

Nyon, May 5, 2017

## Risk of a deepening of the digital divide – worrisome WTO discussions

The following article describes some potentially very worrying discussions that are taking place within the WTO. If ever realised, the demands that key nations and regions, in particular the EU, Japan and the US, are pushing, will deepen the global digital divide, put even more power into the hands of the few, put data protection at risk, supersede national employment laws, and directly harm especially the developing countries' economic and technological development.

Hidden under the phrase of 'e-commerce', the proposals issued to the WTO would fully and unconditionally liberalise data flows, remove tariffs, prohibit trade conditionalities, and put national and local businesses, services and workers at risk.

The push for new WTO rules are undoubtedly linked to the problematic TPP(A) and TiSA negotiations and outcomes.

As you will read, the implications are far-reaching.

### 1 Background

---

At the Second Ministerial Conference in May 1998, ministers, recognizing that global electronic commerce was growing and creating new opportunities for trade, adopted the [Declaration on Global Electronic Commerce](#). This called for the establishment of a work programme on e-commerce, which was adopted in September 1998.

Four WTO bodies were charged with the responsibility of carrying out the Work Programme: the Council for Trade in Services; the Council for Trade in Goods; the Council for TRIPS; and the Committee on Trade and Development. The General Council plays a central role and keeps the work programme under continuous review.

From July 2016, the debate on Electronic Commerce at the WTO intensified when several Members proposed to negotiate new rules in addition to the existing ones in the WTO Agreements. This push to negotiate new rules must be seen in lieu of the stalled or failed agreements TiSA and TPP in particular.

---

***WTO Definition of electronic commerce:***  
*The Work Programme on Electronic Commerce states that: "Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term 'electronic commerce' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means".*

---

*Box 1 source*

[https://www.wto.org/english/tratop\\_e/com\\_e/econ\\_e.htm](https://www.wto.org/english/tratop_e/com_e/econ_e.htm)

## 2 Main contents of the 2016 and 2017 issued proposals

---

During 2016 and 2017, a number of proposals have been tabled in the WTO, with the most aggressive positions among the proposals coming from the EU, Canada, Japan and US<sup>1</sup>.

The demands from these countries and regions are listed below. As you will see, they will all have a serious negative impact on our sectors and our work.

1. **Removal of all tariffs and requirement of non-discrimination:** basically these two mean that the countries want to fully liberalise trade routes of digital goods and services, and remove any national treatment clauses (meaning that they will remove the rights of countries to give preferences to their own companies, products and services, or restrict foreign ones).
2. **Enabling unhindered cross-border data flows.** This would prohibit any country from demanding that their data remains within its borders. It will mean that the data is governed by the law of the other country where it is held, which may provide no effective consumer, privacy or fraud protections. Given that data is the new gold, this is particularly alarming as many governments have not yet realised the value of their data and are signing away the right to develop the means of harvesting the value from the data in the future.
3. **No localisation barriers:** Demands to foreign providers to set up shop physically in the host country will be removed. This in turn raises numerous regulatory questions. If a foreign provider is not physically present, how will the service be regulated? Think also liability terms here.
4. **No technology transfer:** Many developing countries have a trade clause aimed at bridging the digital divide by stipulating that foreign providers make the technology used available to the host country. This in turn has a positive flow effect as local firms and employees/workers benefit from using the new technologies and thus acquire new skills. The US, the EU and Japan wishes to ban all technology transfer clauses.
5. **Network competition:** In relation to telecommunication networks, which are vital for the technological infrastructure, many developing countries have a clause that says foreign providers can set up network coverage in the profitable urban areas on condition that they also invest in rural network coverage. This too will be banned.

## 3 Potential consequences

---

Today's e-commerce markets are controlled by a relatively small number of companies, such as Amazon, Google, Uber, Ebay and in some countries Ali Baba. Their typical business model to first and foremost "get big fast" by dominating markets through economies of scale and only thereafter to begin to think about profits, is already squeezing out competition from local businesses who simply cannot compete against the market share and the low prices.

In addition to this, the proposals aimed to **prohibit localisation mandates**, i.e. that a country can require a company to have a local presence (an office/branch/company), will further accentuate the differences between local and multinational service providers. By prohibiting localisation

---

<sup>1</sup> Canadian [proposal](#), US [proposal](#); Japanese [proposal](#) , EU [proposal](#)

requirements, a company would be allowed to offer a service (such as a financial service, legal service, travel service) to citizens in a country without being present in that country.

