



Opening Spaces for Digital Rights Activism: Multilateral Trade Negotiations¹

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ABOUT THIS REPORT

This paper, authored by Burcu Kilic and Renata Avila, analyzes the role played by civil society organizations (CSOs) within discussions on the trade-related aspects of e-commerce before, during, and after the Eleventh Ministerial Conference of the World Trade Organization (WTO). It identifies systemic issues that may lead WTO Members to adopt rules that are unfavorable for users and consumers, and provides recommendations as to how CSOs can counter those issues. This paper further proposes a blueprint for constructing a positive, collaborative agenda for meeting the challenges of highly technical trade negotiations in the area of e-commerce. The report forms part of a series of research funded by the Internet Policy Observatory at the Annenberg School for Communication and the University of Pennsylvania.

ABOUT THE AUTHORS

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ABOUT PUBLIC CITIZEN



Public Citizen is a national, nonprofit advocacy organization that has been standing up to corporate power and holding government accountable for more than 45 years. Public Citizen's Digital Rights Program provides technical assistance to negotiators and government officials on digital trade issues and helps inform and mobilize CSOs and advocates to protect the rights and privacy of internet users. PC's broad background in international trade law and policy, intellectual property, and information technology combined with its experience on trade agreements, allows it to provide highly detailed expert analysis and legislative solutions. ourdigitalrights@citizen.org

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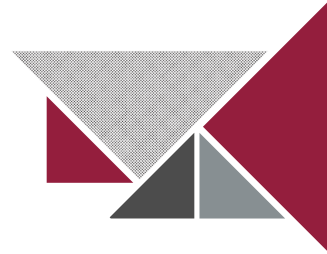
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ABOUT THE IPO



The Internet Policy Observatory (IPO) is a project at the Annenberg School for Communication at the University of Pennsylvania. The overarching goal of the program is to deepen the reservoir of researchers and advocates in regions where Internet freedom is threatened or curtailed and to support the production of innovative, high-quality, and impactful internet policy research. The IPO facilitates collaboration between research and advocacy communities, builds research mentorships between emerging and established scholars, and engages in trainings to build capacity for more impactful digital rights research and advocacy.

Through the IPO's three-pronged approach, the program seeks to *educate* a network of advocates and researchers, *produce* high-impact, locally-relevant research in furtherance of Internet freedom objectives, and help *connect* researchers and mentors to foster collaboration, mobilization, and increase research impact.



SUMMARY

Trade agreements today are a leading venue for rule-making at the global level. These agreements cover a wide array of subjects that extend far beyond traditional trade matters. Starting in the early 1990s, such pacts have become effective tools for dominant industries to dilute or eliminate domestic policies, minimize regulatory costs and maximize corporate interests. In many cases these agreements constrain domestic regulations and establish mechanisms to challenge domestic consumer protections.

Industry is using the growing commercialization of the internet and trade negotiations to establish binding rules covering the digital realm. In recent years, negotiations of agreements like the Trans-Pacific Partnership (TPP) and discussions at venues such as the World Trade Organization (WTO) have increasingly touched on digital issues, such as cross-border data transfers, online privacy, cybersecurity, regulation of spam, and net neutrality. Large tech companies have high stakes in these discussions, as they would benefit greatly from the elimination of domestic regulations, which they call “trade barriers.” This would pre-emptively limit the policy space for individual governments to enact strong consumer protections and reduce the firms’ compliance costs by imposing uniform global rules that the industry has a hand in creating.

Absent fundamental changes in both the substance and process of trade negotiations, trade agreements are likely to have negative effects on the open, nondiscriminatory, and transparent internet; democratic decision making; and access to quality or accessible public services.

Civil society organizations (CSOs) can make a difference in international trade policy making. Indeed, effective CSO engagement is essential given the closed, secretive processes of trade negotiations, which are insulated from the input or oversight of the public. CSOs can provide technical assistance to involved governments, bring new perspectives, build local capacity, educate potentially-affected parties now unaware of these processes and advocate with and for consumers and users.

The most successful CSO interventions have involved internationally coordinated campaigns uniting CSOs across borders to support allied governmental actors and hold accountable governments promoting positions contrary to the public interest. This methodology successfully halted several efforts to significantly expand the scope of WTO rules to include other non-trade matters. By comparison, acting alone as individual organizations, CSO impact may be limited in scope, scale, and sustainability. Effective engagement of CSOs as coalitions in trade policy processes is critical to outcomes that promote the public interest.

This paper analyzes the role played by civil society organizations with respect to discussions on the trade-related aspects of e-commerce before, during, and after the Eleventh Ministerial Conference (hereinafter, MC11) of the WTO. It also explores the behaviour of these organizations during the ministerial proceedings. It identifies systemic factors that may lead WTO Members to adopt rules that are unfavorable for users and consumers, and provides recommendations as to how CSOs can counter those factors. These recommendations include use of the strategies and tactics that have proved effective in past CSO trade interventions. Increased, targeted resources in the short and medium term will be critical to build capacity and increase the effectiveness of CSO advocacy. This paper concludes with a proposed blueprint for constructing a positive, collaborative agenda to overcome the challenges particular to effective engagement in the context of highly technical trade negotiations in the area of e-commerce.



INTRODUCTION

The Eleventh Ministerial Conference of the World Trade Organization was held in Argentina from December 10-13, 2017. The Ministerial Conference, which is the top decision-making and policy-setting body of the WTO, meets every two years. These sessions bring together minister-level representatives of the countries that are members of the WTO to discuss and negotiate the forward agenda of the organization. The 164 ministers, as well as their appointed delegates and ambassadors, represent each nation's government and are responsible for overseeing the functioning of the organization.

The WTO Ministerial Conferences have been the main international forum where the agenda is set with respect to establishment of binding rules for the global economy since the WTO's establishment in 1995. The mandates agreed at the Ministerial meetings determine the work plans for the WTO until the next Ministerial meeting. Negotiations to establish new WTO rules must be approved in this venue.

Representatives from diverse business interests, trade unions, research think tanks, academia, consumer advocacy organizations, and other civil society organizations register for the Ministerial Conference to participate as stakeholders. However, the ability of these non-state actors to engage substantively in a WTO Ministerial Conference is limited, as their level of access allows for few opportunities to actually meet with ministers and delegates. At most, they hope to catch these policymakers for a quick discussion in the corridors or at private side-events. The WTO rules do not allow them to attend the actual proceedings—even as observers—nor to obtain copies of many of the documents under discussion.

With these constraints, it is particularly difficult for under-resourced civil society organizations to effectively engage in the Ministerial process. Moreover, the process at the WTO's Geneva headquarters and in key member nations' capitals in the months leading to the ministerial pre-determine the agenda of the typically three-to-four day Ministerial. Lead up negotiations and Ministerial Conference activities are opaque and effective engagement requires not only specialized expertise in a diverse range of trade issues, but also familiarity with the Ministerial process. At the Ministerial, side events organized outside the formal state-state process are often invitation-only.

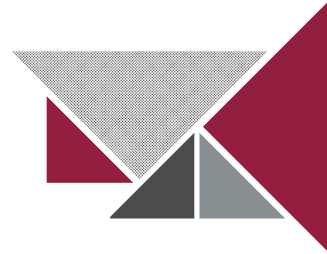
Multinational companies are able to deploy their substantial resources and expert lobbyists to engage continually in

Geneva and in numerous nations' capitals leading up to the Ministerial. And at the Ministerial, representatives from these interests organize major side events, conferences, and receptions. Their lobbyists are able to wine, dine, and mingle with policymakers during invitation-only side conferences and one-on-one power lunches.

