



Input of Greens/EFA to the Trade Policy Review

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3 December 2020

The Greens/EFA Group greatly welcomes the European Commission's initiative to review the EU trade policy. We urge for ambition in this exercise: this is a unique opportunity to fundamentally rethink and reshape our rules to ensure fairer, greener and more sustainable trade.

In this context, we fully take note of Commissioner Dombrovskis' commitments during the hearing in early October 2020 regarding his willingness to *accelerate the mainstreaming of the Green Deal* across EU trade policy. Throughout this document, we make several proposals in this direction. Many of them are based on our [Green Trade for All](#) position paper from 2018, which we warmly encourage you to read.

Building more resilience – internal and external dimensions

Question 1: How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

Question 2: What initiatives should the EU take – alone or with other trading partners - to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?

During her [speech](#) at the European Parliament Plenary debate on 16 April 2020 on the EU coordinated action to combat the coronavirus pandemic and its consequences, European Commission President von der Leyen made it clear that a “*more modern and circular economy will make us less dependent and boost our resilience*”. She outlined that a variety of measures, such as investing in renewables, clean transport, sustainable food and nature restoration, will be important as we recover from the Covid crisis as they will not only help the environment and the economy but will also work towards shortening and diversifying our supply chains.

Her statement rightfully identified the link between economic resilience and the need for transforming our industries and supply chains. Here it must be stressed that resilience on its own *is not enough* if it is not transformative: it is therefore misdirected to pursue “open strategic autonomy”. This should not



be the aim, but rather the reshaping towards a trade policy that is focused on sustainable goods and services. The European competitive advantage lies clearly in green technology, goods and services.

Hence, it is clear that EU trade policy should be guided towards sustainable development, environmental preservation and human rights, according to Art. 207 of TFEU. In addition, it needs to be ensured that consumer rights are respected and consumer protection levels upheld. Nevertheless, decades of business as usual have directed us towards a trade system that primarily serves the economic and commercial interests of companies and is, as a result, both unfair and unsustainable.

While sustainable transformation is key, open strategic economy may also require that in some key areas, supply chains should be shortened in order to be more resilient, this is mainly in the food and agricultural sector, in medicines and in the digital sector.

Supporting socio-economic recovery and growth

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?

Question 5: With which partners and regions should the EU prioritise its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?

Question 6: How can trade policy support the European renewed industrial policy?

WTO reform: The multilateral trade system is being undermined by an increasing number of bilateral agreements as well as by conflicts amongst members. The EU should as a principle act to strengthen multilateralism in trade, with a broader reformed WTO at its core, including a long term solution to the crisis of the Appellate Body, the selection of the new Director-General of the WTO, WTO Subsidy Rules with international partners including, if possible, the United States. In this context, the EU should also actively seek to widen the scope of the trilateral forum with Japan and the US by also including like-minded countries in this discussion.

We welcome Commissioner Dombrovskis commitment to launch a Climate and Trade initiative at the WTO. However, we consider that it should go beyond the liberalization of green goods and services, as possible revisions of the relevant legal disciplines of the WTO Agreements should be explored so that trade rules do not prevent a just and ecological transition. In addition, the EU should also take the lead in favouring an interpretation of WTO rules that is more up-to-date with the present context, in particular with regard to policy exceptions (i.e. climate, environment). The EU could table initiatives in the framework of the Trade and Climate Committee aiming at building majorities.

The EU must engage in a rebalancing of the global system of Intellectual Property Rights (IPR) in order to foster the legal transfer of climate-friendly technology. For instance, this should include the promotion of a declaration on “IPR and Climate Change” at the WTO, encouraging technology transfer and the use of compulsory licensing of key climate technologies. The TRIPS Agreement should be amended to allow WTO members to exclude key climate technologies from patent protection.

The reform of the WTO should offer an opportunity to push forward the possibility to distinguish products according to their process and production methods (PPMs) also when these do not alter the final products because it fulfils a “legitimate objective” in the sense of WTO TBT Agreement (Article 2.2) and to aim at a modus operandi to calculate the carbon content of goods or services traded internationally. The Commission should seek from partner countries the support for such developments in appropriate fora.

