Giant Tech Corporations Join Forces with the WTO to Try to Launch a WTO 2.0 to Cement Digital Colonialism through International Treaties

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Data is the most valuable resource in the world, and the engine of the digital economy. A central goal of the world's biggest corporations today is to have their government representatives use trade agreements to gain control of the world's data. They want to enshrine the right of Big Tech to transfer data anywhere in the world without restrictions, and to be able to use it exclusively for private profit.

Big Tech and its government advocates took a big step towards their goal in March 2019 by launching negotiations for a new agreement on e-commerce in the World Trade Organization (WTO). They are pressuring developing countries to join the talks by using the promise of "e-commerce for development." But their aim goes far beyond "e-commerce" and is an effort to gain the full liberalization of the digital economy of the future, and especially the control over data. Their efforts to gain new rights for Big Tech and limit public oversight and power are a backdoor attempt to rewrite the rules of the future digital economy, to achieve a "WTO 2.0."

The only way that developing countries will have a fighting chance at economic sovereignty is if they are able to preserve control and ownership over their data. To do so, they must ensure that rules that would give corporations the right to privatize and control data are not enshrined in international law through trade treaties. Fortunately, many developing country leaders are expanding their understanding of the value of data and its importance for digital industrialization and for public interest driven development.

In December 2017, African governments, supported by civil society resistance, blocked new negotiations in the WTO on "e-commerce" at the eleventh WTO ministerial meeting in Buenos Aires. But all developed, and some right-wing developing, governments signed a "Joint Statement" supporting new negotiations on digital trade issues. Throughout 2018, they met on a monthly basis and circulated over 50 proposals. (Unfortunately, Director-General Roberto Azevêdo has encouraged the talks and the WTO Secretariat has been performing hosting functions for them, in spite of the fact that member states specifically excluded this role from its mandate at the December 2017 ministerial conference.)

In early 2019, on the sidelines of the World Economic Forum, signatories of the Joint Statement announced their intention to launch negotiations, notwithstanding the lack of mandate in the WTO.

Delegates from 76 countries convened the first talks on a "plurilateral" on digital trade in the WTO in March. They held their first round of talks in May, with plans for monthly future meetings.

Moving forward, Big Tech and its advocates will make every effort to pressure additional countries to join, and to conclude — or at least demonstrate critical mass in order to gain a new multilateral mandate — by the time of the twelfth WTO ministerial, which will be held in June 2020 in Kazakhstan.

Some Potential Negative Impacts of the Proposed Agreement

The potential negative impacts of the proposed rules on people's lives in the digital global economy of the future go far beyond even what we can imagine today. Already, given our knowledge of the WTO and our collective experience with Big Tech, the impacts on policy space for development; on jobs and shared prosperity; on governments' right to regulate in the public interest, including on antimonopoly policies; on privacy and other human, economic, and labor rights; on fair taxation; and many more issues are clear.

To start with, we need more democratic governance over the Big Tech industry. Surveillance capitalism is harming democratic functioning in our media, knowledge, culture, transportation, education, judicial, commercial, health, and other sectors, and damaging our democratic processes. Even in seemingly nondigital areas like farming, Big Tech agriculture corporations are increasingly using big data to control inputs, credit, logistics, and marketing, eroding the power and independence of local farmers who have no access to their own data. The proposed rules would give Big Tech more, not less, power over even more aspects of our lives.

Public interest data policies are essential for economic development and prosperity in all countries, and especially developing ones. Big Tech corporations' extraction of data from around the world for private profit, using trade rules to gain rights to operate in markets while handcuffing governments' ability to ensure their populations benefit, is *digital colonialism*[1]. Data is the lifeblood of the future economy, as Big Data powers artificial intelligence, and so whoever controls the data will dominate the economy. That is why Big Tech's proposal in the WTO to give them the right to *unregulated cross-border data transfers*, sometimes called "free flow of data," is the most dangerous of all.

