

Twelve Reasons to Oppose *Rules* on Digital Commerce in the WTO

Update, March 31, 2019: In January 2019, a group of countries announced their intention to start negotiations on digital trade among themselves – after the WTO membership had rejected this move at the last Ministerial. They just began negotiations! This process began in July 2016 when, at the request of the Big Tech industry, the United States tabled a proposal for disciplines on e-commerce in the World Trade Organization (WTO). The existing mandate within the WTO is to have discussions on e-commerce in the WTO, but not to have negotiations on potential binding rules. At the same time, there is a mandate since the launch of the Doha Round in 2001 to reduce WTO constraints to development policy space in developing countries – but developed country members have refused to agree to the necessary changes. Developed countries have also blocked reforms to the agriculture rules that have been demanded by developing countries for decades, because they constrain poor countries from providing subsidized food to their own impoverished populations, even though rich countries are still allowed to export subsidized agriculture!

Nevertheless in 2017, the goal of rich countries was to set aside the development agenda permanently, and instead launch new negotiations on e-commerce in the WTO. They tried to sell these new talks by portraying e-commerce as good for development, women, and micro, small and medium enterprises (MSMEs). However, by this time, many members of Our World Is Not for Sale (OWINFS) global network had realized that the proposals went far beyond “e-commerce” and were really intending a full and complete liberalization of all aspects of the future digital economy. They argued that agreeing to this new e-commerce agenda would permanently consolidate the first-mover status and monopoly control of developed country high tech firms in their countries, particularly through the control of data. The proposed rules would foreclose the development policy space for developing countries to develop their own digital industrialization. They argued that using e-commerce for development is completely different than negotiating binding rules that were developed by lawyers of U.S.-based high-tech companies.

Further, OWINFS members pointed out that digital industrialization would require rules to regulate the multinationals, such as imposing performance requirements, whereas rules in the WTO would give multinationals market access rights while limiting the role of the state in regulation. They also argued that Big Tech was using the talks to further reduce their tax obligations to developing countries, further increasing their unfair advantage over domestic companies. In addition, they criticized the developed countries for ignoring the needs of developing countries for closing the digital divide, for infrastructure, access to electricity and broadband, skills upgrading, and other prerequisites when no consideration of these issues or the need for financing was being taken into account in the discussions. They also critiqued the fact that the developed countries wanted the new negotiations “for free,” without agreeing to any of the decades-old demands for development policy space.

Realizing some of the massive implications for their development, developing countries, led by the Africa Group, refused this bait-and-switch, and refused to agree to new talks in the WTO on e-commerce (now called “digital trade”) at the December 2017 WTO Ministerial meeting in Buenos Aires, Argentina. The e-commerce agenda is still in the form of discussions, not negotiations, in the WTO. And developing countries have the policy space to promote digital trade by domestic firms now, and to build up their digital industrialization through various policies, performance requirements, subsidies, incentives and the like. It should not go unnoticed that the only country that has built up a true competition to the U.S.-based Google, Facebook, Amazon, etcetera is China – which did so through digital industrialization policies, not by opening up its market to foreign transnationals who had the benefit of government research funding and other subsidies, government procurement supports, time, scale, and other advantages.

But Big Tech and its advocates in the WTO are still pushing for this anti-development agenda with the goal of wearing down the resistance and gaining agreement at the next Ministerial. (They often do so with the support from some developing countries in an attempt to reduce the glaringly anti-development appearance of the agenda.) The current move to start talks is strongly opposed by civil society, and should not be accepted by the rest of the WTO membership. UNCTAD’s Trade and Development Report of 2018, *Power, Platforms, and the Free Trade Delusion*, is a must-read to understand the economic and political implications of digital trade, particularly Chapter III, “Economic Development in a Digital World” Prospects, Pitfalls, and Policy Options.” Updated research by civil society experts is also available on www.ourworldisnotforsale.net.

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Deborah James, May 12, 2017, *Huffington Post*

High-tech US-based transnational companies (TNCs) now represent five of the top seven largest corporations in the world, dominating information (Google, number 2), media (Facebook, number 7), retail (Amazon, number 6), and technology (Apple, number 1 and Microsoft, number 3), according to the World Economic Forum.

