



STRATEGY MEETING ON CATALYZING REFORM OF TRADE NEGOTIATION PROCESSES

Meeting Notes and Report

1. Executive Summary.....	1
2. Meeting Notes.....	2
2.1. Day 1 Presentations.....	2
2.2. Day 1 Discussion.....	8
2.3. Idea Rating Activity.....	11
2.4. Day 2 Discussion.....	12
2.5. Meeting Working Groups.....	16
2.6. Day 2 Presentations.....	20
3. Working Groups and Priorities.....	23
4. Additional Resources.....	26

1. Executive Summary

The Strategy Meeting on Catalyzing Reform of Trade Negotiation Processes drew more than 30 invited participants to Brussels over January 27-28, 2016, in an intensive expert workshop for sharing information, brainstorming and developing actionable strategies to address the appropriation of Internet-related public policy issues into trade agreements that are negotiated in a closed and opaque fashion.

Key takeaways shared at the meeting were:

- There is a spectrum of public participation in policy institutions, and the politics of trade negotiations constrain our ability to be empowered directly at the highest levels.
- Nevertheless it is often not difficult to meet with trade negotiators, who are often only too pleased to draw on civil society's expertise, either at formal public engagement events such as the WTO Public Forum, or on the sidelines of official negotiations at the WTO and TISA, or bilaterally. Industry takes far better advantage of this opportunity than civil society does.
- In addition to civil society initiating outreach and engagement with trade deals that cover Internet policy issues, the institutions and individual countries negotiating these agreements also need to be driven to proactively reach out to affected stakeholders and to institute procedural reforms to facilitate and encourage their active engagement.

- Several vectors of pressure can be applied towards the reform of trade negotiation practices to make them more transparent and participatory, including:
 - drawing on norms of transparency and inclusivity from the Internet governance regime;
 - documenting existing best practices from elsewhere in the international system (eg. transparency of WTO, stakeholder participation at WIPO);
 - applying substantive human rights obligations from existing international legal instruments;
 - partnering with development-focused organizations, particularly UNCTAD, and asserting parties' obligations to pursue multilaterally agreed development goals.
- Addressing the lack of resources for participation in high-level fora is key. A long-term commitment from funders is necessary to avoid discontinuity of representation and lack of coordination between civil society groups.
- Progress can be made at the national level, such as leveraging freedom of information laws, advocating for adoption of baseline best practice standards, regulation of the trade negotiators' "revolving door" problem, and representation in trade advisory bodies.
- Documents that it would be useful to publish include research to counter industry reports that support the status quo, WTO Working Papers on flaws in trade negotiation processes, and drafting of model texts that draw on established human rights, Internet governance and development norms.
- No popular proposals emerged for the removal of Internet-related public policy issues from trade negotiations altogether in favor of other extant processes, nor suggesting that any alternative, more inclusive and participatory global policy development processes be established.

2. Meeting Notes

The following meeting summary contains edited *ex tempore* notes taken during the meeting. These notes may not be complete or accurate. In case of any variance between the notes of presentations and the slides presentations, the slides presentations take priority.

As the meeting was held under the Chatham House rule, these notes do not generally identify participants by name, except with their permission.

2.1. Day 1 Presentations

Introductory Presentation (J Malcolm)

An opening presentation gave an outline of the purpose of the meeting, rules and processes, and possible outcomes:

- The structure of the meeting was designed to facilitate outcome-oriented expert deliberation about possible strategies that could be pursued to address our shared concerns that closed and opaque trade negotiation processes were increasingly being used to make rules impacting Internet users.

- These processes are at odds with the more open and participatory process norms for Internet governance, and this may offer an opening for us to drive reform.
- It is also posited that by partnering with international institutions with authority in the trade regime, we might be able to shift trade negotiation practices in a more positive direction, or advocate for Internet-related issues to be dealt with in more open and inclusive venues.

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Presentation: Global Internet Governance — Fora, Processes, and Lessons Learned (M Shears)

- Internet governance norms have come out of the norms of the technical community, which differ from the typical working methods of states. As governments came in late to Internet governance, they were challenged to adapt to the working methods of the bodies already occupying that space.
- In Internet governance governments participate on an equal footing to other stakeholder groups. However this does not mean that they have an equal role, and there is much continuing debate over the appropriate roles of each of the stakeholder groups in Internet governance.
- Key relevant dates include when:
 - The rights and responsibilities of stakeholders in Internet governance were outlined in the WSIS Geneva Principles in 2003
 - Internet governance was defined by the Working Group of Internet Governance in 2005
- A multi-stakeholder model involves stakeholders cooperating, participating in dialogue, decision-making and/or implementation of solutions.
 - The ICANN definition and articulation of roles goes beyond the definition and scope laid out in WSIS.
 - Some say multi-stakeholderism is just an artifact of the Internet's evolution, it's not a significant governance innovation. However we believe there is value in the approach taken in the Internet Governance space being emulated elsewhere.
- In contrast, the legacy multilateral/intergovernmental model is about policy development by nation states, with often limited consultation with affected communities.
- Relevant Internet governance processes and fora, and the key differences between them, include:
 - IGF: policy *discussion* forum, multi-stakeholder
 - WSIS: a policy *shaping* process, involving multi-stakeholder consultation culminating in multilateral decisions
 - ICANN: policy *making* process, multi-stakeholder
 - An anomaly, becoming an agency unto its own

- Provides a unique example of international rule making that is not state-driven. It is hard to find international rule making using multi-stakeholder processes outside of the Internet Governance space
- Lessons from Internet governance for trade include the importance of:
 - Continuity and coherence
 - Expertise: from civil society, academia
 - Cross-stakeholder engagement: useful for higher-level messaging
 - Internet governance engagement norms
- On the other hand there are also challenges:
 - Internal challenges such as resourcing and coordination
 - External challenges include the fact that multi-stakeholder approaches are difficult, lengthy and unproven, and questions around civil society's legitimacy, expertise and accountability
- A multi-stakeholder approach can be taken in national and international engagement.