Regulatory cooperation: The Commission should strengthen provisions on standardisation in trade agreements by seeking commitments on the uptake of international standards. In this context, regulatory cooperation as it is currently being implemented raises transparency and democratic concerns and risks infringing on the right to regulate. At the very least, regulatory cooperation should only cover technical standards, be based on a non-regression clause and procedurally the mechanism should be kept limited to regulators only, with the involvement of the legislative, and the proceedings of meetings should be made public. Full transparency and inclusion of the oversight of the European Parliament are crucial in this regard.

Africa: The EU’s current approach of negotiating Economic Partnership Agreements establishing different terms for different states and regions go against regional integration and put undue pressure on African partners towards trade liberalisation, which can have a detrimental impact on their economic development. The EU must instead support regional integration and support the development towards a pan-African FTA.

ASEAN: The EU partnership with ASEAN-countries should be strengthened, especially in light of the recently concluded RCEP agreement. The EU should therefore strive for a regional trade agreement with ASEAN. This regional FTA must include higher, and enforceable, standards for climate and environmental responsibility, the ratification of ILO-core conventions and the protection of human rights.

Supporting the green transition and making trade more sustainable and responsible

Question 8: How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

Question 9: How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

A) Preserving policy space. Current trade and investment rules restrict the ability of governments to enact strong climate policies. At the WTO level, no less than seven agreements contain rules related to climate which need to be renegotiated (Abbas, 2020). Those can also be found in current EU trade agreements.

Investor protection and dispute settlement remains a major problem for the EU and Member State's ability to reach their carbon neutrality objective. The latest version found in CETA's investment chapter keeps on protecting past and future fossil fuel investments. Protection standards in investment agreements are still enormously broader than property rights protected under EU law and by national constitutions, resulting in potential hundred-billions euro liability for EU states willing to decarbonise their economy (Saheb, 2020).

A case in point: the Trade Policy Review is taking place at the same time as the negotiations to modernise the Energy Charter Treaty. As stressed by the European Parliament in its report on the European Climate Law, "*the Union shall end protection of investments in fossil fuels in the context of the modernisation of the Energy Charter Treaty*". In order to make that happen, all investments in relation to the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of coal, natural gas and oil excluded from the definition of economic activities that are protected under the ECT. In this context, the proposal adopted by the European Commission and presented to the Council runs counter to the spirit of the European Parliament's position, by retaining protection of existing fossil fuel investments for at least another ten years, and of some gas power plants and pipelines until possibly 2040.

If negotiations to modernise the Treaty in a way that is compatible with the Green Deal and the Paris Agreement do not show concrete progress in the coming months, the EU and Member States must take steps to withdraw from the Treaty altogether.

Overall, the EU and member states need to terminate their existing investment agreements, and stop the ratification and negotiation of new ones. If a complete termination is not possible, investment protection should be limited to direct expropriation and national treatment, and the adjudication process must be made public, predictable and transparent.

B) Current trade and investment rules supplant climate rules. The Paris agreement is mentioned in the latest EU agreements, but only in their non-enforceable Trade and Sustainable Development chapters. The consistency between every other chapter and the Paris agreement is not ensured. In case of conflict between trade rules and climate measures, trade rules still prevail, thanks to their powerful enforcement mechanisms. This hierarchy should be inverted.

The European Commission has indicated that all future trade agreements - agreements for which there is not yet a negotiating mandate- will have the Paris agreement as an "essential element". However, this



excludes many of the major economies worldwide with which the EU either has a recent agreement, or is negotiating one. Existing FTAs and EPAs and current negotiating mandates need to be updated to reflect the new climate neutrality objectives, or risk being outdated even before coming into force.

C) Imported emissions. Imported emissions are emissions embedded in goods imported by EU countries. While accounted as foreign emissions, EU imported emissions are fed by consumption within the EU. Currently, EU's imported emissions represent 20% of the size of domestic ones, which represents a challenge in achieving the objective of carbon neutrality. By liberalising trade independently from the carbon footprint of goods, and not taking into account production standards abroad, the EU trade policy makes cheap carbon intensive goods more competitive on the European market. From short-lived sneakers, fracked gas, soy or palm oil from regions at a high-risk of deforestation, the carbon footprint of traded goods should be assessed and the EU approach differentiated depending on their carbon content. Imported emissions linked to energy and agriculture products should receive specific attention from negotiators. We therefore welcome the Commission's commitment to table a long awaited legislation on deforestation free supply chains.

