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2012

BEGINNERS GUIDE TO TRADE

THIS PUBLICATION WAS PUT TOGETHER BY THE FOLLOWING S2B MEMBER ORGANISATIONS:

The **TRANSNATIONAL INSTITUTE** (TNI) carries out cutting-edge analysis on critical global issues, builds alliances with grassroots social movements, develops proposals for a more sustainable and just world. TNI's Trade & Investment project plays a critical role in challenging the European Union's 'free' trade and investment policies. Together with partner organisations and networks in Africa, Asia and Latin America as well as Europe, TNI provides analysis, supports the development of campaigns and the strengthening of networks, and puts forward alternatives to corporate-driven EU trade and investment policies. **www.tni.org**

SOMO – The Centre for Research on Multinational Corporations (SOMO) is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world. SOMO supports social organisations by providing training, coordinating networks and generating and disseminating knowledge on multinational corporations in a context of international production, trade, financing and regulation. SOMO strives toward global economic development that is sustainable and fair and toward the elimination of the structural causes of poverty, environmental problems, exploitation and inequality. Through research targeted at achieving sustainable change and strengthening cooperation, SOMO seeks to offer social organisations worldwide, especially those in developing countries, the opportunity to promote sustainable alternatives and to provide a counterweight to unsustainable strategies and practices of multinational corporations. **www.somo.nl**

11.11.11 is the coalition of NGOs, unions, movements and solidarity groups in Flanders (the Dutch-speaking Northern part of Belgium). 11.11.11 combines the efforts of 70 organizations and 340 committees of volunteers who work together to achieve one common goal: a fairer world with no poverty. **www.11.be**

CNCD - The National Centre for Development Cooperation, or CNCD-11.11.11, is an umbrella organisation for nearly 80 development NGOs, trade unions and associations for permanent education engaged in international solidarity in the French and German-speaking communities of Belgium. **www.cncd.be**

TRAIDCRAFT's mission is to fight poverty through trade, practising and promoting approaches to trade that help poor people in developing countries transform their lives. Traidcraft builds lasting relationships with producers, supports people to trade out of poverty and works to bring about trade justice.
www.traidcraft.co.uk

The **TRADE JUSTICE MOVEMENT** is a coalition of organisations concerned with trade justice, including trade unions, aid agencies, environment and human rights campaigns, Fair Trade organisations, faith and consumer groups. The movement is supported by more than 60 member organisations with millions of individual members. Together, we call for trade justice - not free trade - with the rules weighted to benefit poor people and the environment. **www.tjm.org.uk**

GERMAN WATCH is an independent development and environmental organisation which lobbies for sustainable global development. For German Watch, sustainable development means socially equitable, ecologically sound and economically stable development. German Watch endeavours to approach its aims by advocating fair trade relations, responsible financial markets, compliance with human rights, and the prevention of dangerous climate change. Its topics are World Trade and Food Security, Climate Protection and Adaptation, Corporate Accountability, the Financial Sector and Sustainability as well as the Financing of Development Cooperation. **www.germanwatch.org**

POWERSHIFT was founded in 2010 and is based in Berlin/Germany. As a think tank and advocacy organisation PowerShift works on EU trade and investment policy as well as on resource- and energy-policies. PowerShift coordinates the Working Group on Trade of German NGOs and is an active member of the Seattle to Brussels network. Recent activities include educational, advocacy and campaigning work on the future EU Investment policy, the publication of studies on raw material-needs of the 'green economy', on the social & environmental implications of Germany's 'green export' strategy and on the issue of 'energy poverty'. On the local level PowerShift is involved in a Berlin-wide referendum on the de-privatisation of the energy system and for a new municipal renewable energy utility. Further information: **power-shift.de**

CORPORATE EUROPE OBSERVATORY (CEO) is a research and campaign group working to expose and challenge the privileged access and influence enjoyed by corporations and their lobby groups in EU policy making. This corporate capture of EU decision-making leads to policies that exacerbate social injustice and accelerate environmental destruction across the world. Rolling back corporate power and exposing greenwash are crucial in order to truly address global problems including poverty, climate change, social injustice, hunger and environmental degradation. Corporate Europe Observatory works in close alliance with public interest groups and social movements in and outside Europe to develop alternatives to the dominance of corporate power. **www.corporateeurope.org**

AITEC seeks to widen the international political debate and give it back its importance by making knowledge accessible. AITEC defines itself as a network of professionals, associations and professional and expertise groups, that works in close collaboration with social movements, NGOs and trade unions. AITEC is an active participant in the alternative globalisation movement. AITEC themes include access to housing and the right to the city; public services, access to rights and democracy; the reform of the International financial institutions; debt cancellation and financing for development; trade and development; and the regulation of international trade. **aitec.reseau-ipam.org**

ATTAC is an international organization involved in the alter-globalization movement. ATTAC opposes neo-liberal globalization and develop social, ecological, and democratic alternatives so as to guarantee fundamental rights for all. Specifically, ATTAC fights for the regulation of financial markets, the closure of tax havens, the introduction of global taxes to finance global public goods, the cancellation of the debt of developing countries, fair trade, and the implementation of limits to free trade and capital flows. **www.attac.org**

ECOLOGISTAS EN ACCIÓN is a Confederation of more than 300 ecologist groups from various people and towns. EeA is part of the so called social-ecologism, which understands that environmental problems have their roots in an increasingly global model of production and consumption, which is also producing social problems, and that to avoid the ecological crisis it is needed to transform that model. To achieve this transformation EeA works with raising awareness campaigns, public complaints or legal actions against threats to environment, promoting and elaborating concrete alternatives. The organisation is structured in territorial Federations and groups. **www.ecologistasenaccion.org**

ADDITIONAL CONTRIBUTIONS FROM NON-S2B MEMBERS:

FOUNDATION FOR A FREE INFORMATION INFRASTRUCTURE (FFII) is a global network of associations dedicated to information about free and competitive software markets, genuine open standards and patent systems with lesser barriers to competition. The FFII contributions enabled the rejection of the EU software patent directive in July 2005, working closely with the European Parliament and many partners from industry and civil society. **www.ffii.org**

MISEREOR is the German Catholic Bishops' Organisation for Development Cooperation. For over 50 years MISEREOR has been committed to fighting poverty in Africa, Asia and Latin America. MISEREOR's support is available to any human being in need – regardless of their religion, ethnicity or gender. **www.misereor.de**

The **VRIJSCHRIFT FOUNDATION** creates awareness about the economic and social meaning of free knowledge and culture for our society. **www.vrijschrift.org**

WIDE is a European feminist network of women´s organisations, development NGOs, gender specialists and women´s rights activists. WIDE monitors and influences international economic and development policy and practice from a feminist perspective. WIDE´s work is grounded on women´s rights as the basis for the development of a more just and democratic world order and the search for alternative approaches to the economic mainstream. WIDE enables members and partners to articulate alternatives to the negative impacts of globalisation, and makes feminist alternatives visible. **www.wide-network.org**

THE FOLLOWING PEOPLE CONTRIBUTED TO THE DIFFERENT CHAPTERS:

Ante Wessels - Foundation for a Free Information Infrastructure (FFII), Vrijschrift Foundation.

Bruno Ciccaglione - S2B coordinator

Cecilia Olivet - Transnational Institute (TNI)

Pietje Vervest - Transnational Institute (TNI)

Frédéric Viale – ATTAC France

Tilman Santarius -

Marc Maes - 11.11.11

Peter Fuchs – PowerShift

Pia Eberhardt - Corporate Europe Observatory (CEO)

Roeline Knottnerus – SOMO/TNI

Rebecca Varghese Bucholz – Traidcraft

Michel Cermak – CNCD

Amélie Canonne – ATTAC France

Oliver Prausmüller - Department for EU and International Affairs / Austrian Chamber of Labour

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Although there is a general consensus on the main lines, the authors and the S2B members do not necessarily agree on all the positions expressed in this reader.

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INTRODUCTION.

