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# CREATING A NORTH AMERICAN DIGITAL FREE TRADE ZONE

Can the internet create a digital free trade zone even where there are border walls that constrain people?

- Trade law can offer enforceable mechanisms to reduce barriers to trade; can also establish minimum protections across borders.

# SERVICES IN TRADE LAW

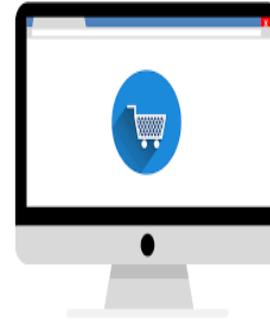


NAFTA, established 1994, offered national treatment for services providers, with special provisions for financial and telecommunications industries

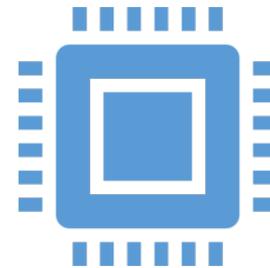


WTO, established 1995, created an essentially global instrument allowing for trade in services across borders.

# USMCA



Ecommerce: De-minimus thresholds raised



Digital products: Prohibit customs duties and other discriminatory measures from being applied to digital products distributed electronically (e-books, videos, music, software, games, etc.).

# Data Localization Motivations



Deter

Foreign  
Surveillance



Protect

Privacy and  
Security



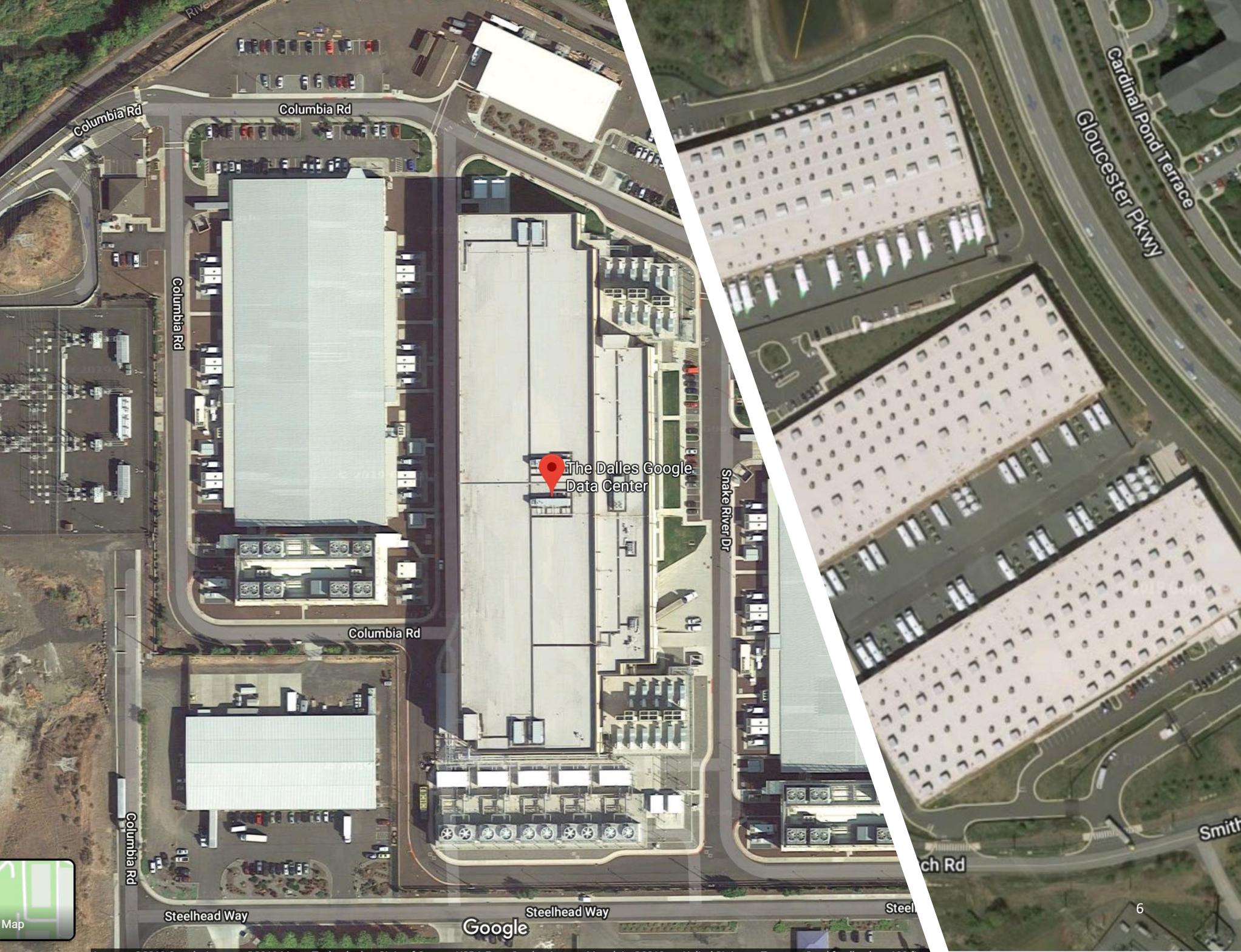
Promote

Economic  
Development  
through Import  
Substitution



Protect

Local Law  
Enforcement  
Access to Data



Columbia Rd

Columbia Rd

Columbia Rd

The Dalles Google  
Data Center

Snake River Dr

Columbia Rd

Columbia Rd

Steelhead Way

Steelhead Way

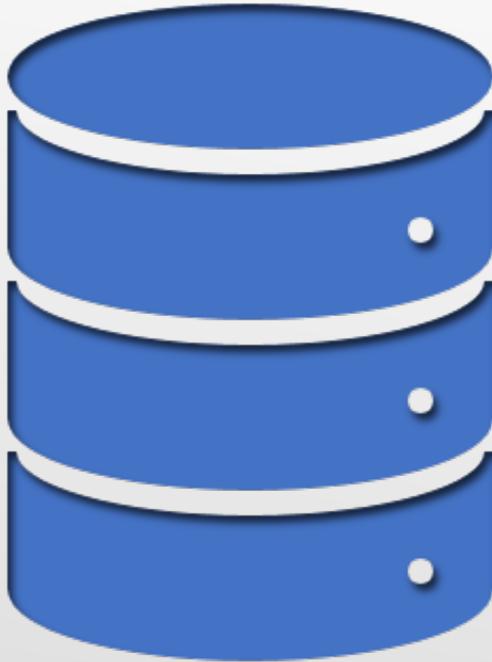
Steel

Google

Cardinal Pond Terrace  
Gloucester Pkwy

ch Rd

Smith



USMCA

- Data localization
  - Financial Information: Data localization with respect to financial services is subject to somewhat different rules.
  - Article 17.18 allows regulators to require data localization if a business is unable to provide them with access to data. The goal is to balance the need for free flow of data with the demands of regulators.