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Presentation: Trade and Internet Policy Making (B Kilic, C Rossini)

- The Internet became relevant for trade policy makers as digital services and products rapidly evolved at the end of the 20th Century.
 - Under the WTO, TRIPS and GATS have assumed relevance to digital policies:
 - GATS: agreement on services, no mention of the Internet but still applies to certain services areas, negotiated pre-Internet and only applies to services listed
 - WTO Doha Round: of huge importance for developing countries, especially in terms of IP, but ultimately a failure as negotiations ran aground
 - Developed countries didn't agree to any proposals put forth by developing countries, keeping with the general framework re: preferential treatment
 - Controversy has intensified since the last round in Nairobi
 - International trade rule making moved to FTAs because of the WTO/Doha stall
 - This has evolved through various bilateral FTAs, into regional/plurilateral agreements like the TPP
 - EU FTAs do not have their own model FTA text; they are drafted separately based on country
 - The US *does* have model FTA language, that is essentially duplicated from FTA to FTA
 - There has been a shift from provisions that are voluntary to mandatory

- The Trade in Services Agreement (TISA) covers 23 parties, including the EU, US, Japan, therefore representing 50 countries in total. It will cover the vast majority of worldwide economic activity in services.
 - TISA is an update to GATS, and is not negotiated even in such relatively open (hotel) venues as the TPP, but at embassies, which stakeholders cannot attend. However industry stakeholders come to Geneva regularly during each negotiating week to meet the delegates and the delegates do make themselves available.
 - The question is: what non-Industry representatives will take advantage of these opportunities? Internet people not from industry are simply not showing up.
 - TISA's E-Commerce chapter is very similar to the TPP; covering cross border data flows, net neutrality, etc.
 - Current leaked texts from December 2015 are at <https://wikileaks.org/tisa>
- The Regional Comprehensive Economic Partnership (RCEP) includes partners absent from the TPP notably China, South Korea, and India, as well as other large partners such as Japan and Indonesia.
 - The biggest threat is from Japan and Korea, bringing proposals they have agreed to under their existing FTAs with US and EU
- There has been a domino effect of FTAs, resulting from the use of counterbalancing differences in economic power among FTA parties
- IP chapters are unique re: applicability of Most Favored Nation (MFN) provisions and a lack of exceptions
 - Key agreements including IP chapters are Singapore-US, Chile-US, Australia-US (2004), KORUS (2011), TPP (2015)
- Many topics re: Internet policies have appeared before the TPP in earlier bilateral FTAs
 - Eg. Cross-border data transfer appeared in 2004 agreements, net neutrality in KORUS
- Internet governance community is not acknowledging how trade agreements are writing the rules they are discussing into hard rules and obligations
- A simplistic equal vote/representation model of multi-stakeholderism does not work, when proposals can be vetoed by industry
 - eg. WIPO and the Treaty for the Blind, publisher groups would have completely blocked it

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Presentation: United Nations (N. Ashton-Hart)

- Key international bodies relevant to the Internet and trade include:
 - World Trade Organization (WTO)
 - International Trade Center (ITC)

- UN Conference on Trade and Development (UNCTAD): Attempt at creating an OECD for the developing world
 - UNCTAD is increasingly dealing with issues of Internet Governance re: developing issues, but UNCTAD's engagement on digital economy issues is much broader than the Internet governance activities
 - See <http://unctad.org/en/Pages/DTL/Science-Technology-and-ICT-Branch.aspx>
 - Very participatory, country delegates are very engaged and bring specific issues to address and seeking advice on legislation to adopt.
- ITU: International Communications Union
 - "Very awful," little to no balance re: human rights concerns
 - Eg. Chinese delegation put forth 14 proposals in one day, including RFID chips to surveil students, and Hi-Def security biometric cameras to scan faces and identify individuals
- WTO E-Commerce Work Program: started in 1998 — More info: https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_trips_e.htm
 - Most recent ministerial decision here:
 - https://www.wto.org/english/thewto_e/minist_e/mc10_e/l977_e.htm
 - So far an ad hoc conversation about principles rather than negotiations on digital trade, but interest is growing: Chile led the negotiations on the ministerial decision on electronic commerce for Nairobi, not the West.
 - Countries are interested in proposing discussions re: digital dimension of offline trade during the next two years
 - WTO negotiators show up regularly in Geneva from around the world, the WTO's bodies tend to meet in time-bound 'clusters' to optimize travel—so everyone who matters is in Geneva for a couple of weeks at a time several times a year. Industry groups regularly come to Geneva during these periods but civil society on the Internet policy side basically never do.
- Negotiators are genuinely interested in learning about various policy proposals and implications on digital issues
 - Industry representatives regularly go to Geneva to meet with them and give them advice
 - Civil society does not engage with them enough, do not go to Geneva to advise and engage with negotiators dealing with services issues
 - It's not hard to schedule meetings with negotiators, especially when it's not at the negotiation round.