D) Carbon leakage. The race to the bottom between climate and environmental policies of countries competing due to trade liberalisation is a major blocker for stronger action, domestically and in partner countries. A broad and WTO compatible carbon border adjustment mechanism will be a step in the right direction. However, the introduction of a CBAM should be part of a broader Union industrial policy that is both environmentally ambitious and socially fair, aiming at steering a decarbonised reindustrialisation of Europe that will create local jobs and ensure the competitiveness of the European economy while fulfilling the Union's climate ambition.

The CBAM should cover all imports, but as a starting point already by 2023 it should cover the power sector and energy-intensive industrial sectors like cement, steel, chemicals and fertilisers, which continue to receive substantial free allocations, and still represent 94 % of Union industrial emissions. The GHG emissions content of imports concerned should be accounted for on the basis of transparent and reliable product-specific benchmarks representing the global average GHG emissions content of individual products.

Developing countries should be compensated in case of adverse impacts of such a measure and taking into account the "common but differentiated responsibility" principle. In addition, the revenues raised by the CBAM should be used for stepping up the Union's contribution to international climate finance in favour of Least Developed Countries and Small Island Developing States, which are most vulnerable to climate change.

E) Due diligence: Horizontal, mandatory human rights and environmental due diligence rules must be mainstreamed throughout EU trade policy. The EU trade policy must, in its part, be fully aligned and support the effective implementation of the UN Guiding Principles on Business and Human Rights. As the Covid-crisis has made clear, certain purchasing practices by our European companies such as low prices, last minute delays, cancellations or changes to orders impact on suppliers' ability to abide by environmental and social standards.

As stressed by the INTA Committee in its recent Opinion on Corporate Accountability and Corporate Due diligence, compliance with the due diligence obligations should be a condition for access to the EU market. Operators should be required to establish and provide evidence, through the exercise of due diligence, that the products that they place on the EU market are in conformity with the environmental and human rights criteria set out in the future due diligence legislation. The EU should also improve the transparency of customs data. Supply chain transparency is an important element in building consumer confidence and helping stakeholders pursue remedy when their rights have been abused. Expanding the range of customs data collected by national customs authorities to include information on manufacturers and promoting its public access is an important avenue to improving such transparency.

The INTA Committee called for complementary trade measures to the company law initiative, like “*the prohibition of the importation of products related to severe human rights violations such as forced labour or child labour*”. Such import ban could be inspired by the existing US approach, though it should also be built [learning from its lessons](#), that is, it should be developed to establish maximum positive impact for affected workers and communities: ensuring that the measures are effective in promoting supplier engagement, providing prompt remediation to those harmed, and preventing adverse consequences for workers and communities. The Commission could produce yearly reports - like the US do - identifying the goods imported in the EU and for which child labour or forced labour is involved. Clauses in trade agreements on investor obligations on rights of affected local communities and indigenous peoples should be considered.

F) TSD chapters: We welcome Commissioner Dombrovskis’s statements during his hearing that he is willing to explore how to improve the enforceability of TSD chapters. In this regard, we urge the Commission to give full regard to the possibility to condition tariff reductions on certain sustainability outcomes, as outlined in the Franco-Dutch non-paper on staging tariff liberalisation.

In addition, the involvement of civil society in the monitoring of TSD chapters’ implementation should be more substantial. The functioning of the Domestic Advisory Groups and the annual Civil Society Dialogues are flawed, due to a lack of transparency, lack of accountability of the EU regarding outcomes coming out of these mechanisms, and lack of regularity in the meetings. Monitoring of the implementation and its follow-up should be more thorough, systematic and inclusive. Besides annual implementation reports, not much info is made publicly available about the impact of our FTA on labour and human rights issues.

