NEWSLETTER 21

FREE TRADE AND DIGITALIZATION AGREEMENTS

DEREGULATION, PRIVATIZATION AND INEQUALITY ON THE INTERNET

WITH THE SUPPORT OF:

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INTRODUCTION

The Road to Monopoly

OBSERVATORIO LABORAL DE LAS Américas

Internet: The space that grew and flourished in the heat of the new millennium and its technological transformations.

Which has existed for several decades, and which unquestionably became popular and universalized as meeting place, for problem solving, for new content, and part of our daily lives as of the 2000s with the emergence of smartphones and 3G, and then 4G, networks.

Seemingly an anarchic space, where everything was possible, where everything could be expressed freely, which generated new meeting places, new and unique spaces for individual and collective creation. Blogs, messaging chats, websites where we could browse for all kinds of information. And later came social networks.

But, that space that grew free of regulations began to be “platformized,” privatized, and monopolized. Indeed, just as in other spheres that lack rules, it became the victory of the strongest and most powerful. Liberalism once again proposed an economy where those with most resources keep the market and generate structures that are difficult to dismantle.

In recent years the Internet has been monopolized by a handful of companies. Today these companies choose what we see, how we inform ourselves, how we access everyday tools, among other issues.

For example, 64.68% of the world's computers have Chrome installed as browser, and 71.7% of cellphones have the Android operating system, while 27.6% have iOS, a clear duopoly (TNI, 2023), to mention a few statistics.

Non-corporate alternative tools exist, but their use is almost marginal in a market dominated by large Silicon Valley corporations, and by the People's Republic of China, in the case of Asia

This monopolization was created by dint of market power and political lobbying over the years. And, as expected, it has caused problems.

With the emergence of scandals such as that of Cambridge Analytica that influenced the electoral results of the US, Brazil and Argentina, some governments realized that something had to be done. That the internet could no longer continue to be deregulated. That it is necessary to act. And discussions began on a regulatory agenda.
Social movements, academia and trade unions had already warned of this situation on numerous occasions, proposing stronger democracies and international regulation as the possible solution to the huge concentrated power that technology corporations had acquired.

For example, the PLADA (TUCA, 2020) describes the fundamental risk posed by concentrated monopoly power to economic development, and the challenge it poses to democracy by modifying public opinion and influencing electoral results.

Regulation, Common Goods and Commercial Logic

Today some governments push for certain basic rules at the national, regional and global level to somewhat balance the scales, generate more competition, give power to the States and redistribute some of the wealth generated by these corporations. It is no longer possible to think of an Internet that is managed based on mere commercial and corporate logic. This is due to several reasons.

First, today private and consumer goods and services are accessed through the Internet, in addition to the population also accessing public services linked to fundamental rights such as education, health, culture and other diverse services and State benefits.

Managing the Internet with a purely commercial and monopolistic (or oligopolistic) logic at the global level is seriously at odds with being able to ensure the fundamental rights of the population, such is the importance of Internet access for all citizens of the world in this day and age.

Also, and above all, digital industries and the monopolization of the digital market were based on data extraction and data processing. Indeed, data have been the raw material and fuel of the digital world.

Personal data are extracted, transformed into relevant information, and that information is used to understand consumers, citizens, production and logistics in a world where capitalism accelerates at the pace of new technologies.

The “datafication” of everything made, produced and consumed gives companies the capacity to influence behavior and preferences, as well as to deliver purchases to consumers as soon as possible.

How convenient it is for companies to check into a conversation where we excitedly discuss that we are expecting a child, and automatically we start receiving advertisements of baby products on our social networks (from those companies that have paid for that service!) or that we are planning a trip, and we start receiving suggestions of car rentals, hotels, tourist packages, and so on and so forth.

Influencing behavior based on the use of personal data is carried out, for example, by generating fake news to vote for certain political candidate.

It is the logistical engineering of prompting and shaping consumers and citizens no matter what. Data have become an asset of tremendous value in the economy, a new asset whose market needs to be regulated.
But this asset is not like a glass of water which, once we drink it, is gone. No. This asset of the economy can be used again and again, and for multiple purposes: the same database can be used to investigate, to design of public policies and to generate more profit for a company. It is a “non-rival” asset. And non-rival assets (such as knowledge, security, education and transportation) have a public nature, so we achieve the best benefit for society if we manage them in favor of all.