Past CSO strategies that successfully affected the outcomes of Ministerial meetings used the strengths of civil society, including issue-expertise and the ability to conduct mass public education and mobilization. This creates a counterforce to the industry efforts in the lead up to and at the Ministerial. This work requires dedicated staff and resources. CSO activities at a ministerial can have limited impact absent the capacity to work with government officials beforehand and create public awareness in key countries. For instance, without prior relationship building, CSO side events may be attended mainly by representatives of other CSOs. And while CSOs often organize protests at the Ministerial Conference venue, the impact of such activities on governments' decision making at the Ministerial is limited unless public education and organizing work has been done in the officials' countries prior to the meeting and technical work has been done directly with the officials to inform them about concerns and alternative policy approaches.

Understanding the power dynamics among WTO member countries is also critical to devising strategies that can affect the outcomes of the Ministerial process. A small number of the most developed economies have historically dominated the ministerial agenda-setting. These governments effectively used the forum to advance the agendas promoted by their multinational corporations. However, because the WTO's rules explicitly require consensus decision making on some issues, including launch of negotiations to establish new WTO agreements, the balance of relative bargaining power among the WTO Members has noticeably shifted. New blocs and alliances have formed between leading developing economies and least developed countries (LDCs). As unified fronts, these nations have been able to block some initiatives pushed by the previously-dominant countries they deemed contrary to their interests. They also have promoted alternative agendas focused on development priorities that the incumbent interests have often blocked. The result is that it has become increasingly difficult for the WTO Members to reach consensus on the launch of talks to establish new WTO agreements or to alter the terms of existing ones.

Growing public awareness of the sorts of decisions taken at the WTO has resulted in WTO Ministerial Conferences becoming more contentious. Talks collapsed altogether at the 1999 Ministerial in Seattle and the 2003 Ministerial in Cancún while the Doha Round of WTO negotiations



launched in 2001 has never been concluded due to serious disagreements between developed and developing countries.² At this juncture the WTO Secretariat and host country will characterize a Ministerial Conference “successful” if consensus is reached on any specific agenda items in advance of or during the meeting and thus any unified Ministerial Declaration can be issued. For example, the 2016 Ministerial in Nairobi was considered a win of realism over ambition due to several relatively minor agreements centred on agricultural issues.³ Despite such conflicts, powerful interests systematically undertake efforts in Geneva between ministerial conferences and at the bi-annual Ministerial conferences to obtain new authority from WTO member countries to engage in substantive policy negotiations that can result in new binding WTO rules. Obtaining authority to launch negotiations to establish a new WTO agreement on e-commerce has become a central goal.

THE 2017 MINISTERIAL CONFERENCE

In the lead up to the recent MC11, there was no agreement among WTO members as to what the event should focus on or seek to achieve⁴. The host government, Argentina, sought to position itself as the leader of the emerging economies from the Global South. Many developing countries were strongly opposed to beginning discussions on any new issues until the WTO adequately addresses food security and other development issues still unresolved from the 2001 WTO Doha Round agenda. However the WTO Secretariat and a small group of member countries, including host country Argentina, were dedicated to launching negotiations on new issues, particularly on “e-commerce”. This effort had wide support from the Big Tech lobby.

At the second Ministerial Conference, WTO member countries agreed to a definition of “e-commerce” as “the production, distribution, sale or delivery of goods and services by electronic means”⁵. Despite the narrow definition, proposals made to the WTO under the banner of e-commerce have focused on issues as broad as consumer privacy and protection, data flows, protections of electronic source code, and digital infrastructures.⁶ For those seeking to develop new WTO rules on these issues to succeed, WTO member countries had to first unanimously approve a new mandate calling for such negotiations.

Despite these goals, the MC11 was characterised by dispersion, lack of direction, and few concrete outcomes. The effort to achieve consensus on the launch of new WTO e-commerce negotiations failed. In part, this outcome

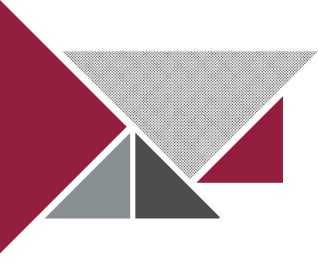
resulted because several prominent developing countries, including India and South Africa, withstood pressure to accede to negotiations they viewed as against their interests. They were joined in this effort by other countries in the Africa Group. In fact, the Ministerial Conference ended with neither a Ministerial Declaration nor any consensus on any of the proposed priority issues, leaving the Argentinian host government with little to show for its efforts and the WTO leadership going back to Geneva with no mandate.

Throughout the MC11, CSOs faced substantial challenges. The Argentinian government, eager to show that it could deliver a smooth Ministerial Conference in advance of the upcoming Argentinian G20 in late 2018, took extreme, controversial measures to prevent any controversy or disturbance. In Buenos Aires it placed heavy and extended security perimeters around the various conference sites, closing roads and requiring people to provide identification and justification for entering certain areas of the city. Puerto Madero, the restricted zone where the Ministerial took place, was basically a full-service compound, allowing the Ministers to attend the event while limiting their interactions with local unions and activists.

Beyond these physical barriers, the government also conducted a restrictive vetting process. Many CSOs discovered a few days before the start of the Ministerial that the Argentinian government had blacklisted around 60 of their representatives from both Argentina and abroad, based on alleged security concerns⁷. Many Argentinian CSO representatives had their accreditations revoked, while some international experts were prevented from even entering the country. The list of those blacklisted included prominent voices representing CSOs from Brazil, Chile, Ecuador, and the European Union, as well as journalists and unionists.

The sudden exclusion of CSOs generated widespread condemnation from CSOs, governments, and eventually the WTO itself, as the WTO secretariat called for a correction of the host country’s policies.⁸ Some CSO representatives’ accreditations were restored, allowing them into the country and the conference, but others remained banned for the duration of the conference.

This paper analyses the role played by CSOs within discussions on e-commerce before, during, and after the MC11, as well as their tactics during the proceedings of the event. The research is based on a desk review of literature, face-to-face interviews with various stakeholders (civil society, government, business), and authors’ observations over the eight-month period leading up to and including the MC11 (May through December, 2017). Through the presentation of



the challenges and opportunities faced by CSOs in the WTO Ministerial, this paper also makes recommendations for CSOs focused on digital rights, to increase their presence and influence in e-commerce-related trade discussions and global trade negotiations more broadly.

THE RISE OF DIGITAL ECONOMY AND NEW CONSENSUS ON E-COMMERCE

I. Big Tech & the Evolution of E-commerce

Over the past three decades, the internet has grown to encompass nearly all aspects of economic and social life and has spread to countries around the world. During this time, a small number of companies have emerged as the dominant architects of the global digital system, shaping how content is circulated, services are performed, and infrastructures are designed.⁹ By the end of 2018, half of the world's population was expected to be online,¹⁰ and more than half of all households will have access to internet services provided largely by five dominant Western companies: GAFAM (Google, Apple, Facebook, Amazon, and Microsoft) and their four Chinese counterparts, BATX (Baidu, Alibaba, Tencent, and Xiaomi). In this paper, we refer to them as “Big Tech.”

