

Many of these concerns fall within the purview of Congress and executive branch agencies. Congress should prioritize passing strong and comprehensive federal privacy legislation, and trade agreements should reflect these high standards.

Even absent federal legislation, however, digital agreements should strive to be ambitious on privacy, however. Existing language in agreements like DEPA and the U.S.-Japan Digital Agreement should be upgraded to give workers and users greater assurance that their privacy will be protected irrespective of where data is stored, and new language addressing worker privacy should be included in future worker-centric trade agreements.

Securing Digital Infrastructure and Cybersecurity

Cybersecurity has never been more important, as businesses, health care, and schools moved online in response to the COVID-19 pandemic and with data from increasingly connected industrial and remote worksites traveling across networks. At the same time, cybercriminals and other malicious actors have sought to exploit digital vulnerabilities to target public utilities, private sector companies, and workers in democracies around the world. In May, after a cyberattack disrupted the Colonial fuel pipeline – and the lives of millions of Americans – the Biden Administration issued an executive order tightening cybersecurity rules for government contractors and establishing an incident review board.⁶⁵ In September, President Joe Biden featured cybersecurity in his address to the U.N. General Assembly: “We’re hardening our critical infrastructure against cyberattacks, disrupting ransomware networks, and working to establish clear rules of the road for all nations as it relates to cyberspace.”⁶⁶

As the OECD has pointed out, cooperation across organizations – and borders – is essential to mitigating digital security risk: “Governments can play a key role to facilitate such co-operation, in particular by supporting, convening or encouraging sustainable multi-stakeholder partnerships based on trust.”⁶⁷ USMCA has language that provides a good model for what new digital agreements could accomplish in this area, with provisions that advance this type of cooperation as well as risk-based approaches to cybersecurity regulation. DEPA has a chapter addressing cybersecurity which commits the parties to “cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties,” and invest in cybersecurity workforce development “including through possible initiatives

relating to mutual recognition of qualifications, diversity and equality.”⁶⁸ These are all good baseline provisions which can be strengthened in future digital agreements, including through new provisions that would require the U.S. and its trading partners to cooperate in increasing cybersecurity protection for private sector infrastructure.

Strengthening U.S. cyber protection means building a better talent pipeline and training those workers for the future. According to the U.S.-based Diversity Cyber Council, less than 15 percent of the cybersecurity workforce is female, less than 10 percent is from minority backgrounds, and less than 8 percent has a disability.⁶⁹ Future agreements should commit to cooperating on cyber-workforce development, with an emphasis on expanding diversity.

Data Flows With Trust

Data flows have become crucial for the seamless functioning of economies and societies. Manufacturers, farmers, and individual workers must be able to move data

Strengthening U.S. cyber protection means building a better talent pipeline and training those workers for the future.

securely across borders and should not be forced to localize either it or infrastructure as a condition of doing business. Unfortunately, an increasing number of foreign countries are gravitating towards forced data localization requirements, which can undermine privacy and security and expose data to state surveillance. These national regulations to restrict the cross-border movement of data

are giving rise to fragmented and sometimes contradictory rules. Such regulatory fragmentation disproportionately impacts small businesses, which often lack the resources to comply with differing regulations across markets.

Under Japan’s leadership in 2019, the G-20 launched a major international initiative on data flows. The “Data Free Flow With Trust” framework maps a multidimensional architecture for international cooperation on data flows, both between governments and involving business, with recommendations for increasing levels of governance trust and building openness through trade rules and other tools.

The quantity of data generated by technology continues to rapidly increase, carrying potential to benefit U.S. manufacturers and farmers, among others, who are seeking

to compete with foreign entities doing the same. To ensure that U.S. workers do not miss this data boom's economic benefits, trade agreements must include provisions ensuring the free flow of data with trust. Specifically, the provisions should protect the movement of data across borders and companies' ability to operate without required use of local infrastructure or redundant data centers in foreign jurisdictions. It should also build in mechanisms to ensure that data flows are subject to robust security and privacy standards and should set standards for government or law enforcement access to data – based on democratic and human rights principles in the U.S. CLOUD Act and EU E-Evidence Regulation. This comprehensive approach will ensure that data flows and data governance are treated as mutually reinforcing concepts in trade agreements for building trust in the digital economy.

Digital trade agreement mechanisms should ensure that data flows are subject to robust security and privacy standards.

