POLICY BRIEF ON DIGITAL TRADE
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Introduction

The figures say it all. The largest corporations in the world are data companies like Facebook, Google and Amazon, Apple and Microsoft, whose wealth and influence dwarf that of many countries. As we live more of our lives online, data has become a raw material of the economy of today and the future. The wealth and influence that data giants have is increasingly being brought to bear over our governments and laws. Trade rules are being used to leverage this influence. Much as sectoral commercial interests have sought to use trade rules as a vehicle for expanding power and influence, we are increasingly seeing the incorporation of ‘digital chapters’ in trade agreements and proposed new international digital trade agreements, in bilateral trade deals and at the WTO.

The “digital trade agenda” would see the ability of governments to regulate big tech in the public interest severely curtailed, deprive states of tax revenue and the possibility of digital industrialization, and expand the power of corporate monopolies over our rights as workers, as citizens and to just economic development. A world in which Big Tech corporations have the rules they want is one in which, among other things; workers face ever more demanding and undignified conditions; in which countries and individuals are locked out of access to and benefits from the data generated by themselves and their citizens; in which the biggest corporations in the world pay almost no tax and whose monopoly power goes unchecked. The digital trade agenda, as pursued by big tech and supported by a number of countries from the global north governments, threatens an entrenchment of corporate dominance over our lives. This document seeks to foreground the concerns that civil society organisations have about the digital trade agenda, and advance a set of principles for digitalisation that would enshrine an equitable and sustainable future.
1. Ending Corporate Monopolies and Digital Colonization

The threat of big tech companies to our individual privacy is well known, however, the data driven revenue model of Big Tech also has far-reaching consequences for the way our economies and societies develop. Big tech companies’ profit models are based on the gathering and extraction of data generated by ordinary people every time we go online. During the COVID crisis, as more money and time were spent online, Big Tech profited immensely, and strengthened its market position, through the collection of vast amounts of data.

Led by Big Tech companies, such as Amazon, Alibaba, Google, Facebook, Uber or Airbnb, digital trade is capturing an increasing share of the global economy. They collect and appropriate data from their users to build up huge fortunes that have sky-rocketed the share of wealth of a tiny elite at the expense of the global majority. Now big tech companies are seeking to lock in their economic dominance through a digital trade agenda that facilitates further expansion and prevents governments from protecting data privacy, requiring data localisation or technology transfer or imposing proper taxation. As it expands digital trade appears as a new scramble for the data assets of the global South, a new – digital – colonisation.

Amazon and Uber generate huge profits in target countries without productive investments, direct employment creation or paying appropriate local taxes. Uber rounds off large chunks of the taxi incomes of large cities in poor countries without owning a car, employing a driver or paying adequate taxes. Amazon captures local markets without setting up shops, employing local staff, investing in local production or paying local taxes. At the same time it is pushing local producers and retailers out of the market.

Low income countries are even less well equipped to withstand the encroachment of the digital companies, let alone to regulate them, than rich countries are. As in the 19th and 20th centuries when raw materials where the subject of resource grabbing by the global North, resulting in the expropriation and impoverishment of the global majority, digital trade is the new frontier of the resource grab, that, unless challenged will result in neo-colonial plunder and prevents countries of the
global south from ever being digitally industrialized. This can be characterized as a new, digital colonization by a tiny number of massive corporations aided by the governments of the Northern countries who stand to benefit. This is why some countries are resisting new global trade rules in the World Trade Organisation (WTO) that would outlaw data localisation, proper taxation and date sovereignty. The WTO is supposed to be a multilateral organisation that adopts trade rules by consensus. Yet, with the complicity of the WTO secretariat, home countries of the digital giants are negotiating new “plurilateral” corporate friendly trade rules among themselves that will, unless we act, in the end be imposed on all countries.

Civil society organisations, citizens, farmers, fisher folk, workers of the South and North must stand together against this corporate capture and digital colonisation and reject WTO plurilateral negotiations that undermine political and community sovereignty. In the place of the digital trade agenda we must build digital regulations from below, starting with private and community data rights and ownership and with rules that ensure that digital cross border trade benefits local producers, retailers and workers.