G) Biodiversity: the biodiversity clauses in FTA have remained mostly ineffective as testified by the alarm-ringing [IPBES report](#) which explained that “*the number of local varieties and breeds of domesticated plants and animals and their wild relatives has been reduced sharply as a result of land use change, knowledge loss, market preferences and large-scale trade*”. The recent spread of the pandemic shed light on reports that have piled up showing that the loss of biodiversity enables zoonotic diseases like covid19 to flourish and disseminate.

In accordance with the EU 2030 Biodiversity Strategy, the Commission should investigate how trade policy contributes to such phenomena and to present proposals to address this problem, notably by following up on the study on “Methodologies and Indicators to Assess the Impact of Trade Liberalisation on Biodiversity” produced at the request of the Commission itself. The Commission should promote EU stringent SPS standards and animal welfare in order to minimize the risks of future epidemics and pandemics. In the meantime, trade in such animals and from unsafe countries should be prohibited in the EU.

H) Animal welfare: According to FAO, nearly two billion farmed animals a year are loaded onto ships and lorries to be sent to journeys ranging from a few hours to six weeks and even more. FTAs contribute to increased levels of animal suffering. Moreover, the EU is a major destination for exotic pets, which are legally and illegally traded and transported to the EU. Zoonoses are favoured by the trade in wild animals and by the spread of intensive animal farming. The overuse of antibiotics in animal production has been recognised as the primary cause of the surge in antimicrobial resistance/AMR. On Climate, the livestock supply chain accounts for 14.5% of global greenhouse gas emissions (GHG). Against this background, better addressing AW aspects within the context of Trade Policy is deeply needed as a means to contribute to reduce animal suffering, the risks of future pandemics, the help to fight against AMR and to lower GHG emissions. The prohibition of all trade of live animals is paramount. According to a [2016 Eurobarometer](#), 94% of EU citizens believe it is important to protect the welfare of farmed animals. 82% of Europeans believe the welfare of farmed animals should be better protected than it is now. Thus, AW conditionality in trade agreements under the form of import restrictions and tariff incentives, combined with material penalties in case of violation of EU regulations is highly recommended. 89% of EU citizens agree that the ‘EU should do more to promote a greater awareness of animal welfare internationally’. The EU does not impose any of its AW standards on imported goods, except standards related to slaughter. Presented as an extension to the Technical Barrier to Trade Agreement, mandatory methods of production labelling should be extended to animal products imports and put into legislation, as is already the case for eggs and fish, promoting transparent and sustainable supply chains.

I) Pesticides: The EU has some of the strictest pesticide laws in the world and has already banned or severely restricted the use of many pesticides that can cause serious damage to human health or the environment. However, companies remain free to export these dangerous products for use in third countries. The EU also allows the import of food produced with banned pesticides. According to a [recent study](#), in 2018, EU countries have approved the export of 81 615 tonnes of pesticides containing substances banned for use in their fields because of the unacceptable risks they pose to human health or the environment. This is a very practical and concrete example of how incoherent our trade policy can be with regards to our values and standards. The export of pesticides banned in the EU must be stopped - what is too dangerous to use in the EU is also too dangerous to use in other countries.

J) Fair Trade: The 2015 Trade for All Strategy contained proposals to promote fair and ethical trade schemes. However, this angle has not received the emphasis it deserved. Despite the launch of the ‘EU City for Fair and Ethical Trade’ award, this still has a secondary anecdotal approach. The EU should declare itself a Fair Trade Continent and adapt EU trade policy accordingly by following the



recommendations presented in this contribution. The Commission should also broaden the scope of the existing city award by creating subcategories of audiences: besides cities, schools or private companies for instance would be incentivised to participate in fair trade projects with the possibility to be awarded. In a spirit similar to the Green Week, the Commission could organise a Fair Trade Week during which participants could present their initiatives and projects and share best practices.

The Commission should support the inclusion of Fair Trade criteria in the future EU mandatory sustainable food public procurement criteria and the new Farm to Fork EU school procurement scheme. In parallel, we must ensure respect for the policy space of EU trading partners to support Fair Trade through their own public procurement: FTAs should contain a chapter to promote uptake of Fair Trade initiatives and national provisions taken with that respect should not give rise to dispute settlements. In addition, the Commission should provide guidance to EU delegations in implementing Fair Trade projects in the EU partner countries.