All countries, especially developing countries, need to harness the value of data for community economic development in the public interest, and for *digital industrialization*[2]. They must maintain the policy space to tailor policies on governance of data, including potentially maintaining data locally or regionally when that might be in the national or community interest. In addition to control over the transfer of data, proposals in the WTO to *ban countries from being able to require domestic data storage* or to *use local servers* would severely constrain countries' ability to ensure that their citizens benefit from digitalization.

Digital policies must promote decent jobs for shared prosperity, not reduce workers' power. This means creation of decent jobs and livelihoods and associated social and economic rights, not expanding the labor exploitation models of corporations like Uber and Amazon. Capital is taking an ever-larger share of workers' productivity gains, partly because corporations have used their surplus wealth to rewrite the rules. The proposed "e-commerce" rules, such as *giving corporations "rights" to operate in markets* while simultaneously *banning governments from being able to require those corporations have a local presence* or *benefit the local economy*, are intended to further increase this power disparity[3]. The most important strategy to ensure that benefits of digitalization are widespread and inclusive is for governments to commit to full employment, focused on equity, including strong labor rights and decent work and working conditions for all workers; gender equality; workers' data rights; and comprehensive and portable social protection including for platform workers. These rules will not appear in any WTO agreement.

"E-commerce" rules would also jeopardize stronger consumer protections, privacy, and rights. The proposed WTO rules would privilege corporate rights to data transfer, storage, and processing over consumer protections and citizens' privacy rights in ways that cannot be fixed by rules in the WTO itself. Algorithmic decision-making, which can exacerbate racial, gender, and labor discrimination, must be subject to public oversight, not hidden as "trade in secrets" as in the proposals in the WTO

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[1] "Digital sovereignty or digital colonialism?" by Renata Avila Pinto, SUR International Journal on Human Rights, 27 - v.15 n.27, 2018: https://sur.conectas.org/en/digital-sovereignty-or-digital-colonialism/.

[2] "South needs data digitalization policies, say CSO experts," by Deborah James, Published in SUNS South-North Development Monitor #8889, April 16, 2019: : http://www.twn.my/title2/wto.info/2019/ti190412.htm.

[3] "El nuevo desafío de sindicalismo internacional: Tecnología, comercio electrónico y empleo," by Sofia Scasserra, ALAI, October-November 2017: https://ourworldisnotforsale.net/2017/Scasserra_labor_ES.pdf.

to *ban governments from being able to [require disclosure of "source codes"[4]](https://ourworldisnotforsale.net/2018/Koene_algorithms.pdf).* Human, labor, consumer, economic, and civil rights must apply equally in the digital sphere without being relegated to the category of undesirable "[barriers to trade]"[5].

Anti-monopoly regulations and enforcement must be urgently implemented at the national and international levels. Nearly all digital trade is dominated by a few global players from the United States and China, such as Google which integrates data from its search engine, web browser, email, maps, advertising, calendar, cloud storage, messaging, translation, video-sharing, mobile phones and operating systems, smart speakers, and other businesses to dominate those sectors. An ever-increasing source of Big Tech's profit-making is derived from buying competitors and avoiding regulation. In addition to creating new and strengthening existing anti-monopoly regulations, governments must consider breaking up corporations engaged in harmful monopoly practices. Until this occurs, it would be foolish to tip the scale in favor of the monopolists' power even further by agreeing to their proposals[6] in the WTO.

Fairer taxation would be severely constrained by proposed "e-commerce" rules in the WTO that include at least seven mechanisms to limit tax liabilities for Big Tech, such as by directly *prohibiting customs duties on digital products*. UNCTAD research recently showed that 97 percent of the tariff revenue losses of digitizable products would be borne by developing countries. But Big Tech also wants to ban policies that countries use to assess taxes on corporate profits, such as *requiring corporations to have a local presence* when they operate overseas or *requiring a local copy of financial records* for tax authority oversight purposes. Digital players are taking advantage of the intangibility of digital goods and services to avoid tax, and now want to codify that avoidance through trade treaties. Countries will not be able to achieve the Sustainable Development Goals (SDGs) without expanding tax-based fiscal supports to infrastructure to improve access to water and electricity, and to ensure quality accessible public services in education, health, and social infrastructure[7] that can reduce unpaid and poorly paid care work in the home, mostly carried out by women.