As the U.S. works with a wide range of countries to support a values-based approach to data flows, it must also develop principles for protecting them when countries do not adhere to democratic norms on data governance. In particular, the U.S. and its trading partners should have a process for guarding against the export of personal data to third parties or third countries that are likely to use this data to harm people. Initial proposals to guard against the misuse of U.S. data by foreign countries have been introduced by Oregon Democratic Sen. Ron Wyden and others.⁷⁰

Algorithms, AI, and Emerging Tech

Trust in technology is essential to ensuring the safe and secure adoption of emerging technologies, such as algorithms, which have become increasingly important decision-making tools in employment, banking, health care, and education. Many cases have surfaced where algorithms have produced discriminatory outcomes that negatively impact workers and other online users, sometimes with little recourse for the impacted individuals. At the same time, AI is also being leveraged in a trade context to promote shared environmental objectives, to help small businesses increase productivity and find new markets, and to help people communicate across borders.⁷¹

We need a more sophisticated trade and domestic policy framework to advance these opportunities and address these challenges. Worker protections related to AI or

surveillance technologies do not exist in U.S. labor law, for example. But they should: When the pandemic began, 30 percent of large employers adopted employee-tracking software for the first time, and now 60 percent use it in general – and not only for office workers.⁷² As recent National Institutes of Health research indicated, “Workplace monitoring and technostress issues will become prominent with an increase in digital presence.”⁷³ We should ensure both in U.S. domestic policy, as well as in our trade

New technologies should be used in a transparent, fair and human-centric manner.

agreements, that these technologies benefit both employers and workers and do not step over reasonable boundaries.

Trade agreements should encourage governments to develop balanced regulations that prioritize risk-based frameworks governing AI. This approach can help assure businesses, workers, and

consumers that new, emerging technologies are being used transparently, explicably, fairly, and in a human-centric manner. It can also ensure that there are compatible and non-discriminatory rules in place that allow businesses and researchers to move data and technologies safely across borders.

To meet these objectives, U.S. trade policymakers should adapt and strengthen language from a number of recent statements and agreements on AI, including:

- The Digital Economy Partnership Agreement, which recognizes the importance of widespread adoption of AI technologies and encourages the development of legal and governance frameworks for their trusted, safe, and responsible use.
- The US-EU Trade & Technology Council declaration, which says that “policy and regulatory measures should be based on and proportionate to the risks posed by the different uses of AI” and includes commitments to “foster responsible stewardship of trustworthy AI that reflects our shared values” and “provide scalable, research-based methods to advance trustworthy approaches to AI.”⁷⁴
- The US-EU Statement on Global Trade Challenges, which stated that the U.S. and EU “intend to work to identify and avoid potential new unnecessary barriers to trade in products or services derived from new and emerging tech, while ensuring that legitimate regulatory objectives are achieved.”⁷⁵

- The Singapore-Australia Memorandum of Understanding on AI, which is intended to foster a human-centered approach, including support for developing and adopting ethical governance frameworks.⁷⁶

Content Moderation and Foreign Censorship

U.S. debates about extremist speech online and keeping the internet a safe and trusted medium are critical to the values of democracy. New challenges in foreign markets have also emerged, as governments misuse technology regulations to surveil political dissidents, suppress the speech of labor activists and disadvantaged groups, and undermine human rights. We need a smarter approach to promoting effective content moderation practices and minimizing harmful and abusive content online, while continuing to promote free expression and robust political discourse in foreign markets where government censorship and surveillance is on the rise.

The challenges that social media companies have faced in stopping malicious actors from weaponizing social platforms – as happened with ethnic violence in Sri Lanka, genocide in Myanmar, and which was a factor in the January 6 insurrection in the U.S. – have resulted in increasing frustration both in the U.S. and globally. They have also triggered an important public conversation about the balance between free expression, safety, and responsibility online.

Following the Christchurch massacre in March 2019, New Zealand Prime Minister Jacinda Ardern and French President Emmanuel Macron arranged a gathering of heads of state and tech CEOs to “address the issue of terrorist and violent extremist content online.”⁷⁷ The group issued the Christchurch Call, an agreement between governments and tech companies to eliminate such content. Forty-eight countries and UNESCO have signed onto the call, as well as several tech companies including Google, Facebook, Twitter, and YouTube. In May, the U.S. formally endorsed the Christchurch Call.⁷⁸

The G-7 recently released “Internet Safety Principles” which expand upon commitments in the Christchurch Call and are intended “to improve internet safety and reduce illegal and harmful content and activity” in the online environment.⁷⁹ These principles – as well as statements by members of Congress – indicate a growing consensus that merely including Section 230 language in trade agreements and calling it a day is no longer sufficient. Section 230 of the 1996 Communications Decency Act, allows internet intermediaries to avoid liability for content posted by users on their platforms. While USMCA included language reflecting Section 230, any updated

approach to digital trade should reflect these G-7 and Christchurch Call objectives and advance an affirmative agenda on content moderation and online safety.