The 'Seattle to Brussels Network' (S2B) was formed in the aftermath of the World Trade Organisation's 1999 Seattle Ministerial to challenge the corporate-driven agenda of the European Union and its Member States aimed at the progressive and far-reaching liberalisation and deregulation of global trade and investment flows. The S2B network joins together more than 50 organisations in 19 European countries and serves as a tool to coordinate and develop critical analyses and joint lobby and advocacy campaigns on European trade and investment policy. S2B comprises organisations working for development, the environment and human rights, women and farmers organisations, trade unions and social movements as well as research institutes, who work together to open up the EU's corporate trade agenda to economic alternatives and more heterodox policy options, with the aim of transforming it into a truly sustainable, gender-just development framework. S2B's political objectives include the ambition to roll back the power and authority of the fora and agreements used to implement the EU's corporate-driven trade and investment agenda; to expose and challenge the undemocratic nature of EU decision making on trade issues; and to promote a sustainable, socially and democratically accountable system of trade. S2B engages in co-ordinated campaign activities with broad participation that focuses on activities

where pan-European civil society activity is essential for challenging decisions taken at the European Commission and Council level and works to ensure that the network activities are co-ordinated with those of other global networks and reflect the concerns of Southern groups.

THE EU IS THE BIGGEST EXPORTER IN THE WORLD.

In 2010, Europe's merchandise exports amounted to $5.63 trillion, that is 38% of the world total. In that same year, the EU's services exports to the rest of the world totaled $684 billion in 2010, or 25% of global trade.[1] The EU is also the biggest provider and host of foreign direct investment (FDI) in the world. The European Union's economic elites worked hard to secure their position as market leaders by opening up third country markets to allow them to import raw materials and other basic commodities and inputs for Europe's industrial sector at very low prices, while exporting expensive processed products and "innovative" services globally. Opportunistic exploitation of the planet and of the people – in particular in the global South – has been a key element of Europe's economic development strategy for decades (if not centuries).

Throughout its history, Europe has made clever use of opportunities to exploit the planet and its people, particularly in the global South, in the interest of furthering its own economic development. Europe has always adapted its strategies to the context set by the global framework, and has now arrived at a point in history where it needs to do so again. The observation that "by 2015, 90% of world growth will be generated outside Europe, with a third from China alone" and "developing and emerging countries are likely to account for nearly 60% of world GDP by 2030" (today, this is less than 50%), is what fuelled the renewed trade and investment strategy presented by the European Commission in 2010 and emphatically called "Trade, Growth and World Affairs".

The EU's Trade Commissioner Karel de Gucht stresses: "Trade is working for Europe's economic recovery by ensuring growth and jobs. Our renewed trade strategy will open markets and connect Europe to the main sources and regions of global growth. My aim is to ensure that European business gets a fair deal and that our rights are respected so that all of us can enjoy the benefits of trade."[2]

The Trade, Growth and World Affairs communication is the EU's response to the shifting balance of economic power and an effort to maintain the EU's current privileges and power. While the people of Europe are increasingly suffering the impacts of major economic, social, environmental and democratic crises, the EU aims to trade its way out of the crisis with a new common commercial policy that continues to build on the approach of boosting growth by means of ever more rapid liberalisation aimed at enhancing EU industry's access to global markets. Trade is highlighted as an engine

for faster growth and employment creation at home, and a means to lift people out of poverty abroad.

However, the EU's development rhetoric cannot mask the fact that the EU is pursuing an ever more aggressive trade and investment agenda which threatens to increasingly impact on not only the people living in the EU's trade and investment partner countries, but also on the EU population itself. The EU's Trade Growth and World Affairs strategy and its predecessor, the "Global Europe" Strategy launched in 2006, openly state that sacrifices must be made to increase market access for EU companies in key areas (where the growth will be generated). In the interest of enhancing the competitiveness of the EU's transnationally operating corporations, the EU demands the flexibilisation of employment relations, the erosion of job security and social protection, the repression of wage demands and the privatisation of public services and utilities. In addition, the European Commission identifies regulatory frameworks as a crucial obstacle to doing business. Deregulation, both at home and abroad, is among its key priorities. The EU has pinpointed deregulation of public procurement in key sectors like public transport, medical devices, pharmaceuticals and green technologies as a major business opportunity.

The European Commission also wants to see more coherence between the demands to its trading partners and the EU's own internal rules. What this means is that the EC wants more liberalisations and privatisations inside the EU in order to obtain similar concessions from its trading partners. And last but not least, the EU demands "fair and undistorted access" to raw materials and energy. This may sound reasonable, but in fact this means that the EU will target and contest all measures that third countries might take to reserve the use of raw materials and other commodities for the development of their own domestic industries. All in the interest of the creation of what it calls 'a level playing field'.

Meanwhile a growing number of activists, civil society organizations and social movements reject this corporate globalisation as part of the problem that created the multiple crisis affecting our planet today. To them, the only viable way out of the interlinked democratic, economic & social, energy & climate, agriculture & food crises starts by shifting away from the neoliberal policies that produced them and that rest on the creation of largely unregulated and "competitive" global markets and the commodification of services, labour and our planet's natural resources.

This guide aims to provide a critical perspective on the key elements of the EU's trade and investment policies and the business interests they serve. S2B offers these critiques as a small contribution to the development of a vision for another Europe in the world and the building of alternatives to the current economic development model.

1. Source: WTO, at http://www.wto.org/english/news_e/pres11_e/pr628_e.htm.
2. At: http://ec.europa.eu/trade/trade-growth-and-jobs/

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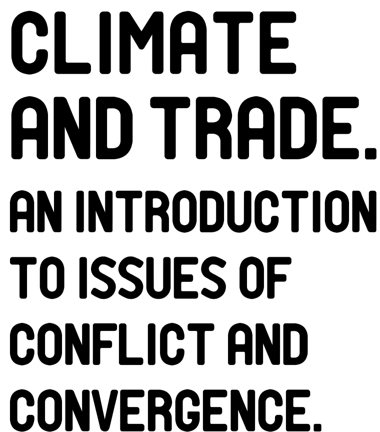

Until today, the trade and the climate debate are coexisting with very little overlap. Trade negotiators for the most part are not interested in climate issues; if at all, they are interested in how climate policies and measures might interfere with trade policy's main objective to liberalize trade. Climate negotiators, in turn, have by and large avoided trade policy topics like the plague. There were concerns that broaching such issues would mean contesting the authority of other government departments, that it would overload the agenda of climate negotiations (which might be true!), that it might ultimately create more conflicts than solutions. However there are good reasons to consider the significance of liberal trade policies as well as the footprint of increasing world trade flows in their impact on human-made climate change. This introductory article will sketch out four areas where trade and climate issues converge.[1]

1. TRADE LIBERALIZATION FUELS CLIMATE CHANGE

In theory, for quite some time, it has been controversially debated whether trade liberalization would mitigate or aggravate climate change. On relative terms, it can indeed reduce emissions intensity as liberalization fosters the spread of climate-friendly technologies. For instance, today the most energy efficient steel production plants site in Brazil and China, and not in Europe or the United States. However, several empirical studies now seem to prove that, on aggregate terms, the decades-old aim of liberalising trade between countries and creating a free world market indeed fuels climate change.[2] For one, the expansion of markets causes transport emissions. Transnational product chains, which fan out the production of one product to a dozen or more locations across the world, may lower business costs – but in most cases, they also create a volume of traffic that is crazy in climate policy terms. And secondly, trade liberalization increases the overall efficiency of the economy and thus fosters economic growth. This in turn will create "rebound effects" as growth goes along with

increased demand for energy and resources, and hence generates additional emissions.

What could politics do? Rather than helping conventional globalisation to flourish through further deregulation and liberalisation, trade policy should pursue "economic subsidiarity", which aims at localizing and regionalizing economic activities whenever possible and reasonable. Economic exchanges should preferably be carried out at the local and national level, while exchanges on the continental or global level should have only a subsidiary function – for instance, when specialising the production of energy-intensive goods in places where particularly low-emission production is possible. To achieve economic subsidiarity, transport costs needs to be much increased. Policies such as eco-taxes, emissions trading, user fees for the global commons (e.g., maritime levies for freight liners), or other ways to internalize external costs would turn back the unnecessary globalisation of commodity flows and production chains.