FURTHER READING
• https://longreads.tni.org/digital-colonialism-the-evolution-of-us-empire
• https://itforchange.net/digital-new-deal/
• Digital Trade Rules: A Disastrous New Constitution for the Global Economy Written By and for Big Tech
• UNCTAD cautions against JSI e-commerce negotiations at WTO
2. Labour Rights

The new digital trade rules will make jobs more precarious.

Production and the economy are changing through digitalization. Its direct consequence is a change in the world of work. The WTO has long been talking about the “servification” of the economy, where each product or service is seen as a chain of workers, where each person provides the supply chain with the service of their work. This idea carries with it the entrepreneurial ideology, seeing the worker as an isolated, individualized and non-unionized agent. The indirect privatization of public services through digital services will become a reality, eroding not only the quality of public employment, but also public services as a guarantee of a floor of rights for all workers in the economy.

Digital trade rules will create a greater imbalance of power between companies and workers, where the atomization of workers and union disunity vis a vis the concentration of power in large corporations will have the potential to decimate labour rights already won around the world. This will be key for global union strategies in the coming years.

Digital trade rules currently negotiated on the margins of the WTO will prohibit demanding on the commercial presence of companies in a territory, which will make it virtually impossible to sue them or demand that they comply with current labor standards.

The concentration of the raw materials (data) of the digital economy will make digital industrialization virtually impossible for low income countries. This will mean greater dependence and more precarious employment in low income countries, whose citizens are mere consumers or users of digital services, without being able to benefit from specialized jobs and higher wages.

Algorithms are becoming increasingly relevant in the world of work. They not only assign tasks, but also judge prospective employees, workers and define her or his career path. Algorithms are not neutral, they are often biased and repeat patriarchal and racist patterns and prejudices of our societies with huge effects on hundreds of thousands of workers. These systems are outside the law as they are protected by intellectual property rules, being true black boxes where all kinds of rights enshrined in our societies are not respected.
Finally, surveillance in the workplace is already a reality today. The lack of privacy of workers is truly scandalous. Not only are there surveillance systems that observe and judge the behavior of workers wanting them to act like machines, but their data are sold to various companies to become objects of consumption and marketing. There is no consent or knowledge on the part of the worker.

The world of work is rapidly changing and society is demanding new protection floors like the universal basic income and new ways of protection for platform workers. It is crucial that our international trade rules don't prevent governments from regulating before they even understand the emerging labour dynamics of the digital economy. New technologies should be used to raise productivity of workers and their salaries, and labour standards to deliver decent work for all. Digitalizations brings new ways of working (such as remote working) that could be used to export labour rights and raise standards worldwide, and not just be a tool to do social dumping in new global value chains. We need new debates around the sovereignty of time for workers and new labor rights and regulations.
3. Food and Agriculture

The digital trade agenda has not only disastrous implications for global inequality at a macroeconomic scale. Big Tech is already forcing a new, poorly understood reality upon food systems. As smart machines and sensor networks increase on farms and farm data grow in quantity and scope, farming processes are becoming increasingly data-driven and data-enabled. Data on food is a valuable strategic asset. Peasants and small-scale farmers, whose land acquires a new value now that it is more readily accessible to robotic farm equipment, are vulnerable to fresh land grabs. With these developments, powerful corporations will increase control of most world food supplies. The digitalization of the food system means it is being reconfigured to benefit data processors, industrial agricultural giants, biotechnology players, commodity and grain behemoths, the global logistics machinery, and retail giants that are, in turn, gradually being swallowed by digital platform giants. Farmers and fisherfolk who are key in creating the knowledge, relationships, and harvests that nurture the majority of the population are now being reduced to data generators without their consent. There is an urgent need to interrogate and expose who controls and benefits from this evolving digital reality.

Reversing the corporate capture of the global food system and reclaiming it for people and the planet calls for building an alternative new deal for food and agriculture. This is a task already being undertaken by some farmers’ groups and popular movements which are actively discussing alternative digital technologies, based on a set of premises different from those espoused by corporate interests. Ultimately, whether or not, how, and which technologies may be beneficial for peasant farmers, pastoralists, and fisherfolk on whose backs the global food system is built, will depend on the conditions, requisites, and sincerity in building this new deal.