One of the best investments one of these companies can make is to change the rules under which it operates so that it can extract greater profits from the global economy while preventing their competitors from having a level playing field. They have long used trade agreements to lock in rules favoring their “rights” to make profits, while limiting governments’ ability to regulate them in the public interest, often in ways that could not advance through normal democratic channels.

You may have heard of the Trans-Pacific Partnership (TPP), a trade agreement negotiated by the Obama administration that was signed in 2016 but that never enjoyed enough congressional support to be submitted for a vote. The TPP was the first “trade” agreement to include extensive binding, so-called twenty-first-century rules for a package of digital issues, bundled under the title of “e-commerce.” While this label evokes a great way of promoting small and medium businesses’ ability to increase online sales, in reality it would have restricted countries’ right to regulate areas such as privacy and consumer protection, cross-border data transfers, net neutrality, and other issues of Internet governance (along with competition policy, intellectual property, and many other issues). Given that there are existing forums, from the Internet Governance Forum to the World Summit on the Information Society, in which businesses, governments, engineers, and civil society experts have long grappled over Internet issues in a multi-stakeholder format, the TPP’s attempted foray into these areas represented a corporate end-run around democracy and good governance. Not surprisingly, it was criticized by groups such as the [Open Digital Trade Network](#).

Trump abandoned the smoldering corpse of the TPP, but nearly identical provisions had been previously revealed in the proposed Trade in Services Agreement (TiSA). The TiSA is intended to lock in deregulation and privatization as designed by major technology, financial, logistics, and retail corporations for 50 participating countries. Although little known, the major obstacle that prevented negotiators from concluding TiSA negotiations during the twenty-second round in December 2016 was a major fight between the EU and the US over data privacy versus corporations’ desire for new “rights” to move data across the globe and to profit from their use without restrictions. (The EU has a strong system of rights on privacy and data protection, whereas the United States’ official policy favors the wishes of Google, Amazon, and other corporations over consumer protections.)

Unfortunately, Trump has not abandoned the TiSA, and he actually appears poised to jump-start the deal again soon. This should surprise no one who has noticed the gradual takeover by the Goldman Sachs wing of the administration. (I have written extensively about the TiSA, including [here](#), [here](#), and [here](#), and why it is a threat to jobs and to Trump’s base [here](#).)

US Commerce Secretary Wilbur Ross has also argued that the renegotiation of the North American Free Trade Agreement (NAFTA) should include updating it with e-commerce rules from the TPP, and Trump himself has mentioned the desire to “knock down barriers to trade” for giant technology companies that are increasingly bending his ear.

As it turns out, the corporations behind the push for e-commerce rules are forum shopping, and have brought their wish list to the Organization for Economic Cooperation and Development, which has published [policy guidance](#) on a variety of related issues; and to the G20, which just released its [Digital Economy Ministerial Declaration](#) [PDF]. However, agreements among members of these institutions are not binding on governments. To obtain enforceable e-commerce rules, corporations are going to the World Trade Organization (WTO). Since July 2016, e-commerce has been the top issue pushed by developed countries in WTO negotiations. If discussions lead to a mandate for

negotiations, the new rules would subject citizens of the WTO's 164 member countries to their far-reaching globe-altering, job-smashing, and potentially development-preventing implications.

Developing countries, which make up the great majority of WTO members, have, since its inception in 1995 demanded a series of changes to existing WTO rules as they realized existing WTO rules were antithetical to their development. A series of 100 proposals (mostly to remove rules from the WTO that constrain the use of development strategies) were folded into the Doha Round, (which was then dubbed the Doha Development Agenda in an effort to convince developing countries that this round of talks would focus on helping them use trade for development). Most egregious and in need of transformation, are agriculture rules, which allow rich countries to subsidize producers and to export subsidized products to the detriment of developing country farmers, who are not allowed to receive government subsidies even for domestic production.

Unfortunately, since then developing countries' proposals have rarely been discussed, while rich countries have imposed a [different agenda](#) of increased liberalization, more corporate rights, and limiting opportunities for countries to use the same policies that rich countries used to develop.

Industrialized countries now face crises because of the negative impacts of 20 years of job-killing trade agreements. Yet their trade negotiators push ahead to entrench a set of rules that go far beyond online retail sales, and that must be understood as an effort to shape the entire digitized economy of the future to corporations' benefit.