2. Trade Liberalization Displaces Emissions

The fact that trade liberalization on aggregate terms increases emissions is hidden behind national emission statistics that only notify territorial emissions. Yet the globalization of trade flows has brought about a major geographical shift in emission patterns, which only comes to light when emissions embedded in trade flows are analysed. On the one hand, the countries of the global North increasingly import industrial products from the global South, since their own economies specialise in services and knowledge-intensive products. As a result, their territorial emissions fall. In turn, emissions rise in a number of Southern countries – not only because of increased national demand, but also due to increased production for exportation. Several studies have provided compelling evidence of this trend.[3] During 1992 and 2008, all industrialized countries together have displaced about 1.2 gigatons of carbon dioxide emissions, which is roughly four times the amount of emissions they have reduced during that time on their own territories.[4]

As long as absolute reduction targets do not exist in emerging and developing countries, the displacement of emissions from industrial countries means nothing less than an increase in total global emissions. Yet it still seems a long way to go until all countries will agree to absolute reduction targets. This is all the more the case as reduction targets based on territorial reporting makes emerging and developing countries less willing to commit to emission obligations as long as the responsibility for export-related emissions fully lies on their shoulders. In climate negotiations, therefore, politics should negotiate on a shared responsibility for export-related emissions. Industrialised countries must take on partial responsibility for the export-related emissions of their Southern trade partners and support reduction activities in these countries.

3. Border Adjustment Measures

On the climate policy agenda, the instrument of border adjustment measures has been discussed for many years. Border adjustments are measures that aim to level out differences in technical standards or production costs between domestic suppliers and importers. For example, if a certain government introduces a tax on energy consumption or requires a companies to install a sulphur emissions filter, this raises the costs for domestic producers. In order to ensure that they will not be outcompeted by competitors from abroad, who do not have to comply to these higher standards in their home countries, the government in question can set up a border adjustment measure. Border adjustment can take various forms, from border adjustment tariffs or border tax adjustments to emissions standards for imports or the inclusion of importers in national emissions trading. As such, border adjustments are both a measure of

fairness (like treatment of importers and domestic companies) and a way to avoid leakage or the relocation of industries due to increased national environmental standards.

Border adjustment measures were first discussed in the European Parliament in 2005 as a potential means to push a reluctant USA to engage in more stringent climate policies. After the USA under George W. Bush had refrained from signing the Kyoto Protocol in 2011 and failed to take any domestic climate policy measures, the EU looked for ways to pressure the USA into taking climate protection seriously. However, such measures never came to life.

Whenever border adjustments have been discussed in developed countries, such as in in draft US climate bills during Barack Obama's first legislative period in 2007/8, this has always created distrust on the side of developing countries, who fear them as a new form of green protectionism. Many developing country governments believe they have a right to catch up with fossil-based development and consider it unfair if their exporting companies are treated like domestic producers in industrialized countries; they don't see it as unfair if advanced companies from the global North face higher environmental standards and costs, while emerging companies from the global South continue to produce according to weaker standards at reduced costs. In 2011, when the European Union mandated foreign airline companies to acquire EU emissions trading allowances, more than 20 developing and developed country governments reacted with protests.

There is also discussion on whether border adjustments can be made compatible with WTO law. For in principle, WTO law does not allow for differentiated treatment of imports according to their process and production methods. At the same time, however, WTO law allows governments to apply like treatment to imported products as to national products. The general view is that, although the actual policy design would be highly complex[5] and would run the risk of being disputed at the WTO's appellate body, border adjustment measures can be made WTO compatible.

Where they have been applied, in international environmental agreements such as in CITES or the Montreal Protocol, trade policy measures have proved an important building block in improving the effectiveness of these agreements. Political leaders must now decide whether, in the mid- to long-term, border adjustments (as well as more rigorous forms of trade sanctions) should be more widely embraced as a tool to help regulate trade in climate-damaging goods and services. For the future, once countries have made sufficient progress in eliminating CO_2 from their industrial production, one might even envisage a gradual trade ban on products that continue to be produced with the aid of fossil fuels.

4. Trade Policy and Sustainable Technology Transfer

In the last – and formally still lasting – Doha Round of the WTO, the rapid liberalisation of environmental goods and services has been negotiated. The idea was that liberalizing trade for, among others, certain climate-friendly technologies, such as wind turbines, energy efficient pumps, or photovoltaic cells, could help advance the broad-based application of these technologies. However, academics disagree on whether liberalisation is really an important condition for the diffusion of climate-friendly technologies. It seems other factors are more important, such as the transfer of know-how, capacity building, technical assistance, and financial support. There is growing evidence that the abolition of tariffs only speeds up the diffusion of those goods that are at the last level of the innovation chain, i.e. goods that are ready for the market. For technologies at an earlier innovation level – i.e. technologies that are not ready for the market or not yet competitive in terms of price – initiatives such as knowledge exchange, joint research and development, and incentive programmes are

more effective. The problem is that increased liberalisation and deregulation may abolish not only tariffs but also non-tariff barriers to trade, which could render the necessary introduction of those climate and energy standards and incentive systems difficult.

In any way, local or national production will be more climate-friendly, whereas increased world trade in climate-friendly goods and services will lead to a higher volume of traffic and transport emissions. How much globalization, how much inter-continental trade in goods can we still allow if emissions should be brought down to a 60-80% reduction globally? Instead of shaping the global economy with production chains from one hemisphere to the other, therefore, trade policies for sustainable technology transfer should rather help building up production capacities in developing countries. This may require new regulation on intellectual property rights. For instance, an Insurance Fund for Climate Protection Technologies could financially compensate researchers and developers of climate-friendly technologies while at the same time mandating them to make their findings publicly accessible for broad-scale application.[6] Thus, climate and energy innovations would be available to human beings as a global public good. In addition, new regulations for foreign investments could help in transferring production capacities to the countries of the global South. Up to now, bilateral and regional investment agreements have essentially aimed to deregulate investments and at the same time to protect foreign investors. It is high time to create a framework to make foreign investment genuinely work in the interest of climate protection. Foreign investments could be subjected to a thorough climate impact assessment. Moreover, foreign investors could be obliged to engage in joint ventures and local-sourcing policies.

WWW.S2BNETWORK.ORG

1. This introductory article rests, among others, on a more detailed study by the author: Santarius, Tilman (2009): Climate and Trade. Why Climate Change Calls for Fundamental Reforms in World Trade Policy. German NGO Forum on Environment and Development/ Heinrich Boell Foundation. Bonn/ Berlin.
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SAILING UNDER THE BIG BUSINESS FLAG.

CORPORATE LOBBYISTS AND THE EU COMMISSION ARE FELLOW PASSENGERS WHEN IT COMES TO SETTING TRADE POLICY.

Brussels, like other power hubs, has become a global hot spot for corporate lobbying. An estimated 15,000 to 30,000 professional lobbyists flood the EU capital, 70% of whom represent big business. The city is home to more than 500 company offices, over 1,000 industry associations and thousands of "hired gun lobbyists" ready to execute every well-paid commission to lobby.

When it comes to influencing EU trade policy, this army of corporate lobbyists has an easy job. Many of them used to work in the EU institutions and know exactly who and how to lobby. Prominent examples include Pascal Kerneis, the lobbying heavyweight at the European services industry and the European employers' federation, BusinessEurope, who started his carreer as a legal expert in the European Commission. Or Roderick Abbot who after working for 30 years in the Commission and the World Trade Organisation (WTO) joined lobbying consultancy APCO. APCO lobbies the EU institutions on behalf of Coca-Cola, Unilever and other corporate players. Glyn Ford – a former Member of the European Parliament with 25 years standing, and a key figure in EU trade relations with Asia – has walked through the revolving door to lobby for the consultancy firm GPlus.

The EU Commission works hand in glove with these corporate lobbyists. It has been shown to have developed its overall trade agenda in close cooperation with the European employers' group BusinessEurope. BusinessEurope and others are regularly invited to exclusive meetings, where they are given access to sensitive information about ongoing trade negotiations – information that is withheld from public interest groups.

Big business also has a lucrative place in the EU's market access working groups and teams. Here, Commission officials, EU member state representatives and corporate lobbyists sit together to discuss regulations in key markets that stand in their way – and develop joint strategies to get rid of them. What business expects from

these groups is clear: the Commission should "gather necessary information from companies", "adapt to company perspective" and "speak company language".

The Commission also has an inglorious record of setting up business groups that serve as active friends and defenders of its trade agenda. In the late 1990s, then Trade Commissioner Leon Brittan invited the chairman of Barclays Bank to set up the European Services Forum, which has proved to be a driving force behind the EU's aggressive push for liberalised services markets across the world ever since. More recently, the Commission set up a bi-regional business forum – the Business Trade Forum EU-Southern Africa – to provide active support for its controversial EPAs negotiations with countries from Africa, the Caribbean and the Pacific. Together with BusinessEurope, the Commission also drafted the pro-EPAs position of the EU-Africa Business Forum.

