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DIGITAL TRADE RULES

A DISASTROUS NEW CONSTITUTION FOR THE GLOBAL ECONOMY, BY AND FOR BIG TECH

EN

PREFACE

The largest corporations in the history of the world – Amazon, Facebook, Google, Apple and Microsoft – are seeking to use 'trade' rules to rig the rules of the global (digital) economy to enable them to collect more data, exercise more control over our lives and their workers, and amass ever more profit. More than 80 members of the World Trade Organization (WTO) are currently negotiating a new agreement on digital trade based on these proposals. This paper seeks to explain how these corporations operate in order to achieve their goals; what the potential impacts of the rules would be on workers, citizens, communities, developing countries, public services, safety and security, and democracy itself; what the alternatives are; and what we can do to stop this mass corporate takeover.

This paper was written towards the end of 2019. Today, in 2020, the world seems a different place, as we collectively experience the coronavirus crisis and new awareness about issues of racism and police brutality. The crises have brought about new, and highlighted existing, urgent problems – often exacerbated by Big Tech's iron grip on our economic and social lives.

EMERGING CHALLENGES IN 2020

The WTO itself is in serious crisis. The 12th WTO Ministerial Conference was due to be held in June 2020, but has been postponed – possibly for another year. WTO Director-General Roberto Azevêdo has said he will step down on 31 August 2020, a year before the completion of his term of office. The United States is still blocking the appointment of new Appellate Body Members to the WTO, which means the judicial function is not operational.

At the same time, many countries have had to take measures to deal with the coronavirus that are inconsistent with their WTO obligations. This is leading to a re-thinking of whether the WTO model – which left many countries short on domestic productive capacity and locked into rules that put foreign corporate rights over the domestic public health emergency – are really fit for purpose. Thus, there is a need for countries to have greater flexibility to depart from existing trade rules. This could well lead to a fundamental rethink of the WTO and its model of extreme liberalisation – an urgent and welcome outcome.

Online commerce is booming, but many technology start-ups and thousands of small businesses have been hit hard by the coronavirus economic shutdowns. On the contrary, Facebook, Google and Amazon have seen their market shares and profits explode during the crisis.

At the same time, there is growing concern about the control that Big Tech exerts over so many aspects of public life, especially through anti-competitive behaviour. Members of the US Congress and several US federal agencies have joined European Union leaders in growing calls to break up vertically integrated roll-up corporations like Amazon, Google and Facebook.

A key provision of US tech policy which shields platforms from liability is coming under political scrutiny in the United States. As science deniers circulated inaccurate information about COVID-19 on social media, some tech corporations began to take steps to remove or flag erroneous content from their platforms. The Trump administration claimed a political bias, and Republicans are looking into rescinding the platforms' immunity. At the same time, Democrats are concerned about some of the platforms' policies of not taking down false or misleading political advertising that could jeopardise our elections.

There is growing recognition on the part of many countries that digital corporations should pay their fair share of taxes. The EU is proposing this as a fiscal support measure in the wake of the crisis, but the Trump administration has just abandoned the efforts towards a multilateral solution at the Organisation for Economic Cooperation and Development (OECD).

Dependence on essential workers during the coronavirus crisis has also led to a greater understanding of the need for hazard pay and social protections, especially in sectors with sectoral bargaining agreements. But so-called 'gig' workers, such as Uber drivers, GrubHub deliverers and Instacart shoppers, still do not enjoy basic labour rights as workers, not 'contractors'. In the United States, pressure campaigns have successfully targeted the use of facial recognition software powered by artificial intelligence (AI), since studies have demonstrated the racist impacts of such software: AI gives false positives for blacks more often than for whites.

At the same time, WTO members have undertaken multiple rounds of negotiations with a view to drafting a new 'plurilateral' agreement on digital trade. They have negotiated draft texts in secret on 13 different provisions on data collection, liability, market access rights, non-discrimination, source-code disclosure, taxes, cybersecurity and more – as described in this paper.

During these times of crisis, uncertainty, and rapid transformation, we need our governments to be able to respond more proactively to emerging problems. We need public interest concerns about economic rights, racial justice and fairness, and human, civil and political rights to be the focus of conversations about rewriting the rules governing data and technology. To accomplish this, however, we need to ensure that corporations are unable to acquire new WTO 'trade' disciplines designed by Big Tech to consolidate their power over our economy and to limit democratic oversight in the public interest.

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Acknowledgements: The author thanks the members of the OWINFS global network for their commitment and advocacy over many years. She especially thanks Professor Jane Kelsey of the University of Auckland (New Zealand); Parminder Jeet Singh and the whole team of IT for Change (India); Sanya Reid Smith of the Third World Network in Geneva (Switzerland); Munu Martin Luther of Uganda; Burcu Kilic of Public Citizen (United States); Sylvester Bagooro of the Third World Network-Africa (Ghana); Daniel Bertossa of Public Services International; Georgios Altintzis of the International Trade Union Confederation; and Christina Colclough of UNI Global Union; as well as Abhijit Das of the Centre for WTO Studies (India); Richard Kozul-Wright and Rashmi Banga of the Globalization and Development Strategies Division of the UN Conference on Trade and Development (UNCTAD); Mark Weisbrot of CEPR; and Aileen Kwa of the South Centre, for their insights and analysis regarding digital trade, corporate power, people who work, and development.

Special thanks to Theo Morrissey for all of his incredible support during the research and writing of this document.

Special appreciation and respect are expressed to the heroic developing country negotiators who protected policy space for digital industrialisation by rejecting Big Tech's agenda at the 2017 Buenos Aires Ministerial Conference.

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EXECUTIVE SUMMARY

Digitalisation is transforming the way we work, communicate, eat, live and conduct our social and family relationships. Technology can stimulate prosperity and development, bring us closer together and help build sustainable livelihoods. But it can also constrain development, exacerbate inequalities and destroy jobs and ways of life. Whether countries, workers and consumers everywhere will benefit, or whether the benefits will accrue only to a tiny minority, will be determined by the rules which set the playing field for how digitalisation will evolve over time.

One of the best investments that corporations can make is to change the rules under which they operate, so that they can extract greater profits from the economy while preventing their competitors from having a level playing field. Powerful corporations have long used trade agreements to lock in rules promoting their "rights" to make profits, while limiting governments' ability to regulate them in the public interest, often in ways they could not have advanced through normal democratic channels.

The World Trade Organization (WTO), based in Geneva, is the global rule-setting body on international trade, counting 164 countries as members. When it was founded in 1995, new agreements within the WTO gave rights to the dominant industries at that time, such as agriculture, finance, services, pharmaceuticals, and manufacturing. The technology industries lack such an agreement in the WTO and are seeking similar rules to these to liberalise the digitalisation that is currently transforming the global economy, particularly the governance of today's most valuable resource, which is data.

Data is the life blood of the digital economy. Whichever firms dominate Artificial Intelligence (AI) in their sectors will dominate their industries. AI depends on massively large sets of Big Data to train the machines learning to make decisions. The valuation of the world's largest corporations in terms of market capitalisation is so high because they are data collectors, and investors know the value of data for future profits. Even corporations that have failed to turn a profit can still garner venture capital if their business model appears to put them in a position to collect data in a way that sets them up to dominate their industry.

Right now, a tiny minority is seeking to use its excessive power, taking advantage of the undemocratic practices within 'trade' policy-making, to rewrite the rules of the global economy, to give themselves new 'rights' to profit – while

limiting public-interest oversight and benefits from the new data-based economy for everyone else. US-based Big Tech transnational corporations (TNCs) Google, Amazon, Facebook, Apple and Microsoft are now five of the six largest corporations in the world – and they (and other Big Tech corporations operating in the transport logistics, telecoms, finance, agribusiness and other sectors) are lobbying governments to negotiate new rules under the guise of so-called "ecommerce" in the WTO and other recent bilateral or regional trade agreements.

Proponents of digital trade rules highlight the opportunities for entrepreneurs, especially small and medium-sized enterprises from developing countries.

But the rules proposed by Big Tech go far beyond e-commerce and have implications for all aspects of the domestic and global economies, even for countries not participating in the latter. If concluded, these rules could result in the complete liberalisation of the entire (digital) economy.

In reality, Big Tech has proposed the rules in order to consolidate its exploitative business model, including: gaining rights to access markets globally; extracting and controlling personal, social and business data around the world; locking in deregulation and evading future regulation; accessing an unlimited supply of labour that has been stripped of its rights; expanding its power through monopolies; and avoiding the payment of taxes.

Therefore, the rules they propose would allow large corporations to accelerate their appropriation of the productivity of workers and small businesses in all countries, which is a characteristic of the contemporary global economy. The rules would inhibit the ability of all countries to promote digital innovation to further shared prosperity in the future, including by protecting the monopolistic power of the Big Tech giants. They would severely constrain the ability of developing countries to use digital industrialisation to take their populations out of poverty. They would jeopardise the privacy of our personal data, put our security at risk and increase the risks from digital-based discrimination, eroding our human, social, economic and civil rights. They would threaten the robust provision of public services on which our societies depend and would inhibit essential public-interest regulatory oversight, the urgency of which is becoming increasingly obvious. They would ensure that the largest and most powerful corporations can avoid contributing to the tax base in the societies in which they operate and profit. And they would ensure that the world's most valuable resource, data, remains permanently

privatised and corporatised rather than put to use to advance shared human prosperity as a public good.

The proposed rules thus represent a grave threat to development, human rights, labour and shared prosperity around the world, and are the very antithesis of the type of policies needed to rein in the cancerous growth of the power of Big Tech.

1 January 2020 marks the 25th anniversary of the WTOs foundation. In that time, while global poverty has been reduced, inequality has grown dramatically, and our consumption practices are threatening the stability of our climate as a place that can foster human life. Proponents of the WTO will claim that they are not to blame for the low levels of poverty reduction in many countries or for the inequality or the devastation of the climate, yet they regularly credit the WTO system with the overall poverty reduction and economic growth globally.

However, the vast majority of poverty reduction around the world in this period has taken place in China, which has followed a very different economic path from that adopted in the WTO, and most of the rest has occurred in countries trading with China.[1]

Industrialised countries now face economic and democratic crises because of the negative impacts of decades of neoliberal economic policies, enforced internationally through trade agreements. Yet their trade negotiators are pushing ahead with entrenching a set of rules that would rig the entire digital economy of the future in favour of giant companies.

After years of resistance to this agenda by the vast majority of developing countries in the WTO, and after being denied a consensus mandate to do so, a group of around 76 countries has just launched talks aiming to bring about a binding agreement on digital trade in the WTO in 2019. These nations are constantly lobbying and pressuring those developing countries that are not participating to join their ranks.

Their aim is to conclude an agreement involving as many countries as possible, as well as to secure a mandate for talks among all members of the WTO by the time of the next Ministerial Conference, which will be held in Nur Sultan (Kazakhstan) from 8 to 11 June 2020 [This has since been postponed for at least a year.].

1 Rosnick, David / Weisbrot, Mark / Wilson, Jacob, 'The Scorecard on Development, 1960–2016: China and the Global Economic Rebound', Center for Economic and Policy Research, 11 October 2017.

Of course, e-commerce can be a force for job creation and development, and certainly has the power to expand innovation, increase consumer choice, connect remote producers and consumers, and increase global connectedness. But this is not the same as having binding global rules on the entire digital economy written by Big Tech for its benefit.

Ensuring that technology is deployed to serve the well-being of humanity and the planet and shared prosperity will only be possible if we exercise our democratic rights and prevent Big Tech from rigging the rules of the future global economy to increase their own private control and profits.

HISTORY AND STATUS OF THE PROPOSED DIGITAL TRADE RULES

Trade rules do not develop in a vacuum. They are developed by wealthy countries' governments based on the wish lists of the powerful actors who lobby them. In this case, US-based Big Tech corporations undertook extensive lobbying of the Obama administration – President Barack Obama himself had more meetings with Google than with any other corporation during his tenure. He also hired Robert Holleyman, formerly President and Chief Executive of BSA | The Software Alliance, a business tech lobby firm, as Deputy US Trade Representative.[2] The administration then eagerly adopted Big Tech's goals to rewrite the rules of the global economy by developing a digital trade policy that mirrored the proposals of industry. The fact that US-based corporations also dominate corporate lobby groups like DIGITALEUROPE allowed them to build global support for these proposed rules.

Comprehensive rules on digital trade in their current form first appeared publicly in a trade agreement among the leaked chapters of the proposed Trade in Services Agreement (TiSA).[3] The TiSA had been designed by major technology, financial, logistics and retail corporations to lock in deregulation and privatisation of public and private services for the 50 participating countries.[4] The major obstacle that prevented negotiators from concluding TiSA after three years of negotiations, in December 2016, was a conflict between the European Union's insistence on data privacy protections in the face of the US corporations' unbending demands[5] for new rights to transfer data across the globe without any restrictions.

The provisions were simultaneously being negotiated in the Trans-Pacific Partnership (TPP), a regional trade agreement signed in 2016. The TPP never enjoyed enough support in the US Congress to be submitted for a vote, and President Donald Trump abandoned the deal. It was later re-signed – with most of the

2 Jane Kelsey, 'How a TPP-Style E-commerce Outcome in the WTO would Endanger the Development Dimension of the GATS Acquis (and Potentially the WTO)', *Journal of International Economic Law*, 21, 273–295, 31 May 2018.

3 Jane Kelsey and Burcu Kilic, 'Briefing on US TISA proposal on E-commerce, Technology Transfer, Cross-border Data Flows and Net Neutrality', 17 December 2014.

4 Deborah James, 'As Deadline Looms, WikiLeaks Reveals Corporate Demands from the EU', *The Huffington Post*, 14 October 2016.

5 'Internet and Technology Industries Call For Strong Digital Trade Provisions as TiSA Negotiations Intensify', Press Release, 17 October 2016, regarding the Letter to Michael Froman, signed by the Internet Association, Computer and Communications Industry Association, Information Technology Industry Council, BSA | The Software Alliance, ACT/The App Association, Consumer Technology Association, the Internet Infrastructure Coalition, 17 October 2016. Available at: https://internetassociation.org/tisa101716 (9 December 2019).

original digital trade provisions – by the remaining 11 participants as the Comprehensive and Progressive Agreement for a Trans-Pacific Partnership, or CPTPP (a misnomer of a trade agreement name if ever there was one). Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam have ratified the agreement, while Brunei, Chile, Malaysia and Peru are signatories to these rules.

The United States first tabled proposals for binding rules on e-commerce in the WTO in July 2016.[6] Soon after, the European Union (EU), Japan and nearly every other developed country made similar proposals – demonstrating a high degree of coordination among powerful business lobbies – but always with at least one (token?) developing country endorser, in an effort to bolster their claim that "e-commerce is not a North-South issue".

The existing mandate within the WTO, which has applied since 1998, is to have *discussions* on a narrowly defined concept of e-commerce in the WTO,[7] but not to have *negotiations* on potential binding rules that extend to non-trade aspects of digital governance.

At the same time, since the launch of the Doha Round in 2001, there has been a mandate to reduce WTO constraints on the scope of development policy in developing countries. But WTO members that are already developed have refused, over nearly two decades, to agree to the necessary changes. Developed countries have also blocked reforms to the agricultural rules that have been demanded by developing countries. Current rules prevent poor countries from providing subsidised food to their own impoverished populations, even though rich countries are still allowed to export subsidised agriculture.[8] And now the United States and other rich countries are seeking to strip developing countries of the flexibilities they have fought hard to preserve, by seeking to enforce the same harmful WTO rules on countries at all stages of development (except – in most cases – Least Developed Countries, or LDCs).[9]

6 General Council, Work Programme on Electronic Commerce, Non-Paper from the USA, JOB/GC/94, 4 July 2016.

7 Work Programme on Electronic Commerce, adopted by the General Council of the WTO on 25 September 1998, WT/L/274, pursuant to the Ministerial Declaration on Global Electronic Commerce, adopted on 20 May 1998, WT/MIN(98)/DEC/2.

8 Ranja Sengupta, 'The road to Buenos Aires, December 2017: Agriculture remains key', Third World Network Briefings, 22 November 2017.

9 D. Ravi Kanth, 'Trump has "personal interest" in differentiation, says US envoy', *SUNS South-North Development Monitor*, #8953, 24 July 2019.

In 2017, the goal of developed countries was to set aside the development agenda permanently, and instead launch new negotiations on digital trade in the WTO. They pitched these new talks by portraying e-commerce as good for development, women, and micro, small and medium-sized enterprises (MSMEs).

By this time, many members of the Our World Is Not for Sale (OWINFS) global network had realised that the proposals went far beyond just e-commerce.[10] They argued that agreeing to this new digital trade agenda would permanently consolidate the first-mover status and monopolistic control of high-tech firms in developed countries, particularly through the control of data.[11] They pointed out that the need for regulation in the public interest, and stronger rules on human rights, including privacy, in the digital sphere were becoming increasingly apparent, whereas rules in the WTO would give multinationals rights to access markets while limiting the role of the state in regulation.[12]

OWINFS members argued that the proposed rules would prevent the policy space for developing countries from implementing their own development in the digital economy.[13] They criticised developed countries for ignoring the needs of developing countries in terms of closing the digital divide, infrastructure, access to electricity and broadband, the upgrading of skills and other prerequisites when no consideration of these issues or the need for financing was being taken into account in the discussions.[14] They pointed out that using e-commerce for development is completely different from negotiating binding rules that were developed by lawyers representing US-based Big Tech corporations.[15]

10 Deborah James, 'Twelve Reasons to Oppose Rules on Digital Commerce in the WTO', *The Huffington Post*, 12 May 2017.

11 Christina Colclough, 'Risk of a deepening of the digital divide – worrisome WTO discussions', UNI Global Union, 5 May 2017.

12 Burcu Kilic and Renata Avila, 'Data Is the New Oil, So Big Tech Is Pushing for A Digital Free Trade Deal', Buzzfeednews.com, 13 December 2017.

13 Sanya Reid Smith, 'Preliminary analysis of aspects of some WTO ecommerce proposals – MC11 briefing paper', Third World Network, 10 December 2017.

14 Deborah James, 'E-commerce and the World Trade Organization', Agencia Latinoamericana de Información, 17 November 2017. Available at: https://ourworldisnotforsale.net/2017/ALAI_E-commerce.pdf (9 December 2019).

15 Parminder Jeet Singh, 'Developing Countries in the Emerging Global Digital Order – A Critical Geopolitical Challenge to which the Global South Must Respond', IT for Change, 2017. Available at: www.itforchange.net/Developing-Countries-in-the-Emerging-Global-Digital-Order (9 December 2019).

Realising some of the massive implications for their development, the WTO's Africa Group, coordinated by South African Ambassador Xavier Carim and the e-commerce focal point Vahini Naidu, issued a blistering critique of the so-called "e-commerce for development agenda", rebranding it a "trade liberalisation agenda".[16] Led by highly skilled negotiators, developing countries from the Africa Group[17] and India, with support from Bolivia, Cuba, Venezuela and other countries, exposed this 'bait-and-switch' initiative. They then refused to agree to new negotiations on binding rules on digital trade in the WTO at the December 2017 WTO Ministerial Conference in Buenos Aires, Argentina.[18]

However, a group of 70 countries had signed a Joint Statement Initiative (JSI) declaring their desire for digital trade rules in the WTO, and they met throughout 2018 to prepare the ground for real negotiations.

In January 2019, on the sidelines of the World Economic Forum (WEF), they announced their intention to start negotiations among themselves.[19] They launched these 'plurilateral' talks in April 2019[20] and have been negotiating towards a binding agreement on a monthly basis ever since. They coordinate closely with the business lobby, which is invited to hold lunchtime lobbying talks – in the same room at the WTO on the very days of the negotiations, with free lunch provided – to ensure that the talks take on board the arguments and visions of Big Tech, but without civil society having the ability to critique and rebut their fallacious claims. The Department for International Development (DFID) of the UK and the German

16 Kanaga Raja, 'The African Group position on e-commerce talks at WTO', SUNS South-North Development Monitor, #8559, 24 October 2017. See 'The Work Programme on Electronic Commerce: Statement by the African Group', JOB/GC/144, 20 October 2017.

17 'Africa and Development: Proposal by the African Group', WT/MIN(17)/11, 5 December 2017.

18 Deborah James, 'Results of the 11th ministerial conference of the WTO', *América Latina en Movimiento*, 24 April 2018.

