

# THIRD WORLD *Economics*

TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 677 16 – 30 November 2018

## WTO faces threat of dispute settlement dysfunction

The WTO is confronted with challenges relating to its dispute settlement regime that threaten to undermine the proper workings of the multilateral trading system. Firstly, it needs to unblock the process for filling vacancies in its highest adjudicative organ, the Appellate Body. But beyond that, the WTO membership must also undertake a long-overdue review of the overall dispute settlement mechanism, whose functioning has previously given rise to concern, not least among developing countries.

- Time for WTO to take up overdue review of DSU – p2

---

### Also in this issue:

*Abandon talks for e-commerce rules at WTO – CSOs*

p6

*Unsustainable?: The IMF's approach to the Sustainable*

*Development Goals*

p15

*Digital platforms generate opportunities and challenges* p9

*Has privatization benefited the public?* p16

## Contents

### CURRENT REPORTS

- 2 Time for WTO to take up overdue review of DSU
- 5 EU and allies push back against India's move to strengthen MTS
- 6 Abandon talks for e-commerce rules at WTO – CSOs
- 9 Digital platforms generate opportunities and challenges
- 11 Capacity-building needed to reduce digital, data divides

### OPINION

- 15 Unsustainable?: The IMF's approach to the Sustainable Development Goals
- 16 Has privatization benefited the public?

THIRD WORLD ECONOMICS is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

**Publisher:** S.M. Mohamed Idris; **Editor:** Chakravarthi Raghavan; **Editorial Assistants:** Lean Ka-Min, T. Rajamoorthy; **Contributing Editors:** Roberto Bissio, Charles Abugre; **Staff:** Linda Ooi (Administration), Susila Vangar (Design), Evelyne Hong & Lim Jee Yuan (Advisors).

• **Annual subscription rates:** Third World countries US\$75 (airmail) or US\$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US\$95 (airmail) or US\$75 (surface mail).

• **Subscribers in India:** Payments and enquiries can be sent to: The Other India Bookstore, Above Mapusa Clinic, Mapusa 403 507, Goa, India.

• **Subscribers in Malaysia:** Please pay by credit card/crossed cheque/postal order.

• **Orders from Australia, Brunei, Indonesia, Philippines, Singapore, Thailand, UK, USA:** Please pay by credit card/cheque/bank draft/international money order in own currency, US\$ or euro. If paying in own currency or euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

• **Rest of the world:** Please pay by credit card/cheque/bank draft/international money order in US\$ or euro. If paying in euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

Visit our web site at <http://www.twn.my>.

Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

© Third World Network

# Time for WTO to take up overdue review of DSU

Whatever the motive behind them, the US' grievances against the WTO's Appellate Body present developing countries an opportunity to press for the long-pending review of a dispute settlement system whose functioning has previously raised concern.

by Chakravarthi Raghavan

GENEVA: The World Trade Organization (WTO) and its multilateral trading system (MTS) is facing an existential threat which, unless taken up and resolved at the highest political decision-making levels of the WTO membership, will see the WTO system atrophy and wither away.

(See "WTO-MTS facing existential threat, needs political decisions" in *TWE* No. 676 for the first part of this series on the WTO-MTS and the crisis in the Appellate Body.)

In this light, after resolving the threat to the system posed by the US blockage of a process to fill four current vacancies in the WTO Appellate Body (AB) – a mandatory obligation under Article 17.2 of the WTO Dispute Settlement Understanding (DSU) – WTO member states must discharge the obligation cast on them at Marrakesh in 1994 to undertake a complete review of the DSU and decide to either continue it as it is or with changes to its rules or to terminate and replace it with something else.

The review and changes to the existing DSU would need decisions by consensus, without it being linked collaterally to other changes desired by any WTO member or group of members. These changes may need amendments to the DSU and/or the WTO, and will be subject to the amendment procedures prescribed in the WTO's founding treaty and its annexed agreements.

### Unfulfilled DSU review mandate

In concluding the Uruguay Round of multilateral trade negotiations at Marrakesh in 1994 with the WTO Treaty and its annexed agreements, the ministers of the participating countries with plenipotentiary powers also took some decisions and understandings that are integral parts of the adopted Treaty. Among these is the Decision on the Application and Review of the Understand-

ing on Rules and Procedures Governing the Settlement of Disputes.

The WTO Treaty committed all parties to sign on to all the agreements, and bring their own domestic laws and regulations into compliance with their obligations under the Treaty. It also set out, under each of the "agreements, decisions and understandings", a commitment by members to undertake further negotiations in a number of areas.

These further negotiations on issues that were unresolved in the WTO Treaty are a continuing collective obligation of the WTO members and cannot just be jettisoned without necessary decisions at the highest level.

The Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes invited the Ministerial Conference of the WTO to undertake a "full review" of the DSU within four years after the WTO's entry into force and "to take a decision on the occasion of its first meeting after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures."

Such a review was to have been made at the WTO's Seattle Ministerial Conference in 1999 but could not be done as the conference met and ended in confusion amid Clinton administration-organized street demonstrations and protests.

[In the preparations for the Seattle meeting, the informal group of developing countries in the WTO had undertaken its own review in a small committee chaired by Egyptian Ambassador to the WTO Mounir Zahran. The group sought and drew on the expertise of former negotiators and others.

[Disclosure: The writer participated in this exercise at the request of the group, and contributed an analysis of various rulings under the WTO dispute settlement system and their implications.

The analysis was discussed at a meeting of the informal group in the run-up to the Seattle conference. In this light, it was revised and subsequently published as a monograph: Chakravarthi Raghavan (2000), "The World Trade Organization and Its Dispute Settlement System: Tilting the Balance Against the South", TWN Trade and Development Series No. 9, Penang: Third World Network (<https://www.twn.my/title/tilting.htm>). The analysis and several of its recommendations are still relevant and valid today.]

After the Seattle fiasco, when a new round of multilateral trade negotiations – the Doha Work Programme, otherwise known as the Doha Development Round – was launched in 2001 at the Doha Ministerial Conference, the mandate for the DSU review was reiterated. (However, the review was delinked from the rest of the work programme so that it could be undertaken without any attempt by any WTO member to use this as a trade-off for concessions by other members in other areas.)

This decision has not been overruled or changed in any way by subsequent Ministerial Conferences and is thus still in force.

Nevertheless, the review was never carried out in good faith, the negotiations being constantly sidetracked by the US and the EU. The two have been the major beneficiaries of the dispute settlement process and the functioning of dispute panels and the Appellate Body. On the other hand, developing nations and their development prospects have been the long-ignored victims.

Taking advantage of the DSU provision for the effectively automatic adoption of their rulings, and advised by the WTO secretariat (servicing them) in violation of all principles of natural justice, the dispute panels and the AB have sometimes handed down rulings in what is seen as a rule-less manner and even running contrary to the specific provisions of the WTO Treaty.

In the nearly two decades of off-and-on negotiations on the DSU review, except for a few minor procedural tweaks, both the US and the EU have opposed any substantive changes. The review has neither been completed nor concluded, and remains on the agenda of informal negotiating sessions of the WTO's Dispute Settlement Body.

Meanwhile, by blocking consensus for filling the four existing vacancies on

the AB, the US under the Trump administration has now created a situation whereby, before the end of the year, the AB will become non-functional for lack of three members to constitute a division bench to hear and dispose of appeals. Though the US has done so for mala fide collateral purposes, namely, to force other WTO members to effect so-called WTO reforms, it has done the developing countries a great service by bringing the DSU review prominently back onto the WTO agenda.

This is an opportunity that developing countries miss at their own peril. The future of the WTO-MTS will be irreparably damaged if they do not take up this opportunity to ensure a complete review of the DSU – to meet not only the issues now being flagged by the US, but also their own, much earlier criticisms of the dispute settlement system, including the functioning of the secretariats of the WTO in "servicing" panels and the AB.

In this process, the developing countries should refuse to engage in any formal or informal talks that would in any way link the DSU review to negotiations and trade-offs in any other area, or in return for taking up any new agenda of the US or its allies the EU, Australia and others.

#### Authoritative interpretation

The DSU review should be taken up after the Ministerial Conference – or, when it is not in session, the General Council – considers the current threat to the WTO-MTS posed by the failure to fill the vacancies in the AB, and provides authoritative interpretations of Article 17.2 of the DSU to make clear that it is an obligation of the WTO members as a whole as well as of individual members to implement Article 17.2 in good faith.

(Article 17.2 reads, in full: "The Dispute Settlement Body shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.")

On this particular matter, the Minis-

terial Conference/General Council should strive to act by consensus, but if no consensus can be achieved, to then decide by voting, as provided for in Article IX.2 of the WTO Treaty: "The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions of Article X."