Peasant farmers’ and fisherfolk’s sovereignty over their data, ownership and control over the tools and their access to data commons are key. Farmers and fisherfolk who are creating the knowledge, relationships, and harvests that nurture the majority of the population must take back control over these datasets. This is critical to determining their community’s future. This requires also the reimagination and reconfiguration of digital relations in ways that can protect
and advance the rights of peasants, smallholder farmers, (the majority of whom are women), agricultural and food chain workers, cooperative markets, local breeders, and fishing communities.

FURTHER READING
• http://www.ipes-food.org/_img/upload/files/LongFoodMovementEN.pdf
4. Digital Trade and the Climate Crisis

The digital trade agenda also has critical implications for the capabilities of our societies to tackle the climate crisis, by undermining technology transfer and the ability to ensure that goods and services meet environmental standards.

Technology transfer forms a critical component of the support needed by the global south to address the climate crisis. The digital trade agenda would hinder this as it demands a prohibition on access to source code and algorithms, that could hamper technology transfer by preventing countries from implementing technology transfer requirements, and limit the ability of countries to mitigate or adapt to climate change[1].

Lack of access to the source codes corporations use in products and services also mean that countries can’t check a product or service’s compliance with environmental regulations. For example, in the Volkswagen emissions scandal, software was installed in vehicles to allow cars to pollute 40 times the legal limit while passing an emissions test.

The digital trade agenda has implications for questions of equitable energy consumption and material throughput. E-commerce further prioritises international goods and services over local goods and services which is more climate intensive. Transitioning to a low carbon economy also demands huge public investments in a green energy transition. A digital trade agenda that prevents governments from regulating big tech could deprive countries of the economic resources (both through the proposed bans on digital taxes, and bans on national ownership and storage of publicly generated data around weather, climate, the environment, public services and natural resources) to fund and inform a transition to a low carbon economy.

Low income countries participating in the plurilateral discussions at the WTO risk signing up to more stringent rules than currently apply to them. (All the proposed provisions on source code to date have come from countries in the global north.) If the digital trade agenda is implemented the rules around source code may lead to increased dependency of the global south on foreign technology to adapt to the climate crisis, in a context where those least responsible for the climate crisis in the global south are already bearing the brunt of its impacts.
To fight the climate crisis while addressing global inequalities, rich countries must deliver on their technology transfer commitments, and make green technology a global public good.

FURTHER READING


NOTES

5. Human rights to Personal Data and Privacy

The new rules of digital trade undermine everybody’s rights to privacy and ownership of personal data. The digital trade agenda of big tech is aiming at the collection of more and more data as an economic resource and source of power.

Those who have the means to extract data, can own data without rules on how to use them or accountability for the impacts it has. Most often extracting data happens without transparency or the consent of those from whom it is being gathered. Therefore big tech aims for rules to transfer our data without our knowledge or consent to any institution without any accountability. This process will be accelerated by the plans for digital trade on the international level. Recent scandals such as Cambridge Analytica, breaches in Facebook or Yahoo prove that self-regulation by companies is not only ineffective but dangerous for all of us. These dangers range from being discriminated against on the job market by hiring algorithms that reproduce gender and racial discrimination, paying higher prices for a safe way home in a taxi at night, being spied on by electronic toys, or being targeted for the political party you are considering voting for.

In the long run, big tech aims at controlling all aspects of human lives from food to mobility, education, healthcare and more. These companies are aiming to gain the power to continue collecting our data before we as societies have had discussions on how data should be used – thus limiting peoples’ rights to sovereignty, sufficiency, privacy and fight for equality.

This new extractive business model stands in direct conflict with international human rights on privacy. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights provide that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. Since 2013 several resolutions on the rights to digital privacy have been passed and should be the guidelines for future policy making, rather than the agenda being dictated by lobbyists for Big Tech.

In lieu of big tech’s wishlist full of market access, interference in democratic processes and lack of regulation by governments, we need stronger government
regulation. The EU's position is especially crucial for this development in general, since its General Data Protection Regulation (GDPR) that was implemented in 2018 has been a standard setter for data protection since. Nonetheless, the EU should not rely too heavily on this one instrument, but make serious efforts to improve and apply the same importance to the issue of privacy protection in its international trade negotiations.