This intimate relationship between corporate interests and policy-makers in European trade policy is clearly not limited to the EU level. The World Development Movement has unearthed emails between UK government officials and Barclays, in which the bank is encouraged to back the UK's position on financial services in EU trade agreements vis-à-vis the EU Commission through lobby groups such as the British Bankers' Association or the European Services Forum. And other EU member states are surely just as business friendly.

On the other hand, it is hard to find evidence of EU member states or the Commission responding positively to the concerns about trade issues voiced by social, development or environmental groups. Recently, the Commission's director general for trade, David O'Sullivan, admitted that while his door was open to NGOs, he had "indeed made efforts to have more contacts with business". As a result, "industry walks through that door more often than others," he said and added: "I do not apologise for that, this is the way it's going to be." Because according to O'Sullivan, trade is about industry.

The consequence of this business first approach is a trade policy that increases the exploitation of natural resources across the world. This trade policy deprives countries in the global South of the policy tools to pursue necessary strategies for development. And it has demonstrably contributed to the unprecedented economic, food, climate and energy crises we are currently facing. So, trade cannot be only about industry.

Anyone engaged in the fight for trade justice and a new economic order should therefore roll up their sleeves to roll back corporate power over EU trade policies.

WWW.S2BNETWORK.ORG

FOR FURTHER READING:

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THE EU-INDIA FTA.

A THREAT TO BASIC HUMAN RIGHTS.

India and the EU are currently in the process of negotiating a far-reaching bilateral free trade agreement (FTA). The FTA negotiations started in 2007 and will continue into 2012. The agreement aims to liberalise 'substantially all trade' between the two trading blocks. It will contain chapters on trade in goods, services, investment, public procurement and intellectual property rights. In all these areas, commitments are likely to go far beyond what has been agreed in the WTO.

The European Commission (EC) is insisting on the principle of 'reciprocity', and seeking to avoid asymmetries in the level of commitments between the two parties. This logic of reciprocity has been criticised by civil society organisations (CSOs), given the great imbalances between the EU and India regarding economic development, wealth, poverty and hunger. While the negotiations have been shrouded in secrecy, the little information that has been leaked has given rise to serious concerns among trade unions, farmers' and women's movements, anti-poverty campaigners, public health and human rights organisations on both sides of the talks that the EU-India FTA will fuel poverty, inequality and environmental destruction. They have repeatedly called for a halt to the negotiations and ex ante human rights impact assessments of the proposed trade liberalisation and deregulation measures.

UNDUE CORPORATE INFLUENCE

The negotiating agenda for the EU-India FTA has been effectively set by big business, which has been granted privileged access to policy makers on both sides of the negotiations. At the EU end, corporate industry is closely and exclusively consulted, and has been provided with sensitive information about the on-going talks. On the Indian side, Indian industry was closely involved in determining the parameters of the future FTA negotiations. Corporate India is also increasingly hiring professional lobby firms to influence the debate in the EU and at Member State level.

By contrast, the issues raised by public interest groups have largely been ignored. Requests for access to meaningful information by Parliamentarians, state governments and civil society in India and Europe have repeatedly been turned down.

Powerful corporate sectors, including banking, retail and manufacturing, are demanding access to the Indian market – exposing rural farmers, small traders and businesses to crushing competition. With saturated markets and stagnant growth rates at home, EU businesses and politicians are keen to get unhampered access to the vast Indian market. India, on the other side, has increasingly turned to export-driven growth, particularly in services, which it wants to sustain.

The EU is India's biggest trading partner. India is only the tenth biggest trading partner for the EU, but European firms are keen to secure their share of India's market of more than 1 billion people. The EU's agenda for the trade negotiations with India is based on its Global Europe trade strategy, adopted in 2006. 'Global Europe' aims at the opening up of new markets, enhanced protection for EU industry's property rights abroad and unhampered access to raw materials.

IMPACTS ON HUMAN RIGHTS

The proposed FTA is likely to have a significant negative impact on human rights. In Europe, corporate India's market access agenda is likely to lead to job losses in the automobile and textiles sectors, and an increased pressure on health, quality and labour standards. In India, the proposed FTA is expected to seriously impact the right to food and the right to health.

THE RIGHT TO FOOD

Despite its impressive growth rates and burgeoning middle class, India is ranked at 119 out of 169 countries on the UN Human Development Index and remains home to more hungry and undernourished people than any other country in the world. According to the latest available FAO figures, 224 million or 26.9% of the Indian population were living in chronic hunger in 2006-2008.

In the FTA negotiations, the EU demands that India opens up its market to EU agricultural imports by eliminating more than 90% of all agricultural and non-agricultural applied tariffs toward the EU within a period of 7 years. Meanwhile, the EU would maintain its own agricultural subsidies and non-tariff barriers for agricultural produce. The proposed tariff elimination would seriously impact on the millions of Indian small-scale producers, including in dairy and poultry.

The EU has expressed a strong interest in opening up India's dairy sector to EU exporters. If tariffs would indeed be bound at zero vis-à-vis the EU, India would be deprived of the means to protect its market, even though it might need to do so in order to protect of fulfil the right to adequate food of farming families. Poultry is another sector that the EU is keenly interested in and that is of equal importance for the nutritional security of the poor in rural India. India's landless, marginal and small-scale farmers keep about 85% of the country's poultry stock. Backyard poultry keeping is an important supplement to their income. The elimination of the current Indian import tariff of 100% for fresh poultry meat cold seriously and negatively impact in particular small-scale contract farmers. They would be highly vulnerable to price drops as a result of EU import surges, as the bulk of their investments are made on credit. EU import surges are a real threat. The EU is the third largest exporting country of poultry meat in the world. EU imports, which increased by 500% since 1995, virtually destroyed the poultry sector in West Africa. European exporters are highly competitive internationally mainly due to price differentiation between the different parts of the bird. Fillets are sold at relatively high prices in the highly protected European market, which allows for the remaining parts such as legs to be exported at very low prices, mainly as a lucrative alternative to expensive waste disposal. Indian experts point out that this EU supply would closely match the Indian consumer preference for legs.

SMALL VENDORS VERSUS SUPERSTORES

Food security in India is also under threat from EU demands for the opening up of multibrand retail in India to EU investors. This would allow global retail companies such as Metro, Carrefour and Tesco to establish supermarkets in India. Retail is the second largest source of employment and livelihoods in India. Between 35 and 37 million people, or 7 to 8% of the total workforce are currently employed in retail, mostly in the so-called unorganized sector: in small local shops or as street vendors.

An increased share of highly efficient modern retail would drive many of these small vendors out of work. Net job losses are estimated at between 1.1 and 4.9 million jobs within five years.

The second impact on the right to food may be felt by small-scale farmers who indirectly supply retail with food products. Agricultural markets in India are now continuously subject to tight regulation involving minimum prices for all agricultural products except fruits, vegetables and herbs, a public distribution system, public food reserves and the promotion of marketing cooperatives. But the Government of India has announced that these market regulations will be fundamentally reformed in tandem with the opening of multi-brand-retail for foreign direct investment (FDI), mainly by allowing retailers to directly purchase agricultural products from farmers. Thus, as market shares of retailers are expected to grow significantly, a big share of food supply chains may then be organised directly by supermarkets in the future. On the one hand, studies show that farmers contracted as suppliers by retailers often benefit from more stable demand and higher prices. On the other hand, only the most efficient and educated, with some capital and larger holdings, succeed in gaining access to modern, highly standardised supply chains, while small-scale producers may be further marginalised. Excluding Indian small-scale producers from market access, however, would threaten their right to adequate food. Moreover, as Indian food processing is poorly developed, there is a risk that European supermarkets might to a large extent fall back on their well established international sources for processed food, especially since import tariffs will be cut simultaneously.

An opening up of the retail sector would also adversely impact poor consumers. In traditional outlets, these are often able to negotiate lower prices than rich customers. And, even though many food items are offered at lower prices in supermarkets, these items tend to involve processed, labeled and packaged food, which are generally more expensive and less suitable for poor customers. The expansion of European supermarkets is unlikely to help realise the right to food of these vulnerable groups.