The DSU is in Annex 2 to the WTO Treaty. As such, the relevant parts of Article IX.2 above for an authoritative interpretation of DSU Article 17.2 are the first and third sentences of Article IX.2.

#### Varying language

In this and in the DSU review, it is essential to bear in mind a few details as context:

The various multilateral trade agreements in Annex 1 to the WTO Treaty – agreements on trade in goods (Annex 1A), trade in services (Annex 1B) and intellectual property (Annex 1C) – were negotiated over a seven-year period in the Uruguay Round among different groups of nations in various negotiating groups (1986-90) and at the level of the Trade Negotiations Committee (1991-93). This sometimes resulted in the same concept or agreed view being formulated in different language in the various agreements on trade in goods in Annex 1A.

In contrast, the WTO Treaty itself and the DSU (Annex 2) were fashioned only towards the end of the Uruguay Round negotiations in 1993. These two were first agreed upon by the US and the EU at ministerial-level talks and settled (at official level) in detail by more or less the same group of countries and delegates (though aided by different advisors).

In the process outlined in the paragraph above, three different terms have been used in the WTO Treaty and the DSU. These are: "clarify" in Article 3.2 of the DSU; "authoritative interpretation" in Article IX.2 of the WTO Treaty;

and “amendment” in Article X of the WTO Treaty.

Though the terms “clarify” and “interpret” are generally used loosely as synonyms, in the WTO and DSU context, where two different terms have been used, in terms of the “ordinary meaning” under the Vienna Convention on the Law of Treaties, it is clear that the intent was, and is, to relate to two different functions: “clarify” as a function of panels and the AB, and “interpret” as a function of the Ministerial Conference/General Council.

It is time to ensure that the AB, which often talks of its duty as “treaty interpreter”, functions in accordance with the WTO Treaty intent. Where the language used in a WTO agreement is ambiguous and needs “interpretation”, the AB, rather than taking this upon itself, must ask the Ministerial Conference/General Council to provide an “authoritative interpretation”.

The WTO Treaty and the DSU, along with the various multilateral trade agreements in Annex 1, were concluded at official level in November-December 1993. Until this stage, none of the negotiators had a clear idea of how the various agreements under the Uruguay Round would be dealt with – whether as one agreement or several agreements – nor of the nature of the organization that would come into being to service and administer these agreements.

It was only at this stage (after the WTO Treaty was agreed upon to be a single treaty with annexes), when the use of varying language to express the same intent in various agreements in Annex 1A was brought up by some developing countries, that the negotiators decided to append a General Interpretative Note to Annex 1A: “In the event of conflict between a provision of the General Agreement on Tariffs and Trade 1994 and a provision of another agreement in Annex 1A ... the provision of the other agreement shall prevail to the extent of the conflict.”

Early in 1994, when the ambiguity and/or variation in language used in various agreements was again brought up at the stage of the legal scrutiny of texts concluded at official level, Canada (generally viewed then by others as reflecting US views) insisted that any effort to reconcile the texts would lead to the unravelling of the entire package and should not be undertaken. Rather,

Canada suggested, these matters could be left to be sorted out by dispute panels and the AB. This view prevailed.

However, with the US cheerleading, panels and the AB, tasked with “clarifying existing provisions” (DSU Article 3.2), have from the beginning disregarded the overriding interpretative note to Annex 1A and made it inutile.

### Lack of good faith

As set out above, before taking up the DSU review, the Ministerial Conference/General Council needs to provide an authoritative interpretation of Article 17.2 of the DSU in order to deal with the AB vacancies. Article 17.2 is perhaps the only Article or rule in the WTO Treaty and its annexes that sets out, in the mandatory “shall”, both the collective and individual obligations of members to implement in good faith.

If there can be any doubt left in anyone’s mind on the US’ lack of good faith in blocking the process to fill the AB vacancies, the recent testimony by the US Trade Representative Robert Lighthizer to the US Senate Finance Committee – namely, that the US objections are intended to force other members to radically change the WTO-MTS to suit its current needs – should dispel such uncertainty.

As noted in the first part of this series, a number of former trade negotiators, trade law academics and some members of the WTO have, taking the US objections at face value, put forward various suggestions\* for resolving the deadlock over the AB appointments. The US has neither responded in detail to these suggestions nor spelt out the changes it wants.

In practical terms, unless the US

agrees in good faith with or without changes to any or all of them, most of the proposed solutions, such as arbitration, will result in the over 40% of disputes involving the US (as either complainant or respondent) remaining unresolved. Such a dispute settlement system ill serves the collectivity of the WTO. (SUNS8882) □

*This article is the second in a series. The first part, “WTO-MTS facing existential threat, needs political decisions”, appeared in TWE No. 676.*

### Note

\* The following are some of the proposals that have been advanced to resolve the AB impasse:

1. “Taking recourse to the DSU to save dispute settlement at the WTO” (Parts A & B), <https://worldtradelaw.typepad.com/ielpblog/2019/03/guest-post-taking-recourse-to-the-dsu-to-save-dispute-settlement-at-the-wto-.html>; and <https://worldtradelaw.typepad.com/ielpblog/2019/03/guest-post-taking-recourse-to-the-dsu-to-save-dispute-settlement-at-the-wto-part-b.html>
2. Five papers and writings cited by Clement Marquet in footnote 8 to his paper “The Appellate Body in dire straits: Taking a step back on consent to jurisdiction”, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3220525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3220525)
3. <https://worldtradelaw.typepad.com/ielpblog/2019/03/would-speeding-up-wto-dispute-settlement-help-with-the-appellate-body-crisis.html>; and <https://worldtradelaw.typepad.com/ielpblog/2019/03/planning-for-life-without-the-appellate-body.html>
4. Chakravarthi Raghavan (2000), “The World Trade Organization and Its Dispute Settlement System: Tilting the Balance Against the South”, <https://www.twn.my/title/tilting.htm>

## Connect to Third World Network’s World Wide Website for the latest on

**International Relations • Environment •  
Agriculture • Science • Economics • Trade •  
Health • Education • Communications •  
Development • Indigenous Peoples •  
Medicine • Forestry**

**www.twn.my**

## EU and allies push back against India's move to strengthen MTS

In their drive for WTO reforms aligned with their interests, the EU and other leading developed countries may have to contend with efforts by India to forge a developing-country alliance to advance development-friendly perspectives.

by D. Ravi Kanth

GENEVA: The European Union and other major developed countries have expressed sharp concern over India's attempts to build a strong coalition of developing countries for safeguarding developmental concerns and strengthening the multilateral trading system (MTS).

In the face of the worst assault yet on the World Trade Organization (WTO) by the trans-Atlantic powers, India is convening in New Delhi on 13-14 May an informal meeting of trade ministers, restricted to developing countries, with the objective of building a strong coalition against this assault, trade envoys told the *South-North Development Monitor (SUNS)*.

### Decoupling

The EU and other major developed countries seem determined to decouple the impasse at the WTO's Appellate Body (AB) from other issues such as an outcome in the negotiations on fisheries subsidies and transparency and notification provisions.

The US, according to several trade envoys, is in no mood to resolve the AB impasse that it has created. If the vacancies in the AB are not filled in time, the AB will cease to function after 11 December 2019, when it will no longer have the minimum number of members for a division bench to hear and decide appeals.

The EU and its allies, while expressing concern on this at the WTO's Dispute Settlement Body, want to turn a blind eye to the US stance and proceed with other issues such as fisheries subsidies and "WTO reforms."

India, on the other hand, has said repeatedly that the resolution of the AB impasse must take precedence over other WTO reforms. Without a common understanding on the way forward on the impasse, India warned, the multilateral trading system could become more

asymmetric.

While WTO reforms are important, developing countries cannot be expected to undertake the same obligations as the developed countries, India has insisted. The reform process, according to India, must ensure that development remains at "its core and must preserve the fundamental rules of the WTO, namely, non-discrimination, decision-making by consensus, and special and differential treatment for developing countries and LDCs [least developed countries]."

The proposed New Delhi meeting is likely to be attended by trade ministers from around 20 developing countries, and will focus on issues concerning the dispute settlement system, strengthening the multilateral trading system, safeguarding developmental concerns, transparency and notifications, and addressing the asymmetries in the WTO agreements.

On safeguarding developmental concerns, India wants the invited trade ministers to discuss the need for strengthening the contractual provisions for special and differential treatment in current and future trade agreements.

New Delhi also wants the implementation problems faced by the developing countries, raised even at Marrakesh in 1994 and mandated in 2001 to be resolved, to be addressed as part of the WTO reforms.