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

Proponents disguise their proposals in the Trojan Horse of being necessary to “unleash development through the power of small- and medium-sized enterprises (SMEs) using e-commerce.” 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 written by Google for its benefit.

I recently attended a forum on e-commerce of the UN Conference on Trade and Development (UNCTAD) that was well attended by corporate representatives masquerading as development experts. “E-commerce” — as in getting more citizens online, or facilitating rural Bangladeshi women selling homemade products directly to UK consumers — was not only held up as a silver bullet to solve every development challenge under the sun, but was also conflated with binding rules in the WTO on ‘e-commerce’ which include allowing foreign TNCs unrestricted access to domestic markets according to their own rules. But SMEs are the least likely to be able to compete with giant TNCs, which enjoy the benefits of scale, historic subsidies, technological advances, strong state-sponsored infrastructure, and a system of trade rules written by their lawyers. E-commerce in the WTO is a bait and switch.

For those concerned about jobs, decent work, our shared environment, development, inequality, and the public interest, here are 12 reasons to oppose new negotiations on “e-commerce” rules in the WTO.¹

1. Talks on e-commerce are pushing aside a development agenda that could dramatically reduce poverty. Millions of impoverished people, including farmers, could see their lives improve if changes were made to the existing rules on agriculture in the WTO, which I have written about [here](#)

¹ For the sake of simplicity, provisions repeated in many proposals are referred to here without identifying the multiple country sponsors of each provision or proposal. It should be noted that several developing economies have joined the papers of developed countries, e.g., the EU, but without any development provisions appearing to have been incorporated into those proposals.

and [here](#). The global Our World Is Not for Sale (OWINFS) network has long promoted a [turnaround agenda](#) (endorsed by hundreds of civil society groups) through a range of similar demands. But this agenda has received scant attention while all eyes focus on e-commerce” in the WTO this year. In fact, developed countries are likely to require starting “e-commerce negotiations as “payment” for developed countries to agree to deliver on the promises that they have failed to fulfill since 2001 — when the so-called Development Round was launched.

2. E-commerce proposals are premature rule-making. US companies seek to rewrite the global rulebook to lock in their current dominance in the field. Despite near-total supremacy in high tech, they want to undermine China’s resurgence as a global player, as it invests billions to develop high tech sectors under its “Made in China 2025” plan. US corporations also seek 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 potential consequences. Developing countries generally lack experience with many of the technologies being discussed, so they do not know what is the “best practice” with regard to a wide range of activities. Even the World Bank’s “World Development Report 2016: Digital Dividends”² noted that development benefits from digital technologies have lagged behind their rapid spread, and that few developing countries count on the requisite broadband access and other infrastructure, regulatory frameworks, human capital, and accountable institutions to reap the benefits. Recent UNCTAD reports show that a majority of developing countries do not have an adequate legal structure regarding digital trade, Internet governance, or cyber-security. Even US and EU rules on many of these issues have yet to mature. The benefits of digitalization could be immense for all, but not if the rules are tilted in favor of the powerful. That is why the WTO’s Africa Group [opposed establishing a mandate on e-commerce rules](#)³ in October. 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.

3. The “e-commerce” proposals would decimate jobs. Technologies driving the “fourth industrial revolution” intend to [disrupt labor markets](#), as flexibility is key to “innovation.” Well-paying jobs with benefits are being replaced by casual labor lacking in social protection or stability. Companies are transferring market risk onto the individual contractor or “independent worker,” who is not only paid less, but who lacks employment benefits such as sick leave, health care insurance, and retirement contributions — not to mention job stability. Often, as in the case of Uber, the company’s efforts to establish market dominance are at [direct odds](#) with workers’ ability to increase their pay. And while the danger to jobs from robots is exaggerated, many jobs will be replaced through automation. A 2016 World Bank [Development Report](#) estimated that a full 47 percent of jobs in the United States are at risk of automation, 65 percent of jobs in Argentina, 77 percent of jobs in China, and a whopping 85 percent in Ethiopia. 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.” The e-commerce proposals don’t create this change, but would accelerate its pace and make it more difficult for governments to mitigate the negative impacts. Rather than consolidating market access rights for TNCs to intensify this disruption, as the e-commerce proposals would do, countries should be able to utilize a range of policy tools to promote good jobs, social protections, and — particularly in developing countries — the structural transformation of their economies.