In the past, digital technologies, and the issues related to them, were subject to debate primarily in developed economies and the upper segments of society due to low levels of access and affordability. Now, with skyrocketing internet and mobile penetration rates, those debates must be global. The dominant role of Big Tech in the transfer of data and personal information across borders presents new global trade challenges on issues ranging from competition to international consumer and data protection standards. As explained by Sir Tim Berners-Lee, “Dominant platforms can lock in their position by creating barriers for competitors. They acquire start-up challengers, buy up innovations and hire the industry's top talent. Add to this the competitive advantage that their user data gives them, and we can expect the next 20 years to be far less innovative than the last.”¹¹

Historically, lack of regulation at the domestic and global level has allowed Big Tech to enjoy an extremely liberal global marketplace as it pertains to e-commerce and digital technologies. However, a recent series of scandals surrounding the abuse of personal data, culminating in the revelations that political firm Cambridge Analytica harvested the data of 50 million unknowing Facebook users¹², has resulted in declining consumer trust and brought about talk of new regulations for information and

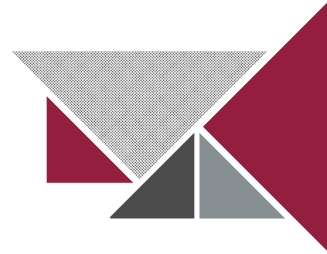
communication technology (ICT) industries. This marks a turning point from the long-established and relatively uncontested assumption that data should be able to flow freely across borders with minimal restrictions and few government regulations. Indeed, there have also been new calls for regulation of online platforms and demands by citizens, advocacy organizations, and governments for improved privacy protections. These recent debacles have amounted to a public relations disaster for Facebook and also have provided civil society organizations with new ways to approach constituents with regard to discussing e-commerce as well as data protections and regulations.¹³

E-commerce issues centered on the global “sharing economy” have also become contentious, as myriad local and municipal regulations have been implemented by governments seeking to deal with the economic and societal impact of companies such as Airbnb and Uber. For a few years, these platforms operated without regulatory oversight, but local governments have begun to implement policies to tax and regulate these industries in response to rising public health, economic, security, and labor concerns¹⁴. While these companies have been able to operate without much regulation in their early years, it has become clear that the laissez-faire policies of self-regulation they have enjoyed are being challenged by policymakers who argue that new up-to-date regulations are needed in these markets.

These prominent technology companies are among the most profitable businesses in the world¹⁵ and have significant resources with which to oppose new regulations. One avenue through which they can combat regulation is via trade policy. As public opinion grows more skeptical of the dominant position of these online platforms and as regulators—particularly across Europe—weigh in more heavily on the need for tighter rules, Big Tech is seeking ways to neutralize this regulatory push. This includes codifying Big Tech's dominance via multilateral trade agreements¹⁶ that would prohibit individual jurisdictions from crafting policy.

II. Regulating (and Deregulating) the Internet Through the WTO

It is in the interest of Big Tech companies to preserve the unregulated status quo that they have enjoyed for the last several decades and to neutralize challenges that national and local regulations might pose to their business models. To achieve those ends, they aim to connect those yet to be connected to the internet via their platforms, consolidating their positions as providers of services and infrastructure of local and national governments, and to preserve the free flow of data globally, with minimum privacy and data-



protection restrictions. In recent years, Big Tech has sought to achieve these goals via the WTO.

With the support of the WTO Secretariat and some developed countries, over the past few years Big Tech has been pushing for a new WTO agreement on e-commerce. Given the WTO's multilateral span, encompassing most of the world's countries, such an agreement would have implications for almost every aspect of the digital economy.

Such an agreement also could significantly threaten the public interest. For example, codifying the "free flow of data" in an enforceable multilateral agreement would provide technology companies a powerful new venue to contest, via business-friendly WTO arbitration processes, recent privacy protections that have been passed by individual jurisdictions.¹⁷ Powerful commercial interests often recruit a WTO member country to challenge other countries' policies.

The prospect that the launch of e-commerce negotiations at WTO would result in controversial rules is amplified by the complexity of these issues, which makes it difficult for WTO delegates specialized in trade matters to understand the wide implications of the kinds of e-commerce rules industry seeks. Compounding this problem is the closed, secretive nature of the WTO process. The WTO historically has offered very few mechanisms for those who seek to protect consumer rights to participate in its processes or educate delegates and ministers.¹⁸ As such, Big Tech lobbyists that have the resources to meet officials in capitals and wine and dine those in Geneva become the de facto experts within a forum such as the WTO, and use this special advantage to inform and persuade these important policymakers. If the WTO Members do eventually reach an agreement on e-commerce, the WTO, influenced by Big Tech, might well become the space that determines how data flows around the world, and whether safeguards are offered to citizens with respect to vital consumer protections, safety and security regulation, and other broad public policy areas that protect the rights of the individual and the interests of society.

Three Potential Gains for Big Tech at the Global Trade Negotiations

There are three concrete means by which Big Tech could potentially "win" in the global trade frame: 1) by playing a major role in improving connectivity and determining global internet markets; 2) by constructing enforceable WTO rules that mandate the free flow of data and encourage weak data regulations; 3) by preventing domestic regulation that could constrain their current businesses models. Each situation is visited in the following subsections.

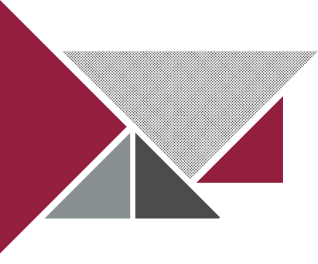
- **Connecting the next billion**

The first priority for Big Tech is to lead the effort to "connect the next billion"—a term for the worldwide population that still lacks internet access—allowing it to determine the way the internet will be provided to citizens from countries all around the world.¹⁹ For these companies, increased connectivity is synonymous with market expansion. In the global trade arena, technology companies look to achieve this objective via a quid pro quo arrangement with developing countries. In practice, companies offer to provide technology to least developed countries (LDCs) and regions that lack access to the internet or mobile infrastructure, in exchange for favorable market protections and regulations.

Companies have used the WTO to trade technological infrastructure for favorable policy in the past. A prime example is the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS), a WTO agreement that took effect on January 1, 1995. Many developing countries vehemently opposed inclusion of such rules in the WTO. The industry argument aimed at quelling the opposition was to frame the new WTO rules as part of a bargain: new technologies were offered to developing countries in exchange for increased regulatory protections for intellectual property (IP).²⁰ By setting standards for IP regulation worldwide, TRIPS has been a boon to multinational corporations that engage in the export of IP. However, the amount and quality of technology transferred to developing countries has been minimal²¹ and the new rules resulted in negative repercussions for everyday citizens. For example, the patents and enforcement rules in TRIPS reduced the availability of generic versions of lifesaving medicines in many developing nations, creating severe access, affordability, and public health issues.²²

The example of TRIPS provides a potential parallel to the current push for a new WTO agreement covering the broad area of e-commerce, as well as the inclusion of these issues in various bilateral and regional free trade agreements. Big Tech and their associated charities, as well as Chinese companies,²³ are racing to connect the disconnected²⁴ and provide critical infrastructure for economically disadvantaged populations. While few would argue that connectivity is not an admirable aim, Big Tech pursues it with the goal of both opening up new markets of online consumers and garnering these consumers' data. The companies spearhead the development of these markets by offering affordable devices, free applications and services, and, in some cases, even free access to parts of the internet.