In the area of transparency and notification requirements, India wants timely notifications such as on maximum residue limits in goods and on visa-related requirements for individuals providing services under Mode 4 of the General Agreement on Trade in Services (GATS).

India also wants timely disclosure of traditional knowledge and genetic resources in annual notifications of members, but without any punitive action.

In addition, New Delhi has high-

lighted various asymmetries in the WTO agreements which need to be addressed.

During a closed-door outreach meeting with trade envoys from several countries on 2 April, the EU said India's proposal on fisheries subsidies as well as its attempts to convene the ministerial meeting of select developing countries pose a threat to outcomes in the fisheries subsidies negotiations and WTO reforms, said sources familiar with the development.

At the meeting with the so-called Middle Group countries from Asia, the EU sought to discuss a common approach on the WTO reforms regardless of the impasse at the AB. The EU also specifically sought the advice of the invited trade envoys on fisheries subsidies and transparency and notification requirements. Further, the EU asked the participants about the New Delhi meeting.

According to the above sources, the EU was opposed to India's proposal to modify the draft fisheries subsidies negotiating text to state that "fuel subsidies, even if non-specific, when granted for [wild] marine capture fishing at sea, will be subject to disciplines".

### Non-specific subsidies

During the 27 March session of the negotiations on fisheries subsidies, India had said that both specific as well as non-specific subsidies, including the fuel subsidies provided by the developed countries, pose a threat to the conservation and sustainable use of marine resources.

According to negotiators familiar with the proceedings, India pointed out at the meeting that the United Nations Sustainable Development Goal target 14.6 is cited as the overarching goal of WTO members to frame disciplines for curbing certain forms of subsidies which contribute to overcapacity and overfishing and IUU (illegal, unreported and unregulated) fishing.

After the launch of the Doha Development Agenda trade negotiations in 2001, major developed countries shifted their subsidies from categories deemed harmful to those considered non-harmful as per the WTO provisions. For example, in the agriculture sector, leading developed countries shifted tens of billions of dollars of harmful subsidies to the supposedly non-trade-distorting Green Box category to avoid subsidy re-

duction commitments.

In a similar vein, the US, the EU and other developed countries which were largely responsible for overfishing shifted their specific subsidies into the non-specific category so that they could successfully avoid any commitments under fisheries subsidies disciplines, shifting the burden of subsidy reduction in the fisheries subsidies negotiations onto the developing countries.

Against this backdrop, India insisted that “the fisheries subsidies negotiations are not permitted to regulate trade, but instead to address the issue of sustainability of marine resources.”

The share of fuel subsidies which are treated as non-specific subsidies by the developed countries is about 22%, according to data compiled by the WTO, while some other agencies have maintained that the fuel subsidies would amount to 60% of the total costs of fishing, India said at the meeting.

“Since our proposal is on ‘scope’ part of the disciplines, it will apply to the proposed disciplines horizontally – while doing so, we also reserve our rights to have appropriate and effective S&DT [special and differential treatment] in the final outcome of these negotiations,” India maintained.

A large majority of developing and

least developed countries, including the Africa, Caribbean and Pacific (ACP) Group of countries, welcomed India’s proposal, saying it simplifies the proposed disciplines on fisheries subsidies.

Negotiators from South Africa, Argentina, Peru, Senegal, Brazil, Vietnam and China among others said that by “bringing non-specific fuel subsidies within the scope”, a major asymmetry in the proposed disciplines can be eliminated.

Several developed countries such as the EU, the US and Australia however expressed serious reservations on India’s proposal to include non-specific subsidies in the overall category of harmful subsidies. The US, for example, said the issue of non-specific subsidies remains an “unresolved issue when the fisheries subsidies negotiations had led to a stalemate”.

Clearly, India’s objections have rattled the developed countries, said a trade envoy who asked not to be quoted.

With traditional champions of developing-country alliances like Brazil having switched sides, India needs to build a new alliance of like-minded countries that can offer a developmental narrative to address the challenges facing the multilateral trading system, the envoy said. (SUNS8883) □

proposed negotiations which, if concluded, could result in the full liberalization of the entire (digital) economy, and thus represent a back door attempt to achieve a “WTO 2.0”. While the rhetoric surrounding “e-commerce” highlights the opportunities for developing country entrepreneurs, having binding rules on the still-emerging digital economy would severely constrain the ability of countries to develop their economies in the future. It would accelerate the global disadvantaging of workers and small enterprises in all countries vis-a-vis large corporations that characterizes the current global economy. It would enable Big Tech to consolidate its exploitative business model, including gaining rights to access markets globally; extracting and controlling personal, social, and business data around the world; locking-in deregulation and evading future regulation; accessing an unlimited supply of labour stripped of its rights; expanding its power through monopolies; and evading the payment of taxes. The proposed rules thus represent a grave threat to development, human rights, labour, and shared prosperity around the world, and are the opposite of the policies needed to rein in the power of Big Tech.

### 1. We need appropriate democratic governance, not unlimited power over data by Big Tech.

Democracy and sustainable development depend on the free flow of information, and we strongly believe in freedom of expression. But this is different from unregulated collection and cross-border transfer of data by TNCs. Big Tech’s surveillance capitalism is harming democratic functioning in our media, knowledge, culture, transportation, agricultural, judicial, commercial, health, and other sectors, and damaging our democratic processes. Public debates increasingly focus on the need to reduce the power of Big Tech through stronger regulations on the national and international level, but proposed e-commerce rules – including their top goal of unrestricted “free flow of data” – could preempt such efforts in the appropriate agencies.

### 2. Public interest data policies are essential for economic development and prosperity in all countries.

## Abandon talks for e-commerce rules at WTO – CSOs

**In a 1 April letter to WTO member states, over 300 civil society organizations from across the world voiced opposition to the proposed negotiations on electronic commerce in the WTO, which they say would entrench domination of the digital economy by giant technology firms instead of promoting inclusive, development-oriented digital industrialization. The full text of the letter is reproduced below.**

Technology can stimulate development and help build sustainable livelihoods, but the right policies are essential to ensure that countries, workers and consumers everywhere can benefit. But some countries have declared their intent to rewrite the rules of the global economy, to give giant technology corporations, the largest companies in the world, new “rights” to profit – while limiting public interest oversight and benefits from the

new economy for everyone else – by commencing new negotiations on “e-commerce” in the WTO. The rules proposed by Big Tech transnational corporations (TNCs) go far beyond “e-commerce” and have implications for all aspects of domestic as well as the global economy, even for countries not participating.

We are writing to express our profound and urgent opposition to these

At this point, most countries (and most people) don't properly grasp the value of data, the most valuable resource, so governments are too easily allowing it to be collected indiscriminately and transferred outside their countries by TNCs. Just as in previous centuries, when developing countries lost control of the capacity to properly take advantage of the wealth-creating potential of commodities, there is a danger of repeating those same mistakes now with data, leading to digital colonialism and the exacerbation of the serious problem of increasing inequality around the world. All countries, and especially developing countries, need to harness the value of data for domestic entrepreneurs, but also for community economic development in the public interest. Thus, they must maintain the policy space to tailor policies on governance of data, including potentially maintaining data locally or regionally when that might be in the national or community interest. Proposals in the WTO to give Big Tech the right to unregulated cross-border data transfers, to ban countries from being able to require domestic data storage or to use local servers would severely constrain the ability of developing countries – and all who are not Big Tech – to ensure that their citizens benefit from digitalization.

### **3. Strong consumer protections, privacy, and rights would be jeopardized by “e-commerce” rules.**

Strong policies for digital user protection are needed, including around matters of privacy and data protection. Citizens have rights to privacy and consumers have rights to have our data protected and not abused by giant TNCs for private profit, or by governments against our human rights in the digital space. The proposed WTO rules would give corporations unlimited rights to transfer data to whatever jurisdiction they please and would privilege commercial rights over consumer protections and citizens' privacy rights in ways that cannot be fixed by rules in the WTO itself. Human, labour, consumer, economic, and civil rights must apply equally in the digital sphere without being constrained as “barriers to trade”. As companies increasingly use artificial intelligence (AI) such as in hiring and firing, and govern-

ments increasingly use it in functions such as judicial sentencing, we also need strong algorithmic accountability frameworks to ameliorate gender and racial discrimination and bias, not restrictions on access to source code and algorithms as in the proposed rules.