We need public debates and discussions on how to reclaim ownership of our data. In the long run, co-owning techno-structures and full transparency on the usage of our data will be essential to protect our privacy in a digitalized world.

**Human rights and racial inequality**

Police forces are increasingly using machine learning algorithms for predictive crime mapping; and individual risk assessment – forms of “predictive policing”. These technologies exacerbate systemic racism, because these algorithms often draw from flawed and non-transparent sources and because what is and what is not important for an algorithm is ultimately a decision taken by human beings. They have been shown to disproportionately impact people of colour already subject to discrimination and violations of their human rights by law enforcement officials.¹

The digital trade agenda proposes that countries using predictive policing services cannot access the algorithm and source code used,² making it impossible to assess algorithmic biases built into the software. While there is good reason to ban predictive policing altogether, the digital trade agenda makes it even harder just to regulate it.

**FURTHER READING:**
- https://www.eff.org/deeplinks/2020/09/technology-cant-predict-crime-it-can-only-weaponize-proximity-policingnon-disclosure clauses
6. Taxation and Tackling Monopoly Power

Digitalization has enabled multinational corporations and in particular big tech to move capital and data easier than ever before between borders and to choose countries for their operations with the least oversight and the lowest taxes.

Countries – in particular in the global south – lose billions in tax revenue due to these practices and the rules that big tech are pushing for in trade deals make it even harder in the future to reverse the trend. Less tax revenue from big tech means also that the burden of taxes shifts to workers and small businesses that don’t have the same means to circumvent tax rules. The eroding tax base further deprives the states’ capacity to fund social services and choose their own development path. Now, more than ever we need the ability to tax multinational corporations and big tech to raise the funds to finance a socially and ecologically just transition.

Companies like Uber or Amazon already using loopholes to channel their profits to tax havens and paying little if any taxes in the countries in which they generate their profits. Big tech and their allies in governments are pushing for digital trade rules that will make it even harder to tax them and generate revenue by tariffs on digital trade. Turning the moratorium on customs duties on e-transmissions into a permanent waiver, will lock in states forever.

Big tech is also trying to ban local data storage requirements and local presence requirements via digital trade rules. But tax authorities need to be able to access companies’ data in case of an audit. With no local presence it is almost impossible to tax big tech.

We need a global tax reform that makes sure multinational corporations including big tech is no longer able to shift profits away from taxation. As in other policy fields digital trade rules should neither limit the policy space to tax them nor to establish international cooperation to make sure tax revenues are distributed fairly between the countries where the profits arise.
7. Conclusion and Towards Data Resource Sovereignty and Public Collective Ownership Approach

Given the current digitalisation of our economies, societies and lives, we need a broad public debate about how to make sure these technologies are implemented and governed in the interest of people and the planet. Therefore, our governments and the EU must stop engaging in negotiating and deciding international rules whether it is via bilateral trade agreements or at the WTO level. The currently discussed rules would further liberalize the digital economy and guarantee the profit interests of a few big corporations.

We urge the EU and governments to organize and engage in a broad public debate about the digitalization around the core values we have outlined above and to work towards data resource sovereignty and a public collective ownership approach.

**Data resource sovereignty**

Big Tech monopolies must be answered by global rules that curb their power and provide democratic governance of data and the digital world. Citizens, civil society, states and the international community must work together on digital sovereignty to gain back control over the digital domain. In this respect, a Digital New Deal should be brokered on the global level instead of enshrining the rights of the Big Tech sector by means of the WTO agreement on digital trade that is being negotiated. The question of data rights and protection should be at the heart of such a global deal, breaking away from the contemporary capitalist model of private data being assetized.

Data accumulation should be used as a force for the good, spreading knowledge amongst people and countries instead of putting claims on knowledge spheres. This means data monopolies should be broken down and publicly accessible data infrastructures should be built. Inspiring examples on the local level can be found for example in Barcelona, where the municipality has developed new governance models in the form of publicly accessible data trusts.

Data should be classified as a global public good, and be accordingly regulated under guidance of the UN. The Global South, which is lagging behind in digitalization,
should get full access to the digital world and digital tools to develop their economies and societies.