Presentation: Lessons for Trade Negotiations from Development and Environmental Bodies and Processes (D. James)

- Just as the Internet governance regime offers possible vectors for reforming trade negotiations, so we can also draw lessons from development bodies and debates.
- Samples of trade issues with developmental impacts: agriculture, industrialization, public services, access to medicines, clean water, access to information
 - Agriculture: major impact on developing countries especially re: food security
 - Human rights agreements, International Covenant on Economic, Social and Cultural Rights
 - UN: Food and Agriculture Organization and the World Committee on Food Security, UN Development Goals
 - Actual trade rules undermine or do not support development (eg. bans on subsidies, tariffs to protect domestic industry)
 - UN Special Rapporteur on the Right to Food openly clashed with the WTO on policies
 - WTO and global trade policies not limited by nor concerned with existing development principles
- Industrialization and job creation
 - UN Industrial Development Organization (UNIDO), UN International Labor Organization (ILO)
 - No access to WTO negotiations, no civil society participation
- Public services
 - WTO had no mandate to ensure the facilitation of rights to health, education, energy, sanitation, etc.
 - Only to facilitate more trade in those services, limiting domestic regulation, facilitating privatization and deregulation
- Health provides a good model for development-oriented impact on trade policy
 - Least Developed Countries (LDCs) waivers: 5 years + 2 years + 2 years ...
 - LDCs asked for a specific exemptions on patents indefinitely, until they reach a certain level of development
 - Tactics included straightforward requests, close civil society monitoring, understanding of opposition/lobbying involvement, NGO letters of support, LDC Group lobbying countries, support from International agencies, support from members of US Congress, support from generic supplies to LDCs
 - Ultimately achieved a 17 year extension

- Other development processes: United Nations
 - General Assembly is most inclusive, civil society can make regular interventions
 - Informal channels, "informal informal" channels, varying levels of civil society participation (example Committee on World Food Security)
- Trade Advisory Committees
 - Washington Post Graphic shows 566 individuals working with the Obama administration
 - Majority industry, followed by trade groups, little participation from academics or NGOs
- The Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is a possible model for improving trade negotiation process norms
 - Provides rights to the public, eg. "right to public participation" on environmental decision making
- Lessons
 - Non-trade areas allow for multi-stakeholder input
 - Official trade negotiations have rules that do not allow for multi-stakeholder participation
 - Corporations using trade to create binding policies that would not pass through democratic processes
 - Forum shifting / treaty shopping as ways to circumvent more democratic policymaking fora
 - Development friendly policies only are accepted into trade institutions when civil society, relevant UN agencies and third-party validators work together

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2.2. Day 1 Discussion

During the discussion period that followed the morning presentations, the following topics were raised. Some have been moved out of chronological order to aid flow and comprehension. Comments are not attributed to individuals due to the adoption of the Chatham House rule.

- Civil society engagement strategies
 - We need more civil society engagement overall
 - Alignment of interests and advocacy between groups
 - We need to emphasize the need for public accountability
 - Need to look at how we can marshall civil society forces to be able to engage in the most effective manner possible
 - Strategies re: authorities of different levels of trade officials

- Impacting policies more effectively in finding the sweet spot between not too high nor low level
 - SDGs 16 and 17 (sustainable development goals) could be leveraged - 16 contains targets on good governance, openness transparency, etc., 17 contains target on transparent trading system. Note that the existing targets may not be suited to our goals but worth a look.
 - We can't approach these trade agreements with the attitude that we reject the entire project
 - We can't get involved at the last minute
- Civil society participation with negotiators
 - It's incredibly important to have physical presence at negotiations
 - Problem is lack of resources, it's expensive both in time and cost
 - Addressing the resource issue on physical meetings with negotiators
 - Civil society groups can collaborate on meeting with negotiators in Geneva, they should meet with them when they're in town for other negotiations
 - Ought to commit to dedicating more time and resources to this
 - Continuity is vital: You can't have a rotating cast of civil society/stakeholder representatives to go, much of the efficacy of engagement relies on relationships established with policymakers
- Enforcement of international human rights obligations
 - Corporations and governments seem to forget that human rights obligations are not soft law, they are hard law; they are treaty obligations.
 - We need to fix the gap in knowledge among even civil society members to ensure they are aware of existing human rights institutions and statements
 - International arbitration mechanisms always prioritize trade agreements and financial/economic considerations over human rights
 - 43 out of 44 cases to uphold public interest considerations have lost at the WTO
 - In all of these arbitration systems, trade always comes first
 - Governments enter into binding human rights obligations, while entering into trade agreements that delay/undermine/make impossible their human rights obligations
 - There are existing human rights mechanisms/institutions that we can participate in
 - Could we seek an International Court of Justice / EU Court / etc. opinion on this phenomenon?
 - Could assert that human rights treaties trump existing treaties (NAFTA, bilaterals), but that HR considerations must be mainstreamed into treaty negotiations

- Eg. of clear violation of human rights violations, Covenant on Civil and Political Rights Article 19 — the secrecy of negotiation violates access to information, as well as Article 25 on right to participation
 - A court opinion would strengthen the hand of negotiators and countries to resist policies that undermine human rights
 - Call for UNCTAD to question ISDS mechanisms via Article 53 of the Vienna Convention on the Law of Treaties
- Compliance: unlike human rights infringements where enforcement is more difficult, trade agreements have easy sanctions threat/stick behind them
- Awareness of trade negotiation politics
 - Optics and geopolitics of negotiating trade agreements with the U.S., for example, are quite different to bilateral negotiations with other trade partners
 - One size does not fit all, we need to consider diverse scenarios
 - At the WTO, the International power equations have shifted and will continue to shift, changing the entire dynamic
 - If stakeholders want to be there, they can be there now. It's not so exclusive as was once true.
 - WTO receives funding based on percentage of world trade
 - Draft negotiation texts have been released
 - Members and chairs are free to speak to whomever
 - Linkages between agreements and obligations
 - Lowering of standards in one policy area, as a kind of retaliation against a country over non-compliance with other policies
- Categorizing public participation in policy institutions: a spectrum
 - Participation can occur at the level of information, consultation, involvement, engagement, or empowerment
 - This working document explains more: <http://tinyurl.com/tradeparticipation>
- Transparency
 - Some fora are already very/fairly transparent, so we can contrast these with those that are much more secretive and closed
 - Eg. ACTA (publication of negotiating text) vs. TPP
 - WIPO vs. WTO
 - We need to compare and keep records of different levels of transparency and engagement

