

Statement from Civil Society Organizations Against E-commerce Rules in the World Trade Organization

January 25, 2019

Introduction

Electronic commerce, and digital trade and technology more generally, can stimulate development, generate jobs and help build sustainable livelihoods. However, just like previous changes in technology and trading patterns, for countries, workers and consumers everywhere to benefit, the right policies and institutional support, both domestically and internationally, are essential.

At the same time, giant technology companies, representing the largest corporations in the world, have set forth their objectives to rewrite the rules of the global economy to consolidate their business model. This includes gaining rights to access markets globally; extracting and controlling personal and business data around the world; locking-in deregulation and evading future regulation; accessing an unlimited supply of labor stripped of its rights, including significant numbers of women workers, and non-payment of taxes. These strategies are embodied in their proposals on “e-commerce” in the World Trade Organization (WTO). While the rhetoric surrounding e-commerce highlights the opportunities for e-commerce for developing country entrepreneurs, rules in the WTO would lock in rights for transnational corporations while handcuffing proper public oversight over corporate behavior in myriad aspects of the digital economy, and thus represent a grave threat to development, human rights, labor, and shared prosperity around the world.

Unfortunately, some countries, acting on behalf of Big Tech corporate interests, are intending to launch new negotiations on e-commerce at the WTO. We are writing to express our profound and urgent opposition to these proposed negotiations on e-commerce, which, if concluded, would severely constrain the policy space of countries to develop their economies in the future, and would accelerate the global disadvantaging of workers and small enterprises in all countries vis-à-vis large corporations that characterizes the current global economy.

As shown below:

1. Under the proposals being made, a few global players would continue to dominate digital trade.
2. A new approach is required.
3. That new approach should address key issues such as data governance, MSMEs, jobs, taxation, consumer protection, anti-monopoly regulation, and trade facilitation.
4. The e-commerce agenda is being used as a Trojan horse for proposals that would entrench the power of dominant multinational corporations.
5. Developing countries must develop their own agenda for digital industrialization.

1. A few global players would continue to dominate digital trade

Nearly all digital trade is currently dominated by a few global players from the United States and China through platforms that are not simply disrupting and re-organizing economic activity, but leading to digital domination. In order to trade, developing countries have to produce and increase the value captured from production. If digital trade is expanded without first improving productive capacities in developing countries, as well as closing the digital divide through improvements in physical infrastructure and interconnectivity, and adopting enforceable norms for privacy and data protection, developing countries will be simply opening their economies even further to foreign imports. Linking into e-commerce platforms will not automatically increase sales, but can lead to further erosion of domestic market shares and fundamental human rights. Thus, further liberalization in the digital sphere, without the necessary domestic investments to improve productive capacities, will destroy jobs and further informalize them, decimate micro, small and medium enterprises (MSMEs), and severely constrain future development. These threats to economic sovereignty and future development prospects from premature digital

liberalization will be greatly amplified if the rapidly evolving digital economic space is governed by rules that were developed by transnational corporations (TNCs) for their own profit-making around the world, as they are proposing in the WTO.

2. A new approach is needed

Instead of digital liberalization, what is needed around the world for structural transformation is a jobs- and development-focused digital industrialization strategy. In Africa, this is reflected in the Agenda 2063: The Africa We Want vision. Digital industrialization indicates the need for investment in countries' technical, legal and economic infrastructure and policies to develop and support domestic digital businesses and platforms and build capacities to use domestic data in the public interest; to strategically promote domestic MSMEs including through technology transfer and national data use frameworks; to ensure universal benefits of the digital economy through full employment policies; to ensure proper taxation and investments to close the digital divide; to advance consumer welfare and privacy through enforceable consumer protection measures; to ensure public interest regulation of the digital economy and sound competition practices; and other pro-development strategies. Much of this can be accomplished through domestic policies that should be developed with appropriate stakeholder input, as well as through regional integration; but policymakers require sufficient policy space to do so. Restricting that space is the clear aim of plurilateral efforts currently under discussion in the WTO.

Developing countries should be able to maintain their policy space to drive the digitalization agenda in their countries. The role of development partners (donors) should be supportive of, rather than driving, the agenda. Given the persistent poverty in many countries in Africa, Latin America, Asia, and the Pacific after decades of liberalization, the increasing inequality in many developed countries, and the increasing power of digital platforms over all our economies, international institutions should support digital industrialization and structural transformation rather than digital liberalization. The focus of the technology division of the UN Conference on Trade and Development (UNCTAD) on encouraging developing countries to participate in e-commerce through autonomous liberalization without addressing all of the above structural issues, such as in the recent illegitimate and EU-funded "Nairobi Manifesto," for which it has no mandate, must not be appropriated to support anti-development e-commerce negotiations in the WTO.