K) Circular economy: Our trade policy is key to implement the aims of reducing the total environmental and resource footprint of EU production and consumption, with resource efficiency, zero pollution, non-exposure to harmful and toxic substances, and waste prevention as priorities. The COVID-19 crisis has demonstrated the need for a resilient economy based on sustainable and shorter supply chains, which Circular Economy will bring forward by closing and slowing down material, product and resources loops. Closed material loops and shorter supply chains would lead to less dependency on raw material imports and less waste export and thus contribute to the EU's open strategic autonomy.

It is therefore crucial that we ensure that trade and investment agreements do not contradict circular economy policies. We must provide carve-outs in trade agreements for relevant EU legislation on circular economy from the notion of trade barrier, as well as stronger and adequate legal environmental safeguards. In addition, increased recycling can reduce the EU's reliance on imports of raw materials.

Mandatory minimum requirements for durability, interoperability, reparability, upgradability, reusability and recyclability for all products alongside further product-specific requirements, as well as mandatory labelling requirements, should be equally applied to imported goods in order to create a level playing field.

L) Precautionary principle: at the moment, when it comes to the precautionary principle, the EU's FTAs make only vague references to case law of the WTO such as regarding the SPS agreement, and fail to reference this vital principle in the most relevant chapters. In order to safeguard the environment, as well as human, animal and plant health, the EU must fully anchor the precautionary principle in its FTAs.

M) Services: Public services must be safeguarded against offensive commercial interests. They have no place in trade agreements. A "negative listing" approach whereby all sectors and measures pertaining to trade and investment in services are automatically covered unless governments expressly carve them out in reservations, which is the approach adopted under CETA, creates significant risks as it implies

wide liberalisation of services with little room for change in the future, essentially locking in governments to privatisation and deregulation of their public services. The EU must instead adopt a positive listing approach, as it had more generally done in the past, whereby parties instead indicate the sectors they want to be covered by the agreement. The EU must exclude ‘ratchet clauses’ which determine that if an exempted measure is amended or eliminated it cannot later be restored from its FTAs.

Supporting the digital transition and technological development

Question 10: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?

Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?

Our current trade rules limit policy space on digital issues. Free flow of data, disciplines on services that restrict our regulatory ability (e.g. ban on local presence requirement), and disciplines on source code disclosure all in practice impose strong limits on our policy space, which is highly dangerous for the future. It is crucial that the EU pays attention to this now. There is already a loss of trust in the EU linked to non-enforcement of product safety and other product standards linked to e-commerce development. As a solution, the EU must add a stronger consumer angle to FTAs and stop dismantling controls in an attempt to facilitate trade.

We must be cautious about introducing the principle of “free flow of (non-personal) data” or banning localisation requirements for IT services. Provisions on data localisation should contain wide exceptions for legitimate development purposes and be subject to a review clause.

We must avoid a development whereby raw data is extracted in less developed countries, transferred to the EU, and then further processed with the value generated here. Such a situation would be similar to the extraction of raw materials from the Global South and their processing in the Global North, and could lead to digital colonialism or digital land-grabbing. While discussions at the OECD are ongoing regarding, amongst others, the future of the digital taxation system, there are several barriers towards Global South meaningful participation in the discussions, and the proposals currently at the table do not go as far as to a comprehensive and fair reform of the current international tax system of tech giants.

Ensuring fairness and a level playing field

Question 12: In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?



From the externalisation of the environmental and social costs of our consumption onto Global South, to the fact that we continue to export pesticides which are currently prohibited in the EU: in order to be coherent with our values and objectives this Trade Policy Review must lead to an encompassing reform of the way we trade. In general, the EU needs to apply more of its internal standards to EU imports and exports. As hard as we fight against subsidies and other unfair trade practices, we should also be fighting against environmental and social dumping.

Policy Coherence for Development: In its Trade Policy Review, the Commission must ensure it examines all trade investment rules from the lens of the principle of Policy Coherence for Development, that is, taking account of development objectives in policies that are likely to have an impact in developing countries. Below we address various trade policy issues which should be part of such an analysis.