This does not mean that the U.S. government should simply abandon all engagement with trading partners on pressing cross-border content challenges, however. Instead, we need a smarter approach – one that promotes effective content-moderation

China censors internet content and uses it to drive an authoritarian political agenda.

practices, minimizes harmful and abusive content, and continues to promote free expression and robust political discourse in foreign markets where government censorship and surveillance are on the rise.

This updated trade framework should also take a more targeted approach to addressing this foreign censorship and surveillance. At the same time that many democracies are seeking to improve online safety, an increasing number of countries wish to use online regulations as a tool to carry out censorship and state surveillance intended to suppress the voices of political dissidents, labor activists, and disadvantaged minorities. As Freedom House concluded in a September report:

Authorities in at least 48 countries pursued new rules for tech companies on content, data, and competition over the past year. With a few positive exceptions, the push to regulate the tech industry, which stems in some cases from genuine problems like online harassment and manipulative market practices, is being exploited to subdue free expression and gain greater access to private data.⁸⁰

China censors internet content and uses it to drive an authoritarian political agenda. It promulgated false narratives regarding its persecution of the Uyghurs and other human rights violations, for example. Other countries have followed suit, using politically-driven content measures to limit user speech and political debate. India, in particular, “has threatened to imprison employees of Facebook, Twitter, and WhatsApp in retaliation for the platforms’ refusal to take down content associated with Indian farmers’ protests,” the Center for Democracy & Technology reported in August.⁸¹ The Washington Post has highlighted similar trends in Russia, Turkey, Vietnam, and Indonesia, concluding that “authoritarianism has covered itself with the fig leaf of supposedly lawful regulation.”⁸² As the U.S. content regulation debate moves forward, it is critical that policymakers engage with allies and rivals alike to address these issues and advance U.S. values for workers around the globe. As the Center for Democracy and Technology states:

[F]ree expression issues should be a central concern of US international trade policy. Policies that promote free expression abroad create a positive feedback loop that benefits users throughout the world. The reverse is true as well: policies that suppress speech negatively impact the online environment for all users. They can lead to a decline in the quality of services for non-English speakers. US trade negotiators can play an important role in safeguarding the ability of users all over the world to use the internet to connect, create, and express ideas.⁸³

To advance these values, we must develop a clear strategy for updating and integrating a broader internet freedom and responsibility agenda into trade agreements and other elements of foreign policy. In particular, trade policymakers should develop a strategy to counter foreign digital censorship in concert with the U.S. International Trade Commission, which is investigating the trade implications of foreign censorship practices. The U.S. should strive to include language similar to the Christchurch Call and G-7 Internet Safety Principles in digital agreements, along with commitments to ensure that technology is never used to violate human rights or repress workers.

Competition Policy

Including language on competition policy in a U.S.-led digital agreement could help dispel the notion that such an agreement only benefits “big tech” and could have the added benefit of strengthening regulatory cooperation among parties in this area.

In July, the Biden-Harris Administration issued an Executive order on Promoting Competition in the American Economy, which states: “The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage.”⁸⁴

The Biden-Harris order reflects an economy-wide approach to updating competition law to deal with 21st century challenges in the tech sector and beyond. However, while the U.S. is undertaking these important efforts, many other countries are also seeking to modernize their own competition laws and regulations. Given the integrated nature of the digital economy, it is important to drive a cooperative and principles-based approach on these issues, with clear frameworks to guard against anti-competitive practices. Updated approaches to competition and trade should preserve space for new laws and regulations while ensuring that such measures are consistent with core principles of due process, nondiscrimination and national treatment, fair evidentiary standards, and the protection of intellectual property and trade secrets. In fact, the Biden competition

order encourages the FTC to establish rules on “unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy.”⁸⁵

We should also avoid provisions which inadvertently expose user data or IP to authoritarian rivals, or that have the impact of unfairly advantaging companies in authoritarian countries – which can both directly and indirectly harm U.S. workers and consumers. U.S. trade policy and a worker-centric digital agreement can begin to address these practices and their impact on competition.