3. A new approach should include specific steps

The following key issues need to be addressed:

- a) Data governance infrastructure
- b) Micro, small, and medium enterprises (MSMEs)
- c) Jobs
- d) Taxation
- e) Consumer protection
- f) Anti-monopoly regulation
- g) Trade facilitation

We outline below particular actions that we believe should be taken for these issues:

- a) **Data governance infrastructure:** Sustainable development depends on the free flow of information, and we strongly believe in freedom of expression. But this is different than cross border data transfers of the most valuable natural resource, which is now data, to foreign corporations. Just as in previous centuries, when developing countries lost control of the capacity to properly take advantage of the wealth-creating potential of commodities, there is a danger of repeating those same mistakes in the 21st century with data, leading to digital colonialism and the

exacerbation of the serious problem of increasing inequality around the world. At this point, most countries (and people in those countries) don't properly value data, so governments are too easily allowing it to be transferred outside their countries and to Big Data corporations without sound protections for their citizens. Developing countries need to harness the value of data for domestic entrepreneurs, but also for community economic development in the public interest. Data frameworks should be developed urgently on this principle and employed by developing countries to promote domestic digital industry. They thus must maintain the policy space to tailor policies on control and governance of data, including potentially maintaining data locally or regionally when that might be in the national or community interest. New digital businesses that work on data and business intelligence derived from it, must be owned domestically. The rights for corporations to a global free flow of data proposed in the WTO is dubious, when data is also considered the key resource of a digital economy.

- b) **MSMEs:** UNCTAD has highlighted that all countries which successfully industrialized used infant industry protections. Since developing countries, and particularly Least Developed Countries (LDCs) and other countries in Africa, still need to industrialize, they will also need to be able to use tariffs strategically, along with other protections for nascent industries. Developing countries need to maintain and use the policy space to promote MSMEs, which represent the majority of employment, including through active policies of technology transfer. The international system of rules governing patents and copyrights have proven to facilitate tax avoidance and resulted in a huge transfer of wealth from the global South to TNCs in the North and from people to a tiny set of hyper-protected patent- and copyright-holders. We need systems of innovation and MSME promotion without further entrenching anti-development systems of intellectual property protectionism that least developed countries (and non-WTO Members) are not required to implement. Discussions on MSMEs in the WTO seek to promote liberalization in developing countries, which would actually privilege large companies at the expense of developing country MSMEs and must be rejected.
- c) **Jobs:** Inclusive digital industrialization for shared prosperity must also focus on decent job and livelihood creation and social and economic rights in the digital sphere. Recent UNCTAD research has demonstrated that labor is gaining a diminishing share of global production vis-à-vis capital, partially due to the fact that capital has used its surplus wealth to rewrite the rules to allow it to extract increasing profits. Normative advances towards recognizing and valuing the contribution of women's unpaid labour in the home have not been matched by substantive changes in laws or policies including tax – expenditure policies. The International Labor Organization's (ILO) latest Global Wage Report finds that, excluding China, real wages grew in 2017 at the slowest pace since 2008. Automation and trade have weakened workers' bargaining power, but governments have pursued policies that promote employer's interests over those of workers, including through austerity policies. The most important strategy to ensure widespread and inclusive benefits from digital industrialization is a commitment to job creation towards full employment, focused on equity strategies, including strong labor rights and decent work and working conditions for all workers, gender equality, and comprehensive and portable social protections including for platform workers. This must also include data rights for workers and algorithmic transparency to ameliorate bias in employment (and other) practices, which would be banned under proposals in the WTO.
- d) **Taxation:** Advocates of corporate interests have labeled taxation of the digital economy and import duties as over-burdensome trade barriers. E-commerce proposals in the WTO include at least five mechanisms to ensure that Big Tech companies would not be liable for tax contributions in jurisdictions in which they operate or profit, not just through prohibiting appropriate taxation but also by banning requirements that countries have a local presence in countries where they

operate. We oppose this, as giant technology companies should contribute to the national tax base, just as do local or non-digital companies. Digital players are taking advantage of the mobility and intangibility of digital goods and services to avoid tax and create an uneven playing field that is hurting competitors who are running traditional businesses and complying with traditional tax models. Tax rules that allow digital TNCs to artificially reduce taxable income or shift profits to low-tax jurisdictions in which little or no economic activity is performed should be tackled and must not be exacerbated by digital trade rules proposed at the WTO.

Appropriate taxation is essential to build the fiscal base in developing countries that are needed for investments in development-focused infrastructure, including the digital infrastructure, and good quality and accessible public services, including taxation earmarked to reduce and redistribute unpaid and poorly paid care work in the home. This is all the more important given that the build-up of debt (both public and corporate) in recent years is once again raising concerns about its sustainability with a number of developing countries already facing serious levels of distress or worse. Developing countries will not be able to achieve the Sustainable Development Goals (SDGs) without expanding fiscal supports to achieve quality accessible public services in education, health, access to water, electricity, and more.