Companies have sought to privatize public assets. Privatizing these assets provides ownership to monopolies that generate

extraordinary profits, to the detriment of the majority.

Heated discussions have been held at a global level on the regulation of data, content, algorithms as forms of processing information and deciding on people's lives, on the redistribution of the income generated by these technology giants, and on how to generate a freer and more competitive Internet. This is discussed in various spaces, but there is one space in particular where discussions go in the opposite direction: free trade agreements.

"E-commerce" or Deregulation of the Digital Economy

These agreements seek to deregulate the digital economy in one stroke and forever, to generate rules that sustain the monopolies of Silicon Valley, privatize data and ensure that companies are not liable for the effects of algorithms and the content distributed on their platforms, among other issues.

Let us look closer at what is happening with the so-called "e-commerce" agenda of the free trade agreements and the World Trade Organization (WTO).

In 1998, long before cell phones became popular, the "e-commerce commerce" agenda was set up in the WTO. This name was not whimsical.

It is fully intentional for internet deregulation to be passed off as a mere commercial issue for online buying and selling platforms.

Yet nothing is further from reality. The truth is that – in those days - a rule was

established that is extended every two years and basically prohibits the collection of customs duties on data. In other words,

the raw material of the digital economy, the asset with which the technological giants would develop and give them their current power, could be extracted tax- and expense-free. A ruthless extractivism that brings to mind the conquest of America.

Years have gone by and no new issues were negotiated. The digital economy grew unregulated and its regulation remained a concealed or ignored issue, particularly among the governments of the global south.

Large technology corporations invested plenty of resources to influence the governments of the most powerful nations.

They mainstreamed their deregulatory agenda into free trade instruments, which once again began to be prioritized as of 2015/2016.

While it was becoming obvious, urgent and necessary to regulate the digital economy because of its dire effects on society, large digital corporations continued advancing their deregulatory agenda.

Thus, to the need to discuss the local, regional and global regulation, corporations responded with an important lobby to influence governments to move forward with what today are called digital free trade agreements.

We are fully aware that in 2021 Amazon spent US$ 19 million and Meta US$ 20 million in lobbying the government in the US alone. (TNI, 2023).

Dependence, Development and Raw Materials

The history of barriers to development and the economic dependence of the region and how free trade agreements ensure that Latin America and the Caribbean countries are fated to produce raw materials is well-known. Throughout history, free trade agreements and WTO agreements have consolidated the region as producer of raw materials for the global economy by complicating industrialization and productive development strategies, and progressively weakening the terms of trade.

The industry is increasingly technological, more complex and with more added value, and although areas such as agriculture, livestock and mining have added value to their production processes, patents and advances in the production of raw materials are mostly developed by transnational corporations, making it more and more difficult for the region to insert itself positively into production chains. However, it is noteworthy that Latin America has found its place among diverse industries, and its potential and human capital in digital industries is remarkable.

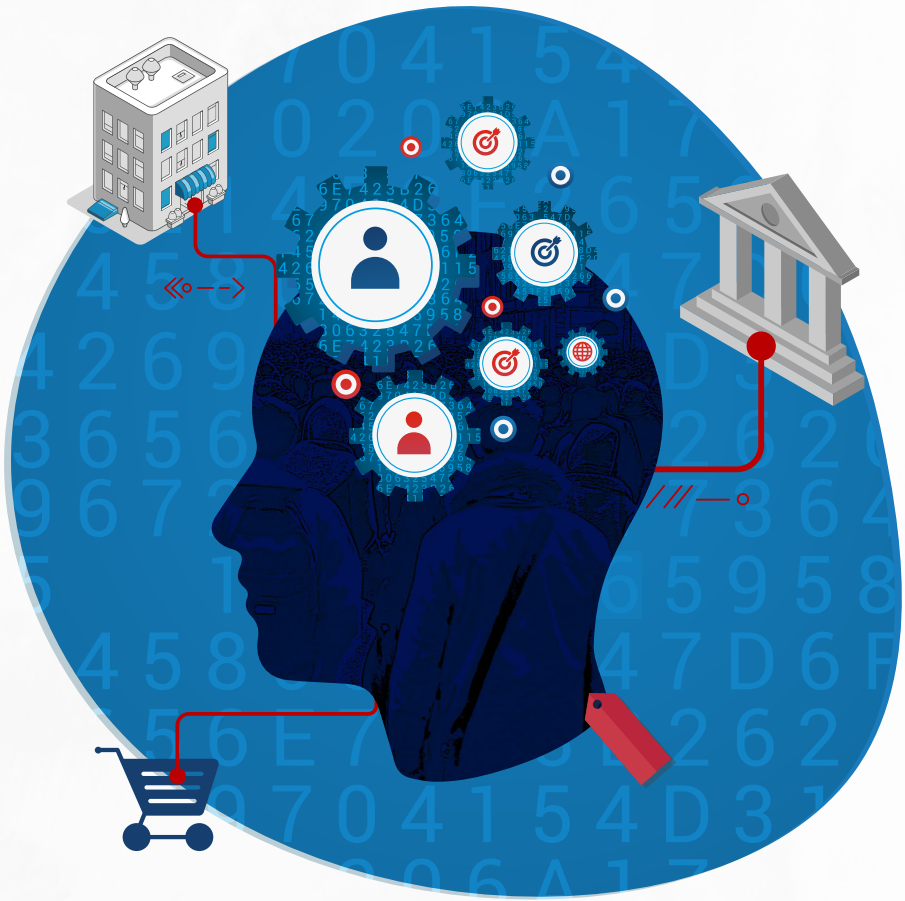
But... is it possible to develop our countries based on the creation of digital companies and markets?