FDI PROTECTION HAMPERS LAND REFORM

Since the coming into effect of the Lisbon Treaty on 1 December 2009, the European Commission has acquired the right to negotiate investment chapters on behalf of the EU Member States. Investment protection might turn out to be major obstacles to current and future land reform initiatives. For example, standard clauses on the prohibition of direct and indirect expropriation without compensation can make it very expensive for Indian states to acquire land that is being used by European companies. Also, the current mandate does not clarify that regulatory measures to achieve legitimate public policy objectives do not constitute indirect expropriation. If this is not changed, the proposed free trade agreement (FTA) will prescribe compensation in the context of land reforms, even though the Indian constitution does not. The option of investor-State dispute settlement would allow companies to circumvent local and national courts and sue India directly under a variety of international institutional frameworks for violations of the FTA investment provisions. Investors' rights would thus prevail not only over the Constitution of India, but also over universal human rights such as the right to food, of which access to land is an essential element for the rural poor.

THE RIGHT TO HEALTH

The proposed EU-India FTA is also expected to severely impact the right to health. India's existing policy against the abusive patenting of medicines has fostered a blossoming generics industry that not only supplies the whole of India with affordable drugs for the treatment of AIDS, malaria, cancer, tuberculosis and swine flu, but is also their largest supplier throughout the developing world. Ninety per cent of HIV/AIDS patients in the global South currently depend on generics from India. But the EU-India FTA seems to threaten the country's pivotal role as the 'pharmacy of the developing world'. Leaked information on the EU's negotiating position shows that – in response to proposals by large pharmaceutical companies to strengthen intellectual property rights - EU demands on IPR protections to go well beyond the requirements of the WTO TRIPS agreement. The EU demands:

- data exclusivity provisions, whereby Indian generic drug makers would be obliged to repeat the innovator companies' costly and time consuming tests because public authorities could no longer rely on their test data to approve the generic drug. This could delay or even prevent the registration of and price competition through generics;
- an extension of the standard life of patents from 20 to up to 25 years;
- enforcement measures including provisions allowing the seizure of products suspected of infringing IPRs at the Indian border, which could hamper legitimate trade in generics;

These provisions would enable Big Pharma to maintain prohibitively high prices on medicines and drastically restrict India's ability to produce and export cheap generic versions of drugs.

RESPECT HUMAN RIGHTS!

Both the EU and India have a clear obligation under international law to respect, protect and fulfill all economic, social, cultural, civil and political human rights in all policy areas, including trade policy. For the EU, moreover, the Lisbon Treaty recognises this obligation through an explicit reference to trade policy. Given their duty of respect, the State parties must not ratify any trade agreements obliging them to implement measures that would impact negatively on human rights. Given their duty of protection, states must not ratify any agreements making it more difficult for them to ensure that private actors comply with human rights. And given their duty of fulfillment States must refrain from ratifying any agreements that make it more difficult for them to fulfill human rights.

At the very least, a binding human rights clause should be included in all trade and investment agreements that stipulates the revision of any provision that is found to violate or threaten human rights. The first step for the EU and India in ensuring coherence between the FTA and these human rights obligations would be to conduct systematic and timely Human Rights Impacts Assessment (HRIAs) ex ante, meaning before concluding any trade agreement, and ex post, i.e. following a certain phase of implementation of the agreement. So far, the European Commission and the Government of India have not responded positively to the call for a Human Rights Impact Assessment on the FTA.

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This contribution is based on the findings of two reports:

Trade Invaders. How big business is driving the EU-India negotiations, Corporate Europe Observatory/ India FDI Watch (2010). http://www.corporateeurope.org/sites/default/files/sites/default/files/files/resource/Download%20the%20report%20%22Trade%20Invaders%22.pdf

Right to Food - Impact Assessment of the EU-India Trade Agreement, Misereor/Heinrich Böll Foundation (2011) http://www.misereor.de/fileadmin/redaktion/testimonials/ecofair_Trade_Dialogue_Right_to_food_impact_assessment_EU-India_trade_agreement.pdf

INVESTMENT PROTECTION AS A COMMON EU COMPETENCE.

A NEW THREAT TO SUSTAINABLE DEVELOPMENT.

INVESTMENT: A KEY ELEMENT IN EU TRADE POLICY

The Treaty of Lisbon that came into effect in 1 December 2009, gives the EU exclusive competence in the area of foreign direct investment. Prior to Lisbon, the EU only had the competence to negotiate investment market access. Member States negotiated their own bilateral investment agreements to provide for post-establishment investment protection guarantees. The European Commission now has exclusive competence to develop an integrated investment market access and post-establishment investment protection policy as part of the EU's common commercial policy. It gives the European Commission the power to negotiate comprehensive trade and investment agreements on behalf of the Member States. In time, the EU intends to integrate the existing bilateral investment treaties (BITs) of the Member States into the EU's common commercial policy. The EU Member States currently have some 1200 BITs in operation, out of a global total of roughly 2500. The Member States want their BITs to serve as a blueprint for the EU's future investment policy. They are demanding that in doing so, the EU will uphold the highest level of protection offered by these BITs.

Foreign direct investment (FDI) is a key element of the EU's trade policy. The EU regards FDI as a key means to promote development and economic and social growth, in particular for developing countries. The EU stresses the interdependence and complementarity between trade and FDI, which plays a crucial role in building the global supply chains that are part of the modern international economy. The EU's investment policy focuses on the negotiation of investment rules in the context of its trade negotiations that provide EU investors and investments with legal certainty and a stable and predictable regulatory environment in which to conduct their business.[12] The EU's mantra is: economic growth equals development, FDI boosts economic growth, hence countries must sign international treaties to ensure the stability and protection needed to attract FDI. The EU disregards the tension between safeguarding investment protections

and the obligation of states to balance investor rights with the (inter)national obligations to other stakeholders and constituencies in its push for investment agreements that only mention investor rights and contain no reference to investor obligations to respect government policies relating to sustainable development and the safeguarding of wider human, social, political, economic and cultural rights.

INVESTMENT AGREEMENTS: A TOOL FOR DEVELOPMENT?

From a sustainable development perspective, there are many problems associated with investment protections as laid down in EU Member State BITs.

The EU's agenda is focused on market access and post-establishment protection for its own transnational corporations to help them capture new markets and cheap production bases. The EU may tell its trading partners that it is in their interest to create an attractive business climate to bring in the necessary capital to lift people out of poverty by kick-starting modern industries. But the reality is that while urban consumers in developing countries may benefit from cheap imported products, their small producers and emerging industries often cannot compete with the EU's giant corporations that take over their markets. International trade demands a certain level of production and capital formation that mitigates against the participation of the small producers that form the backbone of many developing countries' economies. International trade and investment flows tend to benefit the already better off. As such, they do not per se further sustainable (economic) development. In fact, in the absence of redistributive policies, such export-led growth is likely to lead to a more unequal distribution of wealth. In this light, it would be wise if developing countries would not focus on attracting foreign capital as a development strategy per se. If trade and investment are to contribute to sustainable development, they need to be embedded in a wider development strategy.

THE EU's INVESTMENT LIBERALISATION AGENDA

The EU's agenda for investment liberalisation and protection typically includes demands for enhanced market access; treatment of investors/investment (including absolute standards of treatment relating to protection and security and fair and equitable treatment; national treatment, i.e. similar treatment of foreign investors to nationals of the host state; and clauses on most favoured nation treatment: similar treatment of foreign investors to the best treatment accorded any third nation); compensation for direct and indirect expropriation; dispute settlement (including investor-to-state arbitration, by which investors can sue host governments before international investment tribunals); and capital liberalisation to guarantee unhindered repatriation of returns on investment.

These demands that, according to the EU, are aimed at creating what it calls a fair and level playing field, can have serious adverse social, economic and environmental impacts, particularly in poorer and developing countries.

For example, the clauses on national treatment that the EU pursues, stipulate that foreign investments cannot be treated worse (but can be treated better) than domestic investors. The problem with such stipulations is that they leave little or no room for targeted policies to promote the development of domestic industries. Trade and investment agreements do not allow for what they see as 'discrimination'. A breach of what foreign investors consider 'fair and equitable treatment' as protected by standard international investment agreements can be a reason for them to sue countries before an international investment tribunal. The opportunity that investment agreements give to foreign investors to bypass national laws and question proposed government regulations before international tribunals if they threaten to impact on foreign investors' expected future profits is one of the most contentious elements of BITs and other international investment treaties (IIAs). It allows investors to challenge proposed regulation as

a form of indirect expropriation. Investment arbitration suits, which are typically conducted behind closed doors, bring excessive legal costs and may lead to governments being ordered to pay hundreds of millions of Euros in compensation to investors for loss of future profits. Particularly in poorer/developing countries, they pose a serious danger to public budgets. Even the threat of investment arbitration may thus lead to what is called 'regulatory chill', where states abandon the introduction of legitimate social and environmental regulation. This can be highly problematic, particularly in countries that have made liberalisation commitments before sufficient regulatory and supervisory frameworks were in place. Concerning the liberalisation of capital: The current financial crisis has made clear how free movement of capital can result in surges of highly damaging speculative capital flows. This makes the EU's continued insistence on the liberalisation of investment-related capital movements all the more worrisome. The EU's capital liberalisation clauses stop host country governments from putting caps on the repatriation of profits and demanding that a percentage of the returns on an investment are reinvested in the host country.