Language on competition policy in a U.S.-led digital agreement could help dispel the notion that such an agreement only benefits “big tech.”

Some initial attempts have been made to address these issues in the trade context, but a more holistic approach is needed. The U.S.-Japan Digital Economy Agreement, DEPA, and the Singapore-Australia Digital Economy Agreement do not go into great detail but do encourage cooperation and, in the case of the DEA, “sharing best practices on the enforcement of competition law and the promotion of competition in digital markets.”⁸⁶ USMCA’s Chapter 21 does not fundamentally shift competition law in North America, but “may open the

door to enhanced cooperation between Canadian, American and Mexican competition authorities,” as trade attorney Erin Brown has written.⁸⁷ It calls for parties to abide by robust procedural fairness commitments, such as: providing transparency as to the applicable competition laws and rules; conducting investigations subject to definitive deadlines or within reasonable timeframes; providing for representation by legal counsel; protecting confidential information; requiring the national authority to establish the legal and factual basis of alleged violations; and ensuring all final decisions are communicated in writing.⁸⁸

A U.S.-led digital agreement should build on these provisions not just by facilitating greater cooperation on digital competition, but also by reflecting the principles and standards set forth above on due process, nondiscrimination, evidentiary standards, intellectual property and trade secret protection, and the impact these values have on democracies versus their authoritarian rivals.

Consumer Protection

Consumers on the internet often encounter unsolicited messages and consumer fraud. In order to protect workers and citizens online, digital agreements must address these online harms. U.S. policymakers should seek to strengthen USMCA language that requires parties to “adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial practices that cause harm or potential harm to consumers engaged in online commercial activities.”⁸⁹ This measure could be strengthened by adding an enforcement or redress obligation, for example, with which the U.S. is already in compliance based on Section 5 of the FTC Act. Trade policymakers could also build on DEPA language which requires parties to “recognise the importance of transparent and effective measures to protect consumers from fraudulent, misleading or deceptive conduct when they engage in electronic commerce.”⁹⁰ Finally, given the cross-border nature of consumer protection challenges, an updated trade agreement should also drive cooperation between national consumer protection agencies.

Conclusion

Rising inequality and America’s COVID-19 experience have heightened societal and political anxieties about the impacts of technology and trade. Both have offered tremendous benefits to U.S. and global society, but those benefits have not been equally shared. While there is much work to be done at home to level the economic playing field, the Biden-Harris Administration’s focus on worker-centric trade is an opportunity to develop a digital trade agenda that will address these concerns, uplift workers, and advance shared values.

The U.S. has a strategic and national security imperative to engage more assertively abroad, especially in Asia, advancing a digital governance agenda that promotes transparency, trust and democracy, to counter China’s autocratic vision. But it must also leverage this opportunity to use technology and trade to forge a new, positive compact with workers and communities.

This can start by recognizing that digital trade agreements must focus on more than just expanding market access and eliminating barriers. New policies and trade provisions must enhance workers’ welfare and prepare them to use and benefit from digital technologies and must actively increase access to technology and trade tools for women, minorities, and other stakeholders and communities which have traditionally been underserved by trade.

Agreements should seek to uplift workers globally through capacity-building, which can promote fair labor standards and offer digital training in developing countries. Digital technologies have been a major boost to small businesses, especially during the pandemic, and we should implement policies to expand digital access for women- and minority-owned small businesses and facilitate their ability to access global markets.

The process of developing worker-centric digital trade policies should start by broadening the conversation to ensure that labor, small businesses, and other diverse stakeholders are fully represented as policy is developed.

Digital trade policies must promote responsible use of technologies by addressing consumer fraud, stemming the misuse of digital technologies, countering foreign digital censorship, and using technology to encourage sustainability.

Finally, a worker-centric digital agreement must foster trust in digital technology, through robust provisions governing privacy, cybersecurity, artificial intelligence, and data flows.

The U.S. is at a trade and technology crossroads. The rapid evolution of globalization and technology has left many workers and communities feeling insecure, and China's swift advance has challenged U.S. national security. The right domestic investments, together with smart, worker-centric digital policies, can open a path forward to creating a safer, more trusted digital economy that promotes workers and sustainability, while advancing U.S. global digital leadership, and strengthening democratic values.

End Notes

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