### **4. Digital policies must promote decent jobs for shared prosperity, not reduce workers' power.**

Inclusive digital industrialization for shared prosperity must focus on decent job and livelihood creation and associated social and economic rights. UNCTAD's Trade and Development Report has shown that workers are losing their share of global production vis-a-vis capital, partially because capital has used its surplus wealth to rewrite the rules to allow it to extract increasing profits. Automation and trade policies have weakened workers' bargaining power, and the proposed “e-commerce” rules would further erode workers' rights and power vis-a-vis giant digital corporations and lead to increasing inequality and precariousness in many sectors. As more women enter the digital economy, we object to how “gender” and “women's economic empowerment” are being used in the WTO to push anti-development policies which will reduce power of women workers. New rules that reinforce structural inequalities between and within countries will not be acceptable just because of a gender or labour clause. The most important strategy to ensure widespread and inclusive benefits from digitalization is a commitment to job creation towards full employment, focused on equity, including strong labour rights for all workers; gender equality; workers' data rights; and comprehensive and portable social protection including for platform workers.

### **5. Anti-monopoly regulations and actions are urgently needed, in jurisdictions outside of the WTO.**

Nearly all digital trade is dominated by a few global players from the United States and China in ways that are not simply disrupting and re-organizing economic activity but leading to digital domination. An ever-larger source of Big Tech's profit-making is derived from

buying competitors and avoiding regulation. In addition to creating new and strengthening existing anti-monopoly regulations, governments must consider breaking up companies engaged in harmful monopoly practices. Until this occurs, it would be foolish to tip the scale in favour of the technology monopolists' power even further by agreeing to their proposals in the WTO.

### **6. Digital liberalization would decimate development and increase poverty in developing countries.**

In order to trade, developing countries have to produce and increase the value captured from production. If digital trade is expanded without first improving productive capacities in developing countries, as well as closing the digital divide through improvements in physical infrastructure and interconnectivity, and adopting enforceable norms for privacy, data protection, and economic data rights, developing countries will simply be opening their economies even further to foreign imports. Linking into e-commerce platforms will not automatically increase exports but can lead to further erosion of domestic market shares. Thus, liberalization in the digital sphere, without the required domestic investments to improve productive capacities, will destroy jobs and further informalize them, decimate micro, small and medium enterprises (MSMEs), and severely constrain future development. These threats to economic sovereignty and future development prospects from premature digital liberalization would be greatly amplified if the rapidly evolving digital economic space is governed by rules that were developed by TNCs for their own profit-making around the world.

### **7. Digital industrialization is urgently needed to foster development and MSMEs.**

Instead of digital liberalization, what is needed around the world is a development-focused digital industrialization strategy. In Africa, this is reflected in the Agenda 2063: The Africa We Want vision. Digital industrialization indicates the need for investment in countries' technical, legal and economic infrastructure and policies to develop and support

domestic digital businesses and platforms and build capacities to use domestic data in the public interest; to strategically promote domestic MSMEs including through technology transfer and national data use frameworks; to ensure universal benefits of the digital economy through full employment policies; to ensure proper taxation and investments to close the digital divide; to advance consumer welfare and privacy through enforceable consumer protection measures; to ensure public interest regulation of the digital economy and sound competition practices; and more. Specific policies are required to protect the small actors, traders, farmers, small service providers, workers, etcetera that are threatened by new globally organized digital models. Much of this can be accomplished through domestic policies that should be developed with appropriate stakeholder input, as well as through regional integration. But “e-commerce” rules in the WTO are intended to specifically restrict the ability of countries to implement most such policies.

#### **8. Fairer taxation would be severely constrained by proposed e-commerce rules in the WTO.**

“E-commerce” proposals in the WTO include at least five mechanisms to limit tax liabilities for Big Tech, not just by prohibiting appropriate taxation but also by banning requirements that companies have a local presence in countries where they operate. But giant technology companies should contribute to the national tax base, just as do local or non-digital companies. Digital players are taking advantage of the mobility and intangibility of digital goods and services to avoid tax and create an uneven playing field. Tax rules that allow digital TNCs to artificially reduce taxable income or shift profits to low-tax jurisdictions in which little or no economic activity is performed should be tackled and must not be codified by digital trade rules. Appropriate taxation is essential for investments in development-focused infrastructure and good quality and accessible public services, including social infrastructure that can reduce unpaid and poorly paid care work in the home mostly carried out by women. This is all

the more important given that the build-up of debt (both public and corporate) in recent years is once again raising concerns about its sustainability. Developing countries will not be able to achieve the Sustainable Development Goals (SDGs) without expanding fiscal supports to achieve quality accessible public services in education, health, social care, access to water, electricity, and more.

#### **9. We need policies to promote innovation, small businesses, and security, not more patent monopolies.**

UNCTAD has highlighted that all countries which successfully industrialized used infant industry protections. Since developing countries, and particularly Least Developed Countries (LDCs), still need to industrialize, they need to be able to use protections for nascent industries, including through active policies of technology transfer. The international system of rules governing patents and copyrights have resulted in an incalculable transfer of wealth from the global South and consumers everywhere to a tiny set of hyper-protected patent and copyright-holding TNCs in a few countries. Extreme protections for “intellectual property” (IP) stifle innovation, reduce freedom and creativity, promote monopolies, and facilitate tax avoidance. They also reduce our security against hacking, as source codes and algorithms treated as trade secrets could evade regulatory oversight. Proposals in the WTO under the name of “e-commerce” would further entrench systems of IP maximalism and should be rejected, especially for LDCs that are not required to implement them. Instead, we need proven policies that promote innovation, unconstrained by anti-development extreme IP monopolies.

#### **10. Countries need policy space; the e-commerce agenda is promoting harmful total liberalization.**

“E-commerce” is being used as a Trojan horse for other proposals that would expand liberalization including the removal of tariffs (on information technology products); liberalization of

various services; and allowing foreign companies to compete for government procurement contracts of all ministries. They are proposed to apply even to LDCs who do not have to liberalize goods or services in the Doha Round. These proposals include issues which developing countries successfully stopped from being negotiated in the Doha Round. “E-commerce” should not function as a back door for anti-development rules that have already been rejected.

#### **11. We need a new agenda for digital economic policies, and for the global economy.**

Developing countries must develop their own agenda for digital industrialization. They must not advance the “e-commerce rules” that were developed by TNCs like Amazon, Google, Facebook, and Alibaba in their own interests. Other models can more equitably distribute the benefits of the digital economy while reinforcing human rights. All countries likewise urgently need policies to constrain the behaviour of these corporate behemoths, not to further entrench their outsized monopoly power. A pro-development outcome cannot be achieved in e-commerce talks because the rules and policies needed for digital industrialization are the opposite of WTO rules, which give companies rights while constraining the role of the state in regulating.

Civil society has argued that the global trade system must provide countries sufficient policy space to pursue a positive agenda for development and job-creation, and must facilitate, rather than hinder, global efforts to ensure food sovereignty and true food security, sustainable development, access to affordable medicines, and global financial stability. It must privilege global agreements on human rights, the environment, and SDGs over corporate profit. This pro-development agenda is being shoved aside in the WTO in favour of Big Tech’s interests through the “e-commerce” talks. We thus urge WTO members to abandon their push for digital trade negotiations in the WTO and focus urgently on transforming global trade rules for shared prosperity for all. □

*For the full list of signatories to the civil society letter, see [www.ourworldisnotforsale.net](http://www.ourworldisnotforsale.net).*



# Digital platforms generate opportunities and challenges

Relevant policies and regulations may need to be adapted to deal with the policy challenges posed by the growth of online digital platforms and to maximize the development effects of these platforms, says a UN economic body.

by Kanaga Raja

GENEVA: Digital platforms can create new opportunities for companies of all sizes to engage in trade, but the gains are not automatic and economic policies and regulations will need to maximize the benefits while minimizing the costs.

This is one of the main conclusions highlighted by the United Nations Conference on Trade and Development (UNCTAD) in its latest Policy Brief (No. 73, March 2019), "Making digital platforms work for development".

In the brief, UNCTAD highlighted growing concerns over the rising market power of certain platforms and the related implications for competition, data protection and ownership, consumer protection and taxation and employment policies.

UNCTAD's latest statistics show that global electronic commerce sales grew 13% in 2017, hitting an estimated \$29 trillion. A similar surge was seen in the number of online shoppers, which jumped by 12% and stood at 1.3 billion people.

Though most Internet buyers purchased goods and services from domestic vendors, the share of those buying from abroad rose from 15% in 2015 to 21% in 2017, with the growth being driven mainly by an increase in the United States.

As a result, said UNCTAD, cross-border business-to-consumer (B2C) sales reached an estimated \$412 billion, accounting for almost 11% of total B2C e-commerce – a 4% hike on the previous year's numbers.

## Data a valuable resource

According to the UNCTAD policy brief, digital platforms are key in the evolving e-commerce and digital economy landscape. Their main characteristics include the provision of infra-

structure to intermediate between different users; the reliance on network effects, as more users beget more users, leading to monopolistic trends; and the use of cross-subsidization.