- e) **Consumer Protection:** Strong policies for consumer protection are needed, including around matters of privacy and data protection. Citizens must have rights to privacy and consumers must have rights to have our data protected and not abused by giant TNCs for private profit, or by governments against our human rights in the digital space. The proposed WTO rules would jeopardize privacy and data protections in ways that cannot be fixed by rules in the WTO itself.
- f) **Anti-monopoly regulation:** Digital platforms must be more strongly regulated on the national and international level, as an ever-larger source of their profit-making has been derived from avoiding public interest regulation. Special policies are urgently required to protect the small actors, traders, farmers, small service providers, workers, etcetera that are threatened by new globally organized digital models. This requires steps to decentralize digital economy structures and power, as well as specific policy measures to support small actors in their extremely uneven relationships with digital majors. Fundamentally, companies engaged in monopoly practices must be broken up to reduce the power of the platforms and Big Tech vis-à-vis the public and especially workers. Additionally, a good share of the newly created digital value must be utilized for ameliorative and redistributive measures, like social protection and public services.
- g) **Trade facilitation:** Much of the current infrastructure in developing countries is built to facilitate extracting commodity resources through ports, rails and road. This must be altered to focus on domestic market development and regional integration including through information communications and telecommunication (ICT) infrastructure necessary to close the digital divide. The drive to increase trade facilitation in developing countries, largely funded by donors, has focused more on facilitating imports rather than addressing the much-needed supply side constraints. The recent drive to support digital liberalization in developing countries is following a similar trend, which will ultimately push developing countries deeper into being consumers of what they do not produce. This will have far reaching consequences on employment, revenue and digital innovations which are ultimately needed for structural transformation.

4. The e-commerce agenda is a Trojan horse

“E-commerce” is being used as a Trojan horse for proposals expanding WTO liberalization including: removal of tariffs (on information technology products); liberalization of various services; stronger intellectual property protection on trade secrets; a total ban on technology transfer requirements; and

total liberalization of all government procurement of all ministries. These proposals include “Singapore issues” which developing countries successfully stopped from being negotiated in the current Doha Round and have been proposed to apply even to LDCs who do not have to liberalize goods or services in the Doha Round and do not have to enforce intellectual property monopolies.

5. Call for action

Developing countries must develop their own agenda for digital industrialization. They must not copy or advance the “e-commerce trade rules” that were developed by TNCs like Amazon, Google, and Alibaba in their own interest to open markets, control data, handcuff regulators, and constrain the role of the state in fostering jobs and industrialization policies. If e-commerce disciplines in the WTO were good for development, then there would be no need to arm-twist developing countries into joining the e-commerce negotiations that we are seeing in the WTO. We commend the majority of countries, including the African Group, for their opposition to e-commerce proposals in the WTO, and urge other countries to abandon these egregiously anti-development and anti-worker proposed negotiations.

Instead of furthering liberalization of the digital economy, civil society has set forth that the global trade system must provide countries sufficient policy space to pursue a positive agenda for development and job-creation, and must facilitate, rather than hinder, global efforts to ensure true food security, sustainable development, access to affordable healthcare and medicines, and global financial stability. It must privilege global agreements on human rights and environmental sustainability over corporate profit. Serious changes must be made to existing WTO policies, in order to allow countries more policy space to pursue urgent solutions to key global challenges. These demands are also reflected by the vast majority of developing countries in the WTO in their prioritization of agricultural reform and special and differential treatment. We urge WTO members to focus urgently on this agenda, rather than expand the WTO’s liberalization model – which is being rejected by populations in the global North and South – by launching plurilateral e-commerce negotiations in the WTO.

Endorsements as of January 24, 2018

Bread for the World	International
Development Alternatives for Women in a New Era (DAWN)	International
Third World Network-Africa	Pan-African Regional
African Center for Trade and Development (ACTADE)	Uganda
Alliance Sud	Switzerland
Association for Proper Internet Governance	Switzerland
Attac Norway	Norway
Both ENDS	Netherlands
COAST Trust	Bangladesh
Consumers Association of Penang	Malaysia
Fundación Internet Bolivia.org	Bolivia
IT for Change	India
Nigeria Private Sector Alliance	Nigeria
The Norwegian Trade Campaign	Norway
Pro Ethical Trade Finland (Eettisen kaupan puolesta ry)	Finland
SEATINI-SA	South Africa
Southern and Eastern Africa Trade Information and Negotiations Institute	Uganda
War on Want	UK