EYES ON TRADE

A PUBLIC CITIZEN BLOG ON GLOBALIZATION AND TRADE

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Rethinking Trade - Season 1 Episode 40: Apple & Google Seek U.S. Trade Attack on Anti-Monopoly Law

October 18, 2021

Right now, Apple and Google are lobbying the U.S. government to attack South Korean anti-monopoly policies. They claim that a recently passed Korean law requiring app stores to allow consumers to use diverse payment systems violates the US-Korea trade deal. Big Tech corporations want to hijack trade pacts to outlaw as a "barrier to trade" anti-trust, labor, environmental or consumer protections that could cut into their profits.

On today's show, we discuss this case and Big Tech's current attempts to quietly thwart domestic digital governance and pro-competition policymaking now underway in the U.S. Congress, in various U.S. agencies and in countries around the world by misbranding such policies as "barriers to digital trade."

Learn more: www.tradewatch.org

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rethinking TRADE with LORI WALLACH — Apple & Google Seek U.S... Share

Transcribed by Sally King

Ryan

Welcome back to Rethinking Trade where we don't just talk about trade policy, we fight to change it. I'm Ryan, and I'm joined once again by our in-house trade expert, Lori Wallach. There's a good chance that you're hearing this podcast through an Apple or Google platform, and today we're going to talk about something both of these companies are doing to expand their monopolies. Under the guise of international trade rules. Apple and Google are urging US government officials to attack a recently passed South Korean law that would require app stores to allow consumers to use diverse payment systems, not only those controlled by the App Store, among other monopoly busting features. Lori, can you give us a summary of what this so-called dispute is all about?

Lori Wallach

You bet. At issue here is a law that was passed by South Korea's Parliament that is attempting to break up what are now monopolies by Apple and Google with respect to consumers who want to buy apps, but also developers who have created apps. Under the current monopoly practices of these two, you, as a developer have to sign a deal that says you only sell through one or the other, and you won't go to any other platforms. But then also, you're required to use the Apple or Google payment system. And those big companies take a cut right out from under the developer. So the idea in this law is to say number one, you can use any payment system you want, if it's listed on Google or Apple. And number two, you can't be limited to where you will sell it. And ironically, there are bipartisan proposals that are identical in the US Congress. Now, what the companies are trying to do is pretend that instead of this being an anti-monopoly initiative, that the US Congress is replicating that somehow this is an illegal trade barrier, and perhaps even a violation of a free trade agreement between the US and Korea, which is, of course, total garbage. But it's a preview of coming attractions of the newest and latest attempt to have a corporate sneak attack via trade agreements.

Ryan

And in addition to being a preview, this whole story also shines a light on the past. But first off, it reflects a broader big tech strategy to quietly thwart domestic digital governance and anti-monopoly actions by branding them as barriers to trade. But it's also part of a long history of companies arguing that basically anything in the way of their profits such as you know, labor, environmental or consumer protections, constitutes barriers to trade. Can you talk about that dynamic historically, and how big tech has sort of updated it and is utilizing it today?

Lori Wallach

On this podcast, we often talk about how what is at the heart of today's so-called trade agreements often has nothing to do with trade. But rather these corporate-rigged international agreements end up becoming Trojan horse platforms, where non-trade agendas that are not able to get through the sunshine of public debate end up getting implemented through the backdoor of a so-called trade deal. And that's what we're seeing here. So as governments around the world and finally, even here in the US, are realizing the way that these mega-platforms are threatening our economy, our livelihoods, frankly, our democracy, there is action to try and incorporate some kind of basic consumer protections, gig economy worker protections, and generally established what is often called digital governance. So some rules to ensure these companies are operating in the public interest. And the companies hate this. And along a part of that alongside of those public interest protections is some anti-monopoly actions. So the companies realize that they have finally perhaps come to the end of the road of their wild abuses and lack of government oversight. And so their strategy is this effort to get negotiated in the trade context, what they are calling "digital trade rules," those are air quotes around them folks, digital trade because it's not about trade. And what they hope to do is effectively replay what Big Pharma did in the 80s where they got rules stuffed into free trade agreements that required every signatory country to guarantee the pharmaceutical corporations extended monopoly protections so straight up protectionism and free trade agreements, so that their medicines basically could have monopoly guarantees for higher prices and that governments would be handcuffed from using policies that could bring down medicine prices. And that garbage got stuck in trade agreements that doesn't have anything to do with trade. And basically, every signatory country has to meet it. That is what big tech is up to right now, they want to get the handcuffs on the Congress and Parliament's around the world, on government agencies trying to regulate them and break up their monopolies. And the way they sort of see it is they can do this in one fell swoop worldwide. And sort of, you know, excavate the policy space out from under governments around the world trying to get those big monopolist under control. And it is, you know, it is part of a theme, which is you, you know, have seen over and over non-trade policies that the corporations don't like labeled illegal trade barriers and forbidden. I mean, one of the rules in these so-called Digital trade agreements takes a page out of what the Wall Street firms got stuck into a WTO agreement, which is literally rules that say you can't regulate on the size of a firm, or how many services they offer. That's the law globally, for financial firms in many countries, because of WTO. And that's what big tech, for instance, is trying to get enacted, as well as rules that basically, you know, require governments to allow the free flow of information, your private data, which means privacy rules, basically would be very hard to establish, or that requires governments to protect and secrecy the algorithms and code of these platforms. So like racially discriminatory searches that mean different people only see certain jobs or loan opportunities or housing opportunities, incitement to violence, all of the different abuses and discriminations that can happen online. You could never do the research as an investigator or as a congressional committee, you'd have to know a crime was committed for the government to get any of this information. And similarly, liability protections so that you know, if it's sold online, and may burn down your house, that product, but you can't sue for that dangerous product. All of this garbage is part of this broader digital trade agenda and has nothing to do with trade. And so this is basically just the latest version of corporations hijacking trade agreements to do bad things that would be really hard to get past in public.

