



The Dangers of the E-Commerce Agenda in Trade Negotiations: Statement by the Just Net Coalition 7 December 2017

The Just Net Coalition¹ (JNC) was formed at a civil society meeting in New Delhi in February 2014. It comprises several dozen organisations and individuals from different regions globally concerned with internet governance, human rights and social justice, and the relationship between them.

We have been among the [309 civil society organizations](#)² who have called upon the member countries of the World Trade Organization (WTO) to refrain from accepting the proposals of WTO members who are pushing a dangerous and inappropriate new agenda under the disguising rubric of “e-commerce”.

Key provisions of the proposals which are not acceptable from the point of view of important public interests include: a prohibition of requirements to hold data locally; a prohibition of otherwise regulating cross-border data transfers; a prohibition of requiring a local presence for goods/service providers in the country; and a prohibition of requiring open source software in government procurement contracts. It is also proposed that there be no border taxes on digital products.

Furthermore, it is being proposed to effectively give the WTO jurisdiction to adjudicate whether a national technology or data regulation was “reasonable,” “objective,” “transparent,” and “not more burdensome than necessary to ensure the quality of the service.” WTO’s adjudication processes have historically tended to favour commercial interests, and giving them a blanket supervision of technology/ data regulation may go against governments’ obligation to ensure that services are operated in the public interest and respect human rights and freedoms.

¹ <http://justnetcoalition.org>

² <http://notforsale.mayfirst.org/en/signon/11th-wto-ministerial-letter-global-civil-society-about-agenda-wto>



In addition, discussions in WTO and in so-called free trade agreement (FTA) negotiations are neither transparent nor inclusive, thus resulting in decisions that do not take into account the interests of all concerned parties. The processes are overly influenced by big business interests.

We discuss below first the procedural shortcomings of discussing e-commerce matters in trade negotiations, then the substantive dangers.

Procedural issues

Many of the organizations that consider themselves to be part of a so-called “Internet Community” are great champions for the principle that all Internet governance topics should be discussed in open multi-stakeholder forums. Yet many of these organizations are not yet using their considerable influence to oppose the proposals to move the crucial discourse on the future of the Internet and the digital realm as a whole to the WTO with its trade-oriented framing of the issues. We are for this reason (again together with many others) [calling on the Internet Community](#)³ to evaluate the WTO’s degree of lack of openness, transparency and inclusiveness, and to use their influence with the various governments accordingly.

There is no real advantage to be gained in negotiating Internet-related matters in the World Trade Organization or doing so behind the possibly even more opaque closed doors of bilateral or plurilateral “Free Trade Agreement” (FTA) negotiations, such as those for TiSA, TTIP, TPP, etc. This is especially so at this stage when basic governance concepts and frameworks for Internet and data have not been worked out at forums more suited to do such preliminary work.

We have the impression that some of the people/organizations involved in Internet governance discussions are, at least implicitly, applying a syllogism along the following lines:

It is acceptable that trade negotiations are secretive.

Some Internet governance issues are related to trade.

Therefore it is acceptable to discuss some Internet governance issues in trade negotiations, even if secretly, and non-inclusively.

From our point of view, the major premise (the first one) is false: it is not acceptable that trade negotiations are not open. This is well explained in :

<http://www.borderlex.eu/trade-policy-ngos-wont-satisfied-eu-transparency-push/>

³ https://justnetcoalition.org/2017/to_Internet_Community_re_WTO.pdf



And here is a concrete example of the possible negative effects of secret trade negotiations. One proposal that has been made would prevent governments from requiring disclosure of source code. The actual proposed text could perhaps be understood to prevent governments from procuring open source software. Maybe that is not the intent of the proposal, but, if so, the language should be changed to make it clear that there is no intent to prevent the procurement of open source software. But maybe the trade negotiators are not too well informed on technical issues such as open source software. So, they would benefit from public inputs. This itself is an important reason why the negotiations should not be secret.

Surely, we all agree that governments benefit from input from all stakeholders. So, in our view, the syllogism that applies here is:

Secrecy in trade negotiations is not acceptable.

WTO and FTAs are at present secretive and non inclusive.

Therefore, it is not acceptable at present to conduct negotiations in WTO or in FTAs, especially about issues of Internet governance where a tradition of open and inclusive policy discussions has been established.

We are aware of the fact that some people think that some level of secrecy is needed in trade negotiations. But recall that trade negotiations are supposed to be win-win: everybody is supposed to be better off at the end. Secrecy is not normally required in win-win negotiations. Secrecy is often required in win-lose negotiations. So, it appears to us that the insistence on secrecy in trade negotiations indicates that they are not win-win negotiations.

But if that is the case, it is all the more reason to call for openness: the public has the right to know what might be bargained away. Specifically, in our context, we have the right to know what, if any, human rights (e.g. free speech, privacy, access, parity of economic opportunities) are being bargained away.