This will have a significant impact on workers and employment in both the home and the host country. *Firstly*, the offshored companies will be able to deploy staff using Mode 4<sup>2</sup> provisions allowing them to circumvent host country employment laws and regulations. *Secondly*, this in turn has already lead to a rise in numbers of contractualised workers with all that that entails of precarious work. *Thirdly*, as multinationals (both offshore and onshore) have a competitive advantage over domestic firms due to economies of scale, technological advantage and global supply and value chains, domestic firms are forced to cut costs. This in turn is sought by cutting wage costs and/or by substituting employees with contractual workers. Indeed as noted by UNCTAD (2013): “Most evidence suggests that merchandise trade liberalization does not impact the aggregate level of employment but does impact employment and wages at the sectoral and occupational level”<sup>3</sup>.

Prohibiting localisation requirements also raises serious *liability* questions. If a foreign company has no obligation to set up a physical presence in a country, but can service that market off-shore and purely electronically – customers or aggrieved firms would have to litigate outside of their own jurisdiction, and most likely in the US or EU courts (as most of the data storage infrastructure is presently located in these countries). This will be costly, time-consuming and will supersede national institutions. In the finance sector, for example, a risky or new product or service can be offered to citizens if the country’s laws ‘allows it to be sold’. The risk here is that toxic products can easily be designed to circumvent laws or are ‘innovations’ that regulators have not thought about, and therefore in principle do not break a national law, but can have devastating effects.. Regulatory authorities would lose their ability to recover assets of suppliers, should the need arise. Local content requirements in television, radio, cinemas and advertising, will be lost. Employment laws and regulations would also be affected. For laws to be effective, they need to be enforceable, and in general, the new rules hamper that enforceability. Hence an off-shore company, in principle, could circumvent national employment laws since offshore workers will be employed under the offshore country’s labour laws. The only way to prevent this is through the service delivery contract, which can specify other terms of employment. . Consequentially, it will be up to each negotiating party to remember to include specific employment conditions in each and every contract signed.

Whist all this is alarming, the move to **prohibit forced technology transfers**, would certainly also deepen the digital divide. For example, nations have previously given approval for investment under the condition that the multinational helps the nation’s domestic suppliers to upgrade their technology. Another example has been the requirement that over a specific time-frame, the MNC commits to buying a large percentage of their parts from local suppliers. To do so, the MNC had to train and upskill the suppliers, offer standard blueprints, supply them with tools and fixtures and offer technical assistance. All of which benefited the local expertise. Removing the obligations to transfer technology would alarmingly also undermine a commitment already taken by WTO members in the GATS Annex on Telecommunications to provide technology transfer to less developed countries to support the development of their telecommunications infrastructure.<sup>4</sup> Effectively, by prohibiting localisation requirements and technology transfer obligations, government rights to regulate e-commerce markets are seriously undermined. This will especially hit the developing countries the hardest.

---

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/mouvement\\_persons\\_e/mouvement\\_persons\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm)

<sup>3</sup> [http://unctad.org/meetings/en/SessionalDocuments/cid29\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/cid29_en.pdf)

<sup>4</sup> Article 6d [https://www.wto.org/english/tratop\\_e/serv\\_e/12-tel\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm)

However, more is at stake. The demand to enable **unhindered cross-border data flows** is another serious matter. Data flows underpin the entire digital economy. Alec Ross (2016)<sup>5</sup> estimates that by 2020, 15-20% of the global GDP will be based on data flows. Ownership, control and access to data thus generates significant income streams for those who collect and analyse it. By removing the right to regulate data flows, countries will lose economic opportunities as well as political/security strength. For example, countries may want to have all or certain types of data generated by their citizens to be located within their national borders. Others may not want foreign countries to conduct surveillance on their citizens, as they would be allowed to do as data privacy would be subject to the rules of the territory in which the cloud computing facilities (data servers) are located.

As you can see, these discussions on e-commerce are serious and could have widespread negative effect on privacy rights, data rights, the Global South and bridging the digital divide. Attempts to bridge the digital divide through technology transfer and localisation obligations and measures that aim to boost skills, employment, technological know-what and know-how will be lost. The Global South will suffer the most – a fact that seems acknowledged by a number of countries that in February 2017 submitted a ‘e-commerce for development’ proposal. The proposal is though weak and falls sort of its aim.