- Asymmetry in transparency: Varying levels of secrecy depending on stakeholders

2.3. Idea Rating Activity

The afternoon session was devoted to the completion, rating and discussion of ideas through the methodology of Idea Rating Sheets. Idea Rating Sheets are a simple deliberative methodology used to allow large groups of people to generate a set of ideas, and then to prioritize those ideas.

The session proceeded by:

1. Dividing the room into table groups, and allowing individuals time to silently jot rough ideas on scrap paper.
2. Discussing those ideas internally within the table group, and then writing ideas in large print on Idea Rating Sheet forms to be shared with the larger group of participants.
3. Arranging all Idea Rating Sheets around the room, and allowing all participants to review and rate them, as well as noting any particular strengths and opportunities, or concerns and weaknesses associated with the ideas.
4. Discussing a selection of the most popular ideas, as well as some of those that may have been more controversial or divisive.

At the conclusion of the process, volunteers from each of the assigned table groups highlighted a small number of the most popular results drawn from those generated in their group, which were briefly discussed before the first day of the meeting was called to a close.

Popular Themes

The Idea Rating activity had resulted in the generation of 66 ideas, amongst which some common themes emerged:

1. Establishing a norm requiring the release of consolidated texts after each negotiating round for public comment (many comments added the good question, *but how?*).
2. Resourcing travel to trade rounds and capacity building for civil society organizations, on the basis of a long-term (3 to 5 year) commitment from funders.
3. Compiling best national and international practices in trade negotiations (including freedom of information and advisory bodies) and then campaigning to spread adoption of such practices.
4. Developing model texts on Internet-related topics covered in trade agreements, drawing upon existing human rights, Internet governance and development texts.
5. Outreach events to engage relevant government officials and policy making bodies to enliven them to our concerns.
6. Research to counter industry-funded research and reports that present a one-sided perspective on Internet-related trade topics.
7. Campaigning for tougher laws addressing the revolving door problem between trade negotiations and private industry.
8. Pooling civil society resources and developing common strategies to ensure effective and

efficient engagement.

These ideas also reveal some obvious gaps vis-à-vis the framing of the meeting, in that there were no popular proposals that directly suggested challenging the legitimacy of certain topics being included in trade negotiations at all, or suggesting the development of alternative, more inclusive and transparent policy processes for dealing with such topics. This may indicate that these approaches do not enjoy support from the group, or that further work is needed to develop ideas reflecting these approaches.

[Download Idea Rating Sheets data set](#)

2.4. Day 2 Discussion

Sorting and Prioritizing Ideas

The ideas generated in the preceding day's session had tentatively been divided into four main categories overnight:

- Civil society funding, capacity building (Red, 16 ideas)
- Advocacy and liaison with targets and allies (Yellow, 15 ideas)
- Establishing new norms or practices for trade bodies (Blue, 21 ideas)
- Transparency (Green, 10 ideas)

Four ideas could not be categorized, and were noted but left aside for the remainder of the exercise. There was a brief discussion of some of the ideas that had been identified in each category.

1) Civil Society Funding, Capacity Building

- Popular ideas:
 - Funding for travel, capacity building, etc.
 - Pooling civil society resources and developing common strategies to ensure effective and efficient engagement
- Unpopular ideas:
 - Establishing an open trade network (a multi-stakeholder body to work towards transparent and participatory standards)
 - Distributing ICANN funds to facilitate wider participation
 - A working group of NGOs willing to sign NDAs for access to negotiating texts
- Comments:
 - Advocates and negotiators/officials see past each other. This suggests the need for advocacy training, to learn how to hit the main points and be effective. Another idea: the institutions themselves could train advocates to engage with negotiators.
 - We need to find ways to incentivize negotiators to work towards civil society goals.
 - Institutions should establish engagement spaces; WTO for instance could create such a

space.

- Diplo Foundation does very good trainings for delegations to engage with negotiators.
 - This is not so much focused on trade, but they could be interested in extending to that field
 - Those who have been engaging with the WTO for a long time could provide this training
- WTO Secretariat could participate in existing institutional mechanisms where civil society and other stakeholders already meet outside the institution, such as the WSIS process (ITU)
 - Response: The WSIS forum is strongly resented by the other agencies, WTO officials would not participate, for instance
 - Counter-response: The WTO does engage with ITU on patents and standards, so there is a possibility for WTO officials to be involved in other processes

2) Advocacy and Liaison with Targets and Allies

- Popular ideas:
 - Develop model negotiating texts
 - Provide regular trainings on the issues for the officials and bodies
 - Create a platform to establish regular dialogue with negotiators
- Unpopular ideas:
 - Provide incentives like letters of support to government officials
 - Work/infiltrate the UN and associated trade organizations
 - Rank trade negotiators
- Comments:
 - WTO's Public Symposium, with civil society group presentations; could be a place for civil society to engage
 - WIPO also allows civil society side events
 - UNCTAD has a strong commitment to having a G77 approach to trade issues; it has political credibility from developing countries; a good opportunity to build bridges with officials
 - World Economic Forum (WEF): there's a disconnect between the Internet policy stakeholders and trade officials, former feels that latter don't understand their issues
 - Update to Background Paper: NETmundial Initiative and WEF are no longer coupled; WEF and ICANN will not be providing funding for this initiative; the Brazilians will be carrying this forward.