Recently, the rapid digitization efforts that have been taking place in developing countries have focused largely on mobile technologies, and these market decisions have long-



term effects on how and in what way consumers in these countries can use the internet. This priority shift, from a focus on personal computers to one on mobile devices, offers less productive and creative possibilities for users in the developing world. Many productive occupations enabled by the internet (web development, word processing, graphic design) are near to impossible to carry out via mobile devices and without high-speed broadband connections.

One mistake that civil society has made in the past is to assume that the race by telecoms and Big Tech to connect the next billion is due to an ideological commitment to information as a human right that runs in parallel to their business models. In reality, it is more related to the economic and growth-related priorities of those same companies. The current debate around increasing access lacks any discussion of multi-faceted programs—such as one laptop per child, which advocated for the development of creative capacities and literacy for the poor to be able to fully develop the potential to code, to create hardware, and even to be skilled in robotics—to actually provide new users with digital literacy and agency.²⁵

Instead, the connectivity agendas of today are focused on enabling consumptive behavior. In many cases, current mobile products offered in developing countries allow users to access only a previously installed set of websites, blocking any ability to create and innovate. In addition, “zero-rating” practices are especially common in the developing world. With “zero-rating,” an internet service provider applies a price of zero to the data traffic associated with a particular application or class of applications—usually owned by Big Tech—so the data does not count toward any data cap in place on the internet access service.²⁶ Big Tech platforms are often the beneficiaries of zero-rating schemes, which not only consolidates their dominance in the market but also affects content consumption, limits competition from small players, and has implications for privacy and security. Unlike desktop and laptop computers, mobile phones are usually linked to registered SIM cards.²⁷ Accordingly, this emphasis by Big Tech on mobile access increases the risk of surveillance and profiling of populations.

Providing technology to developing nations, a process often referred to as “digital aid” is ostensibly done to promote connectivity and commerce in developing countries and is regularly included in national poverty-reduction strategies. However, this digital aid often comes at a price: support for Big Tech’s regulatory agenda. That agenda may cause efforts to protect the public interest, such as via new regulatory standards to protect digital privacy and dignity, to instead give way to corporate interests, such as data extractive practices that would ultimately hurt rather than benefit local economies.

- **The push against national regulation and restrictions**

Until now, Big Tech has enjoyed a vastly unregulated global marketplace. However, as discussed above, a series of recent scandals involving the abuse of personal data has led to a backlash from the public and from national regulators. What could be a prime political opportunity for those concerned with the public interest to demand both better protections and regulations and an equitable balance between commercial and consumer rights is also a direct threat to the interests of Big Tech. Compounding the concerns of these technologies companies is the forthcoming implementation of the European Union’s General Data Protection Regulation (GDPR). This law, which entered into effect on May 25, 2018, provides higher standards of data protection to EU citizens than ever before. That is yet another reason why companies have adopted the strategy to push for lower standards globally, as an attempt at blocking the possibility for the European standard on data protection to become the global norm.

The most desirable scenario for Big Tech is to have lax, uniform, global rules and to avoid fighting political battles in individual jurisdictions. In a 2010 white paper entitled “Enabling Trade in the Era of Information Technologies: Breaking Down Barriers to the Free Flow of Information”, Google argued that “trade officials should work to ensure that all governments accept the same presumption for the Internet – a presumption that governments may not restrict online information flows.”²⁸ It is likely that given recent changes in public opinion toward internet companies Big Tech will double down on this rhetoric to protect its interests. As such, one of the major priorities for technology companies is to push for rules in trade agreements that hinder signatory countries’ development of new legislation and regulations, and chill government scrutiny targeted at their business practices. Increasing awareness about consumer privacy concerns, the exponential development of smart surveillance technology, and security vulnerabilities are pushing governments to ask for more from Big Tech—such as the use of local data storage or servers, data procured for government to be stored locally, or code to be made available for inspection.

The backlash against platforms may accelerate even more regulation as countries and data protection authorities raise serious concerns about Big Tech’s ability to self-regulate.

- **Data flows: trade issue or human rights issue?**

The economies around data flows are becoming a greater share of world GDP. Today, the global circulation of data



is not just circulation of information but also circulation of capital, with enormous consequences for the distribution of wealth; social justice; and fundamental human rights. These data flows cross multiple technologies with varied priorities and associated practices. For example, the free circulation of data is a necessary condition for many technologies, particularly for cloud computing technologies. Data also cannot be discussed in isolation from machine learning and online service platforms and, more recently, artificial intelligence.

Big Tech lobbyists have targeted the WTO and other trade negotiating venues and adopted trade jargon to argue that data “liberalization”—in which data flows freely across borders—contributes to the economic growth and human development of all nations. They argue both that the free circulation of data contributes to global economic development and innovation, and that restricting data flows equates to restricting the availability of information. This narrative, essentially equating liberalized digital markets to freedom of expression ideals, enables and encourages massive and indiscriminate global data exploitation models. This also serves to equate any government that wants to restrict data flows for legitimate reasons—such as to offer data protection to their citizens—with authoritarian governments seeking to limit political speech.

Once dragged into the trade narrative, privacy and data protection rights become a form of protectionism and assume the related economic baggage in addition to being posited as constraints on freedom of expression. Under WTO rules, signatory countries must conform all existing and future domestic policies to the terms of the agreements that the WTO enforces.²⁹ Countries can challenge the policies and practices of other countries that do not meet these standards. A tribunal of three trade experts decides these cases. Trade sanctions can be imposed against a country unless and until non-conforming domestic policies are eliminated or changed. As a result, countries always almost eliminate or alter successfully challenged policies. Thus, the inclusion of WTO rules on e-commerce redefining privacy and data protections as “trade barriers” would expose countries with the strongest privacy and data protections to direct challenge and inhibit other countries from enacting such policies. Indeed, increasingly the Big Tech response to instances of governments creating rules about how data travels across their borders is to attack such policies as “digital protectionism”—a label that is easy to assert, hard to define, and deeply polarized.

A good example of this broad characterization is the GDPR. Many consider the GDPR to be one of the most important recent developments in the promotion of global privacy and

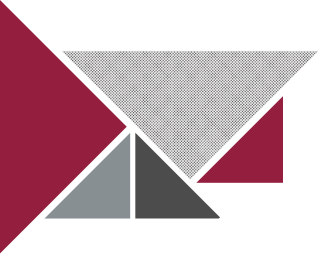
data protection standards.³⁰ Industry organizations affiliated with Big Tech attacked this legislation as a threat to freedom of expression and the media writ large³¹. The big technology companies are concerned about the implications of this regulation for their current business models based on data collection, and within trade and policy debates they have portrayed it as a move fragmenting the global internet and stifling technology and innovation.³² Lobbyists for these companies continue to push for the deregulation of data in the context of trade negotiations, with the goal of subverting current regulation and preventing other countries from adopting EU-style standards.

