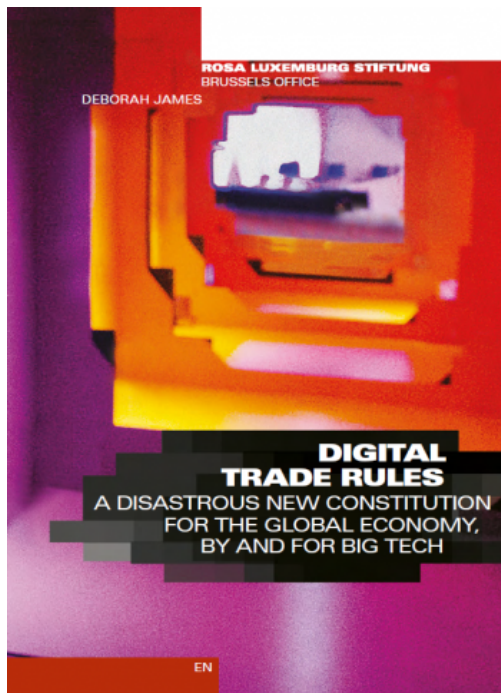


Digital Trade Rules

Jul 8th, 2020 / Deborah James



A disastrous new constitution for the global economy written by and for Big Tech

The largest corporations in the history of the world – Amazon, Facebook, Google, Apple, and Microsoft – are seeking to use ‘trade’ rules to rig the rules of the global (digital) economy to enable them to collect more data, exercise more control over our lives and their workers, and amass ever more profit. More than 80 members of the World Trade Organization (WTO) are currently negotiating a new agreement on digital trade based on these proposals. This paper seeks to explain how these corporations operate in order to achieve their goals; what the potential impacts of the rules would be on workers, citizens, communities, developing countries, public services, safety and security,

and democracy itself; what the alternatives are; and what we can do to stop this mass corporate takeover.

This paper was written towards the end of 2019. Today, in 2020, the world seems a different place, as we collectively experience the coronavirus crisis and new awareness about issues of racism and policy brutality. The crises have brought about new, and highlighted existing, urgent problems – often exacerbated by Big Tech’s iron grip on our economic and social lives.

Emerging challenges in 2020

The WTO itself is in serious crisis. The 12th WTO Ministerial Conference was due to be held in June 2020, but has been postponed – possibly for another year. WTO Director-General Roberto Azevêdo has said he will step down on 31 August 2020, a year before the completion of his term of office. The United States is still blocking the appointment of new Appellate Body Members to the WTO, which means the judicial function is not operational.

At the same time, many countries have had to take measures to deal with the coronavirus that are inconsistent with their WTO obligations. This is leading to a re-thinking of whether the WTO model – which left many countries short on domestic productive capacity and locked in rules that put foreign corporate rights over the domestic public health emergency – are really fit for

purpose. Thus, there is a need for countries to have greater flexibility to depart from existing trade rules. This could well lead to a fundamental re-think of the WTO and its model of extreme liberalisation – an urgent and welcome outcome.

Online commerce is booming, but many technology start-ups and thousands of small businesses have been hit hard by the coronavirus economic shutdowns. On the contrary, Facebook, Google, and Amazon have seen their market shares and profits explode during the crisis.

At the same time, there is growing concern about the control that Big Tech exerts over so many aspects of public life, especially through anti-competitive behaviour. Members of the US Congress and several federal agencies have joined European Union leaders in growing calls to break up vertically integrated roll-up corporations like Amazon, Google and Facebook.

A key provision of US tech policy which shields platforms from liability is coming under political scrutiny in the United States. As science deniers circulated inaccurate information about COVID-19 on social media, some tech corporations began to take steps to remove or flag erroneous content from their platforms. The Trump administration claimed a political bias, and Republicans are looking into rescinding the platforms' immunity. At the same time, Democrats are concerned about some of the platforms' policies of not taking down false or misleading political advertising that could jeopardise our elections.

There is growing recognition on the part of many countries that digital corporations should pay their fair share of taxes. The EU is proposing this as a fiscal support measure in the wake of the crisis, but the Trump administration has just abandoned the efforts towards a multilateral solution at the Organisation for Economic Cooperation and Development (OECD).

Dependence on essential workers during the coronavirus crisis has also led to a greater understanding of the need for hazard pay and social protections, especially in sectors with sectoral bargaining agreements. But so-called 'gig' workers, such as Uber drivers, GrubHub deliverers, and Instacart shoppers, still do not enjoy basic labour rights as workers, not 'contractors'.

In the United States, pressure campaigns have successfully targeted the use of facial recognition software powered by artificial intelligence (AI), since studies have demonstrated the racist impacts of such software: AI gives false positives for blacks more often than for whites.

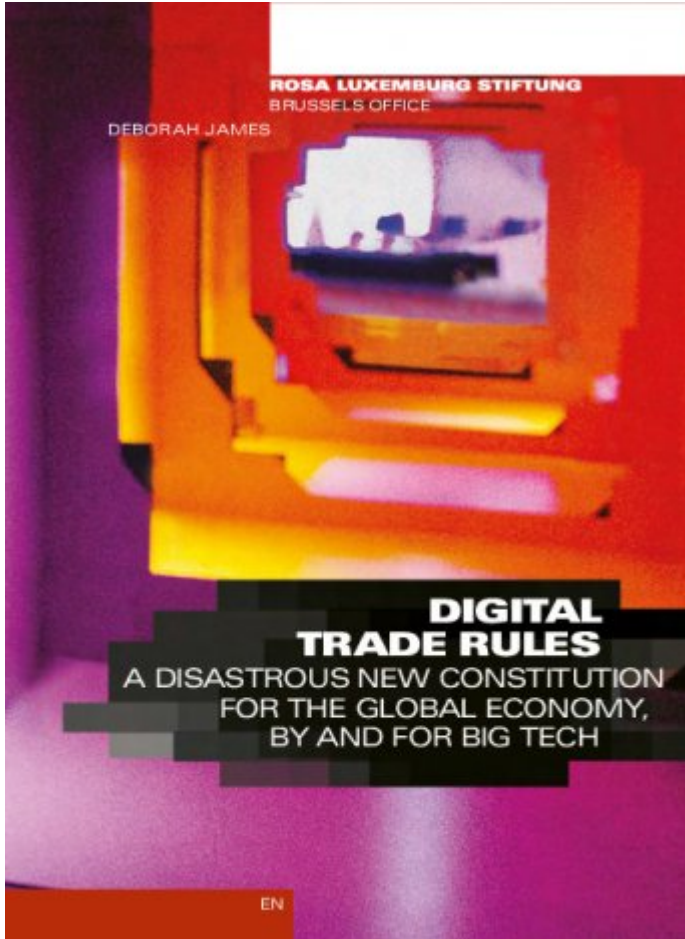
At the same time, WTO members have undertaken multiple rounds of negotiations with a view to drafting a new 'plurilateral' agreement on digital trade. They have negotiated draft texts in secret on 13 different provisions on data collection, liability, market access rights, non-discrimination, source code disclosure, taxes, cybersecurity and more – as described in this paper.

During these times of crisis, uncertainty, and rapid transformation, we need our governments to be able to respond more proactively to emerging problems. We need public interest concerns

about economic rights, racial justice and fairness, and human, civil and political rights to be the focus of conversations about rewriting the rules governing data and technology.

To accomplish this, however, we need to ensure that corporations are unable to acquire new WTO 'trade' disciplines designed by Big Tech to consolidate their power over our economy and to limit democratic oversight in the public interest.

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