- Trade reform could be a Dynamic Coalition under the IGF
 - Response: IGF is not a space that can actively engage around these issues; it is a dead end to advance these policies there.
- When TISA first became officially negotiated, civil society/stakeholders held a training for its delegates on "Internet 101", delegates did not know basic things about the Internet and surrounding policies
 - +1 on more events at the WTO Public Forum for the delegates
- Engaging with delegates at public fora surrounding events leads to delegates proactively reaching out to experts later
- Having events with lunch at a side event can sometimes be enough: food is important and it's not so resource intensive and we can ask for funding for this
- "Infiltrate" these institutions in the above manner; we can prioritize based on fora: UNCTAD, ITC, WIPO, etc.
- We could have a WTO member request the Secretariat prepare a report on impact of trade policy on the Internet; even though not all WTO members are TISA participants.
 - WTO Working Papers are high quality, produced by academics and experts
 - https://www.wto.org/english/res_e/reser_e/wpaps_e.htm
 - WTO could be requested to review trade agreements on various aspects and variables of effects, such as labor, transparency, censorship, etc.
- "Incentivize" officials by writing in letters of support of delegate positions; it can help their standing internally among other delegates
 - Cost effective and persuasive to sway government opinion

3) Establishing New Norms or Practices for Trade Bodies

- Popular ideas:
 - Mount local legislative campaigns to subject advisory committees to FOIA, release drafts, set up citizen advisory bodies
 - Compile best national and international practices in trade negotiations and campaign to spread adoption
- Unpopular ideas:
 - Define a charter of digital rights that can be integrated in trade agreements
 - Constitutional challenge of fast-track and of the confidentiality rules of ITAC and USTR
 - Subject ratification of trade agreements to public referenda
- Comments:

- Breaking the cycle on secrecy: trade negotiators say that they'll have a bad deal if it's open, how about we compare various experiences and approaches to transparency between countries
 - Response: there have already been many studies, and US is usually one of the more open and transparent
 - Counter-response: where are these studies? There is a difference between public participation and disclosure
- Response to charter of digital rights suggestion: use of an existing charter on digital rights could be effective
 - This does seem to be connected to the popular idea above re: the model trade language
- Response to constitutional challenge suggestion: it's too specific to US to challenge a US law (fast track)
 - There have already been two cases but they didn't work out
 - Rather than a constitutional challenge, it could a human rights challenge, under the covenant on public participation
- Response to public referenda suggestion: this is unrealistic given that even most domestic legislation does not go to a referendum
 - Counter-response: it could be an effective mechanism given how closed and undemocratic trade agreements are, and do not carry popular legitimacy

4) Transparency

- Popular ideas:
 - Make trade advisory boards subject to FOIA and end the special NDA access to text
 - Release consolidated text after each negotiating round for public comment
- Unpopular ideas:
 - Open meeting presumption for trade negotiations—can be closed under strictly defined standards
 - Document bullying tactics
- Comments:
 - Reinforce the current practices that we like, where we can get involved
 - WIPO for instance releases text and has an effective mechanism for civil society accreditation, and it has the most to lose from trade agreements encroaching into the area of IP policy. These practices where transparency works should be reinforced.
 - Best way to structure the best practices: is to establish the criteria that do (and don't) justify

different levels of transparency, public inclusion, etc. and have concrete examples

- We need to recognize positive developments, or else we risk looking unaware of recent changes to transparency, and doing so will make us look more legitimate
- We should be specific about what we would like the institutions to do better. For example, what can the WTO Secretariat specifically do (open texts, etc)?
- Seek an amendment in the US context to make the advisory boards subject to the Federal Advisory Board Act; FACA openness procedures could also be applicable
 - USTR is already subject to FACA but not when they discuss the text
 - USTR has an exemption at their discretion and often takes advantage of it
 - On FOIA requests, they rely upon exemption 1 on foreign government information
 - Trade Act also exempts USTR from advisory board meeting disclosure and transparency
 - There is an opportunity to put public pressure on the exercise of the USTR's discretion?
- EU also has exemption re: foreign governments and international relations
 - An attempt was already made to gain access to information in Poland, but it was rejected

2.5. Meeting Working Groups

The meeting then divided into two self-directed working groups; one covering the “red” and “yellow” groups of ideas, and the other covering the “blue” and “green” groups of ideas. It was suggested that each group could work on:

- Eliminating duplicate ideas
- Prioritizing ideas that people within the group are interested in helping achieve
- Brainstorming about the “how”, “where”, and “who” for implementation of more abstract or aspirational ideas (like “require the release of consolidated texts after each negotiating round”)
- Reporting back on the group's priorities

Red and Yellow Ideas

This group considered ideas covering civil society advocacy strategies: liaison with targets and allies, civil society funding, capacity building, and coordination. The following concrete projects that participants could pursue were identified. Where applicable, volunteers are identified or suggested:

- Advocacy resources
 - Develop a CRM containing a list of advocates, negotiators and their roles, stakeholders, private industry, and academics (Volunteers: EFF, Person A)