The WTO and its Digital Trade Agenda: Aligned Interests and an Immediate Future Challenge

- **The MC11: A win for everyone?**

The calls for a new mandate on e-commerce were loud and clear in the lead up to and during the MC11. Several nations, including Argentina, Chile, China, Colombia, Costa Rica, Kenya, Mexico, Nigeria, Pakistan, Sri Lanka, and Uruguay, formed an alliance called the Friends of E-commerce for Development (FED) to corral the unanimous support necessary to call for the new negotiation mandate on e-commerce that they argued would lead to growth, narrow the digital divide, and generate digital solutions for developing and least developed countries. Despite these efforts, unanimous support was not reached and the proponents of new negotiations were unable to secure what is usually considered the first step toward a new WTO agreement. However, by the end of the MC11, Australia, Japan and Singapore, supported by FED and its allies, had consolidated the support of more than seventy countries to start a discussion of new initiatives to conduct “exploratory work together towards future WTO negotiations on trade-related aspects of electronic commerce.”³³

Rather than achieving the formal, consensus-driven, multilateral agreement to begin negotiations on e-commerce, these efforts at MC11 were instead successful in creating ad hoc plurilateral procedures in which a subset of like-minded WTO members would advance discussions on these issues with an eye toward achieving a mandate at a future Ministerial Conference.³⁴ This practice was praised by WTO Director General Roberto Azevedo, who noted during his MC11 closing speech that, in spite of failing to reach any agreement within the system, “large groups of members have come together to advance issues of interest to them and to the global economy.”³⁵ However, this shifting focus on closed plurilateral negotiations between groups of like-minded countries provides even less space for civil society



engagement than the traditional WTO processes. By the end of 2018, the group had already held a few closed-door meetings. There is no publicly-available information about the discussions taking place. However, the group expressed interest in starting text-based negotiations as early as March 2019. For proponents of new negotiations, this plurilateral approach was the best option they could achieve at MC11 to build momentum for the establishment of binding global rules covering the sphere.³⁶ The group's formation and subsequent discussion meetings serve as a first step to eventually achieving their ultimate ambition – a multilateral WTO agreement on e-commerce rules.

If Big Tech is able to capture trade negotiating venues to codify unregulated digital markets worldwide, it could shape the development of the digital economy for years to come. The enforceable rules they envision of unprecedented scope extending well beyond traditional commerce could constrain the ability of states to regulate a rapidly changing digital environment in the areas of consumer rights, privacy and other human rights; anti-competitive practices; labor law; government data, cybersecurity, and national security; among others.

III. CSOs Engagement in Trade Negotiations

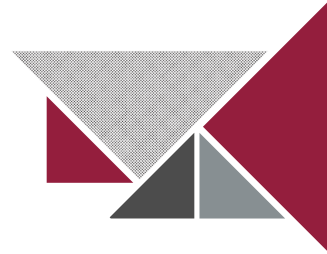
Technology companies have set their sights on the WTO as an institution that could play an important role in shaping the future of the internet. Accordingly, Big Tech companies are increasingly investing resources in lobbying efforts to influence the global trade landscape and push for inclusion of binding rules that benefit them in the area of e-commerce. As is clear from the discussion above, the needs of Big Tech are not necessarily in line with the public interest online. It is imperative that civil society organizations be able to engage effectively in the WTO process in specific and trade negotiations in general in order to represent the public interest for users and consumers. This section provides an overview of possible entry points through which CSOs can engage in these debates, ways that these groups could craft and carry out a digital agenda, potential forms of collaboration between digital rights organizations and other civil society groups engaged in trade issues, and calls to action to improve civil society impact in these spaces. This section is based on observations of civil society meetings held at the MC11, the preparatory events held in advance of those meetings, the specific activities and actions undertaken by CSOs during the MC11, as well as the reflections provided by these stakeholders after the MC11.

Trade-Focused CSOs and the New Digital Trade Agenda

Throughout the last two decades, in both the streets and the corridors of power, CSOs have garnered expertise in developing and launching campaigns and actions around specific trade negotiations and issues. A methodology of effective campaigning has been developed, building off of CSO engagement in the Uruguay Round negotiations that led to the establishment of the WTO and the late 1980s Canadian campaigns relating to the Canada-U.S. Free Trade Agreement (CUSFTA). The efforts of CSOs to work with countries concerned about the risks associated with the use the “trade” framework and General Agreement on Tariffs and Trade (GATT) negotiations to set binding one-size-fits-all rules on service sector regulation, intellectual property, government procurement and more helped to bolster the efforts of Brazil, India and Uganda to preserve member countries’ policy space. Lessons learned through this process as well as Canadian CSO strategies and tactics from the CUSFTA negotiation were improved in the context of CSO engagement and campaigning relating to the negotiation of the North American Free Trade Agreement (NAFTA) and the end game of the GATT Uruguay.

Even as some marginal improvements were made relative to the original Uruguay Round agenda, CSO engagement proved insufficient to shape the 1995 WTO, 1988 CUSFTA or 1993 NAFTA in the public interest or to thwart the conclusion of resulting deals that undermined the public interest. However, by the late 1990s, when a new push was launched to launch a “Millennium Round” of WTO negotiations that would have greatly expanded the scope of WTO rules and on a parallel track the Organization of Economic Cooperation and Development launched talks to create a Multilateral Agreement on Investment, CSO know-how and capacity had grown to meet the challenge.

The effective methodology of CSOs involved connecting country-based multi-sectoral coalitions in internationally-coordinated “inside-outside” campaigning that can operate simultaneously on the local, national and international levels. A core team of CSOs developed a plan that categorizes countries as allies, persuadable and opponents on each key issue. CSOs with technical expertise on the issues being discussed work to educate trade officials in capitals and delegations in Geneva, engage with groupings of countries at conferences around the world, and educate other CSOs, academics and non-trade policymakers whose areas of interest had become subject of “trade” negotiations. And they work to support governments that form groups of like-minded countries within the WTO process with research, analysis, outreach to other delegations and trainings and



briefings. CSOs with campaigning capacity conduct public education and organizing activities in key countries to inform and activate the public, engage parliamentarians and build support for, persuade or thwart the relevant governments with respect to their positions at the WTO.

The global public first became widely aware of civil society's activities when the November 1999 "Battle of Seattle" was beamed live to televisions worldwide. The mass mobilization that combined direct action and labor marches, environmentalist stunts, teach-ins and educational events, that took place in the streets of Seattle, Washington during the WTO's Ministerial Conference, marked a historic turning point for trade activism. It showed civil society united across borders could engage effectively to alter the outcomes of bodies, like the WTO, designed to be insulated against democratic accountability and started a new, more radical phase in transnational social movement organizing.³⁷

But the outcome in Seattle, with key blocs of WTO member countries rejecting the launch of new negotiations to further expand the scope of WTO rules, was the result of three years of intensive work leading up to the Ministerial. Hundreds of one-on-one and group briefings and meetings had been conducted with government officials in capitals and in Geneva. Mini-campaigns were organized to influence the inside process leading to each relevant WTO discussion and decision point leading to the ministerial. Simultaneously, multiyear campaigns promoting the common international strategy had been conducted by national coalitions of CSOs in numerous countries to educate and activate the public and domestic officials.

Prior to the Seattle WTO ministerial, this methodology had been honed in the successful CSO campaign that derailed the Multilateral Agreement on Investment (MAI) negotiations in 1998. It was then applied in the context of the next effort to expand the WTO's scope, the Doha Round, and contributed to the reality that to this date a grandiose WTO expansion agenda has been thwarted. The next challenge is to build the capacity to shape or stop the next WTO expansion priority: e-commerce.

CSOs from traditional social sectors, such as labor; the environmental, consumer, faith and family farm movements and public health campaigners have become savvy in these trade arenas. They have a history of working in these spaces, a solid understanding of global trade policy, and, after decades of developing a winning methodology, can navigate the process well. However, with some notable exceptions, their expertise falls short in the area of digital rights and technology. Many of these sectors – both organizational leaders and memberships – have relatively

low levels of understanding related to both how digital technologies function and the ways in which influential technology issues relate to broader concerns about the preservation of equality, dignity, and rights. They are not situated in the digital rights community and may not have a mandate to advocate for digital rights.