Ryan

And what are these companies asking the US to do specifically, and what mechanisms exist through our existing free trade agreement with South Korea that they can utilize to challenge the South Korean government on this?

Lori Wallach

The big tech companies are asking the US government to threaten to challenge the App Store anti-monopoly policies in Korea as violations of the US Korea Free Trade Agreement. And as well to threaten them with some kind of sanction or other kinds of economic pressure if these laws are allowed to stay on in the books. And number one, the US Congress is about to pass similar laws, there are bipartisan proposals just identical to the Korean law in both the House and the Senate. And number two, if those laws weren't here, and it wasn't a race to see who could pass them first, Korea did, then we shouldn't have laws like that, because we shouldn't have these kind of monopolies that are bad for consumers and bad for app developers that basically allow Apple and Google to harm both the consumer and the developer. And the notion that somehow it should be the US government's business to protect two mega-platforms, online monopolies is just obscene.

Ryan

And you mentioned this just now. And you also mentioned it earlier with regards to the US. Are there other countries adopting similar measures, as I was in South Korea? And are there threats to those actions by big tech firms as well, I guess, in addition to the US that you mentioned?

Lori Wallach

Yes, so part of the reason we suspect that Google and Apple are being so fierce piling on the Korean policy is it is one of the first one that has been enacted in such a big country that basically sends a signal to the rest of the world of, "Oh, well, if they're doing it. We wanted to do that. Let's join." I mean, certainly, the US plays that role if the European Union does that. A lot of developing countries can get beaten up by these companies and frankly, by you know, the US government, but when a country like Korea does it well then the big tech companies are really in a swivel about it, because and that's when they call in the US to the EU to beat up the other developed powerful country, because the tech platforms themselves don't have the ability to just single-handedly bully their way into say intimidating the entire Korean parliament.

Ryan

So my last question Lori is about the US response. So far, the US Trade Representative has not taken up this case and has not come out to challenge the South Korean government at the behest of Apple and Google. Why is it important that they maintain this position and not elevate these attacks, and maybe you could just reflect on the US government's posture towards this?

Lori Wallach

So this issue right now is in what's called an interagency process, that is to say a bunch of different US government agencies are weighing in and what the US position on this should be. And it is worthwhile, if you care about these issues, to leave comments in support of busting up the App Store monopolies with the USTR to mention it to members of Congress and tell them you support it because some other agencies like the Commerce Department, are basically flacking for the big tech corporations. The United States Trade Representative's office, his position has been basically, of course, they're not going to tolerate laws that discriminate literally are set up to go after US companies because they're US companies. But if there is a law that is neutral, ie just simply bans his behavior. And the reason that it impacts these monopolist is because while they're monopolist, they have an undue size, therefore, they're bigger, they're affected more. Those are the kinds of policies the US government should not go after. Those are antitrust policies. And we really urge the trade representative's office to stick to their principle of evaluating everything on the basis of what does it mean for working people? What does it mean, for consumers? It's been really refreshing to see a trade representative's office that isn't just like the Commerce Department still is thinking about what the big companies want. And so in this interagency process, because they're still talking it out, it really seems that the Trade Representative and that's Katherine Tai is the cabinet-level ambassador. USTR Katherine Tai it seems like she and her team have thought this through carefully and want the rule to be is there real discrimination or is this a legitimate policy? And there are some other agencies that would love to just go after this law because big tech wants it. And so you know, what we need to do is make sure that the good policy prevails because otherwise, you know, what are the implications? It's setting up a circular firing squad, because if we start this fight on a nondiscriminatory policy because some US companies don't like it, then you know, when we have a regulation here that impacts some other countries platform that is neutral, but it happens to impact them because they're a big player in the US, then it's going to come after us. And in the end, it's the consumers and the people who create apps. It's basically everyone but the handful of mega big tech platforms that end up losing under that scenario.