4. The e-commerce proposals would exacerbate inequality between countries. In Sub-Saharan Africa, [62.5 percent](#) of the population lacks access to electricity; [87 percent](#) lacks access to the Internet; and the majority do not have postal delivery to their home address. Poor countries have been clear that their concerns include increased access to energy, Internet, and other information and communication technologies (ICT) to close the digital divide; increased infrastructure for logistics, including transportation and postal systems; legal and regulatory frameworks; access to finance; and capacity building in technologies to help them prepare to benefit from e-commerce. But these issues

² World Bank. 2016. “World Development Report 2016: Digital Dividends.” Washington, DC.

³ Third World Network. 2016. “Africa Group’s Deadly Blow to E-com Thematic or Negotiating Issues Talks.” *SUNS* 8337. <http://www.twn.my/title2/wto.info/2016/ti161021.htm>

are generally not reflected in the proposals of developed countries, put forward by the largest e-commerce TNCs. Developing countries' proposals, meanwhile, often result in nonbinding promises of future aid that is rarely delivered.⁴ The fact that China is a major e-commerce player, via Alibaba, does little to mitigate the structural inequalities that would be entrenched between developed and developing countries. The e-commerce proposals would extend vast protectionism favoring companies based in developed countries, in the form of patents and copyrights for technologies and content, resulting in increased revenues transferred from the global South to corporations in the global North.

5. E-commerce proposals in the WTO could make us less safe. The EU's proposal on e-commerce at the WTO includes a ban on access to, or mandatory disclosure of, source code, for all WTO members. Governments, including the United States', 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 such "Internet of things" household devices as refrigerators and smart TVs (which were among the hundreds of thousands of devices utilized 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.⁵

As houses become "smart homes" and cities become "smart cities," the risk of secret, proprietary software becoming hacked puts us all at risk.

6. E-commerce proposals would promote greater inequality by reducing real competition and promoting monopolistic and oligopolistic behavior. "Is it Time to Break Up Google?" Jonathan Taplin wondered in *The New York Times* recently:

Google has an 88 percent market share in search advertising, Facebook (and its subsidiaries Instagram, WhatsApp and Messenger) owns 77 percent of mobile social traffic and Amazon has a 74 percent share in the e-book market. In classic economic terms, all three are monopolies.⁶

The control of information, media, and retail sales by these three firms is reaping unintended consequences for democracy, innovation, and the public interest. These TNCs are able to invest in new markets and operate at a loss for years in order to establish market dominance, as Uber⁷ and Amazon⁸ are doing in [India](#) and many of the hundreds of markets in which they operate. President Trump's new pick for antitrust czar, Makan Delrahim, is extremely weak on antimonopoly regulation. Without strong anticompetitive legislation, companies are consolidating further across sectors through acquisition — "Google buying AdMob and DoubleClick, Facebook buying Instagram and WhatsApp, Amazon buying, to name just a few, Audible, Twitch, Zappos and Alexa," notes Taplin. In addition, if a country is concerned about anticompetitive behavior, its courts will often require that source code be disclosed. But there is no exception in the EU's e-commerce proposal for cases in which courts require that source code be revealed. Proposals also call for dominant players

⁴ A proposal by the Friends of E-Commerce for Development will likely meet this fate while legitimizing negotiations in the WTO. See <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1477> and <http://www.twn.my/title2/wto.info/2017/ti170501.htm>.

⁵ Chief Information Officer, US Department of Defense. DoD Open Source Software (OSS) FAQ. <http://dodcio.defense.gov/Open-Source-Software-FAQ/>.

⁶ Taplin, Jonathan. 2017. "Is It Time to Break Up Google?" *The New York Times*. https://www.nytimes.com/2017/04/22/opinion/sunday/is-it-time-to-break-up-google.html?_r=0

⁷ Manjoo, Farhad. 2017. "Uber Wants to Rule the World. First It Must Conquer India." *The New York Times*. <https://www.nytimes.com/2017/04/14/technology/uber-india.html>

⁸ Bloomberg. 2016. "Amazon to Spend \$5 Billion to Dominate India E-Commerce."

to be able to expand their ability to influence regulation of their operations under the guise of “transparency for stakeholders.” How can SMEs hope to get established in a field where governments are restricted from enforcing anticompetitive behavior, and entrenched players are given a leg up in making the rules?