Privacy regulations should be strengthened and transparency of data, algorithms etc. should become the norm.

E-commerce should only be allowed in trade and investment treaties if it contributes to the well being of all trading partners and their citizens.

**Digital Trade and Public Services: A Public Collective Ownership Approach**

A collective public ownership approach would enable public service authorities to design, license and own their data and artificial intelligence (AI) architecture and tools. In health and care sectors, where we are witnessing the fastest digital transformation in public services, the use of intellectual property rights (IPR) and trade secrets for example could be publicly owned so that research data can be sold at a value that rewards the public health service and not commercial tech enterprises.

All governments should ensure that data access and the processing of public health data for the purpose of research, planning and innovation remains publicly owned and not commercially owned.

All public services should be protected as ‘exceptions’ in Free Trade Agreements (FTA) in e-commerce chapters. In this way the commodification of sensitive data such as health and social care data cannot be traded in global trade deals and will be protected from ISDS mechanisms, ratchet and standstill clauses which restrict domestic regulations.

Public services can also be specifically exempt or ‘carved out’ of FTA e-commerce chapter provisions simply by listing what cannot be included. In health for example: health and social care commissioning of data, health data processing services and IT systems for commissioners, analysts, and clinicians. This would also include medical devices, health data processing for life sciences and research services and IT health systems, trade in medical algorithms, data technology or other health and social care AI devices.

This would protect public funded data processing services from any form of data control from outside the domestic country. It would also ensure that a sovereign
democratic government retains control of access to its data for the purpose of research, planning and innovation according to its own priority policies and associated regulations.

Public consultation and transparency must be embedded in all public ownership models where citizens can track and trace the use of their data and see the value it has generated as a public good. As we move to public service data ID cards or ‘public service use passports’ these rights need to be fully enshrined in protective laws.
8. Principles for a just economy

Whether the emerging digital future is going to be in the interest of people and the planet or a few big tech corporations and a handful of people who own them, is not yet decided. Currently rules are crafted at different levels and in different organisations to govern our digital futures. Big tech corporations push for binding rules in trade agreements and within the WTO and within the European Union (EU) a series of rules are negotiated, such as the digital trade act.

We as civil society organisations, trade unions and social movements have a clear vision, of what are key principles and values that such rules and regulations must embrace, in order to ensure that these technologies are used in the best interest for people and the planet and a good life for all.

For us these principles are:

1. **Data subjects must own their data – individually and collectively**
   All citizens, workers and other economic actors – must be able to individually and collectively control their own data. These needs and rights over data must be recognized (data sovereignty). Data-creating work ought to come with data rights.

2. **We need rules, standards, and new institutions to control and to share our data as well as to protect it from abuse**
   Data should be processed close to the point of its origin. Digital standards must be developed by public interest bodies. This requires an open, inclusive, and participatory policy-making processes from global-to-local levels that center digital justice. Cross-border data flows must be decided nationally or in the case of the EU, within the EU. We need collective legal protection against damages caused by unfair, discriminatory, and/or exploitative processing of data.

3. **Data commons need appropriate governance frameworks**
   Environmental, genetic, weather, agronomic, and other publicly-generated community data need to be governed by commons-based frameworks. This data needs to be free from enclosures or commercial exploitation.
4. Key digital infrastructures need to be governed as public utilities
   We need a pluralistic internet grounded in a constellation of translocal connections, open-source innovation, and diverse knowledges, countering the homogenizing Silicon Valley narrative. We should own our software and be able to control it. To govern the internet as a global public good, we need an independent, representative multilateral mechanism, backed by an international treaty.

5. The digital has to be governed in a local-to-global manner
   Indigenous peoples, local communities, farmers, fisherfolk, and social movements must participate in global-to-local digital policy processes. We also need to re-imagine the relationship between digital technology, society and nature. The core of digital social organisation must be southern epistemic traditions and feminist ethics rooted in socio-ecological wellbeing. We need data governance and regulation that takes into account racial, gender and other biases.