Ryan

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Biden's COVID-19 Kumbaya Summit

October 04, 2021

By Daniel Rangel

In the beginning of August, some media outlets started reporting that the Biden administration was planning to convene a "first-of-its-kind, global leader-level summit" focused on ending the COVID-19 crisis and preparing for future pandemics. The summit was scheduled in parallel to United Nations General Assembly (UNGA) and was supposed to rally the international community to step up its efforts to increase vaccine production and enhance equitable global distribution as the Delta variant surges.

After nearly a full year of frustrated negotiations at the World Trade Organization (WTO) to try to enact a temporary, emergency COVID-19 waiver of certain rules of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), UNGA seemed an appealing multilateral venue to discuss the direly needed global actions required to bring an end to the pandemic. Hence, for several weeks, journalists, diplomats, academics and activists – but most of all, regular people in the Global South unable to access COVID-19 vaccines – pinned their hopes on the summit that the U.S. president was organizing.

A group of more than 50 civil society organizations – including Doctors Without Borders, Oxfam, Universities Allied for Essential Medicines, Public Citizen and Health GAP, – sent President Biden a letter urging him to lead action at UNGA to ensure equitable vaccine production and distribution. The letter described the actions needed so that the president's announced goal, vaccinating 70% of the population of every country within the next year, might actually be fulfilled.

Our organizations outlined the four crucial steps that would truly make America the world's "arsenal" of global vaccine access:

- work with allied countries on a final text to speedily enact a TRIPS waiver for COVID-19 health technologies including vaccines, diagnostics, and treatments;
- launch an ambitious global vaccine manufacturing program with other countries to help produce billions more highly effective doses within one year and support a dedicated financing line item in the Build Back Better Act committing billions of dollars to this effort;
- use U.S. government's full authorities to require the few firms with monopolies over effective vaccines, diagnostics, and therapeutics to transfer technology and production know-how to manufacturers in the Global South; and
- set an example for other governments by reallocating excess doses available in the United States to countries in the Global South via COVAX or regional procurement mechanisms.

And then the day of Biden's COVID Summit arrived. It is difficult to imagine how anyone could have felt anything other than disappointment and ire after watching the four-hour long recording of the event. The "summit" was more a recollection of self-celebratory speeches and pre-recorded statements than a high-level debate between world leaders. And it certainly was not designed to launch a global partnership to end the pandemic with specific solutions and verifiable commitments.

The event was divided into four sessions that were supposed to address the urgent need to vaccinate the world to end the COVID-19 pandemic; the dire shortages of oxygen, testing kits, therapeutics and personal protective equipment (PPE) that are ravaging the developing world; and plans to be better prepared for the next pandemic.

Although the targets and commitments related to testing, therapeutics and PPE are woefully inadequate as well, this piece will focus on the problems with the portion of the summit that dealt with vaccine production, distribution and access.

From the outset, it is important to clarify that the Biden administration's new 500 million vaccine dose donation is commendable. Similarly, the fact that with this new commitment to purchase and donate more doses to a total of 1.1 billion shots makes clear that the U.S. administration is willing to make financial efforts to get shorts in arms not just on American soil, but all over the world.

Yet, it is also true that this action will not end this pandemic or lay the foundations for a global public health framework that delivers for everyone, regardless of their country of birth. And it will transfer hundreds of millions more U.S. taxpayer dollars into the coffers of Pfizer, a company that has reaped windfall profits from the pandemic while blocking the ability of qualified producers in developing countries to make enough doses to cover the world.

At this point, no one thinks that we can "donate" our way to safety. Pledges to redistribute doses from high-income countries with relatively high vaccination rates to low-income and lower-middle income countries are only the first and most basic step needed to stop the global vaccine apartheid we are witnessing.