The most important value of such platforms stems from the data extracted from users that can be further analyzed, used and monetized. "Data have become a valuable extractable resource in the digital economy," said UNCTAD.

By reducing transaction and search costs, digital platforms enable those offering assets or services to connect more easily with those wishing to use or consume them. "This has created potential opportunities for new trade types (in digitally traded products, services and tasks) and for more traditional trade using e-commerce and other online platforms to better match buyers and sellers and to make products more visible," said UNCTAD.

It noted that many platforms provide access to free or paid services via the Internet to connect users, buyers and sellers, such as services related to logistics, payments, market research, trade compliance, market intelligence data, advertising, refunds and dispute resolution. Digital platforms can allow for a more efficient utilization of physical assets and time. Often accessed through mobile applications, they aggregate and bring together supply and demand in ways that were not possible before. Digital platforms can also help to empower women entrepreneurs, said UNCTAD.

There are different ways for micro-enterprises and small and medium-sized enterprises to gain an online presence to market their goods and services to potential buyers in their own country or in foreign markets. Participation in online platforms may be more useful for smaller firms that compete in specific, well-de-

defined market segments, such as niche trading in tourism and in value-added food products.

Different options vary in terms of resource requirements, flexibility and the need for in-house skills and capabilities.

One option is to use third-party online marketplaces. The primary focus of these marketplaces may be business-to-business, business-to-consumer or consumer-to-consumer. They often specialize in certain types of products, such as physical goods, digital products or information and communications technology-enabled services.

Another option is to set up a standalone e-commerce site, said UNCTAD. This can be done, for example, by adding an e-commerce function to an enterprise's existing website, by using a software-as-a-service e-commerce solution with a package of what is needed to operate e-commerce or by building a customized e-commerce site.

Benefiting from economies of scale and network effects, a few major online marketplaces have captured significant parts of the overall market, according to UNCTAD. Leading e-commerce platforms include the Alibaba Group, Amazon, eBay and Rakuten.

The development of a local e-commerce industry can provide convenience for residents through shorter shipping times, flexible payment options, relevant products and local language interfaces. Other potential advantages domestically may include more linkages with local industries, reduced reliance on imports and greater openness to support exports.

E-commerce platforms that have emerged in developing economies include Jumia in Africa; Flipkart, Lazada and Souq in Asia; and MercadoLibre in Latin America.

## Division between local and foreign platforms

UNCTAD pointed out that the division between local and foreign platforms is becoming increasingly blurred.

Many domestic platforms may be unable to compete with international platforms. In addition, once domestic e-commerce platforms achieve a certain scale, they often become targets for acquisition by global players. For example, recently, Walmart has acquired Flipkart,

Alibaba has acquired Lazada and Amazon has acquired Souq.

Due to the existence of network effects, local platforms may not become profitable until they reach a critical mass. If only 2-3% of consumers in a country buy online, it may not be worthwhile to invest in digital platforms. "Companies may need to wait until the market exhibits some growth. However, with fast market growth expectations, some firms may temporarily accept low or negative profitability to reap first-mover advantages."

In some developing countries, the absence of global platform providers creates scope for local players. For example, in sub-Saharan Africa, various e-commerce solutions have been developed to facilitate commerce over feature phones. There are thousands of e-commerce startups throughout the continent, but only a few have reached significant scale.

Many new e-commerce payment gateways have also cropped up. In various low-income developing economies, new e-commerce sites are targeting the domestic market, enabling consumers to browse and order goods or services online.

"More research is required to understand the income and employment effects of local e-commerce platforms," said UNCTAD.

### Some policy implications

According to UNCTAD, the growing use of digital platforms has economic, social and political impacts. It said policymakers face challenges in different policy areas, including competition and consumer protection; data protection and privacy; taxation; and employment and working conditions.

According to the policy brief, winner-takes-all dynamics are typical in platform-based economies, where network effects can generate major benefits to first movers. Whoever controls the platform also controls the distribution channel, giving the dominant platform (and data) owner considerable market power.

Digital platforms are transforming markets and competition. If they evade some of the regulatory requirements that traditional businesses need to meet, they may be perceived as providing unfair competition.

The digital platform environment

may lend itself to potential anti-competitive practices, said UNCTAD. As a result of network effects, platforms may gain market power and could abuse their dominant position, for example, by imposing exclusivity arrangements on their providers or carrying out predatory pricing against competitors. In some competition cases involving platforms, they were not considered to hold dominance over the relevant market. By contrast, the European Commission recently fined Google €4.34 billion for breaching European Union anti-trust rules. Finding the appropriate responses to deal with possible anti-competitive practices in the digital economy will become increasingly important, said UNCTAD.

Consumers have benefited from digital platforms through new and better-suited offers, lower prices and more pertinent information. Yet the lack of face-to-face transactions entails greater risks regarding disclosure and transparency, data protection and the applicable laws and responsibilities of platforms and peer providers.

The digital economy relies increasingly on the generation, storage, processing and transfer of data, both within and across national boundaries. Data access and analysis are becoming strategically important for the competitiveness of companies. With regard to the use of digital platforms, there are concerns over how to harness data flows while addressing concerns related to privacy and security.

Policymakers need to strike a balance between the need for companies to collect and analyze data for innovation and efficiency gains, and the concerns of other stakeholders with regard to security, privacy and the movement and ownership of data.

The current system for data protection is fragmented, and national data policy and legislation has not yet been developed in many developing countries. Efforts to promote convergence and ensure compatibility between different international initiatives are needed.

Policymakers in both developing and developed countries also face the challenge of taxation with regard to the digital economy. Reliance on digital platforms may weaken the international tax concept that allocates jurisdictional tax claims over profits of multinational companies based on physical presence. It

raises issues such as enforcement, where to tax non-resident e-commerce businesses, how to assess intragroup transactions, how to classify digital goods, how to identify taxpayers and where and how to collect consumption tax.

Moreover, the digital economy could enable more tax planning and erosion, which reduce the availability of domestic resources for development. Finding ways to address related concerns is of relevance to all countries.

Digital platforms, in a context of closer international tax cooperation, could facilitate enforcement, by reducing the number of actors involved in taxable transactions and facilitating monitoring and traceability.

In addition, the evolving digital economy has been accompanied by the rise of trade in tasks mediated by online labour platforms. This is creating new income-generating opportunities for people in developing countries who have adequate connectivity and relevant skills. Such platforms enable many professionals to sell their services to clients abroad. Annually, some 40 million people access such platforms, looking for jobs or talent.

"At the same time, the fragmentation of the production process and a large oversupply of jobseekers on such platforms may weaken their bargaining power and accentuate tendencies towards a race to the bottom in terms of compensation and other working conditions."

Policies and regulations need to be designed to enable this expanding segment of the economy to ensure the provision of quality and decent jobs, said UNCTAD.

Digital platforms match tasks across the entire skills spectrum. They typically favour certain types of contracts (freelance and contract work rather than regular employment). Workers with high levels of social protection may find themselves in competition with workers in the domestic market or abroad with lower levels of social protection. This has implications for how benefits, healthcare and pensions are organized, and for the provision of training and education.

Moreover, as net benefits from the reliance on digital platforms can be unevenly distributed, the role of redistribution policies should be explored.

**Addressing the policy challenges**

According to UNCTAD, in order to address these policy challenges and maximize the development effects of digital platforms, relevant policies and regulations may need to be adapted to the new digital context.

Economic activities online should, to the greatest possible extent, be regulated in a manner consistent with a fair trading environment that is not biased towards or against any modality of trade and that provides equivalent protection to the rights of all parties involved.

Finding the best development-oriented policy solutions in specific areas will require more dialogue between member states. It will also require more capacity-building in multiple areas in those countries that are the least prepared for the digital era.

A notable illustration of the need for increased dialogue is the UNCTAD eCommerce Week, which has become a leading forum to discuss the development challenges and opportunities brought about by the digital economy, said UNCTAD. (SUNS8880) □

## Capacity-building needed to reduce digital, data divides

**Given the increasing value of data in the digital economy, says UNCTAD, there is a need to build productive capacity to bridge data and digital divides between and within countries.**

by Kanaga Raja

GENEVA: Capacity-building efforts are needed to reduce the digital and data divides between and within countries, particularly those relating to youth, the rural economy, micro-enterprises and small and medium-sized enterprises, and gender, according to the United Nations Conference on Trade and Development (UNCTAD).

This is one of the main conclusions highlighted by UNCTAD in its Secretariat Note titled "The value and role of data in electronic commerce and the digital economy and its implications for inclusive trade and development." The Note was presented at the third session of the Intergovernmental Group of Experts on E-commerce and the Digital Economy, which convened here on 3-5 April. The session was held in conjunction with UNCTAD's eCommerce Week which took place on 1-5 April.