- Develop a wiki of opportunities, priority fora, trade deals dealing with digital policy issues, next steps, skills database, mapping of spaces, research papers and reports (Volunteer: EFF)
- Develop a shared calendar of events (Volunteer: EFF)
- Host opt-in mailing list/s for coordination (Volunteers: EFF, Person A)
- Take note of and avoid duplication of existing efforts
 - The Seattle to Brussels network (<http://www.s2bnetwork.org/>)
 - The Open Policy Network (<https://openpolicynetwork.org/>) (?)
 - Bilaterals.org
- Develop model trade deal language on digital policy issues (free flow, data protection, net neutrality, human rights and telecoms)
 - Volunteers: Person B?, EFF
- Conduct events for government officials and negotiators
 - WTO Public Forum (Sep or Oct), submission due date around June
 - Not a training as such, it would be a panel for awareness raising
 - Or we can do it *before* Sep or Oct, for a longer, more in-depth event
 - It would have to be between negotiation sessions, maybe immediately before or after
 - WIPO (Plenary, Standing Committee on Copyright, or upcoming Digital Copyright Conference)
 - Volunteer: TBC
- Participate in TTIP stakeholder engagement activities
 - We need to find people to go to these
 - Volunteer: Person C?
- Conduct trainings between trade experts and digital and A2K policy experts
 - Volunteers: Person D, Person E
- Using existing Internet governance engagement principles: strengths and weaknesses
 - Volunteers: Person F, Person G
- Establish ongoing advocacy on digital rights, to have constant impact at WTO
 - Volunteers: Person F, Person H
- Identify resources and pursue funding
 - Private industry: aligned associations or companies

- List of funders, a wish list
- Volunteer: TBC
- Campaigning
 - Training of civil society advisors
 - Capacity building to create new organizations/stakeholders
 - Letters of support: at the WTO Forum?
 - Volunteer: TBC

Blue and Green Ideas

This group considered ideas relating to establishing new norms or best practices for trade bodies relating to transparency, accountability and inclusion, and specifically including initiatives focussed on transparency. There was not time to identify volunteers during these groups' working session.

The pursuit of new norms and best practices was perceived as following three successive stages:

1. Transparency: Communications/consultation
2. Participation: deliberation/duty to respond
3. New norms: rights-based structure that forces substantive engagement

1) Transparency

- Transparency as proactive issue, not passive
 - Proactive obligations on behalf of governments
 - Timely release of texts
- Draw attention to existing transparency practices (WIPO, etc) and drive multilateral negotiations in this direction
 - WTO: negotiations are member-led, so any release of documents or positions need to be agreed by consensus
- Create a repository of rules of engagement — baseline standards
 - IFLA's technique: template letter that can be used at the national level
 - NGOs at the national level to request negotiation rules from their governments
 - Look for discrepancies in responses and exploit these
 - Clarify the norms of privacy that the parties are agreeing to multilaterally
 - Civil society to request governments to state their positions in this regard
 - Understand what rules are under the current system, then raise standards
- Releasing text options

- Need to recognize different appropriate levels of transparency
- Each country agrees to release its own text
 - Ideally before text is offered in negotiations
- Release of a position paper at start of every negotiation round
- Time should be allowed for public comment
 - In the US, it would be shared with public at same time as Industry Trade Advisory Committees (ITACs)
- Openness of meetings and record keeping
 - Minutes and agendas of each round should be released
 - WTO: there are no minutes
 - Some language/criteria on responsible and constructive behavior by negotiating parties
 - No arbitrary exclusions
 - Some acceptance from our perspective that some closure of meetings/discussions is appropriate
- Ground our request in law, Article 19 and Article 25 of ICCPR
- Volunteer: TBC

2) Inclusion/participation

- Questions
 - What would a model legitimate participatory framework for trade negotiation look like?
 - How to get to collaborative policy setting?
- Elaborate rules on what constitutes meaningful consultation
 - Unbiased consultations
 - Best practice on consultation procedures
 - Identify what already exists
 - Map the gaps
 - Reasons must be given for why best practice is not being met
- Participation throughout the lifecycle of negotiations:
 - public participation on the front of the negotiations
 - governments should reach out to stakeholders at start of process
 - public transparency at appropriate moments

- observing meetings
- disclosure of the back end (?)
- Formalization of constant engagement: group from civil society, within larger group of stakeholders
 - Build on norms from the Internet governance space
- Volunteer: TBC

3) New trade norms

- We should pursue norm-setting in existing venues (e.g. the positive agenda at WIPO)
- Let's look at the role of the Inter-Parliamentary Union (IPU)
 - Legislators need to be involved during the process, not just at the end
- Also let's remember to keep a spotlight on FTAs afterwards
 - What is working? Failing?
 - Constant review possibility
 - Escape clauses
 - Impact assessments of its human rights obligations
 - Need to have dispute settlement bodies for citizens, not just investors
- Volunteer: TBC

4) What vehicle? [The "who"]

- Interest in partnering with UNCTAD was expressed
- Partnership with one of the multilateral agencies is needed to develop principles that we seek to establish, and then at least one government to follow these principles (Canada was mentioned)

2.6. Day 2 Presentations

Presentation: The Digital Trade Imbalance and Its Implications for Internet Governance: Susan Aaronson

- Main findings of Susan's paper
 - Trade agreements and policies increasingly 'govern' the Internet
 - Governments are making the policies with limited stakeholder input
 - Outcomes for input openness, digital rights and interoperability are largely positive but with some negatives
- Why trade agreements as a tool to regulate information flows, the Internet?