Substantive issues

We object to critical issues related to the digital economy being decided in negotiations with a primary “trade” framing because such negotiations, whether in the WTO or in FTAs, could:

- [Threaten our digital fundamental rights and freedoms](#)⁴

⁴ <https://www.opendemocracy.net/digitaliberties/renata-avila-burcu-kilic/new-digital-trade-agenda-are-we-giving-away-internet>



- [Result in a take-over of much of Internet governance by WTO or other trade-oriented](#)

<https://www.newsclick.in/e-commerce-discussions-wto-more-neo-liberal-policies-negotiated-secret> governance forums⁵

- [Trample economic and privacy rights](#)⁶

- [Lock out public oversight](#)⁷

- [Result in decisions that could harm development and threaten human rights](#)⁸ (For more details, see the following analyses of TPP and TISA, in light of the fact that many of the e-commerce proposals submitted to WTO are similar to the provisions of [TPP](#)⁹ and [TISA](#)¹⁰ and see the following analyses of the similar provisions found in proposed regional free trade agreements, see:

http://www.eria.org/publications/discussion_papers/DP2017-10.html and

<http://www.michaelgeist.ca/2017/11/tpp-back-submission-canadian-governments-tpp11-consultation/>)

It is axiomatic that human rights - civil and political as well as social and economic – must not be bargained away for any reason.

Quite on the contrary, when it turns out that current arrangements for the Internet and the digital economy do not result in these principles being implemented and upheld in practice, these current arrangements for the Internet and its governance must be changed. But the changes must be inspired by respect for human rights, and not driven primarily by the interests of big multinational corporations.

Internet and digital issues cannot be framed primarily from a “trade perspective”. Yet what we see are efforts to block discussion on these issues at globally inclusive policy making forums, and to allow, or even encourage, them to be discussed and decided at trade governance venues like the WTO which, again, are overly influenced by the interests of big companies. We need Internet and data governance venues that are open

⁵ <https://www.newsclick.in/e-commerce-discussions-wto-more-neo-liberal-policies-negotiated-secret>

⁶ <http://www.apig.ch/CWG-Internet%202017-2bis.pdf>

⁷ <https://www.huffingtonpost.com/entry/5951365ae4b0f078efd98399>

⁸ <http://cepr.net/publications/op-eds-columns/twelve-reasons-to-oppose-rules-on-digital-commerce-in-the-wto>

⁹ <https://www.citizen.org/sites/default/files/tpp-ecommerce-chapter-analysis.pdf>

¹⁰ <http://www.uniglobalunion.org/news/tisa-foul-play>

and inclusive of all, and represent public interest, covering the full spectrum of social, economic, political and cultural interests.



This insight is at the heart of the demand for a people’s Internet or citizens’ Internet.

This has been articulated well at the recent Latin American civil society meeting “Dialogues for a People’s Internet: Our America towards to the Internet Social Forum”¹¹ ([Quito](#), September 27-29, 2017) and its regional “*internet ciudadana*” process (A summary in English is also available at <https://www.alainet.org/en/articulo/189104>).

In particular, it is the people who bring the Internet to life and give it content to create the digital economy. Therefore, it does not make sense for us, the people, to remain simply as users of services that the big corporations of the sector offer us, under their own conditions! We should be able to take part in how the digital economy is developed, and we should have the real power of decision over how our contributions are used.

Because of various technological developments, we are currently rapidly entering a new phase: the era of the Internet of Things (IoT), of the digital economy and artificial intelligence. Mass data collection provides the main input and source of value of this economy: data are used by those handling it, made usable for others, and/or sold to advertisers without taking into consideration that personal data are (in many countries) or should be governed by personality rights, an inalienable and not a property right. Yet our personal data are processed through algorithms, including artificial intelligence, with the aim to influence and even control ever more areas of our lives. They are prey for surveillance programmes, spying and cyberwars. Those who gather and control data concentrate power and wealth. The big Internet corporations and security services take advantage of regulatory vacuums (both national and international) in order to impose their rules. It is these regulatory vacuums that the current WTO and other Free Trade Agreement proposals aim to lock in by making it binding international law. Under this regime, citizens are powerless to insure that their human rights and freedoms are respected, exercised and effective; and they are powerless to develop autonomous projects.

It was through awareness of this situation that the initiative behind the [Internet Social Forum](#) (ISF)¹² took shape, as an autonomous world space of social and citizens’ organizations from diverse social sectors, to debate and seek answers to this situation. It was agreed to do so under the umbrella of the process of the World Social Forum, with its

¹¹ <https://al.internetsocialforum.net/>

¹² <http://internetsocialforum.net/isf/>

affirmation that “another world is possible”
in the face of the neoliberal proposition that
“there are no alternatives”.



Just Net Coalition