The Secretariat Note addresses the increasing role of data in e-commerce and the digital economy, in the context of digital and data divides within and between countries.

According to UNCTAD, the role of official development assistance in terms of international policy on capacity-building needs to be addressed. Aid in support of productive capacity development in the context of digitalization is critical, particularly for the least developed coun-

tries, which are lagging behind in digital readiness.

Current levels of official development assistance are inadequate. For example, only 1% of all Aid for Trade funding is currently devoted to information and communications technology (ICT). Similarly, multilateral development banks invest only 1% of their total commitments in ICT projects, and of this, only 4% goes towards policy development.

"Given the speed at which the digital economy is evolving and given the major digital divides that exist in many areas, it is important for the donor community to increase attention regarding the digital dimension of official development assistance strategies," said UNCTAD.

### Digital upgrading

It noted that owning vast amounts of data can only be of value when there is analytical capacity to convert them to information and knowledge. Countries in which the capacity to transform data into business intelligence is limited are constrained in their potential to capture the economic value of data.

To prevent dependence on certain countries in the context of a data-driven digital economy, development strategies

need to include the objective of digital upgrading (value addition) in a data value chain, to enhance domestic capacities to move from data as a raw material to processed digital data and artificial intelligence.

Beyond having access to adequate connectivity and competitive prices, the right skills are needed to be able to derive development benefits from mining big data. There is a need for more advanced digital/ICT user skills for more complex operations using basic software packages and more advanced packages (e.g., sector-specific packages for data treatment and analysis, design, architecture and accounting).

Analysts of all kinds of data need to learn about new data sources, new ways of collecting data, how regulations concerning data affect what can be collected and analyzed, and what technologies to adopt for secure data storage and use.

Beyond foundational skills, a higher level of skills is required to build, supply, deploy and manage digital tools and services. Specialist skills needed range from those required to roll out, upgrade and repair physical ICT infrastructure (e.g., cables and hardware such as computers, routers and servers), to those possessed by software engineers, applications developers, systems architects and data scientists, said UNCTAD.

The growth of the Internet of things, for example, increases the demand for people with skills related to data analytics, business management, hardware and systems design and security. As the Internet of things and big data become more widely used, data scientists and analysts become more central and strategic in the operations of many firms.

The ability to determine what to do with increasing amounts of data and identifying what is valuable and what creates new business opportunities will be key. These roles, in turn, will require broader skill sets, combining analytical, software and architecture skills with business acumen and communications skills.

According to the UNCTAD Secretariat Note, the evolving digital economy is characterized by the emergence of a platform-based ecosystem of digital products and services that are developing through a combination of widespread and continuous measurement and data collection by the Internet of things, data flowing from users' data as

well as from sensor-laden factory automation systems and ubiquitous, Internet-connected user devices.

This is generating “big data” pools that can be mined and analyzed for patterns and correlations that would otherwise remain hidden. The results can be fed into systems where artificial intelligence, machine learning and automated decision-making are used to upgrade system elements and even an entire system.

Platforms hosted by players such as Alibaba, Amazon, Apple, Facebook, Google, Microsoft, SAP, Tencent and others already have big data at the centre of their business models.

Data obtained from the use of digital technologies can provide new sources of knowledge, innovation and profits if analyzed effectively and transformed into intelligence. For example, detailed data collected from the behaviour of platform users and online consumers can allow platform owners to innovate and offer new, better and/or more customized products and services that can be monetized. Data analytics can also be used to support progress towards the 2030 Agenda for Sustainable Development.

The gains, however, are not automatic, and there are various concerns related to data-driven developments, UNCTAD underlined.

Watchdogs, regulators and consumers are increasingly expressing concerns about the implications for security, privacy and ownership and of the use of personal data. Moreover, growing reliance on data, combined with strong network effects, can give companies that control the data considerable market power, raising the risk of market dominance and anti-competitive behaviour.

UNCTAD noted that as trade is increasingly becoming digitalized, cross-border data flows are becoming more important for international transactions. Activities affected by digitalization go beyond online trading and supply chain coordination, to using ICTs for the integration of a wider range of activities into single systems, thus making value chains increasingly data-driven, said UNCTAD.

### **Increasing role of data in digital economy**

UNCTAD noted that the global Internet Protocol traffic, a proxy for data flows, has grown dramatically in the past

two decades. In 1992, global Internet networks carried approximately 100 gigabytes (GB) of traffic per day. Ten years later, global Internet traffic amounted to 100 GB per second. By 2017, global Internet Protocol traffic had surged to more than 45,000 GB per second, due to both qualitative and quantitative changes in the content of Internet traffic. By 2022, at 150,700 GB per second, global Internet Protocol traffic is expected to be 75 times the volume it was in 2007.

A novel aspect of the digital economy is the aggregation of large amounts of data in the “cloud.” Digitalization allows data to flow from all corners of industry and society, not only from sensors built into production lines but also from electric meters, security cameras, customer service call logs, online clicks, point-of-sale registers, status updates on social media and post reactions (such as “likes”). Access to and analyses of data are becoming crucial for the competitiveness and expansion of companies across sectors.

The shift towards cloud computing can be seen as a step change in the relationship between telecommunications, businesses and society as a result of massively enhanced processing power, data storage and higher transmission speeds, accompanied by sharp price reductions. For example, the average cost of 1 GB storage capacity fell from more than \$400,000 in 1980 to \$0.02 in 2016. Users can access a scalable and elastic pool of data storage and computing resources as and when required.

The externalization and aggregation of computing resources and data storage in the cloud allow data to be pooled and analyzed in vast quantities. It also reduces the costs for small businesses of accessing information-technology hardware and software and does not require developing information-technology skills in-house.

The Internet of things concerns the extension of connectivity beyond people and organizations to objects and devices. Sensors are currently embedded at low cost in robots and production equipment, as well as in operator wearable devices, industrial vehicles, buildings, pipelines and household appliances.

Since data are collected continuously in real time, from multiple sources and at multiple points in a system, vast amounts of data can be accumulated. In

this context, the main characteristics of big data are volume, velocity and variety.

Internet of things devices send information to be stored and processed in the cloud and streamline processes and information flows. According to one estimate, approximately 500 billion Internet of things devices will be deployed by 2030.

UNCTAD said that the increasing importance of data in the economy raises various questions related to the implications for inclusive trade and development of digital and data divides.

### **The digital and data divides**

UNCTAD pointed out that the ability of actors in developing countries to benefit from increasingly data-driven e-commerce and digital economy is affected by their capacity to access and use ICTs in an affordable manner. Significant gaps persist in these areas, both between and within countries.

According to the International Telecommunication Union, 51.2% of the global population were using the Internet at the end of 2018. Thus, slightly less than half of the world population remain offline. In the least developed countries, less than 20% of persons were using the Internet, compared with more than 80% in developed countries.

The digital economy can allow micro-enterprises and small and medium-sized enterprises to increase their access to markets and productivity. However, many micro-enterprises and small and medium-sized enterprises, especially in rural and remote areas, are ill prepared to engage in and benefit from e-commerce and the digital economy, including data collection and analysis. They face barriers such as limited access to affordable digital and data infrastructure, payment solutions, trade logistics, skills, consumer and data protection, and financing of digital entrepreneurship. Another aspect of the digital divide is that most data centres are located in developed countries.

The evolving digital landscape offers women entrepreneurs new opportunities to strengthen their businesses and become more effective. At the same time, there is evidence of a “gender digital divide” that excludes women entrepreneurs from the opportunities and benefits of a data-driven economy, due to

lack of literacy, skills, access, resources and other factors.

The gender gap is more pronounced in developing countries, particularly in the least developed countries. In 2017, the proportion of women using the Internet worldwide was 12% lower than that of men, while in the least developed countries, only one in seven women was using the Internet compared with one in five men.

According to UNCTAD, digital divides are due to factors such as insufficient access and affordability, lack of technical and digital skills, including on data analytics, absence of relevant content or local language content and safety concerns. One of the great challenges of digitalization is therefore to achieve inclusion so that no one is left behind, it said.

Addressing these divides is important to attain inclusive trade and development objectives. Unless properly tackled, digital and data-related divides between and within countries will widen, exacerbating existing inequalities. This will require significant capacity-building efforts, including skills development, at the national, regional and international levels, said UNCTAD.

### The value of digital data

UNCTAD said that digital data are becoming an essential input in decision-making, production processes, transactions and relationship management across an ever-increasing swath of the agricultural, manufacturing and services sectors. As the digital economy evolves further, data will become even more inextricably interwoven with all aspects of the world economy, including the functioning of the Internet, global value chains and international trade.