The Global Context and the WTO

There are other issues of interest to global corporations that some developed countries are pushing in the WTO, including investment facilitation, limiting fishery subsidies, and expanding services liberalization.

But the biggest assault by developed countries outside of negotiation themes is to change the fundamental architecture of the WTO. Within the WTO, countries designate themselves whether they are "developed" or "developing," with slightly more flexibilities to the rules applying to the latter. Developing countries fought for these flexibilities because they were rightly suspect that the rules being negotiated in the WTO, which often limit the use of the very policies that rich countries used to develop, would fundamentally benefit rich country corporations more than their own populations. Now, The U.S. and other countries are trying to abolish these small flexibilities by

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[4] "Some implications of WTO ecommerce proposals restricting access to algorithms on algorithmic transparency," by Dr. Ansgar Koene, University of Nottingham, UK:https://ourworldisnotforsale.net/2018/Koene_algorithms.pdf

[5] United States Releases Annual Assessment of Foreign Trade Barriers," Alert by Scott S. Lincicome and Brian Picone, White & Case, April 17, 2019: https://www.whitecase.com/publications/alert/united-states-releases-annual-assessment-foreign-trade-barriers.

[6] Press Release: "Business and Tech Groups Release Priorities for WTO E-Commerce Meetings," Information Technology Industry Council, July 16, 2018: https://www.itic.org/news-events/news-releases/business-and-tech-groups-release-priorities-for-wto-e-commerce-meetings

[7] "Why the dominant digital trade paradigm will not work for women in the global south," Anita Gurumurthy and Nandini Chami, IT for Change, Medium.com, April 2, 2019: https://medium.com/commentary-itforchange/why-the-dominant-digital-trade-paradigm-will-not-work-for-women-in-the-global-south-d053cd3b470f.

limiting their use only to the Least Developed Countries (LDCs). Under this proposal, the same rules would apply to Kenya or Ecuador or Vietnam, as apply to the United States, the EU, or Australia. This issue is at the heart of some of the "WTO reform" proposals that will be central to discussions during the G20 Summit in Japan this June.

But developed countries are also trying to introduce new "geometries" of negotiation along lines that put developing countries at an even further disadvantage. They are framing proposals — advocating the same neoliberal agenda, now also encompassing e-commerce — around issues of "gender" and also "micro, small, and medium enterprises" or MSMEs. Because women and MSMEs are found in every country, and because proponents claim that digital trade is beneficial to women and MSMEs, they then — without irony — argue that any new rules on digital trade would be good for women and MSMEs. The reality, of course, is that the proposals would be extremely harmful to women[8] producers and consumers, especially in the global South, and would benefit large transnational corporations (TNCs) at the expense of MSMEs[9] around the world.

At the same time, the issues of concern to developing countries are still being marginalized in the WTO. The main goal of developing countries for many years has been to transform rules governing *agriculture* so that they can distribute food to their poorest populations in a way that also supports farmers' livelihoods, through the well-established practice of public stockholding. Unfortunately, this practice is generally not allowed under WTO rules, and the US and others have blocked negotiations on it for many years.

The other top issue that should be being discussed at the WTO is the *development agenda*, which focuses on allowing developing countries more flexibility from certain rules in the WTO that have directly harmed their ability to develop their own economies and foment industrialization. Developing countries have often found that WTO rules trap them in the lower rungs of global supply chains, making it difficult to increase the value added in their production. Yet the U.S., EU and other developed countries have refused to conclude the development agenda in the WTO for over 20 years.

All of this is occurring in a context in which "multilateralism" is under attack by the Trump administration and other right-wing allies. Some WTO proponents are using these attacks as a way to bolster support for the institution. But Trump and his counterparts are a *result of* the failure of the broader neoliberal project to raise the standard of living for millions of people in the U.S., and around the world. The real struggle is not between multilateralism and nationalism, but between a pro-corporate form of globalization (neoliberalism) and true multilateralism for shared prosperity — which would involve comprehensively transforming the current trade system into one that is just, democratic, and sustainable.