Whilst the discussions are taking place in the current mandate of the WTO work programme, which is an exploratory, non-negotiating mandate, the proponents are keen to obtain a formal negotiating mandate.. Indeed the agenda for the WTO Ministerial in December 2017, the MC11, will predominantly be concerned with, precisely, e-commerce.

#### 4 Next steps

---

It is all too clear that these discussions, if ever realised, will affect all of our workers, in all of our sectors. The proposals go beyond the cross-border buying and selling of a good, or a service. They will essentially negatively affect our democracies and our human rights, our jobs and our privacy rights. The forces wanting more liberalisation and a de-facto standstill on regulation are keen to use all available means and institutions to get their agenda through. It is also all too clear that workers and the public good stand to suffer from these proposals. If the WTO agrees to even some of the proposals, our governments will voluntarily and irresponsibly be putting even more power into the hands of the world’s largest tech companies: Google, Facebook, Apple, Microsoft, Amazon, Ali Baba and IBM.

As UNI has pointed out [elsewhere](#), the lack of responsible digital regulation is leading to an unprecedented concentration of economic, social, technological and essentially political power.

It is also obvious that these proposals show a strong interlinkage between our strategies and policies on the future world of work, the digital economy, AI and bigdata on the one hand, and the new wave of trade and investment agreements on the other hand.

We all must get involved to safeguard our democracies, our employment laws and our human rights-. We all must loudly and assertively tell our governments that what they are doing is no answer to the world’s challenges. We all have a responsibility to stop these talks that will deepen global inequality and the digital divide thus preventing many of our nations from gaining social and economic prosperity.

---

<sup>5</sup> <http://www.goodreads.com/book/show/25111341-the-industries-of-the-future>

For our next Management Committee we have prepared an Executive Summary of our elaborate TiSA study. That study mirrors these discussions in the WTO. Both the executive summary and the full study, which includes extensive sector analyses, will be made available soon.

## 5 Further reading

---

For those of you interested to read more, here are some links: please note that the employment issue is lacking in the below analyses. We could and should contribute.

1. [https://www.southcentre.int/wp-content/uploads/2017/01/AN\\_TDP\\_2017\\_2\\_The-WTO%20%99s-Discussions-on-Electronic-Commerce\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_2_The-WTO%20%99s-Discussions-on-Electronic-Commerce_EN.pdf) (analysis for Africa)
2. <http://www.itforchange.net/Developing-Countries-in-the-Emerging-Global-Digital-Order-paper> (analysis for India)
3. <http://unctad.org/en/conferences/e-week2017/Pages/default.aspx>
4. [https://www.wto.org/english/tratop\\_e/com\\_e/com\\_e.htm](https://www.wto.org/english/tratop_e/com_e/com_e.htm)
5. [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(%20@Symbol=%20wt/gc/w/\\*%20\)%20and%20\(%20@Title=%20\(electronic%20commerce%20or%20e-commerce\)%20not%20\(communication%20or%20proposal\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20@Symbol=%20wt/gc/w/*%20)%20and%20(%20@Title=%20(electronic%20commerce%20or%20e-commerce)%20not%20(communication%20or%20proposal))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)
6. [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Language=ENGLISH&SourcePage=FE\\_B\\_009&Context=Script&DataSource=Cat&Query=\(\(I%40Symbol%3DJOB\\*+NOT+I%22JOB%2FSERV%2F\\*%22+NOT+I%22JOB\(05\)%2F103%22+AND+\(\(I%40Title%3D%22informal+note%22+OR+%22communication%22+OR+non-paper+OR+%22non-paper%22+OR+\(note\\*+AND+chair\\*\)\)+AND+I%40Title%3D%22electronic+commerce\\*%22\)\)&DisplayContext=popup&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Language=ENGLISH&SourcePage=FE_B_009&Context=Script&DataSource=Cat&Query=((I%40Symbol%3DJOB*+NOT+I%22JOB%2FSERV%2F*%22+NOT+I%22JOB(05)%2F103%22+AND+((I%40Title%3D%22informal+note%22+OR+%22communication%22+OR+non-paper+OR+%22non-paper%22+OR+(note*+AND+chair*))+AND+I%40Title%3D%22electronic+commerce*%22))&DisplayContext=popup&languageUIChanged=true#) (the seven proposals)