  - Financial regulatory authorities must be given “immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the Party’s territory.” If an institution fails to provide such access, authorities shall provide “a reasonable opportunity to remediate” before imposing a data localization restriction on that institution.

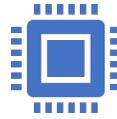
# USMCA



**Ensure that suppliers are not restricted in their use of electronic authentication or electronic signatures, thereby facilitating digital transactions.**

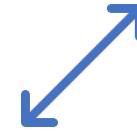


**Require enforceable consumer protections and anti-SPAM rules.**



**Limit governments' ability to require disclosure of proprietary computer source code and algorithms**

Introduction of "algorithms" is new. Protecting AI from industrial espionage. But concerns about legitimate needs for algorithmic transparency.



**Limit the civil liability of Internet platforms for third-party content that such platforms host or process, outside of the realm of intellectual property enforcement, thereby enhancing the economic viability of these engines of growth that depend on user interaction and user content.**

Largely modeled on CDA Section 230, which is seen as critical to the rise of US internet enterprise

# BENEFITS



Middle and large-scale enterprises: Increases size of markets available to producers, thereby increasing economies of scale



SMEs: Boutique specialist firms/individuals have broader market



Empowers consumers by giving them access to broader suppliers



All businesses benefit by accessing a greater variety of suppliers for services they need

# COSTS



CULTURAL IMPACT: CANADIAN CONCERNS  
OVER DOMINANCE OF US AUDIOVISUAL  
MEDIA



DOMINANT LOCAL SUPPLIERS WITH  
PREVIOUSLY CAPTIVE MARKETS NOW FACE  
INTERNATIONAL COMPETITORS, RESULTING  
IN DISLOCATIONS, ESPECIALLY LOSS OF JOBS  
IN CERTAIN INDUSTRIES