RESISTING EU DEMANDS

The EU is the largest source of foreign direct investment in the global economy. Therefore, its demands for liberalisation of investment markets and extended investor rights and protections in its trade negotiations carry considerable weight, in particular vis-à-vis weaker trading partners. The strong focus on the business climate to attract FDI as an end in itself disregards the notion that investment, in order to be pro-development, must be part of a broader development and poverty-alleviating strategy.

In order to harness FDI for development, a radical overhaul of the current frameworks for investment protection is required. Today's BITs only deal with investor rights and rarely, if ever, mention investor obligations. Similarly, these BITs generally do not refer to international human rights obligations (including labour and environmental rights) of the contracting parties. Ironically, the World Bank/ICSID arbitration tribunals have repeatedly refused appeals to human rights made by sued states, but have accepted investors' arguments in favour of the "human right to property".[3]

In a global context where supply chains are increasingly internationalised, alternative frameworks that do take the wider social, economic and environmental impacts of foreign investment into consideration are an imperative. In the wake of the exponential growth of the number of BITs and the accompanying increase in investment dispute settlement cases, a growing body of critical analysis and alternative policy proposals from academia and civil society organisations has developed[4] – some of which are making some headway in the political arena.[5] Their recommendations for policy change range from moderate amendment of the existing frameworks to a more radical overhaul. Common denominators are:

- A need for more precise legal language in BITs and other international investment treaties in order to protect human rights and further sustainable development and the eradication of poverty.
- Ensuring protection of the public domain by enshrining the state's right to regulate in the public interest.
- Binding social and environmental standards in all free trade and investor agreements and a prohibition to lower social standards to attract investment.
- Changing or abandoning the present dispute investment settlement regime. Proposals here include a replacement with a state to state dispute settlement mechanism, or a system that allows affected stakeholders can sue international investors. All proposals share a demand for more transparency of proceedings. Limiting the opportunities for investors to challenge legitimate government measures is another key element.

- Safeguarding policy space to allow developing country governments to prioritise domestic markets and emerging industries in the interest of development, even if this implies 'dis-crimination' against foreign investors.
- Allowing governments room to restrict the flow of capital to protect themselves from financial instability. Equally, the setting of percentages of returns on investment to be reinvested in the domestic market to reduce financial volatility and secure sources of domes-tic capital should be permitted.

There is increasing evidence that excessive investment protection is not a prerequisite for attracting foreign capital.[6] Investments will only serve development when they are embedded in a wider development strategy.[7] In order to prevent a regulatory race to the bottom whereby countries are competitively undercutting each other's social and environmental standards to attract foreign investment, developing countries should ask themselves what kind of investments they want. They should endeavour to attract foreign investments (without crowding out domestic investment that tends to be much firmer rooted in society than foreign capital) that contribute to general welfare and demand the policy space to regulate them accordingly. They may refer to the EU's own founding treaties that demand that the EU defends, inter alia, human rights, equality, sustainable develop-ment, free and fair trade and the eradication of poverty. The EU should be called to task on its responsibility to uphold these values in all its policies, including its trade and investment policies.

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FURTHER READING:

www.tni.org/article/discover-dark-side-investment?context=70931

1. Source: http://ec.europa.eu/trade/creating-opportunities/trade-topics/investment/
2. The EU's Trade Department highlights the EU-Korea Free Trade Agreement as the most recent example of an agreement that reflects EU investment policy negotiations. The text of this agreement can be found at: http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/korea/
3. Alejandro Teitelbaum, 'International, Regional, Subregional and Bilateral Free Trade Agreements', CETIM, July 2010. At: www.cetim.ch/en/documents/report-7a.pdf
4. See for example:
   Public Statement on the International Investment Regime, 31 August 2010. Statement of concern about the international investment regime, supported by academics with expertise relating to investment law, arbitration, and regulation. At: http://www.osgoode.yorku.ca/public_statement
   Howard Mann, et al., IISD Model International Agreement on Investment for Sustainable Development, International Institute for Sustainable Development, 2005. At: http://www.iisd.org/pdf/2005/investment_model_int_agreement.pdf
   'The Top 10 Changes to Build a Pro-Labor, Pro-Community and Pro-Environment Trans-Pacific Partnership', report published by Earthjustice, Friends of the Earth, the Institute for Policy Studies, Public Citizen, and the Sierra Club, August 2010. At: http://justinvestment.org/2010/08/investment-rules-in-trade-agreements/
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5. For example, elements of alternatives proposed by civil society are reflected in the own-initiative report of S&D MEP Kader Arif for the European Parliament's International Trade Committee on the future European international investment policy in its recommendations to aim for a better balance between investor rights and obligations.
   Kader Arif, Report on the Future European Interna-tional Investment Policy, March 2011. At: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0070+0+DOC+PDF+V0//EN
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7. See: M. van Dijk and M. Vander Stichele, "Is foreign investment good for development?" (2008) SOMO Paper, March 2008. www. somo.nl/publications-n/Publication_2478/at_download/fullfile

EU TRADE AND INVESTMENT POLICIES.

A NEW RESOURCE GRAB?

WHAT DO RAW MATERIALS HAVE TO DO WITH THE EU's TRADE AGENDA?

We depend on raw materials – or natural resources – every day, often without even thinking about it. From the aluminium tea spoon we use to stir our coffee to the copper in our mobile phones, our economy has become dependent on the availability of cheap raw materials. If supplies of these materials began to dry up due to scarcity or high prices, the wheels of industry would grind to a halt. But we know that the earth's natural resources are limited, and competition for them is increasing. With constantly increasing demand for raw materials, urgent questions are being asked about who should control trade in and prices of raw materials.

The European Union (EU) consumes a disproportionate amount of the world's natural resources: the average EU citizen consumes three times as many raw materials as an Asian person, and four times as many as someone living in Africa. At the same time, the EU has very limited raw materials of its own and is therefore heavily import dependent. In order to secure its access to raw materials in the future, the EU has launched a new strategy: The Raw Materials Initiative. Skewed to help European corporations, the strategy pays virtually no attention to the interests of the countries which export raw materials.

THE RAW MATERIALS INITIATIVE

The European Commission's Raw Materials Initiative (2008) has three pillars:

- Pillar 1 Securing access to raw materials on world markets
- Pillar 2 Promoting the extraction of raw materials from European sources
- Pillar 3 Reducing European consumption of raw materials

The focus of the strategy is heavily on Pillar 1 *Securing access to raw materials on world markets* which basically deals with how the EU can use trade to access raw materials in natural resource rich countries.

Most countries abundant in not yet exhausted raw materials are developing countries and many are among the poorest countries especially in Sub-Saharan African. These countries need to harness this potential and use their raw material wealth for their development needs. However, by signing bilateral trade agreements or economic partnership agreements, they are locking themselves in to international legal agreements which limit their capacity to use them for development.

WHAT's WRONG WITH TYPE OF RAW MATERIALS TRADE THE EU PROMOTES?

To achieve sustainable economic development and reduce the dependency on exporting raw materials, clear laws and regulations are desperately needed. Developing countries must be able to effectively control their natural resources to make sure that:

- social and environmental damage is avoided
- profits from raw materials are better shared so they benefit the population of the country from which they are taken
- processing and manufacturing of raw materials in developing countries themselves is promoted.

However, Europe's approach to trade in raw materials is threatening to rob poor countries of even those limited tools.

THE EU INSISTS ON THE REMOVAL OF EXPORT DUTIES

Processing adds value to a product. Manufactured copper cable, for example, is many times more valuable than the raw copper ore it is made from. An export tax on raw materials in developing countries can be to protect a country's own processing industries by reserving the necessary raw material inputs at an affordable price for domestic manufacturing and ensure that these newer, infant companies are able to compete globally. The promotion of processing and manufacturing is essential for developing countries if they stand any hope of freeing themselves from their dependence on exporting raw materials.