Which Direction for the Digital Economy?

While proponents have been busy launching plurilateral negotiations in the WTO on digital trade, many developing countries have increased their interest in and understanding of the economic value of their own data for their future development. Members of the Our World Is Not for Sale (OWINFS) global network have been campaigning against rules on digital trade in the WTO on the basis that data should be used for public interest purposes, including for digital industrialization, not just for corporate profit. Some developing countries are raising this issue at the WTO, and also now at the

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[8] "Gender Equality in the Digital Economy: Emerging Issues," Anita Gurumurthy, Nandini Chami, and Cecilia Alemany Billorou, IT for Change and DAWN, November 2018: https://itforchange.net/digital-justice-project/issue-paper-1/.

[9] "eCommerce and MSMEs: what trade rules could improve the business climate in Africa?" By Martin Luther Munu, Research Analyst, Trade & Regional Integration, Economic Policy Research Centre (EPRC), March 2019, munumartinl@yahoo.com: ourworldisnotforsale.net/2019/Munu_Africa.pdf.

UN Conference on Trade and Development (UNCTAD), where a recent meeting[10] failed to agree on recommendations because the EU blocked any mention of the data issue. The key subject of data control is indeed going to be the major point of conflict between corporate advocates and those defending development and the public interest in the years to come; indeed, resource wars of the future will be fought over control of data.

Who benefits from digitalization, like with any technology, will largely depend on the policy landscape in which the technology is applied. That includes global rules set in trade agreements. In order for digitalization to have a positive impact on society and our shared environment, civil society must play a role in shaping those policies.

Civil society can advocate that governments participating in the talks should withdraw, much as Uruguay did during the talks on the proposed Trade in Services Agreement (TiSA) after an internal evaluation by multiple ministries revealed that it would have myriad negative impacts on Uruguayan peoples' lives. In Latin America, e-commerce negotiations participants include Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Uruguay. (Interestingly, El Salvador, Honduras, and Nicaragua had not joined in 2017 but did in 2019 — perhaps under pressure from a Northern neighbor? Unfortunately, Chile, Mexico, and Peru already adopted some of the provisions on digital trade when they implemented the so-called Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), even though the digital provisions had been proposed by the United States, which left the agreement.)

Civil society can also play an important role in encouraging countries that are not participating in the plurilateral (in Latin America: Bolivia, Ecuador, Venezuela, and importantly, the Caribbean countries) to maintain their pro-development positions.

We need a new agenda for digital economic policies, and for the global economy generally. Countries must develop their own agenda for digital industrialization. They must not advance the "e-commerce" rules developed by multinational corporations like Amazon, Google, Facebook, and Alibaba. Other models, including digital industrialization policies with strong user and labor rights, can more equitably distribute the benefits of the digital economy.

Developed countries have argued that it is better for developing countries to participate in the talks so as to ensure a more pro-development outcome. But such an outcome cannot be achieved in the WTO because the rules and policies needed for digital industrialization are the opposite of WTO rules, which give companies rights while constraining the role of the state in regulating.

More than 315 organizations from over 90 countries made these and other arguments in a letter[11] sent to all WTO members, urging them "to abandon their push for digital trade negotiations in the WTO and focus urgently on transforming global trade rules for shared prosperity for all."

Will Big Tech advocates conclude a new "plurilateral" deal among 76 (or more?) members by June 2020? Or will they gain a new mandate in the WTO among the 164 members? Whether they are successful will depend largely on the effort civil society mobilizes to demand that governments defend the economic interests of citizens against the predatory colonial ambitions of Big Tech corporations.

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[10] "South nations take firm stand on geo-economics of data," by Parminder Jeet Singh, published by the SUNS South-North Development Monitor #8890, April 17, 2019: http://www.twn.my/title2/wto.info/2019/ti190413.htm.

[11] "Letter from 315 CSOs from 90+ countries against Digital Trade talks in the WTO", April 1, 2019, Our World Is Not for Sale (OWINFS) global network: http://ourworldisnotforsale.net/2019/Digital_trade_2019-04-01-en.pdf.