6. Techno-structures need to be personal and public spaces and must be decentralised for open use, with interoperability
   We need transnational alliances of practitioners engaged in collaborative and cooperative platform models. We also need a fair digital economic order that creates the enabling conditions for digital industrialization of the Global South. Digital innovation should be funded publicly.

7. Global digital monopolies should be broken
   We need a Global Convention for Data and Cyberspace to dismantle the power of the Big Tech oligarchy and to promote peace, security, human rights, and global justice. We need regulations to rein in the runaway power of transnational digital corporations. This includes global digital taxation rules to prevent regime shopping by technology companies.

8. Societies' datafication needs to be managed democratically
   This requires sovereignty and public interest based governance of digitalized infrastructures in food, health, finance, welfare, and other socio-economic sectors. We need institutionalized norms and principles for evaluating and determining the limits of data extractivism. AI policies that extend beyond the axes of accountability, non-discrimination, and privacy, must ensure equitable redistribution of the gains of data and digital intelligence.
9. Adopt a Manifesto of Workers Digital Rights

WORKER VOICE
Worker concerns and interests should always be at the heart of the development, application and implementation of AI at work.

Everyone at work should have a say in deciding whether AI is introduced to make important decisions about people. There should be genuine and active consultation with unions and workers before new technologies are introduced.

Employers and trade unions working together to put in place collective agreements on new technologies and data is the most effective way to ensure worker interests are respected.

EQUALITY
No unlawful discriminatory decisions should be made using technology. We know workers are suffering discrimination and other forms of unfairness resulting from use of AI at work. For example, there may be discriminatory outcomes when facial recognition technology has been trained on data comprising only white faces. Discrimination by algorithm must stop. There must also be equal access to AI at work for all, regardless of characteristics such as age or disability.

HEALTH AND WELLBEING
No new technology should be introduced at work that has a negative impact on workers’ physical or mental health, or their safety.

WORK/HOME BOUNDARIES
When implementing new technologies, employers should respect the importance of clear work/home life boundaries. Without these boundaries, work intrudes on private life. Workers report to us that they increasingly feel constantly scrutinised and monitored, which can lead to stress and ill-health.

HUMAN CONNECTION
It is crucial to maintain some degree of human involvement in decision making at work. Without this, unfair decisions made by technology are more likely to go unchallenged and unquestioned. We also acknowledge the fundamental importance of human contact and interaction at work,
and the value of human agency. Human beings should not feel they are subject to absolute technological control.

**TRANSPARENCY AND EXPLAINABILITY**
It should be clear to people when technology is being used to make decisions about them at work. The way in which these decisions have been made must also be easy to explain and understand. And there should be enough information available to workers and job applicants about the technology to ensure they can trust it will operate fairly. Otherwise, it will be impossible for workers to challenge unfair and discriminatory decisions made by technology, or to know when inaccurate or misleading data has been used.

**DATA AWARENESS AND CONTROL**
Workers should be educated about the value of personal data, how this is used by their employer, and how data is used to inform AI systems. They should also have control and influence over how their data is used. Data that is used in AI systems must be fair and accurate.

**DATA RECIPROCITY**
Data equality and justice is a principle that all modern, forward-looking workplaces should support. There is an increasing public expectation of equal power and rights over data, and this should be reflected in the workplace. As employers collect and use worker data, workers should have a reciprocal right to collect and use their own data. Trade unions are uniquely placed to help workers and employers redress the imbalance of power over data at work.

**EDUCATION AND COMMUNICATION**
We all need to help educate each other about technology, artificial intelligence, algorithms, machine learning and the power of data, and equip ourselves with the language to communicate about this. When we all understand these terms and can communicate effectively about technology, we will be a significant step closer to solving the problems associated with it.
We are a network of development, environment, human rights, womens' and farmers' organisations, trade unions and social movements, as well as research institutes.

The network was formed in the aftermath of the World Trade Organisation's (WTO) 1999 Seattle Ministerial to challenge the corporate-driven trade agenda of the European Union and European governments. It has also developed as a response to the increasing need for European coordination among civil society organisations.

We are committed to contributing to a new, democratically accountable trading system that advances economic justice, social wellbeing, gender equity and ecological sustainability, and that provides decent jobs and necessary goods and services for all people.

www.s2bnetwork.org