Digital Rights Organizations: New to the WTO

Until very recently, much digital rights activism centered on domestic or regional issues and focused largely on censorship and surveillance issues. Digital rights groups have been successful in many national and international advocacy efforts aimed at pre-empting or reversing internet shutdowns, unblocking websites, promoting fair net neutrality rules, introducing balanced cybersecurity frameworks, and even achieving broad national privacy protections through legislation and courts. Recent examples of these successes include the Supreme Court decision establishing privacy as a fundamental right in India³⁸ and the adoption of a law guaranteeing net neutrality in Chile.³⁹ These national campaigns all followed a similar script that was familiar to the digital rights groups: identifying leading voices and influential actors; mobilizing them to better inform the public and those in power about the issues at hand; and then leveraging them to shift the positions of powerful decision-makers. Within many democratic national contexts, these groups have been successful in encouraging a wide range of actors to join the struggle, including youth groups, consumer groups, artists, workers, musicians, and experts. They have also taken advantage of their specialized knowledge of digital issues, pre-established connections, and media outreach experience.

Despite these successes, many CSOs focused on digital rights issues have limited experience in the murky world of the WTO. There are a few groups of CSOs working to research, analyse, and engage in advocacy related to the effects of trade negotiations on digital rights. Most of these organizations provide significant value by standing apart from business and political interests and illuminating aspects of trade policy that affect digital rights online. These organizations played a part in the European opposition to the Anti-Counterfeiting Trade Agreement⁴⁰ and the organized efforts against the TPP as they worked to connect digital rights issues with broader conversations and actions around global trade regulations.⁴¹

The effectiveness of digital rights activists varies in the context of the WTO. For the most part, there is little engagement from the wider digital rights and internet governance community in the WTO process. In part this can be attributed to the



lack of familiarity with the opaque and complicated WTO processes. It is certainly more difficult to participate and achieve a positive result while navigating unknown waters. In addition, many CSOs working on digital issues are only vaguely aware that so-called trade negotiations are a venue in which rules that would constrain their domestic work are being discussed.

For many digital rights groups, the MC11 marked the first time they had attended a WTO Ministerial Conference. The intention to participate was in itself a positive development, as expertise on technology and its effects on fundamental rights was needed. However, these digital rights organizations faced many difficulties in Argentina. They lacked fluency with the specific language common to the global trade arena. Additionally, as newcomers, these organizations did not have the established connections and familiarity with the national and regional delegations of WTO officials. Finally, it was evident that many of the digital rights organizations, especially those that had not engaged in the TPP or ACTA fights or that were not connected to the global CSO WTO network, did not have sufficient information about the dynamics at play and the advocacy strategies that are used in global trade negotiations.

CSOs are Growing Apart, With Different Priorities and Areas of Expertise

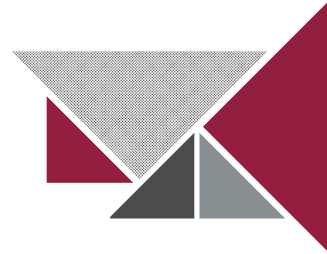
The lack of uniformity between the broad variety of CSOs engaged in trade work and digital groups in their agendas and priorities toward digital policy creates another set of challenges for effective policy engagement. At the MC11, one of the best examples of such disconnects was the discourse around connectivity, economic development, and the United Nations Conference on Trade and Development's E-Trade for All Initiative. Under the umbrella of providing assistance and commitment to the United Nation's Sustainable Development Goals (SDGs). Big Tech continues to offer developing countries technology access in exchange for new markets of consumers for their products and platforms. Many of the CSOs present at such events are incentivized to focus on connectivity gains. However, this emphasis on connectivity is frequently at the expense of long-term development and social equity outcomes related to data extraction, algorithm deployment, and privacy-eroding practices that directly affect the vulnerable populations they aim to assist.⁴² There is very little constructive dialogue between those civil society groups focused on connectivity and those working on development. Therefore, civil society organizations are frequently at odds with one another rather than working strategically together towards common aims.

In addition, debates about e-commerce issues occurring in side events at MC11 generally were marked by a lack of specificity on the topic of consumer rights. On every panel about e-commerce observed at the MC11, speakers did nod to the importance of consumer rights and protections. But there was little participation specifically from consumer rights organizations and the conversations that did take place rarely touched on digital rights. In many of these trade dialogues, government representatives attending, especially those from low and middle-income countries, were enthralled with the innovative capacities of new technologies, associating access to new gadgets and services with positive progress. More representation is needed from civil society organizations that can provide a perspective informed by an understanding of consumers from a diverse range of socio-economic circumstances and articulate to policymakers the long-term implications on their populations of having binding e-commerce rules established in trade agreements. To achieve that diversity of views will require CSOs having the capacity to sponsor programs before and at the ministerial and to have done the relationship building and outreach work to get the government officials to attend.

IV. Towards a Strategy for Effective Advocacy at the MC12

There is a pressing need to create spaces for new actors, including digital rights organizations, to work towards focused, sustained efforts to understand and shape WTO policies on digital trade. The outcome of the MC11 means that at least until the MC12 in 2020, any movement in the area of e-commerce by WTO members will occur in the context of the plurilateral process those members supporting negotiations on e-commerce were able to launch at the MC11. As discussed above, this approach offers the most promising path for supporters of new negotiations to eventually achieve multilateral agreement at a future Ministerial Conference. Big Tech will most certainly push for digital trade to be a top agenda item at the MC12, where a possible new mandate on trade related aspects of e-commerce will again be discussed.

To encourage CSO engagement in these emerging digital trade issues and to build a strategic framework for civil society, targeted efforts need to be taken across sectors between now and the 2020 Ministerial. A strategy of CSO engagement through this period and at the next Ministerial needs to be developed and complemented with research, capacity building, and a path toward sustainability for these initiatives.



Bridging the Gaps and Preparing Civil Society for a Multilateral Negotiation on Digital Trade

- **Capacity Building: Implement Inclusive, Interdisciplinary, and Praxis-oriented Trainings**

Effective engagement on digital issues in the context of trade negotiations requires a wide range of knowledge and expertise. Thus, capacity building efforts should be interdisciplinary, inclusive, and praxis-oriented. These efforts should include participation from a diverse range of CSO thought leaders who can address emerging issues at the intersection of digital technologies and the complex web of “trade” agreement rules covering the service sector, intellectual property, and more. Effectively, CSOs who have engaged for decades on WTO debates, including those focussed on consumer rights and development, and CSOs that have expertise on digital issues must exchange knowledge, collaborate, and learn from one another.

There is a particular need to educate lawyers within CSOs and governments with expertise on the WTO and other trade agreements about digital issues and to train digital rights lawyers on the issues and processes of trade agreements. Additionally, economists, sociologists, and technologists should be included in the conversation, as several of the emerging issues cross a variety of disciplines.

In addition, these trainings should seek to build expertise and networks at the local level, especially in the Global South. Trade negotiators from the Global South are particularly lacking in knowledge and expertise on digital rights issues. Without more representation from these communities, the interests of the world’s most marginalized communities will be unheard in e-commerce debates.

