

**Subject: Extremely problematic language on (1) 'data flows' and (2) 'multistakeholder approach' to digital policy in the UNCTAD text being negotiated**

September 18, 2021

Dear Ambassadors, Delegates,

We would like to draw your attention to the very problematic language on (1) 'data flows with trust', and (2) multistakeholder approach to digital policy making, that still exists in the document being negotiated for the fifteenth session of the UNCTAD.

**This is language that has earlier been consistently rejected by developing countries at numerous occasion at global forums. It cannot find entry into international agreement and legitimacy through the proposed UNCTAD document.**

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**'Data flows with trust'**

Any such language is extremely problematic for protecting developing country interests in relation to emerging global digital ecosystems and digital value chains. Whether in their submissions to WTO meetings or at UNCTAD meetings, as well as at other forums, developing countries have consistently focused on national and people's economic rights to data that gets produced within their territories, and pertains to their people, communities, ecology and environments, etc. They have always objected to any framework calling for unchecked and unhindered flow of such data out of their countries, and out of their controls, with the possibilities therefore of them not getting any economic value from it, and likely leading to their data-based exploitation (digital colonization).

"Data flow with trust" is just a code term to only include privacy and security issues, excluding the elements of economic rights and ownership. Developing countries have been particularly insistent on the latter issues. It is for this reason that major developing countries refused to sign on the language of 'data flow with trust' when it was first formulated at the G 20 meeting in Osaka in 2019.

It therefore greatly surprises us as to why the language of 'data flow with trust' is being accepted now. (Adding 'safety' and 'confidence' after 'trust' still keeps it strictly in the privacy and security realm, not touching the economic value side.)

It is even more unacceptable for this to be done in an UNCTAD document, when this institution is basically mandated to look at global economic systems and structures from a developing country point of view.

We suggest replacing the current language where 'data flow with trust' figures, with the following, which anchors developing countries' key structural concerns in this regard, and would provide apt directions for UNCTAD to focus on the most important digital economy areas of data's economic value and rights:

"... to ensure data rights, including economic rights, data ownership, data sharing, data subjects' and regulatory access to and control of data, and appropriate data flows. in accordance with national regulations and relevant international commitments."

It is worthwhile to mention here that the EU is increasingly drafting legislation around economic rights over data. See, for instance, its draft Data Governance Act, draft Digital Markets Act, and the forthcoming Data Act. There is no reason, therefore, for UNCTAD to not focus on economic value and economic rights aspects of data. In the coming years, this should be its key area of work.

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For the same reason, all places where 'data protection' is mentioned, it should be 'data protection and data rights, including economic rights'.

Also, wherever 'data management' is mentioned, it should instead be 'data governance' – because the latter is a political and regulatory term while 'management' is mostly about business practices. UNCTAD's role is obviously in relation to regulation, governance and policies, and not so much business practices.

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### **Multistakeholder approach to digital policy making**

At, and since the, World Summit on the Information Society (WSIS) whether to stress multistakeholder or multilateral digital policy making has been a constant struggle between developing and developed countries. It is in the circumstances very surprising that the UNCTAD text simply refers to a 'multistakeholder approach' for addressing digital issues. This should be replaced by language of 'multilateral efforts and approaches'.

If 'holistic multi-stakeholder approach' is to be retained, it should be qualified in the following manner;

'... holistic multi-stakeholder approach, with multilateral institutions and governments retaining the key policy-making role,...'

This will be in keeping with the views consistently expressed by developing countries.

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Further, wherever 'multilateral dialogue and cooperation' is mentioned, it should be changed to 'multilateral dialogue, cooperation and policy development'.

The main need today for addressing the formidable challenges of a global digital economy is not just more dialogue or cooperation but actual norms, principles, policy and rules development, including at the global level.

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### **Some other issues**

On a related issue, we are also surprised at the paucity of language on increasing digital economy competition, and decentralizing platform power. This when UNCTAD has done so much good work lately on competition issues in the digital economy, including in relation to monopolistic platforms. And, when there is a severe 'tech lash' the world over – including in the US and China, home to most global digital platforms – calling for much more stringent platform regulation, especially in relation to enhancing competition, and decentralizing the digital economy, and platform power in particular.

We suggest that in the part where platforms are mentioned, the following language is employed (underlined text is the new suggested one):

Intensified international cooperation is required in framework rules on digital platforms to ensure greater competition, digital economic decentralization, rights and fairness for all platform-dependent actors, resisting predatory and competition-extinguishing behavior, and trust and confidence in their use.

It must be mentioned here that increasingly one of the most important digital economy issues concerns the plight of actors dependent on platforms; like cab drivers, small traders and MSMEs, small hoteliers and restaurant owners, small app developers, and so on. It would not do to ignore this central digital economy issue, with special significance for developing countries.

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Lastly, we would like to see a greater focus on, and clearer mention of, the urgent need for digital industrialization policies and strategies, and their connection to global trade. This in our view should be the central mandate of UNCTAD in relation to the digital economy in the coming years.

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