A) Trade taxes: trade-related taxes are in some countries, especially resource-rich developing countries, important sources of revenues. In Sub Saharan African countries, they can amount up to a quarter of the public budget. Hence, liberalization aiming at lowering tariffs adversely impacts the ability of some countries to finance services of general interest. In conformity with WTO rules, developing countries should be allowed to levy export taxes on commodities to cushion the impacts of the multiple crises and to prepare the recovery. Also, while between 1980 and 2018, sub-Saharan Africa received nearly \$2 trillion in foreign direct investment (FDI) and official development assistance (ODA), it lost over \$1 trillion of potential revenues in [illicit financial flows](#). A notable increase is witnessed in the 2000s corresponding to increases in trade from Africa. European authorities should provide technical assistance and incentives to their developing countries counterparts to fight illicit financial flows which hinder the achievements of SDGs. Agreements should also address in a more adequate fashion this threat for the public finances and the EU should step up measures to curb tax evasion and avoidance by European companies abroad, including by urgently adopting public country by country reporting, requiring companies to publish disaggregated tax information for all countries around the world where the companies operate.

B) GSP: The upcoming reform of the GSP system is an opportunity to adapt it the new challenges like climate change or the post-COVID 19 recovery. We need much more transparency in the monitoring process. The assessments and scorecards developed by the Commission must be made publicly available, and roadmaps should be developed with broad range of stakeholders consulted, along with proper benchmarks that are targeted to country context issues.

Better, formalised involvement of civil society actors is crucial, and a formal and transparent compliance mechanism within the GSP scheme that allows all interested parties to submit petitions on alleged labour, and human rights violations on companies or states benefiting from the duty-free access to the EU under the GSP-list is needed.

In addition, as already regretted by the European Parliament in its March 2019 resolution, the GSP scheme, notably in the case of 29 EBA countries, has not led to any change, and, in some cases a

deterioration in their export diversification profiles at the product level. Locking-in beneficiaries to unsustainable export products is a big concern. We need to ensure that GSP programmes do not lead to increased levels of environmental and social dumping. In the revision of the GSP, the Commission must give thought to this in order to ensure that the scheme fully allows developing countries to diversify their exports and that they are able to do so sustainably.

C) Access to medication: Trade measures can both support and hamper the fight against Covid-19. Complex goods like pharmaceuticals or respirators include multiple elements, which need to cross several borders before becoming final products. Their production is limited to a few companies in a few countries, while most others were blindly relying on international trade to secure their supplies. Both the research and the deployment of effective therapies will require governments to use all flexibilities related to Intellectual Property Rights, and their trade aspects. Patents, data exclusivity and trade secrets can all lead to higher prices and make research collaboration more difficult, costing lives.

The EU must reaffirm and push other WTO members to reaffirm that the Human Right to Health takes precedence over TRIPs rules. All countries, especially developing countries, should be able to use all flexibilities in their broadest interpretation without fear of retaliation. It is hence unacceptable that the EU was among the parties rejecting the proposal put forward by South Africa, India, Kenya and Eswatini on 16 October at the WTO's TRIPs Council for a waiver of certain provisions of the WTO TRIPs Agreement to combat the worsening COVID 19 pandemic. The EU needs to ensure that countries have sufficient funds to strengthen their public health systems including through the restructuring of public debt.

D) Moratorium on expansion investment treaties: As highlighted throughout this paper, investment agreements impose a variety of serious limits on states' policy space. While the EU reviews and hopefully reforms its investment treaties, it should support a moratorium of their expansion towards other developing countries. This should notably be the case with the Energy Charter Treaty as well as all bilateral investment treaties.

Other remarks

Question 13: What other important topics not covered by the questions above should the Trade Policy Review address?

A) Gender mainstreaming: Gender seems to be a glaring omission in the Trade Policy Review. The latest report on the "Implementation of the common commercial policy" lacks gender-disaggregated data on the impacts of FTAs and this dimension is not covered in ongoing negotiations.