The industrial process of the digital economy can be described as follows: on the one hand, data enters the factory, heterogeneous, uneven, rustic, just like any other raw material.

The data are processed in the algorithmic factory: automated systems designed to process and homogenize them, and to extract the end-product: information. Said information can be the prediction of our behavior, the improvement of an industrial process, what a technology based on artificial intelligence should say or do, or any other digital product that we might imagine. Information is the end-product, and it is sold or used to generate digital markets.

This product may (or may not) be controversial: in the Cambridge Analytica scandal it was the prediction of the candidate that a relevant number of the population was going to vote for, to then influence and consolidate their vote; the content of what certain groups like can be displayed, regardless of whether that content is malicious or fake; an industry can maximize its profits in a production process, even if is detrimental to the environment or undermines labor rights. Consequently, regulation is necessary for this product to benefit society as a whole.

The question arises: Which are the rules established in digital free trade agreements?



Free Trade, Privatization and Inequality

E-commerce agreements provide for the duty-free extraction and transfer of data across borders. They establish that States cannot impose localization requirements and companies are free to transfer data wherever.

This principle of “free data mobility” entails that once data has crossed the border, jurisdiction over the data is lost, preventing the communities that generated the data from requesting its access or repatriation.

If we consider that data are non-rival assets that can have other simultaneous uses, other than generating corporate profit, we can state that this principle is, in actual fact, digital extractivism and privatization of common goods by transnational corporations.

For example, when a free trade agreement is signed, the principle of free data mobility would prevent a State from legislating, as has occurred in Australia, that the health data of its population must remain within Australian territory. Regulations of this kind are essential so as not to lose sovereignty over data and be able to develop AI-based tools to detect diseases and improve the health system (OAIC, n.d.).

Nowadays, corporations store data mostly in tax havens, for multiple reasons. The main one is because States have little or no influence and regulatory capacity in tax havens. (Scasserra & Foronda, 2022).

Regarding the second component of the industry -the algorithmic factory- free trade rules are clear: data cannot be required to be processed within the

territory, and companies may process the data wherever suits them best.

In addition to this principle, algorithmic auditing is prohibited, i.e. the agreements declare that a State cannot require a company to transfer or provide access to the source code for audit purposes, for example, to allow selling in their market.

This is tantamount to a company releasing a new medication in the market without the authorities being able to check if that medication is harmful to health, if it produces undesirable effects or if it does not comply with local standards and regulations. Absolute nonsense. It is not only necessary, but urgent to audit automated systems to ensure they do not violate local laws, do not discriminate against minorities, are not racist, xenophobic, sexist, do not have harmful environmental effects, etc.

It seems that the algorithmic factory is reserved to the discretion of the corporations and preserves their capacity to conceal industrial processes and locate them where it best suits their purposes.

Free trade agreements also seek to deregulate the end-product produced by digital industries. Firstly, rules are established for the non-payment of customs duties on these end-products. They make it impossible to differentiate between them based on policies. This means that (tax, subsidies, or market access) preferences cannot be established, for example, for a physical book over a digital book, or for a digital educational service over an in-person educational service.