7. E-commerce proposals threaten countries’ futures by mandating the free transfer of their most precious natural resource: data. Uber’s most valuable asset is not cars or drivers, but its data on how people move around. Once a company dominates a field and is able to process raw data into intelligence, it can maintain its dominance to the exclusion of competitors, as *The Economist* argued in a recent article, “The world’s most valuable resource is no longer oil, but data.”⁹ “Free” services like Google or Amazon cloud services are able to access more data than we can imagine, and can transform it into intelligence that can be sold or rented to other companies for more profit. Yet nearly all e-commerce proposals include a mandate to promote cross-border data transfers — which they cunningly refer to as the “free flow of data” — by banning restrictions on data localization (such as the US military uses, which insists that its data be maintained on US servers) and other rules. Why should developing countries give away this valuable resource for free? A digital industrialization strategy would include creating domestic or regional data centers, as countries from China to Sweden have created, and which then can become important hubs for jump-starting software industries, gaming industries, Internet-related industries, and other data-based industries. 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 de-globalisation. What is sought is simply a fair place for developing countries, and for public interest, in the emerging global digital order.¹⁰

8. E-commerce proposals are a threat to our personal privacy and data protection. It is not only developing countries that should be concerned about cross-border data flows, aka “free flow of information.” We have witnessed an explosion of lawsuits by consumers discovering that their data from product or service use — from [Bose headphones](#) to [email management](#) to [sex toys](#) — was sold to other companies, usually without the consumer’s knowledge or consent. That means the personal data was stolen and/or abused; perhaps these “data flows” should be renamed “trafficking in stolen information.” As previously mentioned, the EU has standard-setting rules on personal privacy and data protection that were democratically debated and enthusiastically approved by voters. Many US companies do not meet these standards, and are not allowed to transfer data into the US. A 2017 study, the “Global Survey on Internet Security and Trust,” conducted by the Centre for International Governance Innovation and Ipsos, showed that consumers are reluctant to engage in online purchases because they don’t trust governments (65 percent); companies (74 percent); or that their data will be secure from cybercriminals (82 percent).¹¹ Last year, European groups sent a letter, as did international civil society,¹² urging the European Parliament to stand up for consumer protection and data privacy in the TiSA — but these same provisions are being introduced in the WTO.

9. E-commerce proposals would promote tax evasion and loss of needed public revenue, resulting in further monopolization at the expense of the public interest in all countries, but

⁹ *The Economist*. 2017. “The World’s Most Valuable Resource Is No Longer Oil, but Data: The Data Economy Demands a New Approach to Antitrust Rules.” <http://www.economist.com/news/leaders/21721656-data-economy-demands-new-approach-antitrust-rules-worlds-most-valuable-resource>

¹⁰ Singh, Parminder Jeet. 2017. “Developing Countries in the Emerging Global Digital Order – A Critical Geopolitical Challenge to which the Global South Must Respond.” IT for Change. <https://www.itforchange.net/Developing-Countries-in-the-Emerging-Global-Digital-Order>

¹¹ Centre for International Governance Innovation, IPSOS, Internet Society, United Nations Conference on Trade & Development, and International Development Research Center. 2017. “2017 CIGI-Ipsos Global Survey on Internet Security and Trust.” <https://www.cigionline.org/internet-survey>

¹² Consumers International et al. to European Parliament trade negotiator. 2016. https://edri.org/files/TiSA/globalletter_dataprotection_privacy_20161102.pdf

particularly in developing countries. As companies gain “rights” through the proposed e-commerce rules to more easily move labor, inputs, capital, and data across borders, they would be able to increase their transfer pricing practices and locate operations in countries with the least regulatory oversight and the lowest taxes, exacerbating the tax evasion and illicit financial flows that Global Financial Integrity recently identified as having drained US \$620–970 billion from the developing world in 2014, primarily through trade fraud.¹³ These lost revenues starve developing country governments, particularly in Africa, of the ability to make needed domestic investments to provide health care, education, infrastructure, and the future development of their economies. If a company is not required to have a local presence, how can corporate profits be appropriately taxed? At the same time, efforts are underway to extend the existing moratorium in the WTO on tariffs on e-commerce transactions. Removing the obligation of tariffs on cross-border trade puts brick and mortar stores at a disadvantage compared to e-commerce, and is, in economic terms, a public subsidy for the online businesses, for no apparent social benefit. But given that developing countries depend to a far greater extent on tariffs as a source of fiscal revenue (to pay for education, health care, and infrastructure) than do developed countries (which have more advanced systems of income, sales, and corporate taxes), eliminating e-commerce tariffs permanently would not only highly disadvantage brick-and-mortar stores, but would seriously impair developing countries’ ability to meet public investment needs, stunting their future development and increasing the likelihood of debt crises.

