

# E-commerce and the World Trade Organization

By Deborah James

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In the early 1990s, transnational corporations (TNCs) in the agriculture, services, pharmaceuticals, and manufacturing sectors each got agreements as part of the WTO to lock in rights for those companies to participate in markets under favorable conditions, while limiting the ability of governments to regulate and shape their economies. The topics corresponded to the corporate agenda at the time.

Today, the biggest corporations are also seeking to lock in rights and handcuff public interest regulation through trade agreements, including the WTO. But today, the five biggest corporations are all from one sector: technology; and are all from one country: the United States. Google, Apple, Facebook, Amazon, and Microsoft, with support from other companies and the governments of Japan, Canada, and the EU (along with some developing countries aligned with them), are seeking to rewrite the rules of the digital economy of the future by obtaining within the WTO a mandate to negotiate binding rules under the guise of “e-commerce.”<sup>i</sup>

However, the rules they are seeking go far beyond what most of us think of as “e-commerce.” Their top agenda is to ensure free — for them — access to the world’s most valuable resource — the new oil, which is data. They want to be able to capture the billions of data points that we as digitally-connected humans produce on a daily basis, transfer the data wherever they want, and store them on servers wherever they want, most of which are in the United States. This would endanger privacy and data protections around the world, given the lack of legal protections on data in the US.

Then they can process data into intelligence, which can be packaged and sold to third parties for large profits, and are akin to monopoly rents. It is also the raw material for artificial intelligence, which is based on the massive accumulation of data in order to “train” algorithms to make decisions. In the economy of the future, whoever owns the data will dominate the market. These companies are already being widely criticized for their monopolistic and oligopolistic behaviors, which would be consolidated under these proposals.

Think about Google, which has become the largest collector of advertising revenue thanks to its ability to analyze and repackage our data. And think about Uber: it is the biggest transportation company in the world, yet it does not own cars and it does not employ drivers. Its main asset is the massive amount of data it has on how people move around cities. And with that “first mover” advantage, and with its army of lawyers and its massive scale, it can outcompete or simply buy up competitors around the world. The disruption Uber has caused in the transportation sector will

shortly be seen in just about every sector you can imagine. The implications for jobs and workers are difficult to overestimate.

Another key rule these corporations are seeking would allow digital services corporations to operate and profit within a country without having to maintain any type of physical or legal presence. But if an online financial services firm goes bankrupt, how can depositors seek redress? If a worker (or contractor) for the company's rights are violated, or a consumer is defrauded, how can they get justice? And if the company does not have a domestic presence, how can it be properly taxed, so that it is on a level playing field with domestic businesses? Most countries require foreign services suppliers to maintain a commercial, physical presence in the country to operate for just these reasons; but Big Tech just sees it as a barrier to trade (and unaccountable profit). Public interest regulations would be seriously undermined.

But that's not all. Big Tech also does not want to be required to benefit the local economies in which they profit. There are a series of policies that most countries employ to ensure that the local economy benefits from the presence of TNCs: requiring technology transfer, so they can grow their own startups; requiring local inputs, to help boost local businesses; and requiring the hiring of local people, to promote employment. But although every developed country used these strategies in order to develop, they seek to "kick the ladder away" so that developing countries cannot do the same, exacerbating inequality between countries.

The business model of many of these companies is predicated on three strategies with serious negative social impacts: deregulation; increasing precarification of work; and tax optimization, which most would consider akin to evasion of taxes. All of these downward trends would be accelerated and locked in were the proposed rules on "e-commerce" to be agreed in the WTO.

Since proponents of "e-commerce" rules in the WTO first tabled proposals last year, they have sought to convert an existing mandate to "discuss" e-commerce into a mandate to "negotiate binding rules" on e-commerce in the WTO. They have justified their proposals on the basis that e-commerce will promote development and benefit micro, small and medium enterprises (MSMEs) — as if promoting e-commerce and having binding rules written by TNCs are the same thing. But developing countries have focused their demands on increasing infrastructure, access to finance, closing the digital divide (obtaining affordable access), increasing regulatory capacity, and other concerns that will not be addressed by new rules on e-commerce in the WTO. A group of 90 countries have long put forward proposals in the WTO that would give them more flexibility to implement national policies to promote development, but their proposals are regularly ignored in the negotiations.

Meanwhile, MSMEs are able to participate in e-commerce now; but they are less likely to reap the benefits of scale, historic subsidies, strong state-sponsored infrastructure, tax avoidance strategies, and a system of trade rules written for them and by their lawyers if e-commerce rules in the WTO were to be adopted. What MSMEs need are policies along the lines of a digital industrialization strategy; but the policies envisioned by proponents are more likely to result in what is being termed the new "digital colonialism."

At this point, proponents have scaled back their ambitions due to massive resistance from the African bloc and some Asian and Latin American members. Now they are proposing more seemingly technical issues, such as e-payments, e-signatures, and spam. But these issues actually belong in other fora, such as the UN Conference on International Trade Law (UNCITRAL) or the International Telecommunications Union (ITU) where legal and technical experts rather than only commercial interests were long ago able to help governments establish better rules.

Perhaps as a Plan B, proponents are claiming that “technological neutrality” already exists in the WTO. This would mean that if a country “committed” financial services in the WTO — meaning that it agreed to have financial services subject to rules limiting regulation in that sector — then cross-border online banking — with all of the potential cybersecurity threats of hacking, or unstable financial flows wreaking havoc on local banking systems — would already be committed. But this is a preposterous idea, and WTO members have not agreed to it, despite the intent of some countries to establish it as an accepted principle.

Proponents are also pushing to renew a waiver on tariffs on electronically delivered products. But there is no economic rationale as to why digitally traded products should not have to contribute to the national tax base while those that are traditionally traded usually do. Big Tech may actually obtain this waiver, since it is often “traded” for a waiver that helps stabilize the generic pharmaceuticals market in developing countries, which helps guarantee access to life-saving medicines for millions of people.

The outcome in Buenos Aires<sup>ii</sup> will depend on strong resistance by developing country members to this new corporate Big Tech agenda. They should be aided by a strong resistance from civil society to further imposition of pro-corporate rules that encroach on our daily lives.

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*Deborah James is the Director of International Programs at the Center for Economic and Policy Research ([www.cepr.net](http://www.cepr.net)) and coordinates the global Our World Is Not for Sale (OWINFS) network.*

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<sup>i</sup> “Twelve Reasons to Oppose Rules on Digital Commerce in the WTO,” by Deborah James, *Huffington Post*, May 12, 2017, <http://www.huffingtonpost.com/entry/5915db61e4b0bd90f8e6a48a>.

<sup>ii</sup> “Letter from Global Civil Society about the Agenda of the WTO Towards the 11th Ministerial,” October 6, 2017, endorsed by 300 civil society groups, available at: <http://notforsale.mayfirst.org/en/signon/11th-wto-ministerial-letter-global-civil-society-about-agenda-wto>