The development of local expertise is also imperative due to the fact that much of the lobbying process within the WTO relies on the development of relationships with government trade delegates. These relationships can be best formed by local expert advocates interacting with WTO delegates through continual peer-to-peer conversations in their home countries and on-site at the Ministerial Conference.

For digital rights organizations, there is a first line imperative to conduct outreach and training to increase awareness about why the WTO process is relevant to digital rights issues. This must be accompanied by providing them with resources on the basics of trade agreements and the functioning of the WTO. Additional resources and trainings should be developed to introduce digital topics to the wider development and civil society community, including sessions

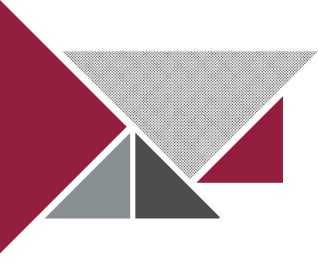
on how e-commerce issues affect human rights, economic justice, and the SDGs. Other important specialized topics would include cross-border data transfer and implications for privacy, source code and cybersecurity, net neutrality, consumer protection, internet-related intellectual property rights, and digital inequality.

However, these trainings aimed at educating diverse actors on the theoretical issues at hand must be supplemented with a second set of trainings focused on practice, since success at a Ministerial Conference requires not only an understanding of the issues at stake but also the ability to understand the most effective strategies and lobbying techniques to use within the trade system. These practical trainings should require participants to be actively involved in the processes and meetings leading up to the trade meetings and negotiations, with support and mentorship from experienced trade experts. Participants can then apply this theoretical knowledge to meeting with trade delegates, writing position papers, and developing new approaches for public interest lobbying. With such an approach, experts can develop a better understanding of the field, adopt innovative strategies, and build synergies across civil society organizations.

The ideal lobbying strategy for e-commerce issues at the WTO would leverage the expertise of a truly interdisciplinary group of experts, lawyers, and activists, learning from each other, setting strategic priorities, and engaging on a unified strategy to affect the WTO process. This will require work on the “inside” to inform government officials and target official WTO processes and work on the “outside” to educate the public in key countries and create political accountability of the government officials. However, before such a strategy can be implemented, the basic outreach and training is necessary.

- **Better Research & Encourage “data philanthropy” and “open data”**

In addition to training, there is currently a dearth of easily-accessible, comprehensive, and well-researched resources on how trade negotiations in general and the WTO process in specific implicates digital rights. This is especially true with regard to research examining the relationships between e-commerce, trade policy, and social and digital inequalities, particularly in a developing world context. Within trade discussions it is invaluable for public interest advocates to understand the economic impact of international digital trade, particularly those advocates working to lobby government delegates. However, in many cases, the data required for rigorous analysis of the implications of e-commerce is proprietary data owned by the business sector or currently



uncollected in many local contexts. These types of data include connectivity rates across jurisdictions, habits of digital consumption, displacement of traditional industries by its digital rivals, employment figures, and the economic gains of digital transition for local industries.

Country-specific data is needed for evidence-based advocacy at the national level, and in many cases governments and international organizations are not producing these kinds of data or making data openly available and easily accessible. The lack of reliable research data on the positive and negative impacts of the digital economy and its effects on emerging markets presents a particular challenge not only for advocacy groups, but also for researchers and policymakers.

In response, a proactive action should be to encourage both “data philanthropy,” that is, the encouragement of the private sector to release key data sets for public benefit, and “open data,” in which governments make public data available and accessible. Specific to the trade policy realm, governments should be pressured to make public the texts of their trade negotiations, which often goes unreleased to the public. Efforts should be made to ask national governments to make available information on trade-related events through freedom of information requests. A campaign focused on coordinating systematic freedom of information requests across jurisdictions would also raise awareness of global trade issues and facilitate collaboration between the local and global networks that include the media, advocacy groups, academia, and other stakeholders.

• **Strategic participation in trade-related events**

The presence of CSOs with digital expertise in trade debates, both at formal and the informal events, is an essential condition for effective advocacy. A key entry point for civil society and digital rights organizations can be a commitment to continual involvement and diligent engagement in such fora. Attendance of larger numbers of public advocates at these events naturally means that there will be more opportunities to counter the substantial lobbying efforts of corporate representatives by providing counter-narratives and information to government representatives. In preparation for the MC12 in 2020, CSO representatives must familiarize themselves with the current and upcoming processes, actors involved, and interests represented in the global trade arena. The following key events are important for CSO representatives to attend:

- The WTO discussions on e-commerce, including the plurilateral meetings of “like-minded” countries

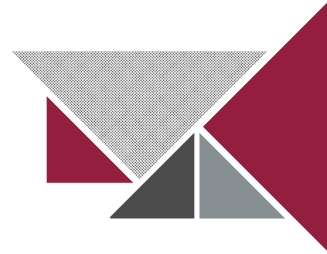
- OECD-G20 Going Digital initiative⁴³
- The annual WTO Public Forum
- United Nations Conference on Trade and Development’s E-commerce Week⁴⁴
- WEF-led public-private partnership with WTO and the Electronic World Trade Platform to open up e-commerce for small business^{45, 46}

Participation in these events requires organizations to allocate significant resources in order to maximize impact. As described above, participation in these fora requires preparation, training, familiarization with the processes and publications, meetings with decision makers, coordination across civil society groups, and media outreach. Continual presence at trade-related events also requires CSOs to obligate funding for travel and other expenses. While powerful corporations certainly have adequate funds to send expert lobbyists around the world, low-resourced CSOs have a much more difficult time obligating adequate funding to these activities.

In the past, CSOs focused on digital rights have prioritized participation in other spaces and venues, such as the World Summit on the Information Society (WSIS) and the Internet Governance Forum (IGF). These events have been the dominant fora for civil society organizations working on digital matters. Because the IGF and WSIS processes emphasize multistakeholder participation, transparency, and diversity, there are many enabling mechanisms embedded in these institutions that facilitate broader participation from civil society. However, such an approach is underemphasized in trade venues, which can lead to CSOs allotting fewer resources to attending, participating, and lobbying in these fora on behalf of digital rights provisions.

Beyond these issues of resources, when CSOs do participate at the Ministerial Conferences, they need to avoid being siloed and side-lined. The experience of the MC11 is illustrative. Given the access issues created by the Argentine government, including not providing venues for CSO events that were convenient for government delegates, we observed that the public events organized by CSOs were attended almost exclusively by members of other CSOs. At past ministerials, CSOs were given access to rooms within the official venue to conduct events.

Meanwhile, CSOs voice was excluded from parallel events held by well-resourced interests supporting the launch of WTO e-commerce negotiations, meaning reduced presence of CSOs in discussions that would have benefited from diverse views. For example, on the Trade and Sustainable Development Symposium⁴⁷ and the Business Forum,⁴⁸ high-level corporate speakers and government representatives



interacted with each other while only a selective group of CSOs were in attendance. While there were thirteen sessions at these events dedicated to discussions about the benefits of digital trade and the need for rules at the WTO, civil society held separate and parallel events contesting both the need for rules and the dangers of rushing into a global trade negotiation. This segregation dilutes the potency of civil society participation in such debates.

Overcoming these many challenges to meaningful participation is crucial to ensure that there is effective public interest representation and digital rights expertise present at trade venues. Unlike internet-focused events, like the IGF, that are often held with the end goal of debating and exchanging ideas, WTO meetings can result in binding rules for the global economy. Thus, comprehensive investment to increase civil society participation at trade-related events is likely to have a greater impact than participation at non-rulemaking events.