19 Participants at the time of the launch included: Albania; Argentina; Australia; Bahrain; Brazil; Brunei Darussalam; Canada; Chile; China; Colombia; Costa Rica; El Salvador; the European Union and its 28 member states; Georgia; Honduras; Hong Kong (China); Iceland; Israel; Japan; Kazakhstan; Kuwait; Laos (Lao People's Democratic Republic (PDR)); Liechtenstein; Malaysia; Mexico; Moldova; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; the Russian Federation; Singapore; South Korea; Switzerland; Taiwan; Thailand; Turkey; Ukraine; the United Arab Emirates; the United States; Uruguay; and the former Yugoslav Republic of Macedonia. Although it is unclear what benefits they might be anticipating, Benin, Kenya, Côte d'Ivoire, and Cameroon have subsequently joined the negotiations.

20 D. Ravi Kanth, '"Digital trade" war underway in e-com pluri-talks at WTO', Third World Network, 30 April 2019.

development agency GIZ, as well as the International Cooperation and Development (DG DEVCO) and the Directorate General for Communications Networks, Content and Technology (DG Connect) of the EU are providing financing to ' incentivise' developing countries to participate in the negotiations.

The corporations behind the push for digital trade rules also engage in 'forum shopping', and have taken their wish list to the Organisation for Economic Cooperation and Development (OECD) and to the G20. The OECD has issued formal guidance in favour of the rules. Trade ministers even formed an 'Osaka Track' in the G20 – with direct support from the WTO[21], even though the majority of members oppose the talks – in 2019 in an effort to portray the negotiations as beneficial for all countries. India, Indonesia and South Africa smartly refused to endorse it.[22] Agreements among members of these institutions are not binding on governments, but they do serve as powerful lobbying opportunities for corporations,[23] and the governments that represent them, to advance their agendas.

Proponents of the digital trade negotiations are seeking to consolidate the Big Tech business model, with its now familiar exploitative practices, namely:

a/ gaining *rights* to operate in markets, while:

b/ evading regulation and locking in deregulation (companies like Airbnb and Uber[24] are known to operate in regulatory grey areas);

c/ accessing an infinite supply of cheap labour (essential to Uber's 'success' is its low level of compensation for drivers);

d/ collecting, legally or illegally, massive troves of data from around the world (Facebook's data collection scandals are well known, and Google collects even more data to be paired with consumer credit card and location data to target advertising);

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21 'Azevêdo joins Prime Minister Abe and other leaders to launch "Osaka Track" on the digital economy', WTO Press Release, 28 June 2019.

22 Ravi Kanth, 'G20 fail to resolve differences over WTO reform, digital trade', *SUNS South-North Development Monitor*, #8923, 12 June 2019.

23 '2019 G20 Ministerial Meeting on Trade and Digital Economy Recommendations for Promoting Innovation, Digital Technologies, and Trade', lobby document endorsed by ITI, JEITA, techUK, Japan Business Council in Europe, Digitaleurope, 9 May 2019. Available at: www.digitaleurope.org/wp/wp-content/uploads/2019/05/May9JointIndustryG20Recommendations.pdf (9 December 2019).

24 Mike Isaac, 'How Uber Deceives the Authorities Worldwide', *The New York Times*, 3 March 2017.

e/ freeing themselves from legal liability for any harms caused by their products or services, as well as any responsibility to benefit the communities in which they profit; maintaining monopoly positions by shutting out or buying up competitors (something that Google and Apple have been fined for and Amazon is being sued for); and

f/ failing to pay taxes, by for example expanding their use of patents and other intellectual property protections (Amazon paid no US federal taxes on USD 11.2 billion in profits in 2018,[25] and in fact received a refund).

Each of the proposed rules in the digital trade negotiations can be understood to achieve one or more of the above goals for TNCs.[26]

This model has allowed the top TNCs to increase their excess profits, or the rents they gain from the economy, meaning getting an income not as a reward for creating wealth but by grabbing a larger share of the wealth that would have been produced anyway. Such excess profits are generated in leading high-technology sectors such as technology equipment, pharmaceuticals and software and information technology services, as well as in sectors that saw large-scale privatisations in recent decades.

EVOLUTION OF THE SHARE OF SURPLUS PROFITS
IN TOTAL OPERATING PROFITS (in %)

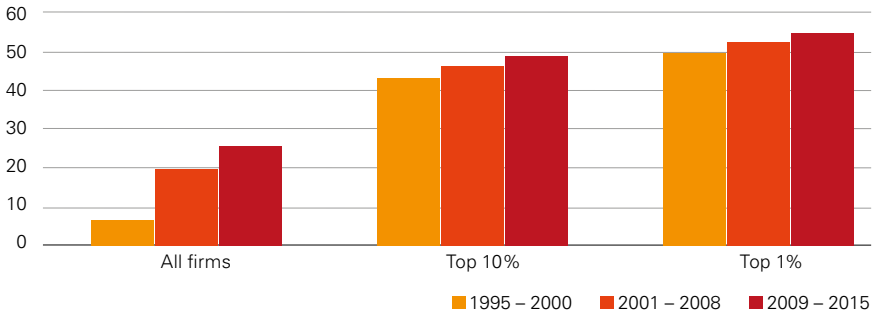


Figure 1 / Source:
UNCTAD Policy Brief 66: Corporate Rent-Seeking, Market Power and Inequality: Time for a Multilateral Trust Buster?, May 2018.

25 Christopher Ingraham, 'Amazon paid no federal taxes on $11.2 billion in profits last year', *The Washington Post*, 16 February 2019.

26 Deborah James, 'Giant tech corporations try to launch a WTO 2.0 to cement digital colonialism through international treaties', *América Latina en Movimiento*, June 2018.

Dozens of proposals have circulated in the WTO, many with overlapping provisions, designed around a borderless, digitalised global economy in which major financial, technology, logistics and other corporations can move labour, capital, inputs and data seamlessly in time and space without restriction, opening up new markets while limiting obligations on corporations to ensure that workers, communities or countries benefit from their activities.

While various proposals emphasise different aspects, they generally reflect the ambitions of the corporate lobbies. An example of a corporate lobby wish list is included in the Annex. The proposed rules include, but are not limited to, the following, although some of the proposed provisions have more adherents than others:

- ensuring that corporations have rights to access markets with digital goods and services with a limited ability for governments to restrict their product or service offerings;
- ensuring that corporations have more rights to access deregulated markets in telecommunications, financial services, computer-related services, information technology (IT) goods and other sectors;
- ensuring that corporations have the right to transfer data across borders, and store such information wherever they want including in data havens, encumbered as little as possible by data and privacy protections or other rules;
- ensuring that corporations have the right to electronic and efficient trade facilitation measures which governments must provide;
- ensuring that corporations have the right to electronic versions of all national laws affecting digital trade, and that new laws require prior notification;
- banning governments from being able to provide an edge to local companies, if it might even slightly disadvantage a foreign corporation;
- banning governments from being able to require local storage of data, including just copies of the data;
- banning governments from being able to require the use of local data servers;
- banning governments from being able to require corporations that are operating in their countries to have a local presence (without which they cannot be taxed or held accountable to consumer claims of fraud or violations of workers' rights);

- banning governments from being able to require that corporations operating in their countries also benefit the local economy (for example by mandating the use of local technology or local inputs);
- banning governments from being able to require disclosure of source codes and algorithms, even in cases in which it may be necessary for security reasons or to guard against discrimination;
- banning governments from being able to require technology transfer;
- banning governments from taxing digital trade, and constraining their ability to tax corporate profits generally;
- banning governments from being able to hold intermediary service providers liable for harms caused on their platforms;
- banning governments from being able to require specific cybersecurity measures in authenticating transactions among parties (e-signatures); and
- constraining governments' ability to regulate the tech sector in the public interest.

There are a few proposals that could have some general public benefit, such as encouraging governments to adopt anti-spam provisions and allowing governments to maintain some privacy safeguards and consumer protections. But these will likely be weak and/or not mandatory and would certainly not be strong enough benefits to allow the rest of the provisions to move forward. And they are issues that should not be subject to adjudication in a trade agreement. Although the participants in the JSI are negotiating a plurilateral agreement that was rejected by the majority of the WTO membership, recent proposals by Brazil, Canada, China, Côte d'Ivoire, the EU, New Zealand and Singapore are available on the WTO website.[27]

27 Documents can be found at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx (9 December 2019) by entering INF/ECOM* in the 'Document symbol' field. Recent proposals by Australia; Canada; Chile, Colombia, Mexico and Peru; China; Hong Kong; Japan; South Korea; Taiwan; Ukraine; and the United States are inaccessible to the public as a result of decisions made by the proposing member. Other participating members have not yet circulated proposals at the time of writing.

BIG TECH'S POWER GRAB: AN ASSAULT ON DEMOCRACY

Big Tech's surveillance capitalism[28] is harming democratic functioning in our media, knowledge, culture, transportation, agricultural, judicial, commercial, health and other sectors, and damaging our democratic processes. Public debates are increasingly focusing on the need to reduce the power of Big Tech through stronger regulations at the national and international levels,[29] but the proposed rules – including their top goal of unrestricted cross-border data transfers – would pre-empt such efforts in the appropriate agencies.

Google and Facebook now control the vast majority of information and news filtration and dissemination, and their algorithms decide what information we see, and what we do not. Their willingness to allow their platforms to be utilised to intervene in democratic processes demonstrates their colossal lack of interest in balancing their power and responsibilities. But one of their goals in the digital trade negotiations is to ensure that *they cannot be held liable for content generated by others on their site*, even if that content foments violence, interferes in elections or causes other damage, and is a source of profit for the corporations.[30] Governments around the world are grappling with issues of freedom of expression and free speech in a context in which violent extremism is being facilitated on social media platforms, and child sexual abuse imagery is expanding exponentially online – particularly on mainstream websites which are failing to dedicate adequate resources to this scourge.[31] While some digital rights groups favour the non-liability provision,[32] these issues require more attention from society, and more democratic control over the companies' operations, not less.

The proposed digital trade rules would reduce real competition and expand monopolistic and oligopolistic behaviour. Nearly all digital trade is dominated by a few global players from the United States and China in ways that are not

28 Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, Public Affairs Books, 2019.

29 Martin Giles, 'It's time to rein in the data barons: Facebook, Amazon, and Google will resist attempts to restrain their market power. But for the sake of our collective prosperity and our personal privacy, it's a fight we can't afford to lose', MIT Technology Review, 19 June 2018. Available at: www.technologyreview.com/2018/06/19/240453/its-time-to-rein-in-the-data-barons (9 December 2019).

30 David McCabe and Ana Swanson, 'U.S. Using Trade Deals to Shield Tech Giants From Foreign Regulators', *The New York Times*, 7 October 2019.

31 Michael H. Keller and Gabriel J. X. Dance, 'The Internet Is Overrun With Images of Child Sexual Abuse. What Went Wrong?', *The New York Times*, 28 September 2019.

32 Some groups that are advocates regarding this issue receive significant funding from Google.

simply disrupting and reorganising economic activity but leading to digital domination.[33] An ever-larger proportion of Big Tech's profits is derived from buying competitors and avoiding regulation. Google has an 88% market share in search advertising but also collects data through email and its Maps, Documents and Sheets services, and with Alphabet also owns the Android operating system, YouTube, broadband company Google Fiber, Waymo self-driving cars, a drone division, Nest smart-home products, Sidewalk Labs, a venture capital arm, and a newly acquired medical records data firm. Therefore, their market share in a specific services sector is dwarfed by their market share defined as data. Facebook (and its subsidiaries Instagram, WhatsApp and Messenger) owns 77% of mobile social traffic.[34] Amazon holds a share of over 90% in five product categories and dominates cloud computing.[35] In classical economic terms, all three are monopolies. Without strong anti-trust, pro-competition legislation, these corporate behemoths are consolidating further across sectors, and the data they amass in each sector gives them even more of an edge.

Governments around the world are rethinking competition policy and investigating the anti-competitive practices of the proponents of the digital trade rules. Google and Facebook have already faced steep fines from the European Commission for anti-competitive behaviour.[36] State attorneys general from the United States are investigating Google and Facebook,[37] and panels in the House of Representatives are investigating those corporations as well as Amazon and

33 Anita Gurumurthy, Deepti Bharthur and Nandini Chami, 'Policies for the platform economy: Current trends and future directions', IT for Change, 2018.

34 Jonathan Taplin, 'Is It Time to Break Up Google?', *The New York Times*, 22 April 2017.

35 Amy Gesenhues, 'Amazon owns more than 90% market share across 5 different product categories: Reports from Kleiner Perkins' Mary Meeker and e-commerce data firm Jumpshot underscore Amazon's growing e-commerce power', Marketing Land, 31 May 2018.

36 European Commission, 'Anti-trust: Commission fines Google 2.4 billion euros for abusing dominance as search engine by giving illegal advantage to own comparison shopping service', Press Release, 27 June 2017.

37 Steve Lohr, 'New Google and Facebook Inquiries Show Big Tech Scrutiny Is Rare Bipartisan Act', *The New York Times*, 6 September 2019.

Apple.[38] The Federal Cartel Office of Germany has found both Amazon[39] and Facebook[40] guilty of engaging in anti-competitive behaviour. Similar investigations are being conducted by the Australian Competition and Consumer Commission and the National Digital Council in France, among others, and many governments are identifying the need to update pro-competition rules, and even new regulatory authorities.[41] Given the dynamics of the digital economy, the dominant approach to considering only prices should be broadened to consider, for example, consumer privacy, personal data protection, consumer choice, market structure, switching costs and lock-in effects[42] and the accumulation of data generally. Developing countries face special challenges when attempting to regulate digital behemoths, as India experienced when it tried to enforce anti-monopoly rules in its e-commerce sector[43]. Moreover, smaller countries often lack the regulatory or market strength to challenge digital monopolists[44] in the absence of a global competition authority.

A proposed provision on source code would limit governments' ability to investigate monopolies. If a country is concerned about anti-competitive behaviour, its courts will often require that source code be disclosed, so that they can check potential price fixing, for example. But a proposed provision on source code would *ban governments from being able to require the disclosure of source code*, even in cases in which courts require that source code be revealed. Likewise, competition authorities sometimes require the transfer of technology as a remedy

38 Naomi Nix and Ben Brody, 'Lawmakers demand records from Google, Amazon, Facebook, Apple', *Bloomberg*, 13 September 2019.

39 Federal Cartel Office (Germany), 'Bundeskartellamt initiates abuse proceedings against Amazon', Press Release, 29 November 2018.

40 Federal Cartel Office (Germany), 'Bundeskartellamt prohibits Facebook from combining user data from different sources', Background Paper, 7 February 2019.

41 See Select Committee on Communications of the House of Lords of the United Kingdom, 'Regulating in a digital world', 9 March 2019. Available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/29902.htm (9 December 2019); and Jonathan Shieber, 'To curb lobbying power, Elizabeth Warren wants to reinstate the Office of Technology Assessment', Techcrunch.com, 27 September 2019.

42 UNCTAD Digital Economy Report 2019, 'Value creation and capture: Implications for developing countries', UN Conference on Trade and Development, September 2019.

43 Aftab Ahmed and Sankalp Phartiyal, 'India tightens e-commerce rules, likely to hit Amazon, Flipkart', *Reuters*, 26 December 2018.

44 'Competition issues in the digital economy', UNCTAD Secretariat, 1 May 2019.

against anti-competitive conduct; this measure would also be banned under the proposed digital trade rules. How can start-ups hope to get established in a field where governments are restricted from enforcing anti-competitive behaviour, and entrenched players have set the rules of the game?

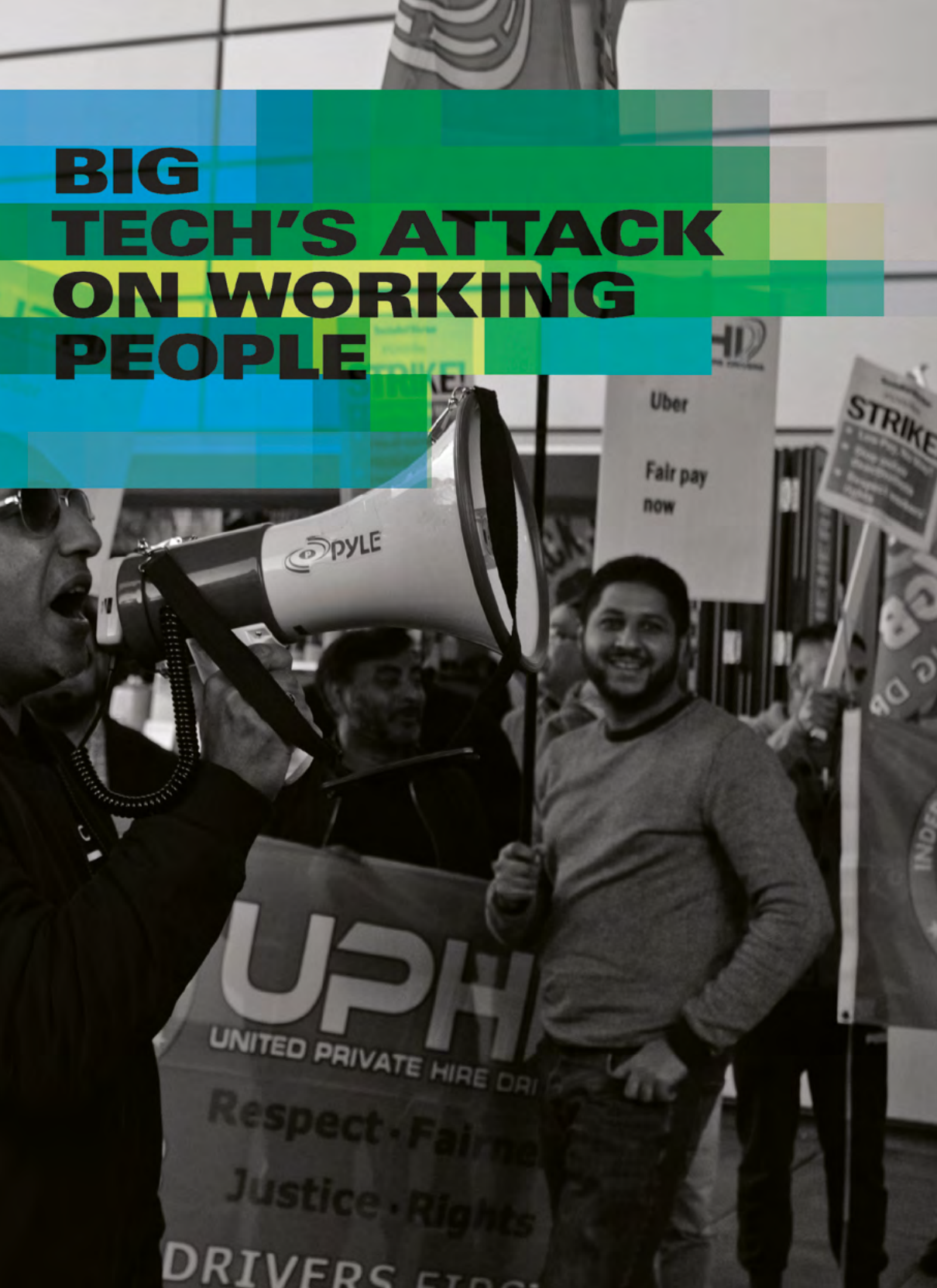
Digital trade proposals are also premature rule-making. The implications of the rising power of technology corporations, and the transformations to our media, work, democracy, and myriad sectors are just unfolding and being understood. But before governments have the opportunity to investigate and to develop democratic rules in the public interest, US corporations are seeking to rewrite the global rule book to lock in their current dominance in the field. Despite their global supremacy, they want to undermine China's rise a global player, as it invests billions in developing high-tech sectors under its *Made in China 2025* plan. US corporations are also seeking to lock out other potential future competitors. Thus, all 164 WTO members are being pushed to negotiate on issues before most of them have much understanding of the potential consequences.

The attempt by Big Tech to use trade policy to secure biased rules in these areas represents a **corporate circumvention of democracy and good governance**. There are existing international forums, from the Internet Governance Forum to the World Summit on the Information Society to the United Nations Conference on International Trade Law (UNCITRAL) and the International Telecommunications Union (ITU), in which businesses, governments, engineers and civil society experts have long grappled over Internet issues in a multi-stakeholder format.[45] The WTO is unique in not allowing for civil society participation.

In addition to creating new and strengthening existing anti-monopoly regulations, governments must consider breaking up companies engaged in harmful monopoly practices. Until this occurs, it would be foolish to tip the scales even further in favour of the technology monopolists by agreeing to their plans to rig the rules of the digital economy in the WTO.