Big data are opening doors for analysis, value creation and the application of artificial intelligence. Big data can be “mined” for insights that enable data-driven decision-making by businesses, government agencies and persons or organizations with access to the data and the means to carry out further analysis.

The value of digital data arises once data are transformed into “digital intelligence”. Under new business models that have emerged, global digital platforms create value by aggregating and analyzing data. This value can then be monetized in various ways:

(a) Platform user data can be leveraged to provide targeted advertising services (e.g., Google, Facebook);

(b) Data from the Internet of things and sensors can be used to support innovation and to make supply chains more efficient (e.g., Caterpillar, Rolls Royce);

(c) E-commerce platforms can use data collected from sellers and buyers on their platforms to offer better services or to raise fees for using the platforms (e.g., eBay, Jumia, Amazon);

(d) Companies can sell or rent out, as a service, the infrastructure or software needed to operate in a data-driven economy (e.g., Amazon Web Services).

Although some digital platforms may provide many services and products free of charge, consumers and users end up paying in the form of giving firms and application developers detailed information, sometimes unknowingly, about their location, preferences, relationships and personal habits. It is this knowledge that can be monetized.

Data are invaluable in terms of gaining a competitive advantage. This is why platform providers are often happy to provide services in return for data rather than money. In the digital economy, there is also a centralizing flow of data.

According to UNCTAD, a global value chain for data is emerging, but, unless appropriate policies are put in place, many economies may find themselves in the low-value part of this chain and increasingly dependent on core platform owners.

Data monetization by global companies can have implications for developing countries in terms of lost and untaxed revenues, the increased market power of global platforms, potential for misuse of personal data, under-development of hosting within a country, data centres, cloud services, advertising markets and the like, it said.

Data collection and analysis can help to manage or resolve critical global issues, assist in the creation of new scientific breakthroughs, advance human health, provide real-time streams of information (e.g., on disease outbreaks or traffic conditions), monitor natural systems, improve the efficiency of resource use, and support decision-making by business people, policymakers and civil society.

There are different ways in which big data can support sustainable devel-

opment, especially when combined with mobile technologies. In sub-Saharan Africa, for instance, large sets of data on soil characteristics are mined to help determine fertilizer needs and increase productivity.

Data gathering and analysis are becoming more affordable with the availability of cloud-based (on-demand) services. Small companies are able to rent cloud-based, pay-per-use data services, rather than buying expensive hardware and software systems and hiring in-house data analysts.

### Challenges arising out of data-driven economy

According to the Note, creating trust online is critically important to seize opportunities from e-commerce and the digital economy. The handling of data is a central component of this. In the current digital world, personal data are a resource that drives much commercial activity online. How these data are used can raise concerns regarding privacy and the security of information. Recent high-profile cases with political implications helped fuel those concerns in 2018.

A 2018 survey on Internet security and trust conducted by the Centre for International Governance Innovation and Ipsos, in collaboration with UNCTAD and the Internet Society, shows growing concerns about data privacy and online security. More than half of respondents in 25 economies were more concerned about their privacy online than they had been a year earlier. In the Middle East and Africa, the share of those feeling “more concerned” rose from 55% to 61%. Nearly half of Internet users in North America were more concerned with their online privacy than they were the previous year, while 79% said that Internet companies were the primary source of their heightened anxiety.

Different notions of privacy and a variety of different stakeholder interests create tensions. Individuals are concerned about their right to privacy and being able to safely and confidently use online services; governments are concerned about national security and safety; and businesses are concerned about compliance burdens and regulations that may hamper innovation and trade. Concern about data privacy will also grow in developing countries, where the use of social media and other digital

platforms is expanding rapidly, said UNCTAD.

As more economic activities are digitalized, companies, organizations, governments and individuals need to pay more attention to how they protect their online data and devices. Connecting private communications networks, industrial systems and public infrastructure to the Internet makes them vulnerable to hacking, identity theft or theft of other personal and financial information, larceny or even industrial espionage and sabotage. Finding adequate measures to protect against these threats requires shared responsibility among all stakeholders.

Digital platforms are mainly characterized by their reliance on data. Part of their market power stems from their ability to collect, process and analyze data and convert that data into digital intelligence for use in economic activities. Thus, they have the capacity to increase their competitive position.

This digital intelligence represents a key asset for controlling large parts of the value of the digital economy. Whoever controls a digital platform also controls the distribution channel, and this can give the owner of the dominant platform (and data) superior information and thereby considerable market power. The winner-takes-all dynamics seen in platform-based industries (e.g., Amazon, Alibaba, Google, Uber, Facebook, WeChat), where network effects accrue to first movers and standard setters, can accentuate polarization in the industrial base.

Moreover, a greater ability to exploit new technologies (e.g., collecting and analyzing data and turning them into business opportunities) relative to that of others with access to the same resources and technologies will increasingly drive competitiveness and the benefits accruing from the digital economy. The use of artificial intelligence can be expected to accentuate the strong market position of the few companies already in a position to leverage access to data, said UNCTAD.

Digital platform companies can also increase their market position by acquiring competitors or innovative firms offering complementary technologies and services. In the case of Google, the company has made more than 230 acquisitions, at times at a rate of one per week.

For consumers, there are also risks to consider. For example, big data, algo-

rithms and artificial intelligence can enable instantaneous and/or individualized price discrimination, where prices are adjusted in real time based on a consumer's behaviour, perceived need for the product or service, and willingness to pay. Analyses of shopping and purchasing histories, in the context of millions of prior purchases from shoppers with similar habits, can give firms a very high level of detailed information that could weaken consumers' bargaining power.

### Regulatory framework

The current regulatory environment for protection of data is highly fragmented, UNCTAD said, adding that legal frameworks that protect data are often outdated or incompatible. In some cases, various pieces of legislation are introduced that are incompatible with each other.

Increased reliance on cloud-computing solutions also raises questions about what jurisdictions apply in specific cases. This lack of clarity creates uncertainty for consumers and businesses, and limits the scope for cross-border exchange and growth.

In both developing and developed countries, enforcement of privacy and security obligations is often inadequate, as authorities seek to catch up with the latest technological advances. Moreover, many developing countries still lack data protection and privacy legislation altogether. In Africa, for example, less than 45% of countries have adopted such legislation, and in Oceania, no economy has data privacy legislation in place. UNCTAD said it has estimated that more than 400 million Facebook users reside in countries with no data protection legislation.

"Coherent and internationally compatible national data protection regimes to facilitate cross-border trade will be ever-more important in the face of new technologies. More dialogue between all stakeholders is needed to achieve adequate protection."

The digital economy relies increasingly on cross-border data flows. A deep understanding among governments and stakeholders of the role of data flows is therefore becoming increasingly important.

For international trade, it is also important that national regimes on regulat-

ing cross-border data flows are compatible across countries so as not to inhibit the adoption and proliferation of emerging technologies, with adverse effects on societal benefits, said UNCTAD.

When considering what may be an appropriate regulatory framework, policymakers also need to factor in various concerns of governments, consumers/users and firms over national security, privacy, movement and ownership of data, as well as economic development.

Whether cross-border data flows should be regulated in trade agreements, as a trade matter, or discussed and regulated at other forums or organizations is still under debate. As more trade is affected by digitalization and conducted over the Internet, it becomes increasingly important for trade policymakers to factor in how the Internet itself is governed and operated.

Given the importance of forces pushing towards market concentration in the digital economy dynamics, competition policy has an important role to play. The potential for anti-competitive practices and abuse of dominant positions of digital platforms may require adaptation of approaches to competition policy frameworks and enforcement, said UNCTAD.

Against this background, UNCTAD posed the following guiding questions for the discussion at the third session of the Intergovernmental Group of Experts on E-commerce and the Digital Economy:

- What are the role and value of data in e-commerce and the digital economy in the context of inclusive trade and development?
- What are the key opportunities and challenges associated with managing and regulating data and data flows?
- What are the public policies, regulations and institutional arrangements in different countries and regions for harnessing and protecting data related to e-commerce and the digital economy, and bridging the digital divides including between and within countries and relating to youth, rural economy, micro-enterprises and small and medium-sized enterprises and gender?
- How could developing countries build capacities, including skills, to use new and emerging technologies such as big data analytic and artificial intelligence? (SUNS8881) □

# Unsustainable?: The IMF's approach to the Sustainable Development Goals

The IMF's professed commitment to the Sustainable Development Goals rings hollow when seen against its actual practices and priorities.

by Kate Donald

The International Monetary Fund (IMF) is increasingly claiming a role for itself as an important player in the implementation of the Sustainable Development Goals (SDGs). However, when it comes to the SDGs, is the Fund a help or a hindrance?