Under Article 10 of the TFEU and under SDG 5, the Commission and Member States have the obligation to combat gender-based discrimination and seek to empower all women and girls. This horizontal objective applies to trade policy as well. In its [conclusions](#) on "Gender-Equal Economies in the EU: The Way Forward", the Council confirmed this by urging the Commission and the Member



States to “pursue gender equality, with a high level of ambition, as a policy priority in all EU external relations”.

In this regard, the Commission could be inspired by the toolkit developed by the UNCTAD to perform gender-aware ex ante evaluations of trade policies. Such impact assessments should consider consequences of the EU trade policy on the unremunerated domestic activities of women. Gender provisions in trade deals must be mainstreamed and strengthened through a gender specific chapter in FTA’s so they directly link to women's rights - including clear goals and targets for implementation based on states' existing human rights and labour rights commitments, including CEDAW.

Besides the usual fundamental ILO conventions, the EU should urge its economic partners to ratify and implement Conventions 189 on domestic workers, 156 on workers with family responsibilities and 190 on violence and harassment. The Member States should swiftly take the lead in the ratification process. The Commission should make sure that the composition of DAGs is gender-balanced and that a Trade and Gender committee is established to point at shortcomings and that, as is the case in the Canada-Israel FTA, the dispute settlement mechanism (if maintained) applies to gender issues.

In the context of the upcoming due diligence legislation, it is crucial that the due diligence obligations be gender-responsive and require undertakings to explicitly consider how actual or potential adverse impacts can differ or be specific to women.

B) Ex-ante and ex-post sustainability impact assessments: Sustainable impact assessments should be carried out prior to the conclusion of the agreements. These assessments should be made by independent organizations and relevant stakeholders should be able to comment and provide inputs to make them comprehensive. Ex-post sustainability impact assessments should also become the norm and be carried out by the Commission, discussed by the related domestic advisory board and national and European Parliaments, highlighting divergences with ex ante impact assessments and accompanied by corrective measures in case initial expectations and goals are not met either by the EU or by the partner(s).

The EU Trade Chief Enforcement Officer should be in charge of verifying that all provisions, including those related to social, human rights and environmental aspects are respected. The Chief Officer should also be attentive that technical and dialogue committees do not take decisions leading to a lowering of EU standards. It is furthermore crucial that DG Trade duly takes into account the input of the other relevant DGs and of the EEAS on issues not directly related to trade, like human rights, environmental standards and sustainable development. Similarly, in EU delegations there should be a regular exchange between officials in charge of trade and commercial relations and the human rights focal points.

C) Democratisation of trade policy: The Commission must take steps to improve the possibility for thorough democratic oversight of the European Parliament. Oftentimes, the Commission’ approach in past and ongoing FTA negotiations (eg CETA, TTIP, and now Mercosur and CAI) have left much room for improvement in this regard - from issues such as a lack of MEPs’ access to crucial negotiation documents, or negotiations based on decades-old mandates. In order to improve Parliamentary



oversight, measures should be taken such as including a vote on the mandate before trade negotiations start. We also need parliamentary oversight and transparency when it comes to regulatory cooperation. To guarantee the legitimacy of trade policy and agreements, all relevant stakeholders should be involved in the negotiations of FTAs. Their comments, including on sustainable impact assessments, should be taken into account and responded in good faith by the Commission.

To maintain their competitiveness and minimize fixed costs, companies active on the international markets and those engaged in their supply chains had to make jobs more flexible which meant more precarious for the workers and their families. It also happens on a daily basis that SMEs cannot cope up and have to shut down. Even though a Global Adjustment Fund was created to offset some negative consequences of our openness, it is little known and used and cannot encapsulate all negative fallbacks.

Trade policy should take into account the decent work agenda and prevent a downward race to lower wages, bad employment conditions, social dumping and exploitation because such phenomena will undermine our European social model and fuel populism. The conduct of trade policy should not constrain the implementation of the European pillar of social rights.

D) Applying changes to agreements already being negotiated: All the changes we outline throughout this document with regards to the substantive provisions and enforcement of trade and investment agreements should not only apply to future negotiations, but also be taken into account in ongoing negotiations. The Commission should also take the opportunity that this Trade Policy Review provides to review existing agreements in order to align them with newer objectives of the EU, notably the Green Deal, the Paris Agreement, and the SDGs.