45 Chakravarthi Raghavan, 'E-Com at MC11 is effort to hijack basic internet governance issues', *SUNS South-North Development Monitor*, 22 November 2017.

BIG TECH'S ATTACK ON WORKING PEOPLE



Most of the gains from productivity over the past three decades have been all but captured by corporations while they have correspondingly reduced workers' share. UNCTAD's Trade and Development Report in 2018 showed (in a finding that even the OECD now finally agrees with[46]) that workers are losing their share of global productivity increases vis-à-vis capital, partially because capital has used its surplus wealth to rewrite the rules to allow it to extract increasing profits. Who benefits from technological changes depends on who is writing the rules under which the technology is deployed. Corporations have weakened workers' bargaining power, including through trade policies, which allowed them to use technological advances to distribute income upwards, and the proposed digital trade rules would further erode workers'' rights and power vis-à-vis giant corporations.[47] Efforts by workers to rebuild that collective power through strengthening collective bargaining, ensuring that workers have some control over how new technologies are introduced[48] and utilising technological gains to ensure shared benefits such as reduced working hours and higher pay[49] would be undermined if corporations were allowed to further rig the rules of the game in their favour.

The proposed digital trade rules were written by Big Tech corporate lawyers to further entrench rules to maximise their profits and power, particularly through their appropriation of data, and minimise that of the people who produce the profit. There is no reason to believe that Big Tech intends to share more of the profits with people who produce it, given the current structures and power dynamics. To give just one example, in a recent battle between drivers and Uber, the California State Legislature recently deemed that the corporations have misclassified employees as contractors. Uber responded by saying that the drivers were not part of their "usual course" of business. In reality, relying on an

46 See www.oecd.org/g20/topics/employment-and-social-policy/The-Labour-Share-in-G20-Economies.pdf (9 December 2019).

47 UNCTAD, 'Trade and Development Report 2018: Power, Platforms and the Free Trade Delusion', Report by the Secretariat of the United Nations Conference on Trade and Development, Geneva, 2018.

48 The Unite trade union's policy can be used as a template for ensuring that workers have an input into deployment of new technologies, with the goal of benefitting workers through reduced working time, increased pay and creation of new jobs. See www.unitetheunion.org/uploaded/documents/0247-New%20Tech%20Agreement%20for%20print%2024101711-32663.pdf (9 December 2019).

49 'The World(s) of Work in Transition Conference Report', ETUI-ETUC Conference Brussels, 27-29 June 2018 and: 'A future that works for working people', Report of the Trades Union Congress of the UK, 10 September 2018.

unlimited supply of cheap labour stripped of rights and benefits is indeed a core aspect of their business model.[50]

Proposed bans on requiring firms to have a local presence would diminish the rule of labour law. Digital corporations are seeking rights to operate in countries while they seek to *limit the ability of governments to require that they have a local presence*, for example through a subsidiary or branch office, in those countries. But if the rights of a worker (or contractor) for a corporation are violated, how can they obtain justice? If a person works for an unknown corporation through an online platform with no local presence and is paid through a financial intermediary, under which labour laws do they operate? Wage theft on digital platforms like Amazon's Mechanical Turk are well documented.[51] Digital firms are prone to siting labour and regulatory, tax and now data processing and storage activities where maximum value can be extracted for private profit. According to the International Trade Union Confederation (ITUC), "[w]ithout a local presence of companies, there is no entity to sue and the ability of domestic courts to enforce labour standards, as well as other rights, is fundamentally challenged."[52]

The digital trade rules are intended to decimate decent jobs and increase the precarity of labour. Technologies driving the "fourth industrial revolution" are used to disrupt labour markets,[53] as this flexibility is key to "innovation". Well-paid jobs with benefits are being replaced by casual labour lacking social protection or stability. Corporations are transferring market risk onto the individual contractor or "independent worker", who is not only paid less but lacks employment benefits such as sick leave, health insurance and retirement contributions – not to mention job stability. In many cases, corporations' often illegal efforts to establish market dominance[54] are directly at odds with workers' ability

50 Farhad Manjoo, 'Can Uber Be Tamed? The company's drivers deserve to be classified as full-fledged employees', *The New York Times*, 4 September 2019.

51 Alana Semuels, 'The Internet Is Enabling a New Kind of Poorly Paid Hell', *The Atlantic*, 23 January 2018.

52 ''E-commerce' push at WTO threatens to undermine labour standards', ITUC OnLine, Brussels, 25 January 2019.

53 'The Gig Economy's False Promise', *The New York Times Editorial Board*, 10 April 2017.

54 Mike Isaac, *Super Pumped: The Battle for Uber*, W. W. Norton & Company, 2019.

to increase their pay.[55] Efforts to organise platform workers have often been met with fierce resistance by the corporations, including through illegal tactics, but trade unions have achieved some important successes.[56] As illustrated below, the largest IT corporations have vastly increased their profits in the last 25 years but their employment levels remain flat.

SHARES OF TOP 1% OF COMPANIES FROM TECHNOLOGY, SOFTWARE AND IT SERVICES SECTOR, 1996–2015 (in %)

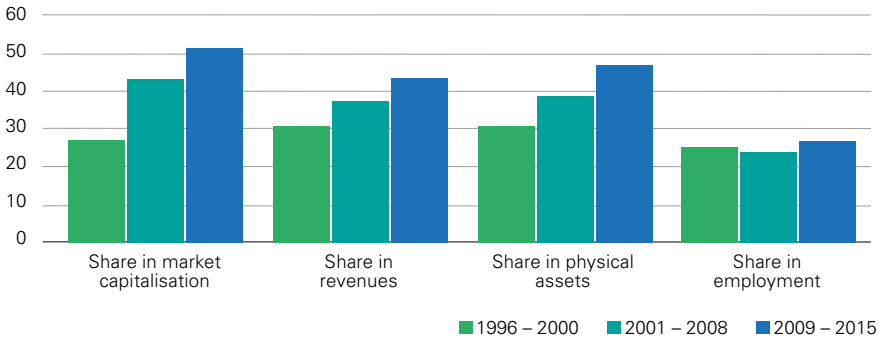


Figure 2 / Source: UNCTAD Trade and Development Report 2018. Note: Top 1% of companies identified by intangible assets in the sector.

A recent UBS Group Report noted that developing countries "will face the threat of the Fourth Industrial Revolution compromising low-skilled jobs via extreme automation, but may not have the technological ability to enjoy the relative gains that could be re-distributed via extreme connectivity".[57] But it is not just technological ability but control over policymaking that is core to whether workers will continue to face low wages and longer hours, or the shorter hours and higher pay

55 Noam Scheiber, 'How Uber Uses Psychological Tricks to Push Its Drivers' Buttons', *The New York Times*, 2 April 2017.

56 Helen Blakely and Steve Davies, 'Trade Union Responses to the Changing World of Work: A Report for UNI Global Union', Wales Institute of Social & Economic Research, Data & Methods (WISERD), School of Social Sciences, Cardiff University, May 2018.

57 'Extreme automation and connectivity: The global, regional, and investment implications of the Fourth Industrial Revolution', UBS, 2016.

that productivity gains should bring.[58] **The digital trade rules would not create this dynamic, but would accelerate its pace and make it more difficult for governments to mitigate the negative impacts.**

Proposed bans on regulating cross-border data transfers would constrain policies to foment job creation and rebalance power. At this point, most people do not properly grasp the value of data, which is in fact the most valuable resource of all,[59] meaning that individuals and governments are too easily allowing it to be collected indiscriminately and transferred outside their countries by TNCs. All countries need to harness the value of data for job creation and communities' economic development in the public interest. Data is the primary resource of the future global economy, and people and governments are increasingly calling for this resource to be utilised for the public good, rather than solely private corporate profit.[60] The only way to bring about a rebalancing of power away from capital and towards working people is to promote state, workers' and community ownership of society's most important resources,[61] including data. Proposals within the WTO to *give Big Tech the right to collect, hoard, store, transfer across borders, sell, and control the use of data*; to *ban countries from being able to require domestic data storage*; or to *use local servers*, would severely constrain the ability to ensure that working people can harness the benefits of digitalisation.

Workers in sectors such as telecommunications, financial services and computer-related services would be especially affected by the rules because those sectors are being targeted by proponents of *additional market access commitments* under the WTO's General Agreement on Trade in Services (GATS). This would bring to bear rules including *National Treatment*, under which countries have to ensure that competitive conditions are at least as beneficial for the foreign corporations as those offered to domestic companies, including prohibiting more favourable treatment for public services providers. It would also include *market access rules* such as restrictions on the government's ability to regulate

58 Dean Baker, Rigged: How Globalization and the Rules of the Modern Economy Were Structured to Make the Rich Richer, Washington, DC, Center for Economic and Policy Research, 16 October 2016, free download at https://deanbaker.net/books/rigged.htm (9 December 2019).

59 'The World's Most Valuable Resource Is No Longer Oil, but Data: The Data Economy Demands a New Approach to Antitrust Rules', *The Economist*, 16 May 2017.

60 Digital Justice Manifesto, JustNet Coalition. Available at: https://justnetcoalition.org/digital-justice-manifesto.pdf (9 December 2019).

61 Grace Blakely, *Stolen: How to Save the World from Financialisation*, Penguin Random House Books, 2019.

the number of services suppliers, the value of transactions, the type of legal entity (banning joint ventures) or the participation of foreign capital (meaning that 100% foreign ownership must be allowed), giving foreign corporations more rights vis-à-vis workers in those sectors.

The rules would also negatively impact workers in transport, manufacturing and even the agricultural and professional sectors. Corporations are now redefining everything as a service except for the final commodity, meaning that deregulatory services rules are overtaking rules on agriculture and manufacturing, with digital firms taking control of real production. As the digital component of most jobs increases, a job managing, for example, a mining operation or an oil well remotely would be considered a computer-related service, which is why the IndustriALL global union federation has called for countries to retain policy space to build digital infrastructure[62]. The same is true of Monsanto's vast data collection operations in agriculture, as highlighted by the global union federation of agriculture workers, the IUF[63]. A country that has committed its transport services to WTO disciplines could be challenged if it tries to ban imports of driverless cars on the pretext that they are a transport service rather than a good, which has concerned the International Transport Workers' Federation (ITF)[64]. Under the proposed digital trade rules, the increased use of AI in professional sectors including law and healthcare would result in the power of capital being extended through its control of data and increased bargaining power. Working people should not just be dependent on national redistribution policies to "compensate the losers" of the harmful rules of trade agreements when those rules are designed to shift benefits from workers to capital.

Public sector workers would be negatively impacted by many of these same rules, but also the increase in privatisation that often comes with digitalisation, discussed below, which often results in deunionisation and the reductions in wages and loss of benefits that go with it.

62 'An Action Plan towards Fair Trade and Industrial Policy', IndustriALL Executive Committee Meeting, Mexico City, 29–30 November 2018. Available at: www.industriall-union.org/sites/default/files/uploads/documents/2018/MEXICO/EXCO/englishec_8_an_action_plan_towards_fair_trade_and_industrial_policy_english_final_amended_version.pdf (9 December 2019).

63 'TiSA: Not our future! The battle over TiSA: when everything is a service, a Trade in Services Agreement affects everyone', Jane Kelsey, IUF, February 2018. Available at: www.iuf.org/w/?q=node/6049 (9 December 2019).

64 'The Trouble with TiSA', Jane Kelsey, International Transport Workers' Federation, 2018. Available at: https://tradejusticeunions.org/wp-content/uploads/2018/08/ITF_Trouble-with-TISA_2018.pdf (9 December 2019).

The proposals fail to address specific issues for workers of platformisation, including the right to organise. Online platforms are based on algorithms that determine the compensation of service providers (workers) who have no bargaining power. Wage theft[65] is rampant in this sector and should be addressed transnationally. According to Caroline Khamati Mugalla of the East African Trade Union Confederation (EATUC), "[t]o this end, governments should establish fair treatment and competition rules, such as portability of rankings among platforms, and actively support platform workers in other ways to increase their individual right to redress and explanation and collective power. Further to this, competition law does not permit self-employed workers to unionise, and governments and competition authorities should update the laws to allow for this possibility." It is not just the creation of jobs that must be addressed but the need to ensure that there are decent-quality jobs in the future digital economy, and making sure that all workers have the right to organise is essential to ensuring that future.

The emphasis in discussions on the Future of Work[66] on job retraining and skill-based technological growth are important, but as trade unions have pointed out,[67] they are no substitute for good policy. Technology's benefits are no substitute for strong labour rights, and the collective power of labour vis-à-vis capital. Rather, these are key pathways to ensuring that the technology is put to the service of improving human well-being rather than the other way round.

Proposed bans on governments' ability to require "source code disclosure" would make regulating digital bias at work more difficult. Algorithmic bias and data control make hiring and firing less transparent but are increasingly being used in evaluations which affect promotions and pay. The increased use of automated decision-making has led to an expansion of profiling from algorithmic bias on the basis of race and other categories. But corporations want *source codes protected as "trade secrets"*.[68] In contrast to these proposals, workers should have an explicit right to an explanation when source codes and

65 Farjad Manjoo, 'The Tech Industry Is Building a Vast Digital Underclass', *The New York Times*, 24 July 2019.

66 Global Commission on the Future of Work: Work for a Brighter Future, International Labour Office, Geneva: ILO, 2019.

67 TUC: A future that works for working people, Report by the Trades Union Congress of the UK, 10 September 2018. Available at: www.tuc.org.uk/research-analysis/reports/future-works-working-people (9 December 2019).

68 Ansgar Koene, 'Implications of WTO ecommerce proposals restricting access to algorithms' (University of Nottingham, Paper Presented at the WTO Public Forum, 2–4 October 2018).

algorithms are used in decisions affecting employment. People from minority groups should have the right to enjoy every aspect of life without experiencing any algorithmic bias. Rights of investigation and transparency remedies should be available for affected parties, not just governments. Furthermore, regulators must have access to source code to ensure that rights and laws have not been violated.

Proposed bans on regulation of cross-border data transfers would severely constrain workers' privacy over their data. Digitalisation is being used by an increasing number of corporations for surveillance of workers,[69] eroding their rights. Human, labour, consumer, economic and civil rights must apply equally in the digital sphere without being constrained as "barriers to trade". This includes the rights to data for workers and the rights to privacy of workers over data produced by their labour. UNI Global Union has done extensive work on this issue, such as in their *Top 10 Principles for Workers' Data Privacy and Protection*,[70] and their calls for workers' data privacy, safeguards, rights and oversight should be universalised.

Proposed rules would entrench gender inequalities, although proponents use "pink-washing" to sell them. The increased use of automated decision-making has also led to increased algorithmic bias against women.[71] Women workers in the 'gig' economy of Big Tech corporations are stripped of their collective rights which are essential to guaranteeing their equality as women workers; they are now experiencing further alienation from regulated labour markets as their jobs are becoming ever more precarious. Under the proposed rules, women-owned small businesses, which could benefit from digital industrialisation and infant industry protections, would instead be subjected to increased competition from Big Tech corporations. Yet proponents of these rules are using "women's economic empowerment" (supposedly from the potential benefits for some women entrepreneurs) to push the very same policies that would entrench gender

69 TUC, 'I'll be watching you: a report on workplace monitoring', Report by the Trades Union Congress of the UK, 2018. Available at: www.tuc.org.uk/research-analysis/reports/ill-be-watching-you (9 December 2019).

70 'Top 10 Principles for Workers' Data Privacy and Protection', UNI Global Union, undated. Available at: www.thefutureworldofwork.org (9 December 2019).

71 Safiya Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism*, University Press, 2018.

inequalities in the workplace.[72] Proposals that reinforce exploitative structures will not become gender-balanced by including a gender clause.[73]

Sharan Burrow, the General Secretary of the ITUC, has stated that if the deficits are not fixed, "a plurilateral agreement on e-commerce trade alone will merely add to the failed economic model of profit first – profit for the wealthiest and most powerful countries and individuals. This can only deepen global division and already-unbalanced development. And the result is greater inequality."[74]

The transformations necessary to achieve a Just Transition – to ensure shared prosperity on a liveable planet – will not be possible under rules set by the most labour-exploitative corporations because exploitation of labour is a key source of their profits. A comprehensive vision and blueprint for this global transformation are found in *A New Multilateralism for Shared Prosperity: Geneva Principles for a Green New Deal*,[75] and include reducing, not expanding, corporate rights over governance. Referring to the investments necessary to achieve the jobs-led climate-saving transformations of a global Green New Deal, UNCTAD's latest research demonstrates that "[r]eversing the decades-long loss of labour income to profits and the shrinking public realm and ensuring corporations pay their fair share is key for the global package to work, due to the positive effect of increased public investment and higher wages on consumption and private investment."[76]

72 'Women's Rights Groups call on Governments to reject the WTO Declaration on Women's Economic Empowerment', Statement by 164 Women's Rights Organisations and allied organisations from all inhabited continents rejecting the WTO Declaration on Women's Economic Empowerment as they believe the declaration "appears to be designed to mask the failures of the WTO and its role in deepening inequality and exploitation", December 2017.

73 Anita Gurumurthy and Nandini Chami, 'Why the dominant digital trade paradigm will not work for women in the global south', *IT for Change Issue Brief*, April 2019.

74 Sharan Burrow, 'What future for the WTO?', in *Women Shaping Global Economic Governance*, edited by Arancha González and Marion Jansen, Centre for Economic Policy Research Press and the International Trade Centre, 2019.

75 Kevin Gallagher and Richard Kozul-Wright, 'A New Multilateralism for Shared Prosperity: Geneva Principles for a Green New Deal', the Global Development Policy Center at Boston University and the Globalization and Development Strategies (GDS) Division of UNCTAD, 2019.

76 UNCTAD, 'Trade and Development Report 2019: Financing and Global Green New Deal', Report by the Secretariat of the United Nations Conference on Trade and Development, Geneva, 2019.