But there is more. As mentioned above, many digital products (not all) are controversial due to their impact on society. In these cases, platforms are presented as mere intermediaries and regulations often do not hold them accountable, as they should, for the content that users incorporate and that their algorithms display. This is particularly controversial.

For example, the case of the 14-year-old girl in Great Britain who took her own life. Her parents asked for Meta and Pinterest to be investigated because they continuously showed videos telling their daughter that her life was worthless. The platform shielded itself

saying that it was not liable for the content, but the parents argued that, indeed, it was liable because the algorithm would systematically show that content to their daughter until they persuaded her that this it was true (Jones, 2022).

The corporations did not suffer any consequences, they were not awarded civil or criminal damages, but it was established that they did contribute to the girl's death.

Some form of accountability is required for corporations to ensure that their algorithms do not cause huge irreparable harm to people, children, to society as a whole.

But these are not the only (deregulation) rules included in digital economy agreements.

The agreements establish the obligation to accept electronic signatures and certificates, which is a controversial issue as it requires levels of cybersecurity which, in many cases, the region does not have, especially the State, a recurring victim of attacks and hacking. They also establish lax rules regarding the control of unsolicited emails from companies to consumers. Although these agreements declare the importance of protecting personal data, they do not establish rules in this regard, therefore, do not ensure people's privacy.

Some articles in some agreements, although not in all of them, prevent platform corporations from requiring prior authorization to operate in a market, which opens the doors even to platform companies that have already been banned in certain

locations around the world due to their negative impact on the urban fabric (Maudlin, 2019).

Other articles establish rules for public procurement and tenders, stating that these must be transparent and online, ensuring free competition between transnational corporations and local companies.

This prevents the government from favoring small and medium-sized national companies over large corporations that, in many cases, are not even based in the country.

Several agreements have already been signed in the region and many others are under negotiation. Some of these agreements are: the MERCOSUR electronic commerce agreement, bilateral agreements with e-commerce chapters such as the EU-Chile agreement , and one of the most extensive and liberalizing agreements, the Trans-Pacific Partnership, best known as TPP. Over time more agreements are added in the region that seek to establish a region unable to regulate digitality, including the social dimension, common goods and an inclusive internet for all.

The PLADA (TUCA, 2023) provides another possible path, with an integrated Latin American economy, not for the unhindered operation of transnational corporations, but for the people, for the promotion of decent work and sustainable development.

Conclusions

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Latin America knows all about colonialism and extractivism. We are fully aware of the past and present effects of free trade agreements on our region. The fight against the FTAA reminds us of times when we refused a regulatory structure that assigned us a role of permanent submission, ignoring our rights to sovereignty, development and self-determination.

Today the economy is digital. But not only the economy is digital. There is a sphere of common goods, of new values that can be designed in favor of all society.

Quality public services and fundamental rights are also at stake in a world that has virtualized social relations and ways of life. In this regard, digital free trade agreements seek to instill the market logic into what should belong to all, in lieu of privatizing data in the hands of a few corporations.

Above all, these agreements seek to organize our society and our economies, to implant the centralized planning of a technological "big brother" that resides in other latitudes and keeps the value generated by the digital industry.

Once again, they throw the development possibilities of the countries of the global south out of the window, dooming us to be consumers and suppliers of raw materials of products that are defined, manufactured and generate profit elsewhere.

The region needs to reflect on inward digital industrialization strategies, with local logic and our own patents so that we become the beneficiaries of the value generated.

Not signing digital free trade agreements is a first step. Regulating, planning and joining to become stronger is the way to go.

Free trade agreements (FTA), bilateral treaties for the promotion and reciprocal protection of investments (BIT) and any other type of international or regional agreement that exclusively promotes free trade and the free will of transnational corporations must be reconsidered and replaced by broad-based agreements that, beyond strengthening trade and investment relations between our countries, prioritize economic and social development and a broad-based and stronger participation of our peoples in the regulation of their different aspects. Consequently, we reject the signing of FTAs, BITs and similar agreements that increase commodification and do not take into account the needs of the region or that give precedence to commercial law above human rights. We recommend the renegotiation of existing agreements in order to incorporate these concerns. (TUCA, 2020)

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