

A Call for Openness and Transparency in Rulemaking for the Internet
13 November 2017

Call for action

We call on the Internet community to invite national governments to refrain from discussing Internet-related matters in the World Trade Organization (WTO), in particular at its upcoming 11th Ministerial Conference, or in other bilateral or plurilateral trade negotiations, until such time as these negotiations are fully transparent and inclusive, in line with the multi-stakeholder approach to Internet governance.

Signatories

Agencia Latinoamericana de Información - ALAI

Association for Proper Internet Governance

Digital Society Switzerland (Digitale Gesellschaft)

IT for Change

JustNet Coalition

Other signatories are invited to add their names

Background¹

Most of the Internet community has long held the belief that issues related to the Internet should be discussed in transparent and inclusive multi-stakeholder forums. The reasons given for favouring the multi-stakeholder approach include “the better the inputs and the more inclusive the process, the better the outputs and their implementation”.²

Recently, some states have proposed to negotiate binding international norms on core-Internet issues like cross border data transfers, spam, data protection and e-signatures in a to-be-created Working Party on E-Commerce in the World Trade Organization (WTO).

The Internet governance community has already raised alarm bells when these sensitive issues have been discussed in opaque so-called “free trade agreement” (FTA) negotiations, such as the Trans-Pacific Partnership (TPP) and Trade in Services Agreement (TiSA). The Global Commission on Internet Governance has noted that:

“Bilateral and multilateral free trade agreements can significantly affect Internet governance issues. Many, such as the Trans-Pacific Partnership Agreement, specifically address important issues such as data localization, encryption, censorship and transparency, all of which are generally regarded as forming part of

¹ The editor for the Background was Richard Hill

² See, for example, the ISOC policy paper [“Internet Governance – Why the Multistakeholder Approach Works”](#), 26 April 2016

the Internet governance landscape. However, they are negotiated exclusively by governments and usually in secret.”³

But the WTO is no better. In fact, the WTO has also been subject to fierce criticism for insufficient transparency and for a lack of participatory opportunities for civil society and other non-state actors. Member states in the WTO system are represented by ministries of trade and economy that tend to be overly influenced by a very specific set of multinational corporate interests in their countries. There is no mechanism for participation of civil society organizations representing the public interest.

In contrast, the United Nations system, for instance, allows non-state actors to participate as observers, as do other organizations such as the World Intellectual Property Organization (WIPO). The international Telecommunications Union (ITU) allows non-state actors to participate with full speaking rights (but not voting rights) in bodies that discuss technical matters and develop technical standards.

The WTO has traditionally insisted on secrecy and resisted participation by non-state actors. While some WTO documents are publicly available on the WTO web-site, some are not. In particular, Member States can, and do, request that certain proposals not be made public.

UNCTAD’s Information Economy Report 2017 highlighted these concerns:

“The fact that these [trade] negotiations are open only to governments has inspired protests by non-governmental actors demanding that they be informed and engaged in negotiations to allay fears that the new rules embedded in these agreements favor the interests of governments or corporations over those of other Internet users. The closed nature of the negotiations also means that the benefits governments hope to achieve may not be evident to the general public.”⁴

In 2016, 20 organizations committed to an open Internet raised the same concerns:

“We recognize the considerable social and economic benefits that could flow from an international trading system that is fair, sustainable, democratic, and accountable. These goals can only be achieved through processes that ensure effective public participation. Modern trade agreements are negotiated in closed, opaque and unaccountable fora that lack democratic safeguards and are vulnerable to undue influence. These are not simply issues of principle; the secrecy prevents negotiators from having access to all points of view and excludes many stakeholders with demonstrable expertise that would be valuable to the negotiators. This is particularly notable in relation to issues that have impacts on the online and digital environment, which have been increasingly subsumed into trade agreements over the past two decades.”⁵

The WTO system lacks features of transparency and participation practiced in UN organizations. It is neither transparent nor inclusive, and it certainly cannot be considered to be a multi-stakeholder forum. Nor does it focus on trade issues; on the contrary it promulgates hundreds of pages of rules that interfere with food safety standards, environmental laws, social service policies, intellectual property standards, government procurement rules, and more; and, according to some, it “is intentionally designed to insulate against democratic pressure for change”.⁶

Efforts to make rules regarding online services at the WTO should be considered with extreme skepticism, given the WTO’s track record of concluding agreements whose effects have been contested, for example regarding intellectual

³ UNCTAD’s Information Economy Report 2017: Digitalization, Trade and Development, pp. 74-75, citing the report of the [Global Commission on Internet Governance](#), p. 78.

⁴ *Ibid.*

⁵ The source is the [Open Digital Trade Network Brussels Declaration](#), cited in the cited UNCTAD report.

⁶ Lori Wallach & Patrick Woodall, [Whose Trade Organization? A Comprehensive Guide To The WTO](#) (2004)

property rights⁷, and which some believe have negative effects for developing countries and for consumers of medicines around the world⁸.

To discuss Internet-related matters in the WTO (or in FTA negotiations) would result in minimizing attention to the interests promoted by civil society. We should learn from the WTO's poor track record in other areas, such as intellectual property, and object – before it is too late – to Internet-related matters being discussed behind WTO's closed doors.

Similar provisions appearing in FTAs have also been criticized by consumers and digital rights coalitions, representing 78 civil society organizations:

“Stakeholders have also expressed concerns about various substantive aspects of rules governing trade in the digital economy. Contentious issues include the inclusion of provisions concerning intellectual property, encryption, source codes, intermediary liability, network neutrality, spam, authentication, and consumer protection.”⁹

We should object to such discussions taking place behind the even more opaque closed doors of FTA negotiations.

Thus we call on the Internet community to get in touch with national governments to invite them to refrain from discussing e-commerce matters in the WTO, or in other trade negotiation forums such as FTAs, until such time as the WTO, or those forums, open their doors to non-state actors and netizens, and let in the light of public scrutiny. Specifically, WTO member states should resist any attempt to lock in the commitment to negotiate on internet-related issues at the upcoming 11th Ministerial Conference in Buenos Aires.

⁷ See for example https://en.wikipedia.org/wiki/TRIPS_Agreement#Criticism

⁸ <https://www.project-syndicate.org/commentary/intellectual-property-21st-century-economy-by-joseph-e--stiglitz-et-al-2017-10>

⁹ The cited UNCTAD report gives the following source for that statement: Bureau Européen des Unions de Consommateurs (BEUC), [Analysis of the TiSA e-commerce annex & recommendations to the negotiators](#), TiSA leaks, September 2016; and [EDRi's red lines on TTIP](#), January 2015. BEUC and EDRi are coalitions of 43 and 35 civil society organizations, respectively.