THE CROCODILE GRAPH: SUPERSTAR PREDATORS
TOP 2,000 TRANSNATIONAL CORPORATIONS' PROFIT
AND THE GLOBAL LABOR INCARNE SHARE, 1995-2015
(IN % POINT CHANGE IN GDP)

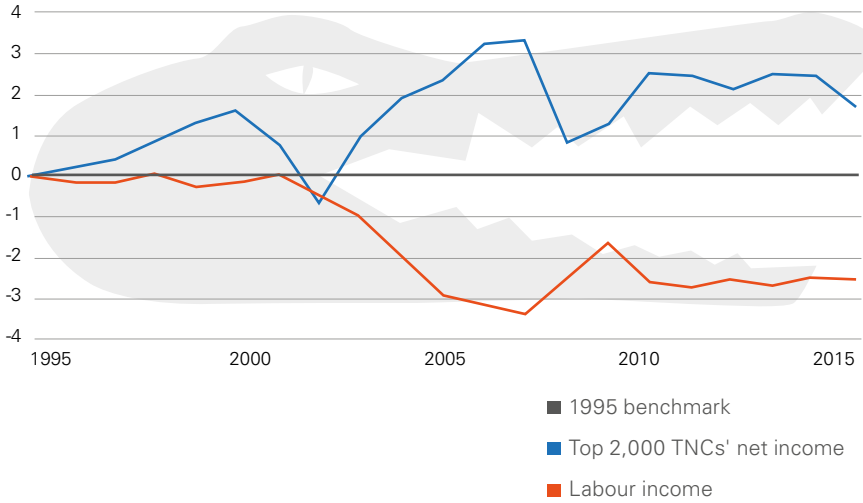
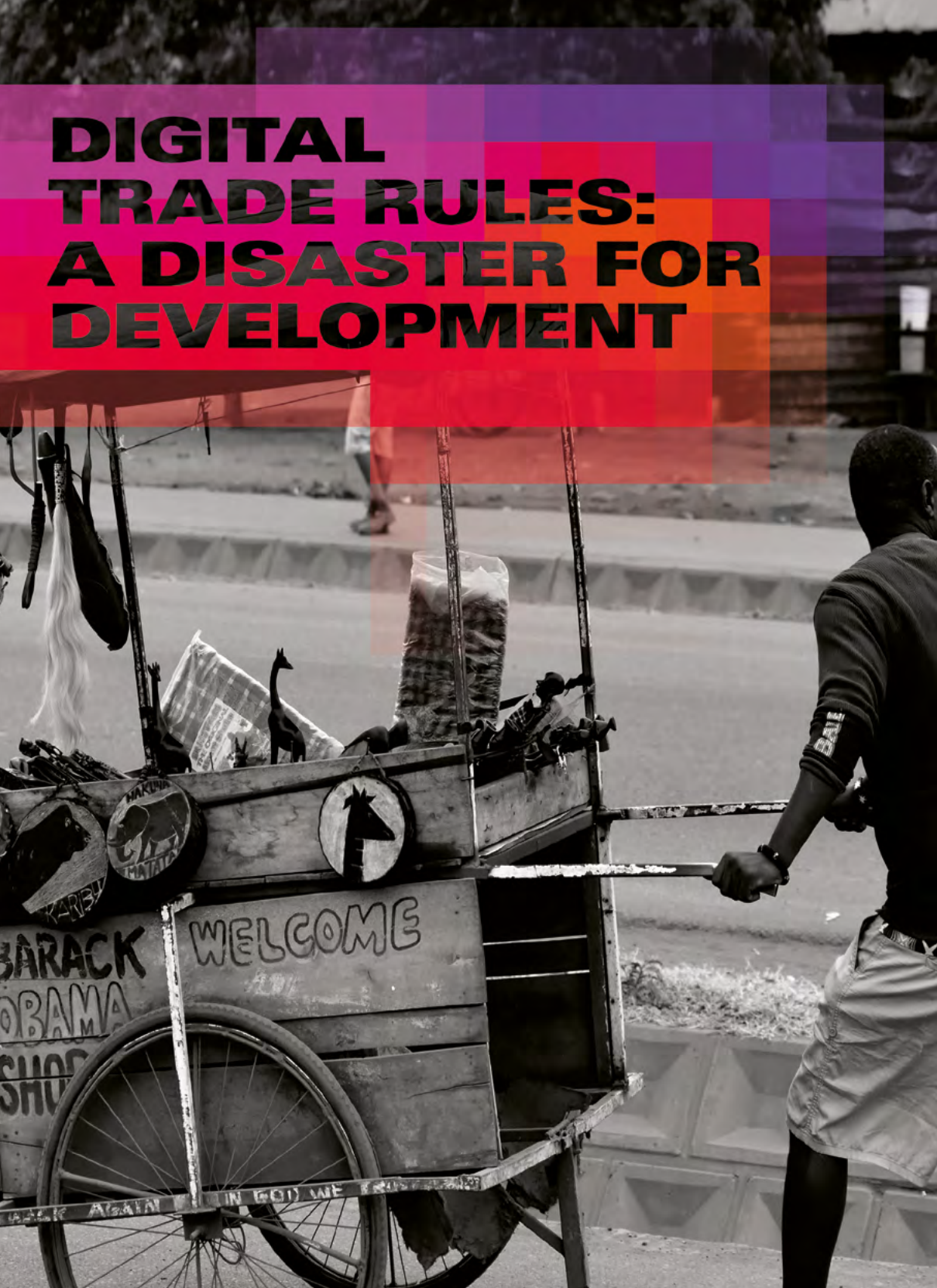


Figure 3 / Source: Kevin Gallagher and Richard Kozul-Wright, 'A New Multilateralism for Shared Prosperity: Geneva Principles for a Green New Deal', the Global Development Policy Center at Boston University and the Globalization and Development Strategies (GDS) Division of UNCTAD, 2019.

Inclusive digital industrialisation promoting shared prosperity must focus on decent job and livelihood creation and associated social and economic rights. The most important strategy to ensure widespread and inclusive benefits from digitalisation is a commitment to job creation with a view to achieving full employment, focused on equity, including strong labour rights and decent working conditions for all workers; gender equality; workers' data rights; and comprehensive and portable social protection, including for platform workers.

In addition, it is important to remember that workers have families, live in communities, pay taxes, use services and operate in economies shaped by domestic and international factors, so the impacts on privacy, tax policy, public services, development and all other aspects of human life affect people who work.

DIGITAL TRADE RULES: A DISASTER FOR DEVELOPMENT



Digital liberalisation will likely facilitate more imports of products and services with high digital content into, rather than exports from, developing countries. Proponents disguise their proposals in the Trojan horse of being necessary to "unleash development though the power of MSMEs using e-commerce". But in order to trade, countries have to generate 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, data protection and economic data rights, developing countries will simply be opening up their economies even more to foreign imports.[77]

Thus, liberalisation in the digital sphere, without the required domestic investments to improve productive capacities, will destroy jobs and further informalise them, decimate MSMEs and severely constrain future development.[78] MSMEs are the least likely to be able to compete with giant TNCs, which enjoy the benefits of scale, historical subsidies, technological advances, strong state-sponsored infrastructure and a system of trade rules written by their lawyers. Research has highlighted that African MSMEs have to compete with big TNCs and also with MSMEs based in developed countries. In Uganda, an enterprise is classified as "micro" if it has up to USD 2,700 equivalent in Ugandan assets; "small" if it has up to USD 27,000 equivalent in assets; and "medium" if it has up to USD 97,000 equivalent in assets.[79] But competitors like Google, Apple, Facebook, Amazon, Alibaba and Tencent have between USD 340 billion and USD 1 trillion in assets – a very uneven playing field. These TNCs are able to invest in new markets and operate at a loss for years in order to establish market dominance,[80] as Uber[81] and Amazon[82]

77 Rashmi Banga, 'Rising Product Digitalisation and Losing Trade Competitiveness', *United Nations Conference on Trade and Development*, June 2017.

78 This issue is clearly delineated in the 'Statement from Civil Society Organizations working on eCommerce for Development, on the Africa eCommerce Week and Outcomes', Third World Network Africa, 14 December 2018.

79 Martin Luther Munu, 'eCommerce and MSMEs: what trade rules could improve the business climate in Africa?', Our World Is Not for Sale, March 2019. Available at: https://ourworldisnotforsale.net/2019/Munu_Africa.pdf (December 2019).

80 Lina Khan, 'Amazon's antitrust paradox', *The Yale Law Journal*, 126(3): 564–907, 2017.

81 'Uber India bookings touch $1.6 billion, 11% of global rides: report', *The Economic Times*, 8 December 2018.

82 John Koetsier, 'Report: Amazon India Worth $16B With 30% Market Share, Will Hit $70B GMV In 2027', *Forbes*, 18 May 2018.

are doing in hundreds of markets in which they operate. Granting giant TNCs *the rights to access markets in a country*, while *banning the country from being able to apply traditional development policy tools like requiring technology transfer*, will put MSMEs at an even greater disadvantage.[83] These threats to economic sovereignty and future development prospects from premature digital liberalisation would be vastly amplified if the rapidly evolving digital economic space is governed by rules that were developed by TNCs for their own profit-making around the world.[84]

GEOGRAPHIC LOCATION OF BIG TECH COMPANIES, SELECTED COMPANIES

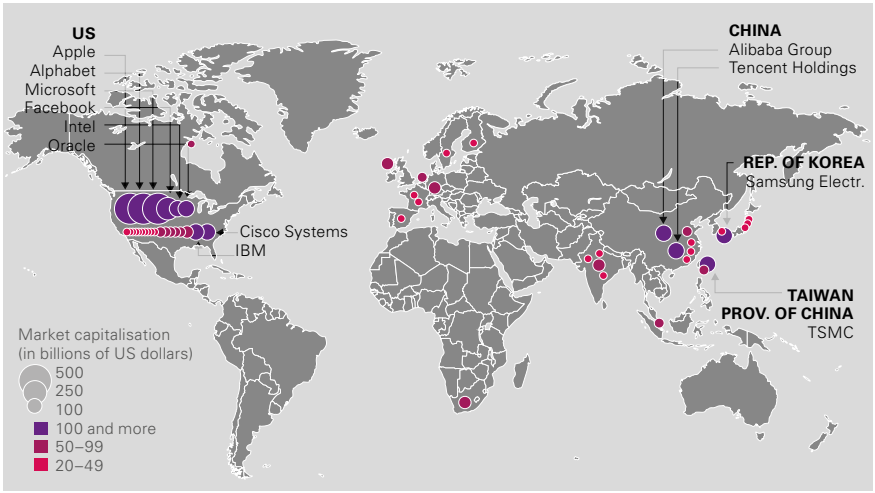


Figure 4 / Source: UNCTAD database of consolidated financial statements, based on Reuters Worldscope.

83 Richard Hill, 'Micro, small, and medium-sized enterprises (MSMEs) and e-commerce', December 2017.

84 Africa Kiiza, Daring to think differently. Why E-Commerce won't work for Africa's development, Rosa-Luxemburg-Stiftung Brussels, 20 December 2018. Available at: www.rosalux.eu/en/article/1337.daring-to-think-differently.html (9 December 2019).

The biggest danger to development from the proposed digital trade rules would be the legalisation of the free transfer of the most valuable resource of developing countries, namely data, to foreign TNCs, forever pre cluding the ability of developing countries to harness digitalisation for their own development. Data is the most valuable asset today, and are the lifeblood of the future economy. Whichever firms dominate Artificial Intelligence (AI) in their sectors will dominate their industries; and AI depends on massively large sets of Big Data to train the machine learning tools to make decisions. Groups like IT for Change have written extensively about the value of data for developing countries and the need for developing countries to maintain rights to control their own data and not allow new rules mandating TNCs to have infinite rights to collect, process and control their data for private profit.[85] 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 now with data, leading to digital colonialism[86] and the exacerbation of the serious problem of increasing inequality around the world.[87]

Why would developing countries give away this valuable resource of data for free? As Parminder Jeet Singh has argued: "*Going by current trends, the level of structural dependency of developing countries in the digital society context is evidently going to be higher than ever. The phenomenon has also been called digital colonisation… Global flows and trade of these vital resources should be on fair terms, ensuring national economic benefits as well as social and cultural protections… Meanwhile, we must make it clear that we are not advocating digital deglobalisation. What is sought is simply a fair place for developing countries, and for public interest, in the emerging global digital order.*"[88]

85 Parminder Jeet Singh, 'Why owning their national data is important for developing countries', IT for Change, March 2019.

86 Renata Avila, 'Digital sovereignty or digital colonialism? New tensions of privacy, security and national policies', *Sur International Journal on Human Rights*, Geneva, May 2018.

87 *Op. cit.*, 'Statement from Civil Society Organizations working on eCommerce for Development, on the Africa eCommerce Week and Outcomes', 2018.

88 *Op. cit.*, Parminder Jeet Singh, 2017.

The economic digital divide is growing, and network effects will continue to exacerbate it unless countries engage in smart digitalisation. A major new study by UNCTAD, the *Digital Economy Report 2019*, highlighted that as the United States and China account for 75% of all patents related to blockchain technologies, 50% of global spending on the Internet of Things (IoT), more than 75% of the cloud computing market and as much as 90% of the market capitalisation value of the world's 70 largest digital platform companies. While the technical digital divide may be narrowing slowly, the economic benefits of digitalisation are accruing overwhelmingly to a few superstar firms in the United States and China, and most developing countries are actually falling further behind. First-mover benefits such as network effects mean that the largest platforms are consolidating and accentuating concentration, leaving developing countries at risk of "becoming mere providers of raw data, while having to pay for the digital intelligence generated using their data".[89]

GROWING DIGITAL DIVIDE AND LOSING TRADE COMPETITIVENESS

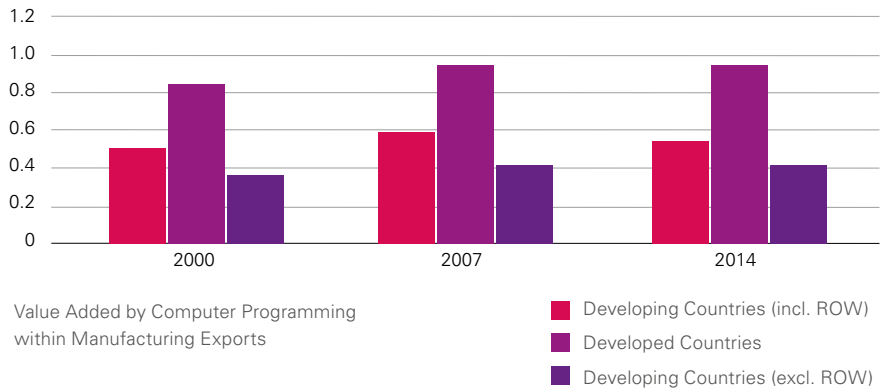


Figure 5 / Source: Rashmi Banga and Richard Kozul-Wright, 'South-South Digital Cooperation for Industrialization: A Regional Integration Agenda', UNCTAD, 17 April 2018.

89 UNCTAD, 'Digital Economy Report 2019. Value creation and capture: Implications for developing countries', UN Conference on Trade and Development, September 2019. Available at: https://unctad.org/webflyer/digital-economy-report-2019 (9 December 2019).

Start-ups in developing countries are gaining traction, but foreign investors are siphoning off profits that need to be reinvested in Africa, Asia and Latin America.[90] Research by the South Centre has demonstrated that new digital markets are "riddled with information asymmetries, monopolies, algorithmic in transparencies and 'winner-takes-all' effects"[91] which must therefore be addressed by developing countries with policy measures to enable their own industrialisation and developmental goals as part of the transition to the digital era.

Developing countries have the policy space to promote digital trade through domestic firms now and to build up their digital industrialisation through various policies, performance requirements, subsidies, incentives and the like. A digital industrialisation strategy would include creating domestic or regional data centres, which can then become important hubs for jump-starting software industries, Internet-related industries and other data-based industries. It should not go unnoticed that the only country that has built up any true competition to the US-based Google, Facebook and Amazon is China – a nation that did so through digital industrialisation policies, not by opening up its market to foreign transnationals who had the benefit of government research funding and other subsidies, government procurement support, time, scale and other advantages.

Proposed digital trade rules are intended to severely limit the development policy space. Corporate lobbies have been clear that they want localisation requirements banned, such as those *requiring a local presence in the country in order to conduct business transactions*; the *hiring of local workers*; the *use of local servers and computing facilities*; and *the use of local technologies*. But developing countries use these requirements to help ensure that allowing TNCs to operate in their economies will assist them in starting infant industries and working their way up the development ladder.[92] An early proposal by the EU also included *opening up government procurement* – a topic explicitly excluded from the current WTO round. Opening up public purchasing (e.g. by promoting privatisation through public-private partnerships, or PPPs) would put MSMEs, which are typically favoured in such contracts, at a serious disadvantage vis-à-vis foreign

90 Thomas Fritz and Sven Hilbig, 'Global Justice 4.0: The impacts of digitalization on the Global South', Brot für die Welt, Berlin, September 2019.

91 Padmashree Gehl Sampath, 'Regulating the Digital Economy: Dilemmas, Trade Offs and Potential Options', South Centre Research Paper 93, March 2019.

92 Parminder Jeet Singh, 'Data localization: A matter of rule of law and economic development', IT for Change, September 2018.

TNCs (which usually enjoy advantages of scale and earlier public investments), meaning that more tax dollars would flow to foreign corporations instead of boosting the domestic economy.

The proposed ban on governments' ability to require technology transfer would particularly hamper digitalisation in developing countries. Even as digital trade proponents seek to reduce tangible barriers to trade such as tariffs, they have sought to *increase intangible barriers such as increased legal protections for 'intellectual property rights (IPR)'*. Digital firms rely on IPR even more than their analogue counterparts. According to UNCTAD, "charges (i.e. payments) for the use of foreign IPR rose from less than $50 billion in 1995 to $367 billion in 2015".[93] Nearly all of this went to OECD countries.

INTELLECTUAL PROPERTY RIGHTS RECEIPTS (IN US$ BILLION)

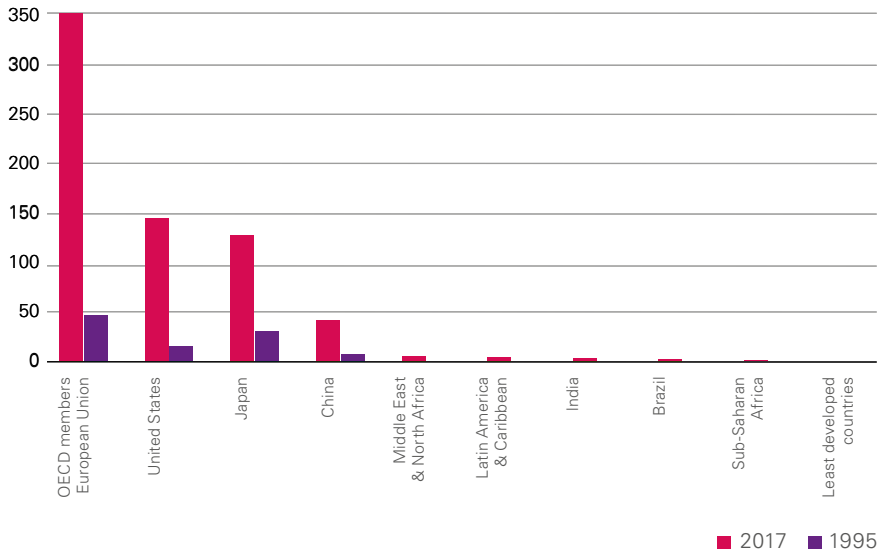


Figure 6 / Source: Trade and Development Report 2019

93 *Op. cit.*, UNCTAD, 2018.

Instead of facilitating technology transfer to deliver on the promise of closing the digital divide, the actual provisions of the digital trade negotiations would put patented technologies further out of the reach of developing countries, increasing the weight of intangibles in global value chains and ensuring that developing countries gain even less from global trade.[94]

In its flagship Trade and Development Report, UNCTAD explains the connection: *"with the rise of export market concentration, large firms have increased their ability to extract rents from newer and more intangible barriers to competition, reflected in heightened protection for intellectual property rights and abilities to exploit national rules and regulations for profit shifting and tax avoidance purposes. The consequent increase in returns from monopolies generated by IPRs, as well as reduction in relative tax costs of larger companies, creates an uneven playing field. The empirical exercises carried out for this Report suggest that the surge in the profitability of top transnational corporations – a proxy for the very large firms dominating international trade and finance – together with their growing concentration, has acted as a major force pushing down the global labour income share, thus exacerbating personal income inequality."*[95]

The same is true for the global share of income of developing countries from trade. UNCTAD further notes that: "*services derived from intangible assets whose geographical location can be determined by firms almost at will – such as financial assets or intellectual property rights (IPR) – can now be "traded" more freely between higher-tax and lower-tax jurisdictions and within transnational corporations (TNCs) themselves. Overall, these processes have tilted the distribution of value added in favour of capital, especially transnational capital, whose owners remain mostly headquartered in developed countries.*"[96]

94 'The WTO's Discussions on Electronic Commerce: Analytical Note', South Centre, Geneva, 2017.

95 *Op. cit.*, UNCTAD, 2018.

96 *Op. cit.*, UNCTAD, 2018.

It is the utmost hypocrisy that in negotiations which proponents claim will help developing countries close the digital divide, which would by definition mean increasing their technological capabilities across a wide range of sectors, include proposed rules to limit that technological access in ways that will also limit the ability of those same countries to fund their own innovation.

Developing countries are being pressured to include new services under WTO liberalisation rules. Many proposals include demands for *additional market access* for foreign corporations in *telecommunications, financial services and computer-related services* sectors. In the WTO, countries decide which services sectors will be subject to WTO rules by "committing" them in the GATS. Many developing countries have not committed passenger transport under WTO rules, but Uber has argued that it is a computer-related service, which could then be included under the proposed rules. Proponents are also advocating the principle of *technological neutrality* in which, if a country committed a service sector in the WTO, then, it is argued, that country has also committed a digitalised version of that service as well. Under this claim, a country that has included engineering design services or construction design services could be argued to have included the importing of 3D printing files.[97] Likewise, many countries that have commitments in hotel or tourism services may be constrained from regulating Airbnb (or supporting a domestic version thereof). Services thus included would be subjected to the WTO principle of *National Treatment*, in which countries are required to provide treatment (subsidies, market access conditions, regulatory regimes, etc.) for the foreign corporations at least as good as the government provides for national companies. Therefore, developing countries would not be able to give domestic companies the same benefits of investment, special protections and economies of scale that developed countries gave theirs in their trajectories.