Why? Because this approach retains control by a few powerful donor countries and the existing monopolist vaccine firms. So, if and when shots get to arms is decided not by the governments needing doses but by those with other priorities and interests. For starters, that means most of the promised doses only are scheduled to be delivered in 2022. Of the 1.1 billion doses that the United States plans to reallocate, 800 million are not expected to ship until next year. And, to date, less than 15% of the vaccine donations that high-income countries have pledged have actually materialized.

Those realities make Biden's COVID-19 summit not that different from the May Global Health Summit in Rome. There, many European countries pledged to redistributed doses as the main tool to address vaccine inequity, but four months later have failed to live up to the commitments. As a result, people from the Global South are still waiting for these vaccines to arrive. To make things grimmer, Biden's call for other countries to join the United States in donating more doses only was answered by just four countries. And, the pledges made by Spain, Italy, Japan and Australia, combined, do not surpass 100 million doses.

This is an unacceptable outcome for an event that was billed as the place where world leaders would unite to agree on a plan to end the pandemic. Fortunately, South African president Cyril Ramaphosa, during his intervention at the summit, did spotlight what is necessary to reach the 70% vaccination goal: We need a global plan for developing countries to be able to manufacture their own vaccines and procure them directly.

In the same vein, UN Secretary-General António Guterres recalled his appeals for a global vaccination plan to solve the problems of intellectual property, technical support and finance to quickly ramp up vaccine manufacturing in different regions of the world.

The U.S. government also has backed the idea of expanding regional production of mRNA, viral vector, and/or protein subunit COVID-19 vaccines for low- and lower-middle income countries. However, until now, the United States has left untapped the myriad policy instruments and resources it could harness to translate this aspiration into reality.

Instead of committing to throw his weight behind the TRIPS waiver or announcing that he will use U.S. government's contractual rights or statutory authorities to mandate the sharing of vaccine production knowledge, during the summit President Biden focused on the scattered actions that his government has carried out to support final-stage vaccine fill and finish operations in some developing countries.

Particularly, President Biden referenced the Quad partnership to finance the production of one billion doses in India and the recent deal to manufacture 500 million doses of Pfizer-BioNTech's vaccine in South Africa. Both of these deals do not represent transformative solutions that reduce Big Pharma's control over supply, distribution and pricing of life-saving medicines neither for the COVID-19 pandemic nor for future health crises.

The Quad partnership underpins vaccine production of Johnson & Johnson's (J&J) shots by Indian producer Biological E. However, for the time being, Biological E is poised to carry out only the final formulation stage, being dependent on J&J for the supply of drug substance. Similarly, the deal between Pfizer-BioNTech and South Africa's Biovac is just for fill and finish operations. These contractual arrangements do not represent autonomous manufacturing in the developing world and do not entail significant technology transfer or knowledge sharing.

The vaccine apartheid will not end and developing countries will not have autonomous capacity to protect their citizens until there are regional production hubs around the world churning out significant volumes of vaccine doses from start to finish. And, the U.S. government could contribute a great deal towards this goal if it uses its political clout and innumerable resources and levers to get a TRIPS waiver enacted and create the conditions for broad technology and knowledge transfer.

However, President Biden failed to mention the TRIPS waiver during the summit even if the White House factsheet released after the event did reference the waiver, the only truly global initiative to end the pandemic.

At the 76th Session of UNGA, the U.S. administration lost an unbeatable chance to engage with world leaders and deliver a TRIPS waiver for which it announced its support since May. Dread that this foreshadows a similar failure at the imminent November WTO Ministerial Conference.

As for the plans to be better prepared for the next pandemic, Vice president Harris unveiled a proposal to create a new financing mechanism for epidemic surveillance, vaccine development and vaccine delivery. This Financial Intermediary Fund for Pandemic Preparedness is to be hosted by the World Bank.

The U.S. will contribute $250 million, and the objective is to raise $10 billion. The final destination for these huge sums of money is, as of now, unclear. But, unless something changes radically, the only certainty is that the fund will keep nurturing the bottom line of the same pharmaceutical companies that today deny vaccine access to those that need them the most.

The lack of U.S. leadership and the fact that the COVID-19 summit did not yield any meaningful commitment resulted in an UNGA where progress on a global vaccination plan was noticeably absent, despite the calls from African heads of state for support for the TRIPS waiver. Instead of the promised first-of-its-kind, global leader-level summit to end the COVID-19 pandemic, the summit was a peak of missed opportunity.

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Eyes on Trade is a blog by the staff of Public Citizen's Global Trade Watch (GTW) division. GTW aims to promote democracy by challenging corporate globalization, arguing that the current globalization model is neither a random inevitability nor "free trade." Eyes on Trade is a space for interested parties to share information about globalization and trade issues, and in particular for us to share our watchdogging insights with you!

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