Even before the adoption of the 2030 Agenda for Sustainable Development and SDGs in 2015, the IMF declared itself "fully committed" to delivering on the new goals. However, in practice this commitment has been patchy at best, with not much evidence of any meaningful realignment.

In 2017, the IMF promised that it would prepare an "in-depth assessment of the scope and effectiveness of IMF support for the implementation of the 2030 development agenda" in 2018. This never emerged. Instead, now we have a colourful new SDGs page on the IMF website that showcases how their work supposedly supports efforts towards achieving the goals (collating several listicle-type blog posts like "5 things you need to know about the IMF and climate change"). IMF rhetoric about the SDGs has also stepped up, with a speech by its Managing Director Christine Lagarde declaring them the "right response to the great challenges of the 21st century", and the publication of a new IMF paper estimating the cost of meeting the SDGs.

## Exacerbating inequality

Taken at face value, it seems churlish to sneer at a declaration of commitment to sustainable development. However, we have to ask ourselves whether the IMF's actions are indeed conducive to "Transforming Our World", the official title of the SDG Agenda.

SDG 10, which aims to reduce inequality within and among countries and is up for special review at the UN High-

Level Political Forum in July, is a particularly useful case study. The Fund claims it is supporting this goal through "strong, inclusive and sustainable growth with poverty eradication," and "gender equity and inclusion". This is, at best, cherry picking. Goal 10 includes a target to reduce inequality through social protection and fiscal and wage policy. The Fund's approaches to all three of these have been subject to robust criticism, precisely for exacerbating inequalities.

Indeed, despite a recent pivot towards defining income and gender inequality as "macro-critical" issues, evidence gathered by Oxfam and the Bretton Woods Project, among others, suggests that the IMF's own policy recommendations and loan conditionality have in fact been – and continue to be – a major contributor to the inequality crisis. For example, in many countries the Fund persists in pushing austerity measures which have taken a heavy human rights toll on the poorest and most disadvantaged groups, including women.

It is also worth highlighting that Goal 10 includes tackling inequalities between countries. Conveniently, none of the IMF materials on the SDGs seem to mention that one of the targets under the goal is to "ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions." What are the IMF and its 'developed' country members doing to meet this target, on which they could have a very immediate and direct effect? Will it explicitly link its upcoming quota review to this target?

Certainly, the power imbalances in global economic decision-making are a profound cause of global inequalities; for example, the stranglehold of rich coun-

tries over the rules of the global tax system perpetuates a situation where billions of dollars are drained from poorer countries every year. The billions that could be raised through measures like tackling transnational tax avoidance and evasion and taxing wealthy individuals and corporations at higher rates, are studiously ignored – a consequence of treating the commitment to reduce inequality between countries as a matter of rich-country discretion or largesse, rather than as a human rights obligation. There are a lot of policy areas where the IMF could be doing much, much more in this regard: preventing the "race to the bottom" on corporate tax rates rather than advocating for cutting them, and deepening its efforts to prevent cross-border tax abuses. However, the IMF paper on financing the SDGs almost entirely ignores progressive, systemic tax reforms as an option, focusing instead merely on improving tax-to-GDP ratios and spending efficiency.

The 2030 Agenda is supposed to be transformative. It is very clear that business-as-usual policies or band-aid approaches to the worst social problems won't get us there. This is especially so for Goal 10, and the Agenda's overarching commitment to "Leave No One Behind". We won't really tackle inequality in any meaningful way if we rely on regressive tax systems, labour market "flexibilization" and exploitative, extractivist economic models, and then just compensate the worst losers with pared-back, targeted "safety nets" that are not even effective in reaching those in need.

If we want to really tackle inequality, we need to hone in not just on those left (or pushed) behind, but those who are too far ahead – it is after all the acceleration of the 1% away from the rest that has fuelled the inequality crisis. But instead, the IMF has continued to emphasize regressive taxes like value-added tax rather than reining in and redistributing the incomes and wealth of the top 1% and multinational corporations.

Ultimately, what is most disappointing is that, rather than seizing a much-needed opportunity to question and realign its practices and priorities based on the SDGs, the IMF is instead merely using the SDGs as a public relations exercise to justify what it is already doing, no matter how incompatible this may be

with truly equitable sustainable development.

Sadly, this approach is very much in line with the increasingly popular fad, especially among big business, of “SDG washing”. But coming from the IMF, which has a profound influence over global macroeconomic conditions and there-

fore the enabling (or currently, disabling) environment for sustainable development, these contortions are deeply irresponsible. □

*Kate Donald is with the Center for Economic and Social Rights. This article first appeared in the Bretton Woods Observer (Spring 2019) published by the Bretton Woods Project.*

## Has privatization benefited the public?

Privatization tends to benefit a select few at the expense of the wider populace and the government, writes **Jomo Kwame Sundaram**.

In most cases of privatization, some outcomes benefit some, which serves to legitimize the change. Nevertheless, overall net welfare improvements are the exception, not the rule. Never is everyone better off. Rather, some are better off, while others are not, and typically, many are even worse off.

The partial gains are typically high but negated by overall costs, which may be diffuse and less directly felt by losers.

### Privatized monopoly powers

Since many state-owned enterprises (SOEs) are public monopolies, privatization has typically transformed them into private monopolies. In turn, abuse of such market monopoly power enables more rents and corporate profits.

As corporate profits are the private sector’s yardstick of success, privatized monopolies are likely to abuse their market power to maximize rents for themselves. Thus, privatization tends to burden the public, for example, if charges are raised.

In most cases, privatization has not closed the governments’ fiscal deficits, and may even worsen budgetary problems. Privatization may worsen the fiscal situation due to loss of revenue from privatized SOEs or tax evasion by the new privatized entity.

Options for cross-subsidization, for example, to broaden coverage, are reduced as the government is usually left with unprofitable activities while the potentially profitable are acquired by the private sector. Thus, governments are often forced to cut essential public services.

In most cases, profitable SOEs were privatized as prospective private owners are driven to maximize profits. Fiscal deficits have often been exacerbated as the new private owners use creative ac-

counting to avoid tax, secure tax credits and subsidies, and maximize retained earnings.

Meanwhile, governments lose vital revenue sources due to privatization if SOEs are profitable, and are often obliged to subsidize privatized monopolies to ensure the poor and under-served still have access to the privatized utilities or services.

Privatization burdens the public when charges or fees are not reduced, or when the services provided are significantly reduced. Thus, privatization often burdens the public in different ways, depending on how market power is exercised or abused.

Often, instead of trying to provide a public good to all, a privatized company excludes many because it is not considered commercially viable or economic to serve them. Consequently, privatization may worsen overall enterprise performance. “Value for money” may go down despite ostensible improvements used to justify higher user charges.

SOEs are widely presumed to be more likely to be inefficient. The most profitable and potentially profitable are typically the first and most likely to be privatized. This leaves the rest of the public sector even less profitable, and thus considered more inefficient, in turn justifying further privatizations.

It is often argued that privatization is needed as the government is inherently inefficient and does not know how to run enterprises well. Incredibly, however, the government is expected to subsidize privatized SOEs, which are presumed to be more efficient, in order to fulfil its obligations to the citizenry.

Such obligations may not involve direct payments or transfers, but rather, lucrative concessions to the privatized SOE. Thus, they may well make far more from these additional concessions than the actual cost of fulfilling government

obligations.

Thus, privatization of profitable enterprises or segments not only perpetuates exclusion of the deserving, but also worsens overall performance of a public sector now encumbered with remaining unprofitable obligations – contributing to what appears to be a self-fulfilling prophecy.

### Benefits accrue to relatively few

Privatization typically enriches the politically connected few who secure lucrative rents by sacrificing the national or public interest for private profit. This has, in turn, exacerbated corruption, patronage and other related problems.

For example, following Russian voucher privatization and other Western-recommended reforms, for which there was a limited domestic constituency then, the Russian economy collapsed by half within three years (1992-94) and adult male life expectancy fell by six years. It was the greatest such recorded catastrophe in the last six millennia of recorded human history.

Soon, a couple of dozen young Russian oligarchs had taken over the commanding heights of the Russian economy; many then monetized their gains and invested abroad, migrating to follow their new wealth.

Much of this was celebrated by the Western media as economic progress. (IPS) □

*Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought.*

**Third World Economics is also available in Spanish.**

**Tercer Mundo Economico is the Spanish edition of Third World Economics, edited and published in cooperation with Red del Tercer Mundo, Uruguay.**

For subscription details, please contact:

Third World Network/  
Red del Tercer Mundo,  
Av 18 De Julio 2095/301  
Montevideo 11200, Uruguay  
Fax (5982) 419222  
Email: redtm@chasque.apc.org