Servicification in the WTO could also threaten industrial production. Corporate traders are also increasingly classifying goods as services. As they embedded smart products with software, they claim that instead of trading in shoes (which may be subject to tariffs), they are trading fitness services (which may be liberalised under the WTO). A claim could also be made that 3D printing files are software and thus subject to the *moratorium on customs duties on e-transmissions*. As digitalisation increases, both of these mechanisms could eventually

97 R. V. Anuradha, 'Technological Neutrality: Implications for Services Commitments and the Discussions on E-Commerce', Centre for WTO Studies, Indian Institute of Foreign Trade, October 2018.

have a serious impact on domestic industries that countries have worked hard to preserve with the strategic use of tariffs.[98]

The proposed rules also limit the policy space by requiring countries, including the Least Developed Countries (LDCs) to agree to new commitments beyond those currently required under the WTO. LDCs are currently not required to assume any commitments on the Trade-Related Investment Measures (TRIMS) agreement in the WTO, or on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Proposals to *prohibit requiring the disclosure of source codes* are considered "TRIMS-plus" because they effectively ban technology transfer requirements (in that source code is a technology) that WTO members may currently allow under TRIMS rules. They are considered "TRIPS-plus" because they require stronger intellectual property protection than under TRIPS. Usually, patent holders are required to disclose the invention, including any source code, as a *quid pro quo* for government intervention to protect their invention.[99]

Many of the proposals would also preclude developing countries from regional integration, which is widely viewed as essential for their development, as envisaged, for example, in the African Union's Agenda 2063. Countries agreeing to allow cross-border data transfers, for example, would not be able to pool data in a regional African cloud, or build up interrelated industries in a sub-regional effort to increase added value among developing countries.

Pro-development strategies focus on closing the digital divide but are not part of the WTO. In sub-Saharan Africa, only 44.6% of the population has access to electricity;[100] only 25% of the population use the Internet, and under one in 200 people have a fixed broadband subscription. The majority of people do not have postal delivery to their home address. Poor countries have been clear that their concerns include increased access to energy, the Internet and other information and communication technologies (ICT) to close the digital divide; increased infrastructure for logistics, including transport and postal systems; legal and regulatory frameworks; access to finance; and capacity building in technologies to help them prepare to benefit from digitalisation in trade. But these issues are nowhere to be

98 *Op. cit.*, Banga, 2017.

99 *Op. cit.*, Sanya Reid Smith, 10 December 2017.

100 World Bank, 2017 figures, Access to Electricity. Available at: https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS (9 December 2019).

found in the proposals. Developing countries' proposals, meanwhile, often result in non-binding promises of future aid that is rarely delivered.[101] The Report of the UN Secretary-General's High-Level Panel on Digital Cooperation makes extensive recommendations regarding the need for multi-stakeholder global digital cooperation for development, but its reference to the WTO simply notes that "any agreement will need to address concerns of a diverse range of countries, including lower-income countries in which the e-commerce sector is less developed"[102], which is impossible given the negotiating dynamic.

The proposed digital trade rules in the context of the WTO do not include development provisions or flexibilities which developing countries have fought hard to maintain throughout the history of the WTO. Developed countries who are proponents of the rules; the Director General of the WTO, Roberto Azevêdo; and even the Secretary General of UNCTAD, Mukhisa Kituyi, have argued that developing countries would be better served by joining the negotiations rather than not participating in the plurilateral negotiations, and especially rather than opposing them on a multilateral basis in the WTO.[103] Proponents have made promises in public forums as to their commitment to development in the talks. But this is belied by the fact that *their proposals lack development flexibilities*, such as longer timelines for implementation, or less onerous commitments for developing countries; by the fact that there are no specific provisions designed to help facilitate growth of developing countries' digital economies; and by the more than 18 years of WTO negotiations, in which developed countries have blocked changes to existing rules that would help developing countries use trade for their own development. In fact, developed countries are currently campaigning to take away 'developing country' status from non-LDCs,[104] thus undermining any remaining credibility as to a commitment to development, particularly given recent research

101 A proposal by the Friends of E-Commerce for Development will likely meet this fate while legitimising negotiations in the WTO. See http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1477 and www.twn.my/title2/wto.info/2017/ti170501.htm (9 December 2019).

102 *The Age of Digital Interdependence*, Report of the UN Secretary-General's High-Level Panel on Digital Cooperation, June 2019. Available at: https://digitalcooperation.org (9 December 2019).

103 Chakravarthi Raghavan, 'E-com pluri-talks a reality, so better join, says UNCTAD SG', *SUNS South-North Development Monitor*, #8885, 10 April 2019.

104 Aileen Kwa and Peter Lunenborg, 'Why the US Proposals on Development will Affect all Developing Countries and Undermine WTO', South Centre Policy Brief 58, March 2019.

that developing countries have gained exceedingly little from WTO rules over the 25 years of the organisation's existence.[105]

Digital rule-making is especially premature for economies that do not have the adequate legal, structural and human capital necessary to compete globally. Developing countries generally lack experience with many of the technologies being discussed. Even the World Bank's *World Development Report 2016: Digital Dividends*[106] noted that few developing countries have the requisite broadband access and other infrastructure, regulatory frameworks, human capital and accountable institutions to reap the benefits. Assessments by UNCTAD show that a majority of developing countries do not have an adequate legal structure regarding digital trade, Internet governance or cybersecurity. (Incidentally, many developed countries lack these as well.) It is lunacy, from a development standpoint, to create binding, sanctionable international legal treaties on newly emerging and incredibly dynamic areas of the technological transformation economy.[107]

The main driver of the digital trade negotiations, the United States, is simultaneously attacking the ability of the dispute resolution system in the WTO to function. Why should developing countries – or any WTO member – agree to a US-based (i.e. corporate-based) agenda when the Trump administration is attacking the functioning of the WTO by blocking the appointment of panellists to the Appellate Body of the dispute settlement system? It seems odd to expand the rule-making branch of an institution at the insistence of a member that is threatening its enforcement mechanisms.[108]

Talks on digital trade are displacing a development agenda that could dramatically reduce poverty. Millions of impoverished people, including farmers, could see improvements to their lives if changes were made to the existing rules

105 Richard Kozul-Wright, Rashmi Banga et al., 'From Development to Differentiation: Just how much has the world changed?', Division on Globalization and Development Strategy, UNCTAD, June 2019.

106 'World Development Report 2016: Digital Dividends', World Bank, Washington, DC, 2016.

107 Chakravarthi Raghavan, 'Development and E-com flow of data rules are incompatible', Third World Network, 30 April 2019.

108 D. Ravi Kanth, 'South challenges US and allies' narrative on WTO "reforms"', *SUNS South-North Development Monitor*, #8952, 23 July 2019.

on agriculture at the WTO.[109] The global OWINFS network has long promoted a Turnaround agenda[110] (endorsed by hundreds of civil society groups) to abolish harmful WTO rules that restrict the policy space for sustainable development. Developing countries, and particularly the Africa Group, have been clear that their top agenda is gaining flexibility from the rules in the WTO that constrain their development. Even after more than 20 years of participation in the WTO, Africa's share of global trade is still minimal (less than 3%).[111] But the development agenda is being pushed aside in favour of the digital trade agenda.[112]

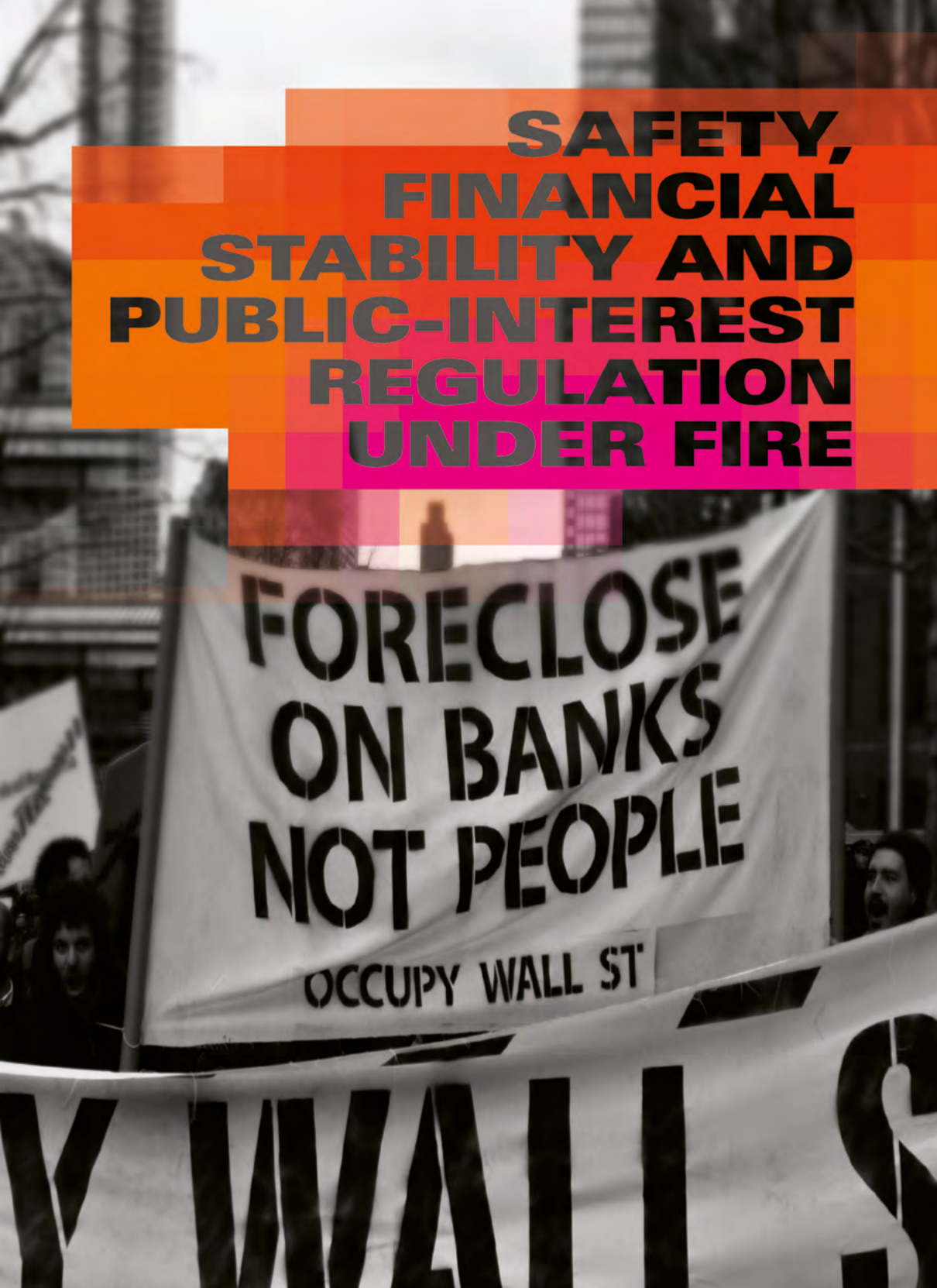
109 Deborah James, 'Investing in Agriculture in Developing Countries: The Whole World Says Yes, But the WTO Says No', *AlterNet*, 31 March 2015.

110 'WTO Turnaround: Food, Jobs and Sustainable Development First – Statement', endorsed by 247 CSOs, 2013.

111 There are 43 African countries that are members of the WTO.

112 Vahini Naidu, 'Knowledge production in international trade negotiations is a high stakes game', 14 June 2019, London School of Economics. Available at: https://blogs.lse.ac.uk/africaatlse/2019/06/14/knowledge-production-international-trade-digital (9 December 2019).

SAFETY, FINANCIAL STABILITY AND PUBLIC-INTEREST REGULATION UNDER FIRE



Big Tech corporations are using their enormous profits to rig the regulatory process, tipping the balance away from the public interest. A primary economic role of governments is to ensure that markets function under rules that balance the interests of various stakeholders, in particular the interests of the public along with the interests of the private sector. But US-based tech companies have vastly increased their lobbying under the Trump administration,[113] and many former regulators are part of the revolving door[114] in Washington, DC, as in other capitals.

The proposed rules would give corporations *rights to access countries' markets* while banning governments from being able to require that corporations operating in their jurisdiction *have a local presence*, **limiting their ability to regulate generally**. In addition, countries cannot impose requirements on the legal form of corporations if do not have a local presence. This allows them to establish shell companies or entities contracted from offshore to supply particular support services but who are not involved in the main business and hence cannot be subject to litigation relating to breaches of local regulations or tax.[115]

The right to regulate could be subject to a trade challenge. While the proposed rules give lip service to acknowledging the right of governments to sometimes restrict the cross-border transfer of data for a "*legitimate public policy objective"*, sovereign governments, if a public policy measure were to be challenged, could be required to demonstrate that their measures were "*legitimate*", not "*arbitrary*" or "*unjustifiable discrimination*" or a "*disguised restriction on trade"*, and that they were "*no greater than necessary to achieve the objective*". Domestic public policymaking should not be subject to the whims of pro-trade arbitrators in Geneva. These disciplines are being further elaborated in parallel plurilateral negotiations on "domestic regulation" which may be concluded even before the talks on digital trade.

The proposed rules would also potentially extend Big Tech corporations' ability to influence domestic democratic regulatory processes. In the guise of "transparency for stakeholders", governments could be required *to notify foreign digital firms of potential new regulations and allow for input into their legislative and regulatory*

113 Michael Tanglis, 'The Big 4's Full Court Press: An Analysis of the Rise in Political Spending from the Big 4 Tech Companies, Google, Amazon, Apple, and Facebook'', *Public Citizen*, 31 July 2019.

114 David Dayen, 'The Android Administration: Google's Remarkably Close Relationship with the Obama White House, in Two Charts', *The Intercept*, 22 April 2016. Also see 'Silicon Valley's Strategy for Washington Goes Way Beyond A Privacy Bill', The Revolving Door Project, 3 October 2019. Available at: https://revolvingdoorproject.substack.com/p/silicon-valleys-strategy-for-washington (9 December 2019).

115 I am indebted to Jane Kelsey for this particular insight.

processes. Digital TNCs can call on far more resources to monitor and influence these processes than domestic MSMEs, trade unions or public interest groups.

Digital trade rules in the WTO could make us less safe. Governments often require source code to be published or disclosed so that vulnerability to hacking can be checked. This will become increasingly important as some estimates project that 50 billion devices will be connected to the Internet by 2020, including household devices belonging to the 'Internet of things' such as refrigerators and smart TVs (which were among the hundreds of thousands of devices utilised in massive hacks in 2014, and again in 2016). Hackability of medical devices, such as pacemakers, and of the electronic systems in cars, could pose serious health and safety risks.

According to the US Department of Defense, which has preferred open source software (OSS) since 2002: "*making source code available to the public significantly aids defenders and not just attackers. Continuous and broad peer-review, enabled by publicly available source code, improves software reliability and security through the identification and elimination of defects that might otherwise go unrecognized… Conversely, when source code is hidden from the public, attackers can attack the software anyway.*"[116]

Regulators have a long history of checking source code when products fail and citizens are injured or killed by faulty cars, driverless vehicles, medical devices, bad medicines, and so on. As homes and cities become 'smart', the risk of secret, proprietary software getting hacked puts us all at risk.[117]

Digital trade rules proposed in the WTO would leave us more vulnerable to hacking through a *prohibition on governments' ability to adopt or maintain measures for electronic authentication*; leaving the method for verifying electronic signatures in the hands of industry. However, many corporations have been found to be lax with consumer data, leading to identity theft and credit fraud (Equifax breaches in February and September 2017 are just one example), cyberattacks on oil and gas pipelines (as happened in April 2018 to Energy Services Group[118]),

116 Chief Information Officer, US Department of Defense. DoD Open Source Software (OSS) FAQ. Available at: http://dodcio.defense.gov/Open-Source-Software-FAQ (9 December 2019).

117 Sanya Reid Smith, 'Some preliminary implications of WTO source code proposal', Third World Network, MC11 Briefing Paper, 10 December 2017.

118 Naureen S. Malik, 'Cyberattack 'Wake-Up Call' Puts Pipeline Industry in Hot Seat', Bloomberg, 6 April 2018.

and other problems which cause consumers financial harm and other damage. In the absence of sufficient regulations regarding financial data, the dominant transaction corporations have set a standard that is difficult and expensive to comply with, and not the most secure, as the cost of security breaches have been most often borne by consumers, not corporations.[119]

Although many in industry, government, technical experts and consumers have all identified the need for higher regulatory standards on encryption of financial data, health data, personal identity information, personal communications and other transactions, to ensure privacy and safety, and a model law on e-signatures already exists as part of UNCITRAL,[120] digital trade rules proposed in the WTO would *ban governments from being able to set or improve standards*, even in the face of rapidly changing technology. It should be also kept in mind that a country may maintain excellent domestic encryption and authentication standards, but if corporations are given the right to transfer data and hold it in third countries, the data is governed by the rules of the country where it is held.[121]

Digital trade rules in the WTO go far beyond the mandates of trade ministries, affecting jurisdiction over policymaking of myriad other governmental authorities. *Competition authorities would be restricted from requiring source code disclosure or technology transfer* as pro-competition measures. Health ministries may not be able to guarantee the security of health data under the proposed *ban on restrictions on data transfers*, and likewise the ability to check medical device software and even the composition of medicines would be compromised under the *ban on source code disclosure requirements*. Environmental ministries (and more importantly the future of the planet) could be fundamentally affected by the proposed *ban on governments' ability to require transfer of technologies,* even though such technologies may be essential for reducing carbon consumption and thus ensuring human survival.

119 This refers to Visa and Mastercard: see Sanya Reid Smith, 'Electronic authentication: some implications', Third World Network, August 2018. These corporations, along with Amazon Payments, PayPal and American Express, are lobbying to delay higher standards in the EU: see 'Postponing higher security standards for electronic payments is unacceptable', BEUC Press Release, 25 September 2019.

120 Richard Hill, 'Notes on E-signatures and Trade', November 2017.

121 *Op. cit.*, Sanya Reid Smith, 2018.

Proposed digital trade rules would place extra burdens on governments to provide digital resources to foreign corporations. In the name of facilitating e-commerce, some proposals in the WTO would *oblige governments to provide electronically available information on all laws that might impact digital trade*. Other proposals would require that *governments provide electronic and efficient trade facilitation measures such as e-invoices*. While these may be efficiency measures a government might undertake, they should not be "rights" of foreign corporations that place undue burdens on countries to prioritise foreign TNCs' online access over domestic priorities, from literacy to digital skill-building to increasing e-government services for citizens.

Proposed digital trade rules would increase the chance of a global financial crisis. Allowing *unrestricted cross-border trade in financial data* — and financial transactions — could have huge unforeseen consequences. In the negotiations aimed at creating the TPP, the US Treasury argued that the right to hold data offshore should not include financial data, because of lessons learned in the global financial crisis, but Wall Street successfully lobbied to have this data included in the TiSA, and that will presumably also be the case in the WTO. Despite the havoc wrought by the global financial crisis, the financial services sector continues to demand unrestricted access to markets for so-called innovative (regulation-evading) products and unrestricted financial flows, as many proposals include demands to expand *market access commitments in financial services*.

Existing WTO rules already oblige countries to allow unrestricted payments and transfers for services that countries have agreed to, subject to WTO disciplines. But countries have an interest in ensuring proper regulatory oversight of this sector, including with regard to cross-border digital trade. Governments often require sensitive financial data to be kept onshore to ensure that adequate privacy and cybersecurity measures are taken, so that the data is subject to proper national regulatory oversight and so that it is available to financial regulators in the event of an emergency. For example, South Africa requires financial data to be stored within its borders so that regulators can review assets related to a bankruptcy, as fraudulent and predatory practices are rife in the financial sector. If financial service providers are not required to have a local presence, local management or local data storage, how can they be held accountable when there is criminal behaviour or a financial crisis?[122] As the global economy becomes increasingly 'servicified'

122 *Op. cit.*, Sanya Reid Smith, 10 December 2017.

and cross-border digital trade increases, the power of financial services suppliers such as Visa and PayPal will grow, as these often act as clearing houses for international transactions that bypass the financial sovereignty of central banks. Digital behemoths like Facebook are also joining the world of financial payment systems and 'FinTech' through digital currencies like Libra, which would further undermine regulatory sovereignty and stability;[123] they should not be given 'rights' to access markets with unsafe new products by means of digital trade rules.

Perhaps most egregiously, digital trade proposals would require that future services be subject to no regulations beyond those for non-digitalised services today. Proposals include a presumption of "*technological neutrality*" — whereby services must be operated in line with rules and schedules of commitments that countries agreed to before the new technology was invented. For example, if a country has agreed to subject financial services to WTO rules, they may not be able to keep digital currencies out of their market. The idea is to 'future-proof' commitments, even if the technology was not available when the country made those commitments.[124] However, many global South governments have made it clear they do not accept this presumption in the WTO.

At the same time, this might be achieved in the digital trade talks through a proposed provision on *"non-discrimination" against digital services*. Curtailing public oversight of the potential implications of technologies that do not exist yet may make no sense to an average person, but it does make a lot of sense to the corporations that favour only rules that prohibit other regulations.