10. E-commerce proposals could increase the chance of a global financial crisis. Allowing unrestricted cross-border trade in financial data — and financial transactions — could bring vast unforeseen consequences. Despite the havoc wreaked by the global financial crisis, the financial services sector continues to demand unrestricted access to markets for innovative (regulation-evading) products and unrestricted financial flows. In the TPP, the US Treasury said 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 presumably in the WTO. 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 in-country 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 behavior, or a financial crisis? As the global economy becomes increasingly “servicified” and cross-border digital trade increases, the power of financial services suppliers such as Visa and PayPal will grow, as these often act as clearinghouses for international transactions that bypass the financial sovereignty of central banks.

11. E-commerce proposals would harm development by diminishing policy space, constraining developing countries’ ability to engage in digital industrialization by limiting commonly used strategies to boost growth and jobs. Corporate lobbies have been clear that they want localization 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 in which they have invested; or the use of local content or inputs. 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. The EU’s proposal also includes opening up government procurement — a topic explicitly excluded from the current WTO round. Opening up public purchasing (such as by promoting privatization through public-private partnerships, or PPPs) would put SMEs that are typically favored in such contracts at a serious disadvantage vis-à-vis foreign 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.

¹³ Spanjers, Joseph and Matthew Salomon. 2017. “Illicit Financial Flows in Developing Countries Large and Persistent.” By Global Financial Integrity. Washington, DC. <http://www.gfintegrity.org/report/illicit-financial-flows-to-and-from-developing-countries-2005-2014/>

The proposed e-commerce provisions also limit policy space by requiring countries, including Least Developed Countries (LDCs) to make on new commitments beyond those currently required under the WTO. LDCs are currently not required to take any commitments on the Trade-Related Investment Measures (TRIMS) agreement in the WTO, nor 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, when a government extends patent protections, the patent holder is required to disclose the invention, including any source code, as a quid pro quo for government intervention to protect their invention. Finally, many of the new proposals would preclude developing countries from regional integration, which is widely viewed as essential for their development, as envisioned, for example, in the [African Union’s Agenda 2063](#).

12. Perhaps most egregiously, e-commerce proposals would require that future services be subject to no regulations beyond those for non-digitalized services today. Under “Domestic Regulation” discussions in the General Agreement on Trade in Services (GATS), goods are increasingly being considered as services. Products are embedded with software that transforms them from, e.g., shoes into “fitness services,” or cars into “transportation services.” Proposals in the Domestic Regulation negotiations include a presumption of “technological neutrality” — wherein services must be operated in line with rules and schedules of commitments that countries agreed to before the new technology was invented. The intent is to future-proof commitments, even if the technology wasn’t available when the country made those commitments. However, many global South governments have made it clear they don’t accept this presumption. Curtailing public oversight of the potential implications of technologies that don’t yet exist may make no sense to an average person, but makes great sense to the corporations that favor only regulations that prohibit other regulations.

These corporations are making a coordinated effort to ensure that this is the principal deliverable at the upcoming eleventh WTO Ministerial Conference, which will be held December 11–14, 2017 in Buenos Aires. 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. Even for groups with differences of opinion about the potential impacts, it is clear that a thorough and open debate should transpire before countries adopt rules, the implications of which are far from certain. While e-commerce advocates argue that any discussions in the WTO will have development at their heart, and that developing countries should be “at the table” when the rules are developed, WTO experts have cautioned that TNCs and rich country governments act in their own interests, and they are setting the agenda and the terms. Closing the digital divide requires smart strategies that would be constrained by the e-commerce proposals.¹⁴

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 favor. To achieve a future in a digitalized 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.

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¹⁴ South Centre. 2017. “The WTO’s Discussions on Electronic Commerce: Analytical Note.” Geneva. https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_2_The-WTO%E2%80%99s-Discussions-on-Electronic-Commerce_EN-1.pdf