Duties on raw materials that are exported can also generate income for public services, contribute to price stabilisation, and support the protection of the environment and natural resources. For example, an export duty on unprocessed wood can prevent forests being stripped bare.

However, the European Commission fears that export duties could limit supply to the EU and increase prices for European companies. It fears the EU economy, which depends on these imports, could be disadvantaged by local industries in producer countries that do not have to pay export duties. As such, in negotiations for new bilateral free trade agreements (FTAs) and Economic Partnership Agreements (EPAs), the EU has been exerting considerable pressure on countries to give up export duties.

EU INVESTMENT RESTRICTS COUNTRIES ABILITY TO REGULATE IN THE RAW MATERIAL SECTOR

The EU is also attempting to push through conditions which would make it much harder for developing countries to regulate foreign companies operating in their raw materials sector. For example, developing country governments would not be able to compel foreign companies to cooperate with domestic companies or to employ local people. This is a vital tool many developing countries use to ensure that foreign investment benefits the local population as well as investors.

TIME FOR A NEW DIRECTION

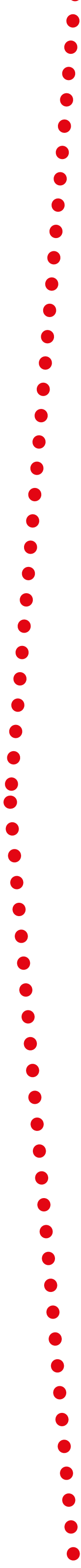
In order to increase Europe's competitiveness, the EU's Raw Materials Initiative focuses on securing unrestricted supplies of raw materials from other parts of the world, but ignores concerns about development and the environment. Instead of trying to obtain unrestricted access to raw materials by signing new free trade agreements, the EU must seek a new direction.

The EU must:

a) tackle the massive over-consumption of resources in Europe compared with the rest of the world.

b) allow developing countries to use exports duties and regulate the behaviour of foreign investors operating in their countries.

c) help poorer countries to integrate into the global economy, such as by reducing their dependency on exporting raw materials, increasing the processing of raw materials in their own countries, and protecting finite natural resources.



FIND OUT MORE HERE:

http://www.traidcraft.co.uk/get_involved/campaign/raw_materials

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TRADING AWAY PUBLIC SERVICES?

The impact of free trade agreements (FTAs) on public services is subject to fierce but rarely public debate, while commercial interests to extend the marketization of basic needs such as energy and water distribution, disposal, education, health or social services interfere with demands to safeguard these services against market rules.

At a first glance the debate on the impact of FTAs on public services shows little difference to more prominent liberalisation and privatization issues at a national or local policy level: Critics point out the detrimental effects of liberalisation measures e.g. on the accessibility, democratic control, quality and affordability of (former) public services, while market advocates typically promise more efficient and less costly services due to increasing competition and hold the view that basically any service is marketable. Against this background two driving forces for the more general neoliberal "reformology" of governments also apply to the rollback of the delivery and provision of public services. On the one hand this rollback is associated with the motive of cost-containment and austerity policies that underpin the dismantling of the national Keynesian welfare state since the 1980s. On the other hand the ongoing restructuring of the public service sector is driven by the motive of "risk transfer":

Alongside the efforts to tighten fiscal policies, governments also seek to curb the expectations of citizens on their social rights. Therefore the project of a "residual public service sector" also implies a shift away from the notion of universal rights (that underpins the concept "public" service) to a privatization and individualization of social risks([1]).

Keeping these contentious issues in mind, one has to consider that until the 1990s neoliberal restructuring of services considered to be essential for the general public, such as network communications, energy and water distribution, education, transport, disposal, health or social services, was first and foremost a matter of "autonomous" legislative action by individual countries. However, from the 1990s onwards the politics of liberalisation were enlarged by new institutional arrangements and political fora for the enforcement of commercial interests. In this regard the creation of the so called "General Agreement on Trade in Services" (GATS) was a milestone for the establishment of transnational service markets and for imposing a regulatory framework that locks in liberalisation gains via the powers of international trade law. The GATS was launched in 1995 as one of the central pillars of the World Trade Organisation (WTO) and thus shows typical features of Free Trade Agreements: While it builds on an extremely narrow conception what is essential to protect from the liberalisation rules of those agreements, the GATS puts under pressure domestic regulations and regulatory instruments that may constrain commercial interests and aim for a special treatment of public services (e.g. in case of public monopolies or subsidization). Due to their one-sided focus on market access obligations and competition rules, commitments under agreements like the GATS severely limit the policy space of (local and) national governments to safeguard and expand public services.

In general, there a two typical effects of liberalisation obligations in FTAs: They »put domestic policy makers under the pressure to consider only measures which are in conformity with these agreements ("regulatory chill" effect) and effectively bind governments to the current level of liberalisation which makes a review and reconsideration of liberalisation measures difficult ("lock-in" effect)«([2]). While ever since the launch of the GATS decisive negotiations about liberalisation commitments took and take place behind closed doors, a significant effect of liberalisation obligations in trade treaties is their long-term binding character on future governments. Thus agreements like the GATS may not only undermine the sovereignty of nation states, but also block policy change to roll back the neoliberal project of a "residual public service sector".

Until the end of the 1990s the GATS and the role of public services in international trade negotiations attracted little public attention. But then a "wave" of so called STOP GATS-campaigns, launched e.g. by trade unions, NGOs, local councils and others, put publicly pressure on national governments to reject liberalisation commitments. One prominent example of the success of these STOP GATS-protests was the raising of public awareness about the offensive interests of European multinationals and the European Commission to include water services in the GATS 2000-negotiations: » Since liberalisation of water has been traditionally – besides pensions, health and social services - a most sensitive political issue, the plans of the Commission met with stiff opposition from towns and municipalities as well as wide variety of civil society organisations «([3]) – and due to this strong resistance and dissenting opinions among EU member states the liberalisation agenda of the European Commission failed. The concerns of STOP GATS-critics were mirrored by general demands to carve out public services from the scope free trade agreements and/or to put any commitment within this market biased framework under public scrutiny.

But while many issues in regard to the impacts of trade agreements on public services remain unresolved, recent years were characterized by a significant "forum shifting": With the strategy paper "Global Europe – Competing in the World", dated in 2006, the European Union presented a reorientation of the Common Commercial Policy. It moved the accent away from the multilateral WTO negotiations to a bilateral approach. The steady increase of bilateral trade negotiations that follow a liberalization agenda that goes well beyond what is being tabled at the WTO emphasizes the urgent need for a "new round" of critical interventions against offensive interests to lock in long term-liberalisation obligations for public services. This comes in particular true against the background of ambitious bilateral "GATS plus"-negotiations like the Comprehensive Economic Integration Agreement between the EU and Canada ("CETA") or the recent plurilateral initiative by a "coalition of the willing" (including i.a. the US, Canada, Australia, the EU and others) to create a more ambitious regulatory framework for the liberalisation of services ("GATS 2.0"). These "GATS plus" negotiations present a new challenge for those who aim for an exclusion of public services from free trade agreements – and those who aim to overcome the democratic deficit of EU´s commercial policy.

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ACTA.

THE ANTI-COUNTERFEITING TRADE AGREEMENT.

The Anti-Counterfeiting Trade Agreement (ACTA) is an intellectual property rights enforcement agreement between the EU and Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and United States. The parties negotiated ACTA behind closed doors, outside the World Trade Organisation (WTO) and World Intellectual Properly Organisation (WIPO).

To understand ACTA, it is good to first look at the present situation. Prior to the 1994 WTO TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), countries could adopt a level of protection of intellectual property (IP) rights that was appropriate to their level of development. For instance, the Netherlands abolished its patents system in 1869, and did not reintroduce it until 1912. In the meantime, the Netherlands had time to develop its industry, without being hampered by patents. The TRIPS agreement changed this. All members of the WTO have to adopt protection of IP rights.

IP rights holders want stronger rights and enforcement, which makes their portfolios more valuable. Countries with small IP portfolios are better off with weaker rights and enforcement. In the WTO and WIPO, developing countries and emerging economies block stronger enforcement rules above the TRIPS agreement. The ACTA negotiating countries formed a "coalition of the willing" and negotiated ACTA outside WTO and WIPO. [Geist] ACTA is significantly more stringent and rightholder friendly than the TRIPS agreement.