Rather than being deterred and alienated by the opaque and exclusive nature of WTO events, it is imperative that organizations advocate for more open participation and transparent processes at trade events. In addition, efforts should be made to push for conferences and side events around the Ministerial Conference to bring together stakeholder groups for meaningful discussion and debate. If civil society is present in trade discussions, collective and consistent demands can be made for structural changes and increased participation, such as financial support for CSOs to attend the events and commitments to provide CSOs with places at the tables where discussions take place.

- **Cultivating relationships with national negotiation teams**

National trade policies are largely shaped by negotiation teams usually based in trade ministries that include officials working in countries' capitals and in countries' Geneva-based WTO delegations. Countries formulate their positions, often also in processes also involving national legislators and other government ministries before Ministerial Conferences. Without established relationships and constant communication with these officials, including outreach to officials in non-trade ministries whose national remit covers digital issues, it will be difficult for digital CSOs to make inroads on digital policy discussions at the WTO or other trade venues. Beyond efforts at improving participation at international trade events, it is essential to encourage ongoing on-the-ground work at the national level. The trainings focused on local activities noted above are the first step. But then coordinated outreach and constant follow up is necessary. The value of CSO attendance at international

events is significantly limited if they fail to connect locally in advance of such events with the people who negotiate and make the policies. Building relationships domestically takes time, and such efforts should be combined with developing informed and digestible research to provide to national policymakers to help them better understand digital trade issues.

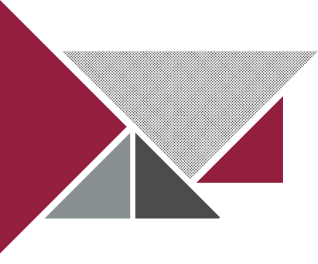
Sustainability of Civil Society to Face the Upcoming Challenges in the MC12

Increasing civil society participation and intervention at e-commerce related WTO and other trade events will need steady support and long-term investments from varied sources. Our observations during MC11 made evident that a group's influence in the processes is proportional to the presence and resources they invest in the lead up and in planning activities for the ministerial.

Influential think tanks and international networks—such as the Organization for Economic Co-operation and Development (OECD), the World Economic Forum (WEF), and the International Centre for Trade and Sustainable Development—have the means to hire experts who support their vision, contract with them to produce research that can be used to influence trade policy, fly them to Geneva regularly and to other negotiating venues, and provide resources for them to develop relationships with key decision-makers throughout the year. At the MC11, these institutions were able to dominate the side events and alternative discussion spaces, attracting relevant actors to their workshops and conversations. They also exercise discretionary power over which members from CSOs they invite to their exclusive gatherings. CSOs with either reformist or confrontational views are rarely invited, leading to homogenous debate.

CSOs can play a crucial role in presenting an alternative narrative to the vision pushed forward by market-oriented think tanks and international networks, but not without significant investment of resources. For many CSOs with a public interest agenda, even finding a sponsor to provide an airplane ticket to Geneva or to the Ministerial itself is a victory. During the week of the Ministerial Conference, limited CSO resources mean that CSOs usually are only able to use free or low-cost venues and often struggle to capture the attention of relevant players.

This trend of low resources and low presence in the lead-up to and at ministerials can be reversed with access to adequate training, resources, and publishing platforms provided by a pool of committed donors and following transparent and accountable administration. Before and



during the MC11, we utilized a small amount of resources from this project to help ally organizations pilot a capacity building and guided advocacy program for CSO participants new to the trade process. These efforts increased the interest and involvement of a new cohort of Global South-based digital rights organizations and consumer groups. This program can be built upon with more resources to both develop additional committed advocates and also establish a thorough process for exploring and pushing forward the public interest within e-commerce negotiations.

At this time, only a few CSOs working on digital issues have both the funds and the agenda necessary to work on in the trade space. Most of the funders supporting the advancement of digital rights, especially in developing countries, focus on tackling issues such as online censorship and surveillance. However, the impact of trade negotiations on the regulation of the internet has the potential to impact every country in the world. And rules set in trade venues are difficult if not impossible to reverse. For instance, if binding e-commerce rules were set at the WTO, any changes or their termination would require consensus by all WTO member countries. Investing early in public interest lobbying around the global digital economy will guarantee that the digital rights agenda is fostered, instead of harmed, by trade negotiations.

CONCLUSIONS AND RECOMMENDATIONS

The MC11 in Argentina saw new dynamics and alliances form amongst WTO Members as well as the development of new agendas focused on e-commerce issues. Months of preparation by the private sector, the host country, and the WTO Secretariat delivered agreement among seventy “like-minded” countries to create a plurilateral working group supporting their narrative and vision on digital trade. The goal of this grouping is to build momentum towards a consensus agreement at the next WTO ministerial to launch formal negotiations to establish a WTO agreement on e-commerce. The extensive process leading to this outcome included formation of a Friends of E-Commerce and Development (FED) group, one of the alliances of WTO Members that supported opening negotiations on e-commerce. The FED group claims that e-commerce is a tool to drive growth, narrow the digital divide, and generate digital solutions for developing countries and LDCs. It is clear from the makeup of the new plurilateral working group that FED’s vision is now backed by the European Union and Japan. This grouping of the EU, Japan, and the FED with support from the WTO Director General and Secretariat, the Argentine Chair of MC11 and Big Tech sought to achieve

agreement at MC11 to obtain a new mandate to start WTO negotiations. Their proposal was denounced by a smaller number of developing countries—including India and African countries represented by the African Group. However, the plurilateral discussions represent significant peril.

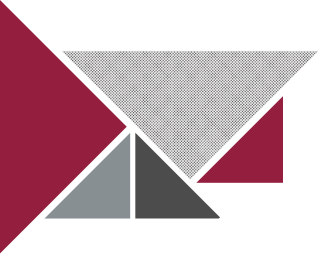
To counter the launch of the plurilateral process and ensure that it does not lead to agreement on a mandate to launch negotiations on a new WTO e-commerce agreement, CSOs need to build a well-equipped and trained army to challenge the arguments presented at the MC11, ask the right questions to experts on a variety of topics, shift the public debate, and slow the pace of discussions. Efforts in the lead up to MC11 were not sufficient to stop the plurilateral process from being started even if they helped to support those few countries that blocked the launch of formal negotiations. It is therefore imperative that CSOs focused on the public interest now start to develop an aggressive and comprehensive strategy for the MC12 in 2020. This strategy requires stable resources for actions and efforts aimed at both the working group plurilateral meeting process and at the lead up to the MC12 and the Ministerial itself. It will require funds for local research, training, and travel. A research fund would facilitate research focused on the practical needs of civil society organizations in this space, substantive evidence to support civil society arguments on trade issues, as well as the dissemination of this research to be used in practice. A travel fund would enable experts from underrepresented countries to attend formal and informal meetings, as well as working groups, within the WTO system. Funding for comprehensive trainings is also necessary to facilitate on-the-ground actions and nurture relationships among trade CSOs, digital rights groups, and trade delegates.

It is more crucial than ever that digital rights groups pay attention to trade negotiations in general and the WTO process in specific. CSOs, digital right activists, and funders urgently need to work together to develop a strategy for the e-commerce debates at the WTO plurilateral working group level and for the MC12. There can be no doubt that these WTO processes and discussions will directly affect the way digital rights online are protected - or not protected - in the future.



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