Renowned economist Joseph Stiglitz, when questioned about the proposed digital trade rules in the WTO, responded that "what I see is exactly what you see; that big corporations want to embed in international agreements, a framework that would stop domestic legislation. It seems to me that there should be no international agreement until there is a greater clarity about how to regulate them".[125]

123 Matt Stoller, 'Launching a Global Currency Is a Bold, Bad Move for Facebook: The way we structure money and payments is a question for democratic institutions, not technology companies', *The New York Times*, 19 June 2019.

124 *Op. cit.*, Kelsey, 2018.

125 Joseph Stiglitz speaking at a panel discussion hosted by Boston University's Global Development Policy Center and UNCTAD, Washington, DC on 12 April 2019. Available at: https://youtu.be/QmIOI-5_G2I starting at 55:44 (9 December 2019).

COMMERCIAL INTERESTS TRUMPING PRIVACY & DATA PROTECTION

Digital trade rules in the WTO are a threat to our personal privacy and data protection. The proposed WTO rules would give corporations virtually unlimited *rights to transfer data to whatever jurisdiction they please and would prioritise commercial rights over consumer protections and citizens' rights* to *privacy* in ways that cannot be fixed by rules in the WTO itself. Through the General Data Protection Regulation (GDPR), the EU has standard-setting rules on personal privacy and data protection that were democratically debated and enthusiastically welcomed by voters. But the United States, where the majority of Big Tech firms are based, lacks such a comprehensive standard. Proponents argue that there are exceptions for privacy and data protection, but even the strongest proposals only state that members "*may adopt and maintain the safeguards they deem appropriate*".[126] However, given that cross-border data transfers are a primary goal of the Big Tech industry, which is largely based in the United States, it is unlikely that the strongest privacy proposals could remain in a final text.

Democracy and sustainable development depend on the free flow of information and freedom of expression. But this is different from the unregulated collection of, and cross-border transfer of, data by TNCs. Proponents of cross-border data transfers appropriate rhetoric of freedom and access to information to try to mitigate public anxiety about massive data breaches and to portray their efforts as being related to rights to freedom of speech in repressive countries. But citizens experiencing online repression will not gain new rights under any proposed digital trade rules, as the rights in the WTO are rights to trade, which are exercised by corporations. The few proposed provisions related to "*open internet access*" subject them to "*applicable laws and policies*".[127]

126 Joint Statement on Electronic Commerce, EU Proposal for WTO Disciplines and Commitments Relating to Electronic Commerce, INF/ECOM/22, 26 April 2019.

127 *Ibid.*; an earlier communication from the United States also referred to "prohibiting web blocking" – see 'Joint Statement on Electronic Commerce Initiative: Communication from the United States, Inf/ECOM/5 25 March 2019' – but its subsequent text-based proposals have not been made available to the public.

Digital corporations that have shown a complete disregard for consumer protections and citizen data privacy rights should not be trusted to self-regulate. Hardly a week goes by without another breach of data privacy and protection by Big Tech TNCs coming to light. Consumers have filed myriad lawsuits after discovering that their data from product or service use – from Bose headphones[128] to email management[129] and sex toys[130] – was sold to other companies, usually without the consumer's knowledge or consent. That means the personal data was stolen and/or misused, meaning that in many cases "data flows" should be renamed "trafficking in stolen information".

The scandal over Facebook inappropriately sharing the data of 87 million users with Cambridge Analytica,[131] and potentially affecting the outcome of the US election, is finally causing regulators to sit up and take notice. Even when data was not intentionally sold, such as when Yahoo allowed 3 *billion* user accounts to be compromised,[132] self-regulation – or industry-driven standards – are woefully inadequate. Given the millions of digitally connected devices in our homes and elsewhere, such as Amazon Echo, Google Home and Apple HomePod, not to mention televisions and smartphones, most digital rights and privacy organisations are calling for industry self-regulation to be abandoned in favour of stronger privacy protections.

128 Jordan Graham, 'Bose is accused of recording, selling audio information', *Boston Herald*, 20 April 2017.

129 Mike Isaac and Steve Lohr, 'Unroll.me Service Faces Backlash Over a Widespread Practice: Selling User Data', *The New York Times*, 24 April 2017.

130 Alex Hern, 'Vibrator maker ordered to pay out C$4m for tracking users' sexual activity', *The Guardian*, 14 March 2017.

131 Issie Lapowsky, 'How Cambridge Analytica Sparked the Great Privacy Awakening', wired.com, 17 March 2019.

132 Taylor Armerding, 'The 18 biggest data breaches of the 21st century', CSOonline.com, 20 December 2018.

While there is some acknowledgement of the inevitability of the need for some data privacy protections in the digital trade negotiations, allowing data flows to be governed by a trade tribunal will subject fundamental rights to corporate trade interests. Proposals in the digital trade talks include weak and non-enforceable provisions on data privacy and data protections that are similar to those proposed in the defeated TiSA negotiations. A major study carried out by academics at the University of Amsterdam found that these provisions are not strong enough to protect citizens' privacy and data protection rights.[133] These same general exceptions have only ever been successfully used to fully defend a challenged measure in one of 45 attempts at the WTO.[134]

The proposed text is thus largely limited as an effective public policy safeguard. In 2016, European digital rights and consumer groups sent a letter, as did international civil society,[135] urging the European Parliament to stand up for consumer protection and data privacy in the TiSA. But the same provisions that privacy groups rejected then are now being introduced in the digital trade rules.

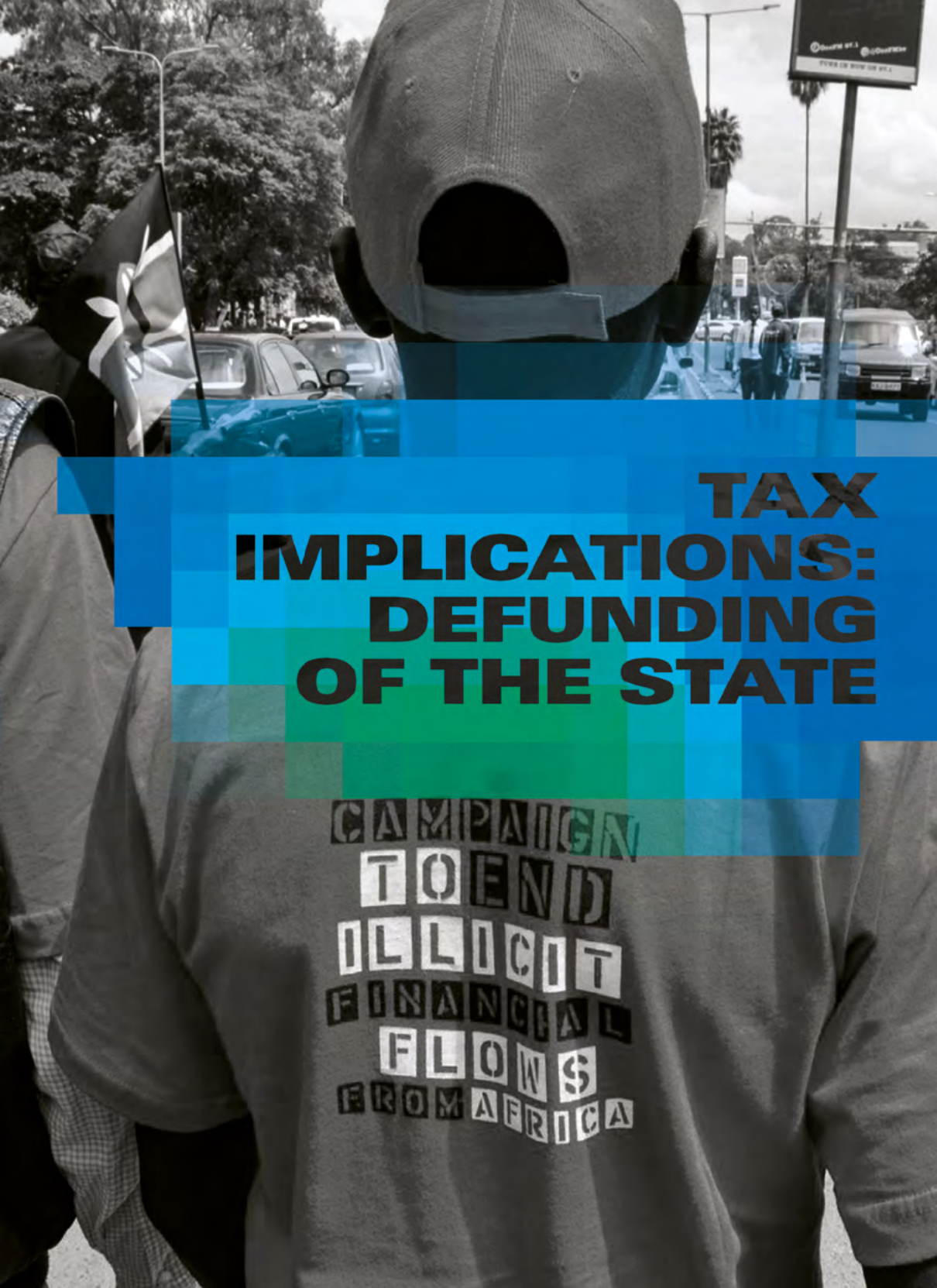
New proposed rules on spam, if agreed to, would hardly balance the increased risks to consumers from the expanded corporate rights, and the same countries that are now proposing rules on spam have blocked them in multi-stakeholder forums for years.[136]

133 Kristina Irion, Svetlana Yakovleva and Marija Bartl, 'Trade and Privacy: Complicated bedfellows? How to achieve data protection-proof free trade agreements?' Ivir Institute, University of Amsterdam, 13 July 2016.

134 'Only One of 44 Attempts to Use the GATT Article XX/GATS Article XIV "General Exception" Has Ever Succeeded: Replicating the WTO Exception Construct Will Not Provide for an Effective TPP General Exception', Public Citizen's Global Trade Watch, August 2015. Since the publication of this research, the count has increased to 45 cases.

135 'Letter from Consumers International, European Digital Rights (EDRi), Public Citizen et al. to European Parliament trade negotiators', 2016. Available at: https://edri.org/files/TiSA/globalletter_dataprotection_privacy_20161102.pdf (9 December 2019).

136 Richard Hill, 'Analysis of The Working Group on Enhanced Cooperation on Public Policy Issues Pertaining to the Internet', Intellectual Property Watch, 2 May 2018.



TAX IMPLICATIONS: DEFUNDING OF THE STATE

Digital trade proposals would promote tax evasion and loss of necessary public revenue. There are two sources of tax revenue from trade generally; tariffs, which are taxes paid by corporations for the privilege of generating profit in a country (these are usually import tariffs, but export tariffs also exist). The second is the tax on corporate profits of foreign corporations operating in a jurisdiction.

Digitalisation has allowed corporations to more easily move labour, inputs, capital and data across borders, making them more able to expand their transfer pricing practices and locate operations in countries with the least regulatory oversight and the lowest taxes, exacerbating tax avoidance and evasion and illicit financial flows. Global Financial Integrity identified TNCs as having drained USD 620–970 billion from the developing world in 2014, primarily by means of trade fraud.[137]

For example, Uber uses subsidiaries based in Ireland and the Netherlands to book the vast majority of its profits, accrued to its intellectual property, in the tax haven of Bermuda, leaving countries (from Kenya to the United States) where profits are generated, without appropriate taxation rights.[138]

These lost revenues harm working people everywhere, and they shift the burden of taxes even more from corporations to workers. Reducing the taxation of transnationals also indicates that a larger share must be made up from other sources, such as income taxes on workers and consumption taxes on consumers, but the negative impacts from these more regressive taxes are not counted in the economic models used by those advocating tariff reductions.

Tax avoidance further erodes the fiscal base that funds the social care infrastructure in developing and developed countries. This would reduce that care and result in the burden of caring for the old, the young and the sick falling even more heavily on women. Instead of evaluating the way that current WTO rules contribute to the global crisis in tax avoidance, as part of the new proposals on 'digital trade', some WTO members are seeking to minimise or ban countries from assessing either type of tax, through seven different proposed provisions.[139]

137 Joseph Spanjers and Matthew Salomon, 'Illicit Financial Flows in Developing Countries Large and Persistent'; Global Financial Integrity, Washington, DC, 2017. Available at: www.gfintegrity.org/report/illicit-financial-flows-to-and-from-developing-countries-2005-2014 (9 December 2019).

138 Brian O'Keefe and Marty Jones, 'Revenue Do-Si-Do: How Uber plays the tax shell game', *Fortune Magazine*, 22 October 2015. Available at: http://fortune.com/2015/10/22/uber-tax-shell (9 December 2019).

139 Deborah James, 'Anti-development Impacts of Tax-Related Provisions in Proposed Rules on Digital Trade in the WTO', Development, Society for International Development, Palgrave Macmillan UK, 20 September 2019. Available at: https://rdcu.be/bRyEC (9 December 2019).

PROVISIONS RELATED TO TARIFFS

Proposals to reduce tariffs on corporations include provisions to make permanent the moratorium on customs duties on e-transmissions; to raise the threshold for imposing tariffs on trade in individual packages (*de minimis*); and to eliminate tariffs on information technology goods.

Removing tariffs on cross-border trade is, in economic terms, a public subsidy for the online businesses, and puts traditional stores at a disadvantage vis-à-vis online stores.

A permanent waiver on customs duties on electronic transmissions (ETs). Electronic transmissions include electronic products such as movies (Netflix), videos (YouTube), music (Apple's iTunes) and books (Amazon), as well as other inherently electronic goods and services such as software. In 1996, WTO members agreed to a moratorium on border taxes on electronic transmissions. This moratorium has been renewed every two years. Politically it is 'traded' for a waiver which helps maintain certainty in the generic drug industries in developing countries, from having cases filed against them by patent-holding countries, even when the developing country was exercising their hard-fought rights, to flexibilities from TRIPS. In WTO-speak, this is called the 'TRIPS non-violation complaint waiver'. This means that in order for developing countries to have more predictability to guarantee access to medicines for the poor, countries are banned from charging customs duties on Netflix. In fact, TNCs that trade in digitisable products have lobbied hard for waivers on tariffs on ETs to be renewed on a permanent basis.[140]

Why should the sales of products that are digitisable, that still depend on the infrastructure, education systems, communications technologies and other resources in destination countries, not contribute to those costs? Why should domestic retailers have to compete with e-retailers that have been, effectively, subsidised by gaining tax-free access to their markets?

UNCTAD Economist Rashmi Banga's recent paper *Growing Trade in Electronic Transmissions: Implications for the South* has made waves in the WTO negotia-

140 See 'The moratorium on customs duties on electronic transmissions should be made permanent', lobby document of the Digital Trade Network, undated. Available at: www.digitaltrade.network (9 December 2019).

tions.[141] She demonstrated that the moratorium, applied to all digitisable products, only costs developed countries USD 0.2 billion USD while at the same time costing developing countries about USD 8 billion USD, i.e. 40 times the revenue of all developed countries combined. Thus, the implications of the moratorium would be the transfer of billions of dollars of tariff revenues from developing countries to Netflix, YouTube, Apple, Amazon and others.

A high minimum for tariff-free small packages (de minimis). Assessing and collecting tariffs, like all taxes, carries administrative costs, and there is a level at which the costs outweigh the revenues. The level at which a country sets the minimum value a package must have to be worth assessing and collecting tariffs is called the *de minimis* level. There has long been agreement that each country should have a *de minimis* that is the right one for their level of economy, given the different structures of economies, including the domestic mix of revenues for its fiscal base as well as the administrative costs. The business lobby, and in particular the US-based express delivery industry which would be a primary beneficiary of increasing trade in small packages, is proposing raising *de minimis* to "reasonable" levels, which could be similar to those of the United States. But the mix of sources of tax revenue in the United States is different from that of other countries. Experts have cautioned against universalising this system because of its lack of appropriateness to other countries, especially developing countries.

The removal of tariffs on information technology products. Corporate lobbies and the governments that represent them have included provisions in the digital trade negotiations to require countries to join the Information Technology Agreement and its expansion (ITA and ITA II). The ITA and ITA II mandate a tariff level of zero on certain products which WTO members were successful in including in the ITA list, because they are supposedly related to the information technology (IT) industry. Some countries such as India declined to participate in this expansion, because rather than experiencing a boost to their IT industry after joining the ITA as proponents claimed they would, their domestic IT industries were decimated after they were faced with mass imports of cheaper IT products after reducing tariffs to zero, according to Ambassador J.S.Deepak of the Permanent Mission of

141 Rashmi Banga, 'Growing Trade in Electronic Transmissions: Implications for the South', UNCTAD Research Paper No. 29: February 2019. Some industry-friendly reports have challenged her work. She has rebutted this criticism in Rashmi Banga, 'Modelling Impact of Moratorium on Electronic Transmissions using CGE: A Critique', *Advances in Social Sciences Research Journal*, 6(8): 391–400, 2019.

India to the WTO.[142] Very few developing countries are members of the original or expanded ITA. Therefore, being required to join the ITA or ITA II as part of a potential digital trade agreement could result not only in domestic IT industries being wiped out, but also in the loss of significant tariff revenue from hundreds of IT products in developing countries.

Tariff revenue is so much more important to developing countries because many of them are still dependent on primary commodity exports, and raising taxes from income taxes is still limited due to the small share of the population in the formal sector.[143] Developed countries have more advanced systems of income, sales and corporate taxes. For example, according to World Bank Development Indicators as of 2017, many African and Caribbean countries rely heavily on trade taxes for around 25-37% of their income. At the same time, the world average is only 3.6%, and developed countries usually rely on tariffs for 1% or less.

Africa's experiences over the years have made the case for countries to tread cautiously in terms of how tariffs should be abandoned with a view to recovering the revenue forgone through other sources. According to an IMF study[144] which looked at the situation over 25 years to determine whether countries which have liberalised trade and lost tariff revenue have been able to replace them with other domestic tax revenue, while high-income countries were able to replace trade revenue with other domestic tax revenues, middle-income countries were only able to recover 40-60 cents for every US dollar lost of trade taxes, and lower income countries have not been able to recover more than 30% of lost revenues.

142 Keynote address by Ambassador J.S. Deepak, Permanent Mission of India to the WTO, Geneva, The Graduate Institute, Geneva Cross-Border E-Commerce Workshop, Organised by the CTEI (30 November, 2018). Available at: www.pmindiaun.gov.in/pages.php?id=1540 (9 December 2019).

143 Sylvester Bagooro, 'Sustainable Tax Panel Forum', UNCTAD E-Commerce Week, 4 April 2019.

144 Thomas Baunsgaard and Michael Keen, 'Tax Revenue and (or?) Trade Liberalization', IMF Working Paper, June 2005.

PROVISIONS AFFECTING CORPORATE TAX ASSESSMENT

A ban on requirements for 'source code disclosure'. A number of countries at the WTO are proposing bans or restrictions on the ability of governments to require access to, disclosure of or transfer of the source code in software (or algorithms or trade secrets). According to trade lawyer Sanya Reid Smith, some tax authorities (such as those in the United States) access the source code of software used for accounting, tax planning, tax-return preparation and compliance to check it and copy this and disclose it to experts for advice. This checking of source codes, algorithms or trade secrets by the authorities may not be possible for those who agree to these WTO 'e-commerce' proposals, which would make it more difficult to detect tax evasion.[145]

A ban on local data storage requirements. A primary goal of the transnational corporate lobby is to gain the right to transfer data across borders, along with a ban on governments' rights to require corporations operating in their jurisdictions to store the data, or even a set of the data, of their operations on domestic servers. Many countries require the data of foreign firms to be stored locally so that tax authorities will have the ability to review the data in case of any audit or requirement for review. For example, New Zealand requires that all business records be stored in data centres in that country in order to comply with the Inland Revenue Act, so that tax authorities can ensure that TNCs are paying appropriate levels of income tax. Mutual legal assistance treaties exist which authorities could fall back on, but proceedings under these often take years to resolve.

A ban on local presence requirements. Traditional tax law requires Permanent Establishment (PE) in order to trigger corporate tax liability obligations. Many countries require that corporations intending to provide services in their countries maintain a local presence for just that reason (along with having a subsidiary or branch location where redress can be sought, in the case of fraud or abuse of consumers or workers, for example). Given the fact that corporations are increasingly providing digital services without establishing a local presence, this requirement is one that many advocates of tax reform efforts are intending to address. At the same time, however, that digital corporations are resisting this reform to global tax rules, they are seeking to gain the right to operate in markets around the world while banning governments from being able to require them to

145 Sanya Reid Smith, 'Some preliminary implications of WTO source code proposals', TWN Briefing Series, 2017. Available at: www.twn.my/MC11/briefings/BP4.pdf (9 December 2019).

have a local presence. This would make it extremely difficult for governments to exercise jurisdiction over the corporation to physically assess the taxes. And since there would be no physical subsidiary assets which could be seized if they were to fail to meet their tax obligations, it could have serious implications for enforcement as well.