- Flexible language can be used as technology changes
- Often binding and enforceable, can challenge digital protectionism
- Includes exceptions for national security, public morals, etc.
- Built on trust, just like online exchanges
- Deep digital trade rules in preferential trade agreements
 - US has gotten everything it wants
 - Has the 11 largest technology firms based in US
 - It's policies are about e-commerce, not about the free and open Internet
 - US wants to limit internet-related barriers to trade
- How to regulate how and when countries can regulate the Internet that could be barriers to free flow of trade
 - Issues: data localization, server localization etc.
- When is something a necessary regulation, and when is it a protectionist trade barrier?
 - US and EU has not figured this out
 - US ITC report found 49 countries had "digital protectionist barriers", including Nigeria, Algeria, China as the worst
 - US itself even has its own barriers to trade, such as encryption, investment incentives, and distortion, procurement rules, cloud server requirements
- Conclusions
 - Trade agreements may not be the only or best venue to set information free
 - May favor US interests and actors
 - Governments should do a better job of linking digital trade and digital rights
- Questions and comments:
 - Why isn't there a malware provision in trade agreements?
 - Principles are being developed in other venues (such as the UN), and there are rules of engagement on this between trade offices and the NSA
 - On TISA leaks
 - The national security exception to local hosting provisions went beyond GATS
 - If a country decides to enact narrow data localization as part of data protection, what happens then?
 - Discussion of cross border data flows, GATS 14, and the evolution of the TISA e-commerce

rules

- TISA leak should have been a lesson for the USTR that transparency is better than leaks, because leaks can be an inaccurate snapshot of what is going on
- There is a problem with framing digital trade policies within the frame of "protectionism" or as "trade barriers"
 - Bring in experts who also have more balanced criteria of analyzing these policies

[Download presentation slides](#)

Presentation: Globalization of Trade Agreements in the Digital Era: Building a Consumer-centric Model

- Engineering and architecture of trade agreements
 - Mechanism (synthesis-components): TISA covers 2/3 of the global GDP
 - Mechanics (how is this set to motion): secrecy + "invisible dictation" by lobbyists and through ISDS
 - Objectives: privatization of services
 - Principles (embedded values): Conflict between data protection and free flow of information
- How should a fair balance be decided?
- Taxonomy of trade agreement models
 - Intergovernmental: WTO, UNCITRAL
 - Plurilateral: TTIP, TISA
 - Multistakeholder: NETmundial, IGF
 - Decentralized: blockchain
- Assessment of trade agreement models
 - 1) Accessibility
 - 2) Transparency
 - 3) Clarity
 - 4) Fairness and proportionality
 - Balance of equitable interests
- TTIP, TISA, TPP as a closed model
 - Not new; consumer always had a limited bargaining position
 - What is new is that they are far reaching in their scope (goes beyond trade, affecting State's sovereignty in policy making and regulating seminal human rights)

- ISDS mechanism in TTIP
- Is harmonization of consumer protection standards a possible solution to protecting consumers' rights in FTAs such as TTIP? How?
 - A set of unified rules and principles governing consumer contracts
 - European: EU Directive 93/13/EEC on unfair terms in consumer contracts; EU Directive 2011/83/EC on Consumer Rights;
 - International: UN Guidelines for Consumer Protection
 - All stakeholders should participate on an equal footing by adopting best practices throughout all stages of negotiation processes

Presentation: Crowdsourced Engagement Processes to Inform Public Processes (Steve Anderson)

- Example: "Stop the Meter" campaign; Canadian telecom policy fight on Internet fees on CRTC
 - Thousands of emails and messages to the regulator
 - Brought internet-crafted policy to decision makers
 - Public opposition movement defeated the ruling
 - New CRTC official listens to consumer input, read out citizen comments from public comment period
- Open the TPP campaign
 - Our Fair Deal campaign: coalition of groups and interests for balanced copyright that uphold user rights
 - Petitions and comments to negotiators
 - Live-streamed comments at stakeholder engagement meetings
 - Presentation to negotiators included comments from Internet users, luncheon
 - Copyright priorities in the TPP: citizen driven input from 300,000 people around the world

3. Working Groups and Priorities

Following the meeting, a [mailing list](#) was established to maintain contact and facilitate overall coordination of cooperative work between all participants. The list has since been opened for other interested parties who were not in Brussels to join. Supplementing this, more focussed working groups are also envisaged to take the work forward.

Based on the Idea Rating Sheets, the meeting discussion sessions, and the self-organized working groups at the meeting, it is suggested that the work program established at the meeting could best be taken forward in the following smaller ongoing working groups:

Transparency and Accountability Group

- **Rationale:** to encourage the uptake and development of transparency best practices for trade negotiations dealing with Internet policy issues
- **Facilitation:** EFF, person B, others TBC
- **Initial priorities:**
 - Establishing criteria to define the levels of transparency that are appropriate at different points in the negotiations
 - Establishing countries' actual multilateral commitments and their domestic positions with regard to transparency
 - Undertaking domestic advocacy on the adoption of transparency best practices as national baseline standards
 - Calling for curbs to trade negotiators' revolving door
 - Issuing freedom of information requests and challenges, for example targeting advisory committees
 - Promoting existing transparency best practices from other policy processes
 - Working towards establishing a global norm that text of trade agreements will be released ahead after negotiating rounds
- **In partnership with:** to be defined (possibly Open Government Partnership?)
- **Detailed strategy and timeline:** to be developed
- **Resources to support group:** to be raised

Liaison and Outreach Group

- **Rationale:** to proactively establish effective liaisons with multilateral institutions and negotiators in relation to Internet policy issues
- **Facilitation:** EFF, Person C?, Person D, Person E, Person F, Person H
- **Initial priorities:**
 - Developing model text on digital policy issues, incorporating references to existing human rights, Internet governance and development instruments
 - Internal capacity building for civil society to enable us to effectively conduct outreach and seize opportunities to speak to negotiators
 - Identifying opportunities for bilateral meetings on Internet policy issues in Geneva and at TTIP and RCEP
 - Organizing a WTO Public Forum (and/or other WTO) engagement event
 - Organizing a WIPO engagement event