Global tax reform is a priority even in the rich countries' club that is the OECD, but the proposed digital trade rules would undermine these efforts. Traditional companies are feeling the pinch from unfair competition with tax-avoiding Big Tech corporations and are finally forcing rich countries' governments to acknowledge the need for taxation of these giants, either through individual country efforts or through the OECD or Group of 20 (G20) negotiations. Those same governments are undermining their own potential reforms through their proposals in the WTO on digital trade.

Global development debates focus on the billions of dollars of investments needed to achieve the Sustainable Development Goals (SDGs). So why, in talks that proponents pitch as 'e-commerce for development', are there so many proposals with negative implications regarding taxation? Ecommerce can be part of a country's overall economic development strategy; but that is very different from agreeing to a set of rules written by Google, Apple, Facebook, Amazon and Microsoft to help them avoid paying their fair share of taxes, thereby consolidating their advantages over non-digital and domestic enterprises while making it easier for them to profit from the accumulation of vast volumes of data.

Digital technologies and AI will also bring disruption to traditional industries, and mitigating such economic disruption will be costly and will intensify demands on governments. One of the world's foremost investors in AI, Kai-Fu Lee, has warned: "*It strikes me as unavoidable that large chunks of the money created by A.I. will have to be transferred to those whose jobs have been displaced. This seems feasible only through Keynesian policies of increased government spending, presumably raised through taxation on wealthy companies.*"[146]

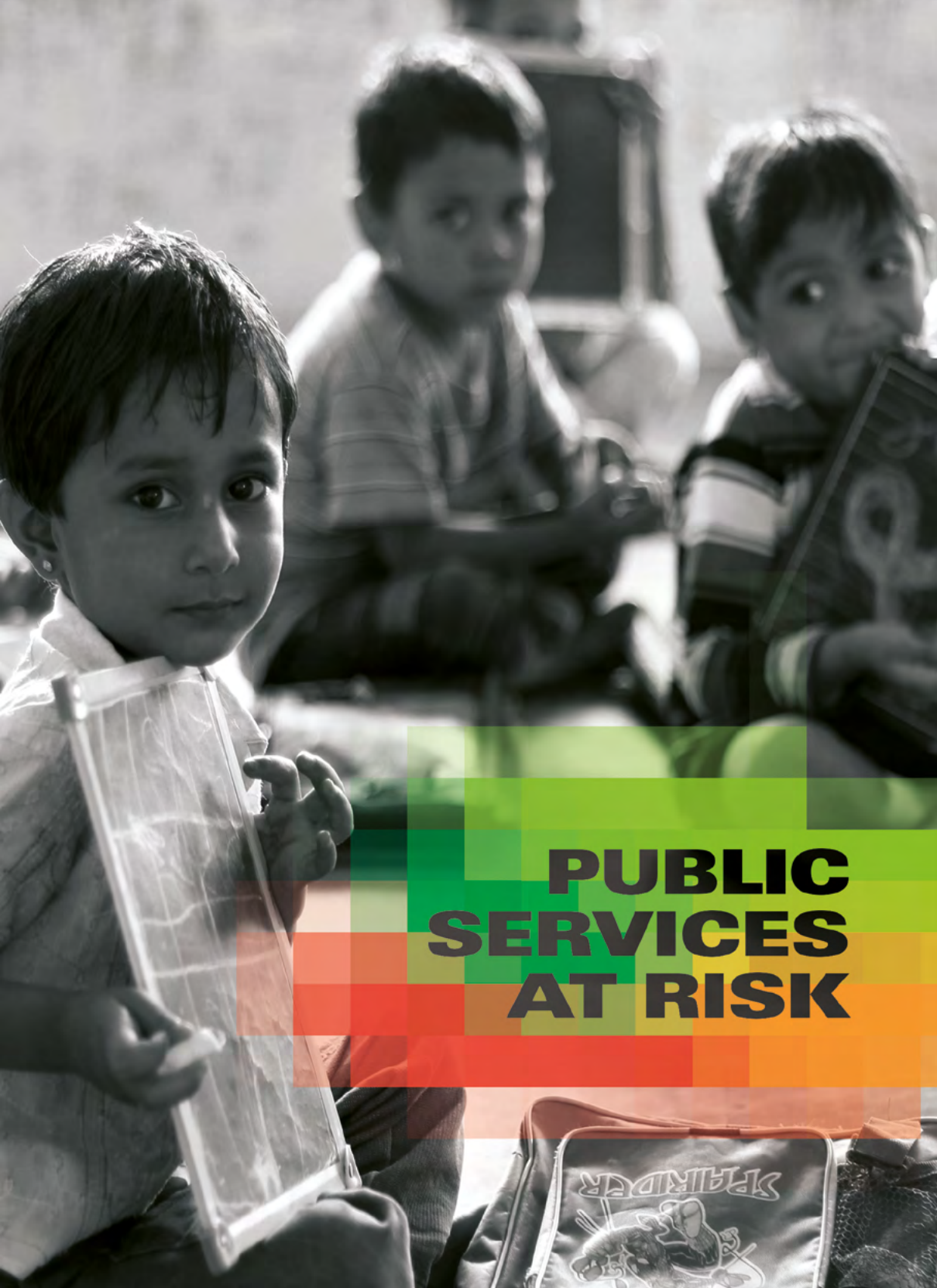
146 Kai-Fu Lee, 'The Real Threat of Artificial Intelligence', *The New York Times*, 24 June 2017.

He acknowledges that this may be feasible only in China and the United States, where AI companies are based.

"*So if most countries will not be able to tax ultra-profitable A.I. companies to subsidize their workers, what options will they have? I foresee only one: Unless they wish to plunge their people into poverty, they will be forced to negotiate with whichever country supplies most of their A.I. software – China or the United States – to essentially become that country's economic dependent, taking in welfare subsidies in exchange for letting the "parent" nation's A.I. companies continue to profit from the dependent country's users. Such economic arrangements would reshape today's geopolitical alliances.*"[147]

If global digital TNCs are successful in their major power grab aimed at gaining permanent rights to control the collection, processing and use of the world's data, and not paying any taxes on their revenues, this is a likely future scenario.

147 *Ibid.*



PUBLIC SERVICES AT RISK

The most obvious implication of the erosion of corporations' share of contributions to the tax base is the reduction of decent-quality, accessible public services which are essential to a thriving and cohesive society. Developing countries will not be able to achieve the SDGs without expanding fiscal support to secure decent-quality, accessible public services when it comes to education, health, social care, access to water, electricity, and more.

But digitalisation, and the proposed digital rules in the WTO and other "trade" agreements, would also negatively impact the quality of public services by increasing corporate power; by facilitating privatisation of services and increasing the scope and coverage of services under WTO rules; by facilitating the privatisation of the data generated through the provision of services; and by reducing the transparency and accountability of services such as social protection.

Digital trade rules are written to give more decision-making power over services to digital corporations rather than democratic governments. Digitalisation can increase citizen participation and access and improve the quality of services, such as when citizens can apply for services online. But there are risks to the public when digitalisation is designed by corporations to increase profits, rather than by the public in order to increase the quality and accessibility of the public service. A primary issue at stake is the loss of democratic control and oversight over the functioning of the public service, when some or all of its provision is transferred out of public control into the private control of companies looking to make profits.

Digital corporations are already increasingly involved in public-private partnerships that facilitate privatisation, eroding democratic oversight over services and reducing the quality of jobs for service workers. 'Smart' cities are a key example of this. A plethora of literature on such cities claim that they utilise digital technologies to enhance services involving energy, transport and utilities in order to reduce consumption, wastage and costs, thereby enhancing residents' quality of life. However, such cities can also expand private surveillance; reduce citizen oversight over decisions involving the allocation of public resources; rationalise services based on income rather than need; and transform citizens into profit and data centres for 'smart' corporations.[148] But many states and municipalities that have experimented with privatisation of public services have later regretted the move, as prices soared and services decreased. *Locking in 'market access' rights through digital trade rules in the WTO would make reversing privatisation virtually impossible*.

Countries are being pressured into committing services sectors, including public services, to WTO rules without their consent. In the WTO, each country decides which of its services sectors to commit to WTO rules, and many countries have not agreed to subject their public services to these. However, experts lack confidence that rules limiting the application of WTO rules to public services would stand up to a challenge, given that many public services include a private component. And, if proponents are successful in including the theory of '*technological neutrality*', a country could not argue that a digitally based delivery of a service (such as online learning) is not included in the WTO, if the analogue version (such as higher education) is already included. Although there is no jurisprudence in favour of this argument, it remains a live debate within the WTO.

In addition, at least 94 countries have committed "computer and related services" to WTO rules, and many Big Tech companies now argue that they should not be classified as belonging to the analogue services sector but rather to the computer and related services sector, a classification which covers the storage and processing of data, management of computer systems and programs, and related services. The EU has an active strategy in the digital trade discussions to pressure countries to *adopt a far-reaching 'Understanding on Computer and Related Services'* in the WTO services to "advance its commercial and strategic interests by securing comprehensive commitments over the digital infrastructure, including

148 Kate Lappin, 'Digital public services', *Latin America in Movement* No. 542, Social Justice in a Digitalized World, 15 July 2019.

data, and future proofing those commitments for new technologies and services".[149] Many public services, such as healthcare, include a digital component, such as health recordkeeping or diagnostic monitoring, could thus be included under WTO rules by the back door.

Digital trade rules also threaten quality accessible public services through the appropriation and privatisation of data. Local, national and international agencies gather large volumes of data without which planning and the delivery of public services would be jeopardised. According to Public Services International, "Data is critical in all government policy making and includes environmental data critical for climate, agriculture and public health planning, public registries, data on private sector compliance and tax, transport, education, the use and distribution of utilities, to individual data potentially including health, work, wealth and income, education, family life."[150] While city or state authorities are deciding to enlist IBM, Cisco, Siemens, Microsoft, General Electric, Amazon, Google, Qualcomm or Huawei in providing essential services to their citizens, then some essential public functions have already been privatised. But at the very least, shouldn't the data generated by those services be available for future government planning and improving services, and not the proprietary property of the corporations?

Digitalisation is already having a severe impact on the provision of welfare services for the poor which would be exacerbated under the proposed rules. A major study in *The Guardian* on 'Automating Poverty' exposed how the tech revolution is transforming the welfare system worldwide, including the fact that millions of citizens who lack digital skills or access are being excluded from accessing their welfare rights.[151] Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, presented a report to the UN General Assembly in October 2019 which documented how AI is increasingly used to automate, predict, identify, monitor, detect, target and punish recipients, often resulting in a reduction of benefits, while precluding the ability of humans to remedy a plethora of mistakes which put citizens living on the margins in further jeopardy.[152] The Special Rappor-

149 Jane Kelsey, 'Understanding the EE's Understanding on Computer and Related Services', Third World Network, forthcoming.

150 *Op. cit.*, Lappin, 2019.

151 Ed Pilkington, 'Digital dystopia: how algorithms punish the poor', *The Guardian*, 14 October 2019.

152 Philip Alston, 'Report of the Special Rapporteur on extreme poverty and human rights', United Nations A/74/493, 11 October 2019.

teur called for the regulation of digital technologies, including AI, to ensure compliance with human rights, and for a rethink of the positive ways in which the digital welfare state could be a force for the achievement of vastly improved systems of social protection. His call was enthusiastically endorsed by human rights groups.[153] The inability of governments to *regulate the use of data* by data collection firms, and the prohibition of *public source code auditing* would render accountability regarding digitalised welfare systems even more difficult.

Countries may always agree to allow private, including foreign, service providers into domestic markets or to supplement service provision. However, governments should retain control over these sectors in the public interest, rather than granting 'rights' to TNCs to access markets and ceding regulatory jurisdiction to profit-oriented rules in a 'trade' agreement.

153 Kanaga Raja, 'World stumbling zombie-like into a digital welfare dystopia', *SUNS South-North Development Monitor*, #9001, 21 October 2019.

THERE ARE ALTERNATIVES: DATA AS A PUBLIC GOOD

One concept is emerging which quickly illuminates the terrible danger of locking digital economy policies into pro-corporate rules: the importance of data as a public good.

Today, private corporations collect, transfer and process data from private citizens around the world, transforming such data into usable intelligence, e.g. for advertising purposes. Public institutions also collect data, such as national health institutes around the world gathering data on vaccination rates. Often public data is stored in open databases and can be sourced for public or private use, such as employment statistics that are publicly available for researchers, or weather data that is repackaged and broadcast. But if corporations like Uber rely on a city's physical infrastructure (roads, pavements, street lights, often even connectivity networks, etc.) that has been paid for by taxpayers over many years, and its main asset is a massive trove of data on how people move about cities, shouldn't city planners also have access to such data for urban planning purposes?

In fact, proposals in the WTO seek to promote *obligations on governments to promote open source data for use by corporations*, while simultaneously seeking to *enforce corporate rights over data held privately*.

Some would balk at the idea that private corporations owe anything to the public. Big Tech promotes an image of itself as being driven by entrepreneurial innovation, but government support has been key every step of the way. But it is widely known that the US Defense Advanced Research Projects Agency (DARPA) funded the development of the Internet, and the Central Intelligence Agency (CIA) and the US military also bankrolled the invention of the Global Positioning System (GPS).[154] But why should sharing of resources only go one way, from public to private, especially when those private corporations have been some of the most recalcitrant in paying their fair share back into public coffers? If anything, "companies that owe their fortunes to taxpayer-funded investment should be repaying the taxpayer, not seeking tax breaks".[155] The corporate conception that only the collector of the data, and not the producer, nor the country in which it is produced, has rights, must be challenged.

154 Mariana Mazzucato, *The Entrepreneurial State: Debunking Public vs. Private Sector Myths*, Public Affairs Books, 2015.

155 Mariana Mazzucato, 'Let's make private data into a public good', *MIT Technology Review*, 27 June 2018.

The answer lies in the concept of data as a public good, and the need for communities who produce data to have rights to the economic value of their data. Some may argue that public governance over privately held data is enough; but to gain real economic benefit as a society, we must develop new concepts of ownership around "'community data' – that is, the sum total of aggregate, de-identified personal datasets; data about natural resources; infrastructural artefacts and so on that cannot be traced back to individual data principals. One possibility that has been put forward is that such datasets ought to be treated as the pool over which the nation state can exercise sovereign rights".[156] This idea is not about individuals being compensated for giving away their data but about *community* and *national* benefits. This is especially important in developing countries, which are prime objects of data collection by TNCs but seldom beneficiaries of the data in usable form.

There are also myriad economic applications of data beyond prompting advertising. For example, private corporations are using drones to amass data about farming in Côte d'Ivoire, which could be used to help increase farmers' productivity, or help mitigate child labour in cocoa production. Instead, it is being used by speculators to give them an edge in determining their positions on commodity futures, meaning that finance is using digitalisation to extract even more profit from agriculture. But if the state had the resources to collect these same data and share it with farmers, the latter could increase their own production and be in charge of their own economic futures without becoming indebted to private technology corporations. The City of Barcelona is innovating new ways to ensure that citizens are involved in a participatory way to see the power in their data to solve problems where they live. "Our approach is to create communal rights to data, and treat data as a common good. There's a lot of public value that can be unlocked out of this data", Chief Digital Officer Francesca Bria has argued.[157]

But the aspirations that could be achieved through public data are not just economic. Rather, the fundamental ideal is that technology should be developed to improve human lives and well-being, rather than the public serving as data production centres for private profit.

156 Anita Gurumurthy and Nandini Chami, 'Digital Public Goods: A Precondition for Realising the SDGs', The Development and Peace Foundation, *Global Governance Spotlight* 4, 2019.

157 Amy Lewin, 'Barcelona's Robin Hood of data, Francesca Bria: Europe needs to pioneer a new system of data ownership, says Barcelona's chief digital officer, Sifted.eu, 16 November 2018.

Public data pools, or data as a public good, could be particularly useful in expanding the access and quality of public services in countries around the world. Imagine if researchers, educators and education policymakers had access to the immense volumes of data being collected by Apple and Microsoft through the use of their devices and software in schools around the world. Shifting from publicly funding private research that leads to patenting of medicines to publicly funded medical research, such as clinical trials resulting in innovative non-patented medicines, could vastly reduce the cost of life-saving medicines around the world.

The global union federation Public Services International (PSI) has identified the need for further public debate on this issue. "The public benefits that digitalisation can deliver will only be realised if data is recognised as a commonly owned public good and accompanied by the regulations and institutional public bodies that public goods require. There is an urgent need to develop the public institutions and infrastructure required to enable data for the public good, to deliver a data commons capable of not just regulating big data but of delivering data as a public commons designed to support better public services, support more effective regulation of the private sector, provide government revenue and give the public control over the use of their data."[158]

However, current frameworks impede such public benefits, and policymakers are taking note. IT for Change pointed out in its recent paper on digital public goods that as "national AI strategy road maps of France and India observe, enforcing such data sharing requirements is possible only through exercising strict control over the transfer of data outside national borders, and claiming jurisdictional sovereignty over data resources generated in one's national territory".[159] In fact, India recently took the first step by instituting "community data" in its draft digital policy. The policy holds that "communities own their data, and national data is a sovereign asset which should be employed for a country's own development".[160]

158 *Op. cit.*, Lappin 2019.

159 *Op. cit.,* Anita Gurumurthy and Nandini Chami, 2019.

160 *Op. cit.*, Parminder Jeet Singh, March 2019.

At an April 2019 UNCTAD meeting in Geneva, delegate after delegate from developing countries spoke out about how they did not want all of the data generated by their citizens to be transferred to foreign corporations, but how they wanted to develop systems for economic benefits to their own public.[161] Communities are also claiming sovereignty over their data; the Maori Data Sovereignty Network in New Zealand has asserted that any indigenous community has the right to govern the collection, ownership and application of its own data arising from its inherent right over its natural resources.[162] A recent Digital Justice Manifesto by the JustNet Coalition sets out this framework from a global civil-society perspective.[163]

Whether data is held or governed by public or private entities, citizens' concerns about data privacy and data protection must be paramount. Both repressive governments and exploitative corporations have shown themselves willing to abuse individuals' data privacy for their own ends. But government agencies have been much less likely to experience a breach in data security than private corporations – and are much less likely to try to extract private wealth from others' information.[164] Stronger national and international laws should focus on expanding required protections, as well as devising policies that make technology serve the public interest. As such, "'Data for development' must therefore encompass the idea of the public value of data and the role of data infrastructure as a public good, respecting citizens' digital rights individually and collectively", referring to both rights to data privacy and protection, and the UN Declaration on the Right to Develop.[165]

161 Parminder Jeet Singh, 'South nations take firm stand on geo-economics of data', *SUNS South-North Development Monitor*, #8890, 17 April 2019. Available at: www.twn.my/title2/wto.info/2019/ti190413.htm (9 December 2019).

162 Te Mana Raraunga - Māori Data Sovereignty Network Charter. Available at: https://planetmaori.com/Files/Content/2016/Te_Mana_Raraunga_Charter.pdf (9 December 2019).

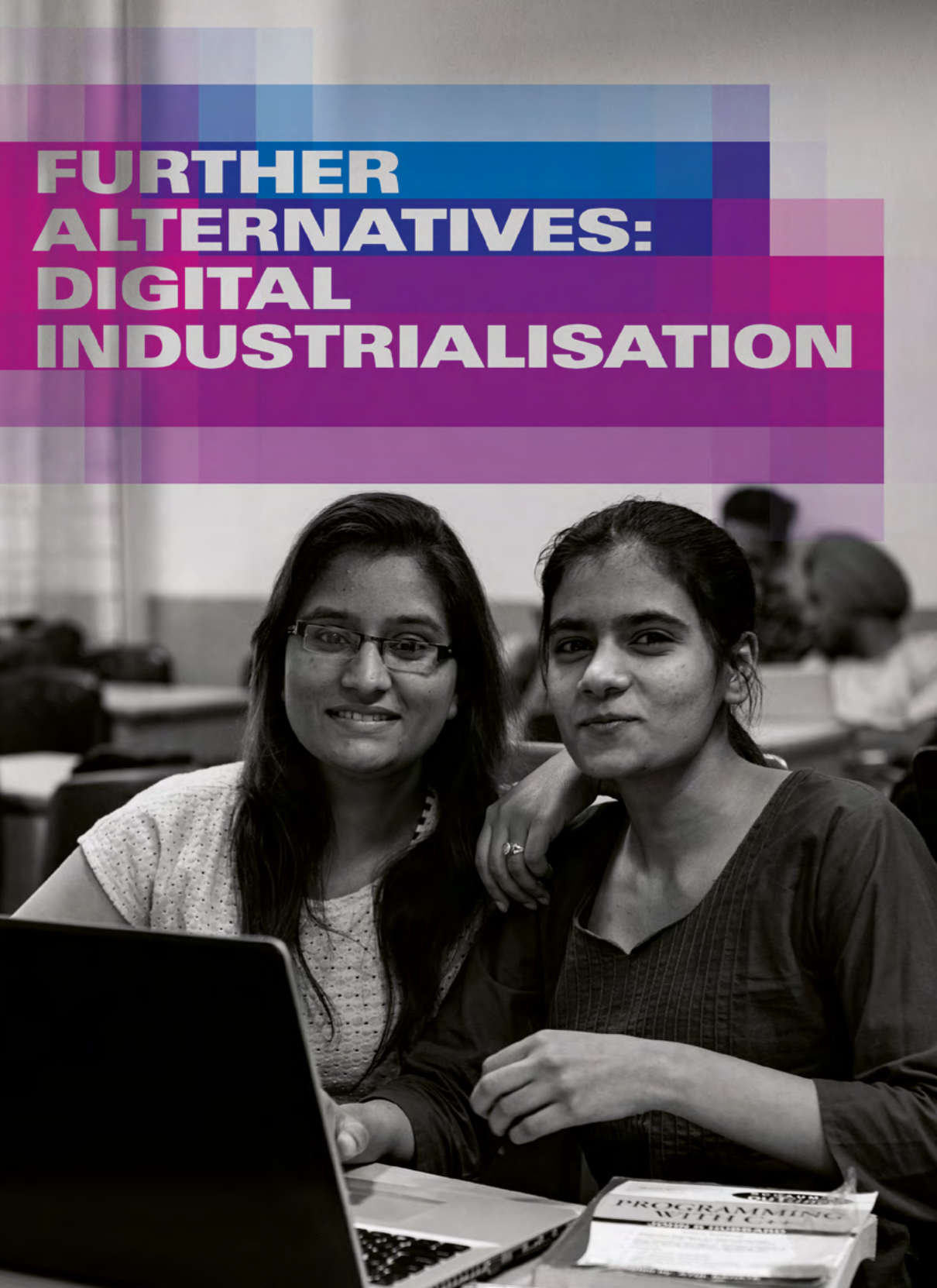
163 Digital Justice Manifesto: A Call to Own Our Digital Future, JustNet Coalition, November 2019. Available at: https://justnetcoalition.org/digital-justice-manifesto.pdf (9 December 2019).

164 Bob Lytle, 'What is Open Data?', 12 February 2016. Available at: www.rel8ed.to (9 December 2019).

165 Anita Gurumurthy and Nandini Chami, 'Data frameworks for a right to development', United Nations Research Institute for Social Development, 8 March 2018.

New structures to regulate data as a public good will be needed, just as new regulations are required in the current privatised framework. The fact that the tech industry "innovates faster than regulators can catch up" does not indicate that governments should abdicate authority to Big Tech to set the rules of the game, domestically or globally through trade agreements. Those new structures, and new uses of data as a public good, can only be created in the absence of the proposed rules governing regulations in the WTO.

FURTHER ALTERNATIVES: DIGITAL INDUSTRIALISATION



In order to achieve the worldwide SDGs on expanding employment, decreasing inequality and eradicating poverty, as well as the Africa 2063 Agenda,[166] millions of new jobs must be created.

In recent years, much attention has been placed on helping MSMEs participate in trade through access to global value chains. In many economies, MSMEs play a critical role in the economy, providing 50% to 80% of employment and at least 40% of GDP. Empowering MSMEs in global trade should therefore boost job creation and promote more inclusive economic growth.

To ensure shared prosperity from digitalisation, all countries must be able to formulate and implement digital industrialisation policies that ensure equitable control and governance of their key resources, particularly data, similar to the policies in previous waves of industrialisation. UNCTAD's Digital Economy Report has shown that most economic benefits of digitalisation are accruing to just two nations, the United States and China, and really only to a few superstar firms within those. While the gap in terms of access may be shrinking, the gap in economic benefits is actually growing.

STYLISED MANUFACTURING VALUE CHAIN SMILE CURVE

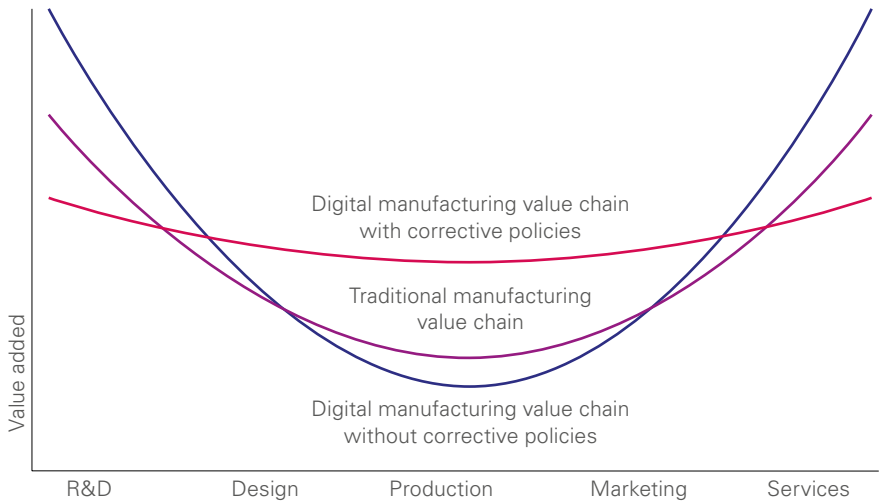


Figure 7 / Source: UNCTAD Trade and Development Report, 2018, p 72.

166 African Union Commission, 'Agenda 2063. Framework Document. The Africa We Want', September 2015.

Digital industrialisation 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 the capacity to use domestic data in the public interest; to strategically promote domestic MSMEs, e.g. through technology transfer and national frameworks for data use; to ensure universal benefits of the digital economy through full employment policies; to make sure of 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 so on.

UNCTAD's Division on Globalization and Development Strategy (GDS) and the India-based IT for Change[167] have produced foundational work to develop the concept of digital industrialisation. Rashmi Banga of GDS has argued that to remain competitive in the digital world, countries need to increase digital content in all stages of production, such as more use of the following: digital services such as computer programming, consultancy and related activities, and information and telecommunications services activities; digital technologies like robotics and 3D printing; data analytics (Big Data); and e-commerce in distribution services.[168]

In order to achieve digital industrialisation, countries must first protect their policy space. Then within that space they must address domestic challenges such as the digital divide and the infrastructure gap, and inadequate regulatory and institutional frameworks.

UNCTAD presents a framework involving the pathway to the apex of a pyramid of digital infrastructure. The most basic level is access to information and communication technologies (ICT) infrastructure, broadband, Internet access, connectivity and affordability. The next is ICT education, leading to digital skills such as building mass-market Internet software and Internet applications.

After this step, countries will be able to build cloud computing infrastructure which will then lead to real data infrastructure and the ability to work with Big Data. The goal of working with Big Data sets is to then be able to process that data, which is the input necessary to operate AI, into intelligence. At the top of the digitalisation

167 Parminder Jeet Singh, 'Digital Industrialisation in Developing Countries (A Review of the Business and Policy Landscape)', The Commonwealth, December 2017.

168 Rashmi Banga and Richard Kozul-Wright, 'South-South Digital Cooperation for Industrialization: A Regional Integration Agenda', UNCTAD, 17 April 2018.

pyramid are advanced technological applications such as Internet of Things (IoT), 3D printing and robotics.

WHAT IS DIGITAL INFRASTRUCTURE? DATA INFRASTRUCTURE IS THE HEART OF DIGITAL INFRASTRUCTURE

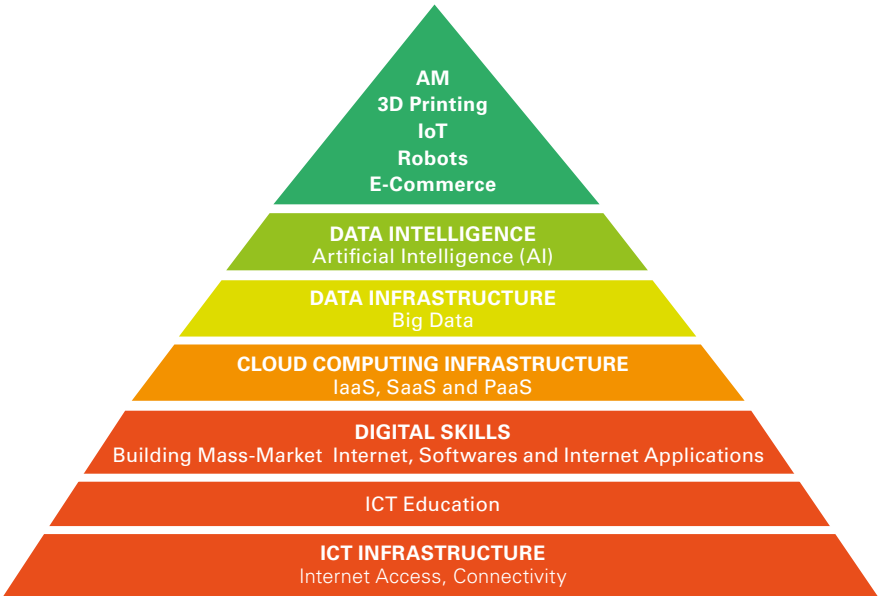


Figure 8 / Source: Rashmi Banga, Presentation "Digital Transformation in Africa," at WTO Aid for Trade Meeting, Geneva. 3 July 2019.

Turning to the policy side, the key issue today in terms of developing digital industrialisation is the control of data. UNCTAD's Rashmi Banga has highlighted the fact that successful data policies govern ownership of data and data sharing.[169] She points to Rwanda's Data Revolution Policy as a good example: foreign firms are still permitted to store data in clouds outside the country, but the data is still governed by Rwandan law. She also highlights India's Draft National E-Commerce Policy, which classifies data into different types (health, traffic, personal, non-personal, etc.) and then has rules for data ownership and sharing, depending on the type of data.

169 Deborah James, 'South needs data digitalization policies, say CSO experts', *SUNS South-North Development Monitor*, #8889, 16 April 2019.

Second, she argues for **localisation of data and building data centres**. She advocates a regional support agenda for small countries that may not have the capacity for local data centres. UNCTAD has a 10-point plan for South-South regional support mechanisms, such as the potential creation of an African or Latin American cloud.

The third policy step would be **to encourage digital technology transfers from foreign firms that would mandate technology sharing**. It is unclear why developing countries would countenance developed countries' proposals (in the name of "e-commerce for development") to *ban source code sharing and technology transfer*. Policies such as joint ownership (banned under *WTO market access rules*) are essential because the issue of technology transfer is vital to developing countries' industrialisation potential.

Fourth, she argues for **regulating trade in electronic transmissions**, which would also be impossible in countries that agree to the proposed digital trade rules.

To deliver shared prosperity, digital industrialisation must also ensure that workers and workers' rights take centre stage. Michael Akuupa, the Director of the Labour Resource and Research Institute (LaRRI) in Namibia, has argued that policies that safeguard the ""iworker" protecting him or her from child labour or forced labour, ensuring his or her minimum wage and safety standards, and also promoting his or her collective bargaining and freedom of association are essential to ensuring inclusive growth from digitalisation.[170]

Developing countries must develop their own agenda for digital industrialisation which can more equitably distribute the benefits of the digital economy while reinforcing human rights. Much of this can be accomplished through domestic policies, coordinated through a pro-developmental state, which should be developed with appropriate stakeholder input, as well as through regional integration. *Proposed digital trade rules in the WTO are intended to specifically restrict the ability of countries to implement most such policies.*

170 *Ibid.*

GROWING RESISTANCE

Civil society has argued that the global trade system must provide countries with sufficient policy space to pursue a positive agenda for job-creation and must facilitate, rather than hinder, global efforts to ensure food sovereignty and genuine food security, sustainable development, access to affordable medicines and global financial stability. It must prioritise global agreements on human rights, the environment and SDGs over corporate profit.

However, proponents of new rules on digital trade are making a coordinated effort to ensure that the conclusion of a plurilateral agreement, along with the launch of multilateral talks, are among the principal deliverables at the upcoming 12th WTO Ministerial Conference, which will be held from 8 to 11 June 2020 in Nur Sultan (Kazakhstan). Trade unions, privacy and digital rights activists, development advocates and public interest groups have an opportunity to raise concerns with their respective governments to bring attention to this imminent threat.

Members of the 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 industrialisation, not just for corporate profit. Some developing countries are raising this issue at the WTO and also now at UNCTAD, where this issue is becoming increasingly contentious.[171] The key subject of data control is indeed going to be the major flashpoint 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.

We need a new agenda for digital economic policies, and for the global economy generally. Countries must develop their own agenda for digital industrialisation. They must not advance the ecommerce rules developed by multinational corporations like Amazon, Google, Facebook and Alibaba. All countries likewise urgently need policies to constrain the behaviour of these corporate behemoths, not to further entrench their outsized monopoly power.

171 Parminder Jeet Singh, 'South nations take firm stand on geo-economics of data', *SUNS South-North Development Monitor* #8890, 17 April 2019. Available at: www.twn.my/title2/wto.info/2019/ti190413.htm (9 December 2019).

Some proponents have argued that it is better for developing countries to participate in the talks, so as to ensure a more pro-development outcome. **However, a pro-development outcome cannot be achieved in the WTO because the rules and policies needed for digital industrialisation are the opposite of WTO rules, which give corporations rights while constraining the regulating role of the state.**

More than 315 organisations from over 90 countries made these and other arguments in a letter[172] 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".

In countries that are participating in the negotiations, civil society can advocate withdrawal from the talks. Uruguay did just that in the negotiations on the TiSA, after an internal evaluation by multiple ministries revealed the myriad negative impacts it would have on Uruguayans' lives. Legislatures should play an active role in evaluating the likely costs and benefits of a potential agreement on human, civil, labour and other rights as well as on the economic impacts.

In countries that are not participating in the talks, civil society can also play an important role in encouraging its government to defend its pro-development positions by not joining the plurilateral talks and by opposing the launch of multilateral talks at the WTO.

Since these provisions are also included in other bilateral and regional trade agreements, e.g. the updated US-Mexico-Canada Agreement (USMCA), a US-Japan agreement, the Regional Comprehensive Economic Partnership (RCEP) and various agreements by the EU, they must be opposed no matter in what form they appear.

Strong media and advocacy campaign work on the national level is essential to holding governments accountable to citizens' demands for fair trade policy, and for balancing out the external power of corporations in trade policy-making processes.

172 'Letter from 315 CSOs from 90+ countries against Digital Trade talks in the WTO', 1 April 2019, Our World Is Not for Sale (OWINFS) global network. Available at: http://ourworldisnotforsale.net/2019/Digital_trade_2019-04-01-en.pdf (9 December 2019).

Advocacy on specific issues, such as those raised in this publication, are also essential. Digital rights and consumer organisations have an important role to play in ensuring that their commitment to freedom of information and access to the Internet is not appropriated to support an anti-rights agenda in the WTO. As historical leaders in the fight for decent jobs and workers' power, trade unions have an essential role to play in leading efforts to oppose any further concentration of corporate power at workers' expense and in developing public benefits from data as a public good. Development and public interest advocates should have no trouble in grasping the fundamental threats at stake, and in making the connections to their important issues.

The positive transformations that the digital era offers for increased prosperity, employment, innovation and connectivity are threatened by the monopolistic and undemocratic efforts of the most powerful corporations that want to rewrite the rules of the future global economy in their favour. To achieve a future in a digitalised world that creates shared prosperity and decent work for all, we must ensure that the rules are written by and for all, and not by and for only a few.

Our World Is Not for Sale (OWINFS) is a global North-South network of civil society organisations including trade unions, development advocates, farmers, environmentalists and public interest groups from more than 50 countries, campaigning for a sustainable, just and democratic multilateral trade system.

www.ourworldisnotforsale.net

ANNEX: CORPORATE LOBBY POSITIONS

www.itic.org/news-events/news-releases/business-and-tech-groups-release-priorities-for-wto-e-commerce-meetings

Recommended Priorities for the WTO E-Commerce Discussions
16 July 2018

Global industry welcomed the announcement at the Eleventh WTO Ministerial that 70 WTO economies would begin work "towards future WTO negotiations on trade-related aspects of electronic commerce." Digital technologies and e-commerce are vital to the growth and development of the global economy, and the WTO is an important venue for the development of ecommerce rules that will ensure that companies can grow, innovate, and create jobs. Recognizing that enabling digital trade through cutting-edge e-commerce rules makes global trade more inclusive and promotes a free and open internet, our associations recommend that these negotiations advance efforts to:

Allow data to move across borders to enable firms and workers in all sectors to serve customers globally, access information, and continuously innovate;

Prevent requirements to localize the storage and processing of data, as companies of all sizes, above all SMEs, rely on the economies of scale that global data centers provide;

Prohibit tariffs and taxes on cross-border data flows and digital products, ensuring firms in any economy can compete on a level playing field around the world and local firms and consumers have access to the best and most innovative digital services and products;

Ensure full market access for services, including new services, so companies can continue to innovate with the confidence that their services will be able to reach consumers;

Encourage members to join WTO Information Technology Agreement and its expansion (ITA and ITA II), guaranteeing low-cost technology solutions for all consumers;

Prohibit requirements that companies transfer technology, source code, algorithms, or encryption keys, to ensure that companies can export with the certainty that their intellectual property – and their customers' data – is secure;

Ensure the adoption of intermediary liability protections, so that online service providers do not have to restrict their activities under threat of liability for third-party content that they do not control;

Avoid regulations of internet services that do not serve legitimate public policy objectives or consider the specific characteristics of both the service and the market, so that innovative services can reach new markets and ensure that consumers have a broad choice of services;

Eliminate or reduce red tape and discriminatory regulatory barriers for all technology products, accelerating technological adoption; and,

Simplify and expedite customs clearance for low-value shipments and raise informal clearance and *de minimis* thresholds to enable e-commerce and SME exports.

Australian Information Industry Association (AIIA)

DIGITALEUROPE

Information Technology Association of Canada (ITAC)

Information Technology Industry Council (ITI)

Internet Association (IA)

Japan Electronics and Information Technology Industries Association (JEITA)

National Foreign Trade Council (NFTC)

ROSA-LUXEMBURG-STIFTUNG

The Rosa-Luxemburg-Stiftung is an internationally operating, left-wing non-profit organisation providing civic education. It is affiliated with Germany's 'Die Linke' (Left Party). Active since 1990, the foundation has been committed to the analysis of social and political processes and developments worldwide. The Stiftung works in the context of the growing multiple crises facing our current political and economic system.

In cooperation with other progressive organisations around the globe, the Stiftung focuses on democratic and social participation, the empowerment of disadvantaged groups, and alternative economic and social development. The Stiftung's international activities aim to provide civic education by means of academic analyses, public programmes, and projects conducted together with partner institutions.

The Rosa-Luxemburg-Stiftung works towards a more just world and a system based on international solidarity.

www.rosalux.eu

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Legally responsible for publication, Head of Office
Andreas Thomsen

Brussels, 2020

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Illustrations, design and production
HDMH sprl

Photos
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Printed in Belgium

Funded by the German Federal Ministry for
Economic Cooperation and Development.

The largest corporations in the history of the world – Amazon, Facebook, Google, Apple and Microsoft – are seeking to use 'trade' rules to rig the rules of the global (digital) economy to enable them to collect more data, exercise more control over our lives and their workers, and amass ever more profit. More than 80 members of the World Trade Organization (WTO) are currently negotiating a new agreement on digital trade based on these proposals. This paper seeks to explain how these corporations operate in order to achieve their goals; what the potential impacts of the rules would be on workers, citizens, communities, developing countries, public services, safety and security, and democracy itself; what the alternatives are; and what we can do to stop this mass corporate takeover.

This paper was written towards the end of 2019. Today, in 2020, the world seems a different place, as we collectively experience the coronavirus crisis and a new awareness of issues of racism and police brutality. The crises have brought about new, and highlighted existing, urgent problems – often exacerbated by Big Tech's iron grip on our economic and social lives.