- Creating a platform to establish a regular dialogue with trade negotiators whom we otherwise would have difficulty in reaching
- Establishing a dialogue with UNCTAD about possible cooperation on trade negotiation practices that affect the Internet
- Rating and providing letters of support to government officials who support our positions
- **In partnership with:** WTO, WIPO, UNCTAD
- **Detailed strategy and timeline:** to be developed
- **Resources to support group:** to be raised

Participation Group

- **Rationale:** to advocate for the development of effective and inclusive democratic multi-stakeholder modalities for participation in Internet-related public policy development
- **Facilitation:** Person F, Person G
- **Membership:** Jeremy has already gathered some other expressions of interest in similar work at the 2015 Best Bits meeting, and proposes to merge that into this group.
- **Initial priorities:**
 - Compiling research to document and promote existing best practices and international commitments on multi-stakeholder participation in development of Internet-related public policies
 - Establishing and promoting criteria of meaningful stakeholder inclusion in Internet public policy development
 - Distinguishing the levels of multi-stakeholder participation that are appropriate at different points in Internet public policy development
 - Calling existing institutions to account for their failure to comply with these criteria
 - Further thought (for discussion) of whether we should support any alternative venues to which Internet public policy development might be shifted out of trade negotiations
 - Further thought (for discussion) about developing a multi-stakeholder open trade network that could work towards developing transparent and participatory standards
- **In partnership with:** to be defined (possibly Internet Governance Forum?)
- **Detailed strategy and timeline:** to be developed
- **Resources to support group:** to be raised

Resourcing Group

- **Rationale:** to marshal both economic and informational resources and tools to assist the work of the other groups

- **Facilitation:** EFF, Person A
- **Initial priorities:**
 - Establishing needed mailing list/s for coordination
 - Establishing a shared CRM and wiki for information about contacts, institutions, negotiations and joint initiatives
 - Establishing a shared event calendar and roster
 - Fundraising and/or establishing a funding platform for joint activities
 - Pooling civil society resources and developing common strategies for pursuing shared objectives
- **In partnership with:** to be defined
- **Detailed strategy and timeline:** to be developed
- **Resources to support group:** to be raised

4. Additional Resources

The [background paper](#) and the [meeting website](#) list a number of resources that were compiled ahead of time. In addition, the following resources were contributed by participants during or shortly ahead of the meeting:

Internet Issues in Trade Agreements

- Recent presentation in Spanish by Carolina Rossini:
<http://www.slideshare.net/carolina.rossini/tratados-y-gobernanza-de-la-internet>
- Older presentation on these issues by Carolina Rossini:
<http://www.slideshare.net/carolina.rossini/sif14-trade>
- Map of the increase presence of e-commerce clauses: *Towards coherent rules for digital trade: Building on efforts in multilateral versus preferential trade negotiations:*
http://old.wti.org/fileadmin/user_upload/nccr-trade.ch/wp3/3.8/wunsch_hold_WP_final_11-07-08.pdf
- Map of the increasing presence of IP clauses in trade agreements:
https://www.wto.org/english/res_e/reser_e/ersd201414_e.pdf

International Institutions

- UNCTAD's Science, Technology & Innovation and ICTs branch:
<http://unctad.org/en/Pages/DTL/Science-Technology-and-ICT-Branch.aspx>
- WTO E-Commerce Work Program:
https://www.wto.org/english/thewto_e/minist_e/mc10_e/briefing_notes_e/brief_trips_e.htm
 - Most recent ministerial decision here:

- https://www.wto.org/english/thewto_e/minist_e/mc10_e/1977_e.htm
- WTO Working Papers:
 - https://www.wto.org/english/res_e/reser_e/wpaps_e.htm
- 2013 WTO public forum: "Expanding trade through innovation and the digital economy"
 - https://www.wto.org/english/forums_e/public_forum13_e/programme_e.htm
 - William Drake, Nick Ashton-Hart presentation on trade and innovation at the 2013 WTO public forum
 - https://www.wto.org/english/forums_e/public_forum13_e/pf13wks_e/ws9_e.htm

Networks and Resources

- Open Policy Network <https://openpolicynetwork.org/>
- Seattle to Brussels Network <http://www.s2bnetwork.org/>
- TTIP: The Dealers infographic by CORREVIV:
<https://correctiv.org/en/investigations/ttip/dealer/>

Public Participation

- NTIA tender document for the production of a Multistakeholder Toolkit as a policy, education and awareness information resource for use by the NTIA:
 - https://www.fbo.gov/index?s=opportunity&mode=form&id=b6836cede58d8efbf4e45f7d1c60c993&tab=core&_cview=0
- International Association for Public Participation
 - Participation spectrum: <https://www.iap2.org.au/resources/public-participation-spectrum>
- Jeremy Malcolm, *Public Interest Representation in Global IP Policy Institutions*:
<http://digitalcommons.wcl.american.edu/research/6/>
- William Gormley, *The Politics of Public Utility Regulation*:
<https://www.upress.pitt.edu/BookDetails.aspx?bookId=36129>
- Gormley, *The Representation Revolution: Reforming State Regulation through Public Representation*: <http://aas.sagepub.com/content/18/2/179.abstract>
- Joan B. Aron, 'Citizen participation at government expense', *Public Administration Review* Vol. 39, No. 5 (Sep. - Oct., 1979), pp. 477-485
- Categorizing public participation in policy institutions: a spectrum
 - Working document: <http://tinyurl.com/tradeparticipation>