ACCESS TO MEDICINE AND KNOWLEDGE

The 1994 TRIPS agreement created global pricing problems. In the 90ties, in sub-Saharan Africa alone more than 17 million people have died because of AIDS. Using IP protection, pharmaceutical companies sold AIDS medicine in South Africa for prices higher than in the US, while incomes in South Africa are much lower. Most patients did not have access to medicines. In 1997, President Mandela of South Africa signed a law to ensure the supply of affordable generic medicines. The U.S. and the EU started to pressure South Africa, the U.S. prepared trade sanctions. 41 Pharmaceutical companies sued Mandela. Then, public outrage over what was happening forced companies and governments to withdraw. Ultimately, this led to the Doha Declaration on the TRIPS Agreement and Public Health, WTO, 2001, a declaration that affirms the right of developing countries to protect public health. [Doha] Since then, there is a pattern of "efforts to confuse the IP issues with those of substandard or spurious medicines" taking place at a number of international fora, according to Indian Ambassador Ujal Bhatia. [Bhatia] In 2008 and 2009, claiming to follow EU rules, Dutch customs seized essential medicines. Generic AIDS medicine not patented in India, nor in, for instance, Nigeria, was seized while in transit in the EU. [Seizures]

A study by Sean Flynn with Bijan Madhani concludes that ACTA increases the risks and consequences of wrongful searches, seizures, lawsuits and other enforcement actions for those relying on intellectual property limitations and exceptions to access markets, including the suppliers of legitimate generic medicines. This, in turn, is likely to make affordable medicines more scarce and dear in many countries. [Flynn with Madhani] See also Health Action International Europe. [HAI]

The global pricing problem places legitimate copies of media and software suites outside the reach of the majority of the people in developing countries. In emerging economies, CDs and DVDs are sold for the same prices as in Europe, while only an elite of 5-10% of the people have an income comparable with a median income in Europe. 90% or more of the people have an income that is much lower. This means that relative to local incomes in Brazil, Russia, or South Africa, the price of a CD, DVD, or copy of Microsoft Office is five to ten times higher than in the United States or Europe, the Media Piracy in Emerging Economies report shows. [Karaganis, 2011] There is no distribution of legal CDs and DVDs outside the capitals. Some 90% of the people in emerging economies can only turn to illegal media copies. Stronger enforcement can not solve the global media piracy problem.

The global pricing problem also plays a role in diffusion of green technology, needed to fight climate change. [FFII-675] The same dynamics apply, at least in part, to the global counterfeiting problem. [Kur] A TRIPS+ approach, like ACTA, that does not solve global pricing problems, but only heightens enforcement, will not solve global media piracy and counterfeiting problems, but will only increase social costs.

DEVELOPMENT

ACTA's purported goal is to combat large scale counterfeiting. But ACTA is not limited to fake Gucci handbags and other copycat products. ACTA addresses a broad range of IP infringements. Intellectual property rights do not have clear boundaries. In many cases only a court case can establish whether an infringement took place. ACTA contains very high damages and intrusive injunctions. Competitors who inadvertently infringe an intellectual property right may be faced with these injunctions and very high damages. They have a chilling effect. "Everyone must become more risk adverse, even when the activity they are engaged in may ultimately be legal." [KEI] Under the guise of combating counterfeiting, ACTA hampers competition from newcomers, both from small and medium sized companies in developed countries as from companies in developing countries. As Korff and Brown formulate it: "Overall, ACTA tilts the balance of IPR protection manifestly unfairly towards one group of beneficiaries of the right to property, IP right holders, and unfairly against others (...)". [Korff and Brown]

FUNDAMENTAL RIGHTS

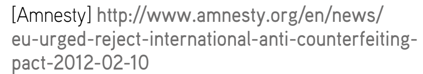
ACTA isn't limited to large scale infringements. ACTA does not contain a minimum threshold (de minimis clause). ACTA's civil and criminal measures can also be used against consumers who copy a CD or DVD, or download music, movies and software. As we saw above, some 90% of the people in emerging economies can only turn to illegal media copies. ACTA targets these people, who are dependent on copies.

ACTA does not contain a public interest exemption either. ACTA's civil and criminal measures can be used against whistle blowers and newspapers revealing documents in the public interest. [FFII-992]

ACTA's draconian measures will put pressure on Internet service providers. These intermediaries, who should be the guardians of Internet freedom, may be scared into a policing role. According to Amnesty International, this is likely to have a chilling effect on free speech and access to information. [Amnesty] In countries with less strong legal traditions and fundamental rights protection than the EU, ACTA may have a very negative effect on fundamental rights, worse than in the EU. With ACTA, the EU does not export the rule of law, but undermines it.

ACTA will hamper competition, development, access to medicine, knowledge and culture, and threatens fundamental rights. ACTA's negative consequences will be stronger in developing countries than in the EU. Germany's Federal Ministry for Economic Cooperation and Development advises developing countries against signing ACTA. [Germany] Four European Parliament committees, including the Development committee, advise the Parliament to reject ratification of ACTA. [Parliament]

While there is now a serious chance the EU will not ratify ACTA, pressure on developing countries will remain to adopt ACTA–like legislation. For instance, the US is negotiating a Trans-Pacific Partnership (TPP) agreement with Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam. The TPP proposals are primarily based on, and frequently go beyond, the maximalist and controversial standards of ACTA. [Infojustice]



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EU DEEP AND COMPREHENSIVE TRADE AGREEMENTS.

A THREAT TO THE ASPIRATIONS OF THE ARAB SPRING.

A NEW PATH TOWARDS DEVELOPMENT?

In December 2011, the European Member States issued the European Commission with four mandates to prepare negotiations for *Deep and Comprehensive Free Trade Agreements (DCFTAs)* with the four signatories to the Agadir Agreement (2007): Egypt, Tunisia, Morocco and Jordan.

"We are offering Egypt, Jordan, Morocco and Tunisia progressive economic integration into the EU single market and want to improve the conditions for market access to the EU for these four WTO members as they engage in a process of democratic and economic reform." said EU Trade Commissioner Karel De Gucht.

The European Commission is currently engaged in a so-called scoping exercise – only with Tunisia, Morocco and Jordan - to assess the willingness of the countries in question to negotiate on each of the themes requested by the EU Member States. These include enhanced liberalisation of trade in agriculture, manufactured goods, services and fisheries, investment protection and the opening of public procurement markets to European companies.

The European Union aims to start negotiations as early as October 2012, perhaps even sooner. The content of the mandate has not been made public, but the European Commission has stressed its willingness to enter the new political context created by the 'Arab revolution' to make rapid progress towards comprehensive trade agreements, which will address all aspects of trade and investment between the EU and each of the Agadir countries.

In fact, the decision to negotiate these deep and comprehensive trade agreements constitutes a threat to both the social and democratic aspirations of the Arab spring and seriously challenges the credibility of the willingness of the European Union to support the people in the region in their struggle for democratically choosing a new path towards development.

The conclusion and implementation of such agreements will have very serious social, economic and environmental consequences for the economy and the people of Egypt, Tunisia, Morocco and Jordan. It will set their economies firmly on a path towards an export-led growth model and open their markets to European multinationals, thus increasing the competition between local workers and their counterparts in Europe and indirectly in other regions, such as South-East Asia.

DCFTAs are not the answer, not at this time, not with the EU's "business as usual" approach

Key demands of the Arab Spring were regime change and reform, including of the neoliberal policies that are causing widespread poverty and unemployment. These same policies the EU, through its DCFTAs, is now seeking to consolidate and enshrine in stone. The proposed DCFTAs will deprive the governments of the countries concerned of crucial political sovereignty in relation to social, economic and environmental policy objectives.

The EU's trade agreements typically focus on liberalisation and deregulation and do not recognise the right to regulate in the interest of labour, the environment and other public policy/sustainable development goals. This is particularly worrying in countries like those of the Arab Spring where the frameworks to regulate and remedy the impacts of trade and investment flows in the public interest are likely to be insufficiently developed to withstand full-blown international competition.

In fact, proposed regulatory measures that would appear to impinge on trade and investment rights as laid down in the DCFTAs can be challenged before a WTO tribunal or an investment tribunal, which could lead to compensation payments to investors of hundreds of millions of Euros, at the expense of public budgets.

The uprisings in the Arab Spring countries were closely linked with a demand for democracy and a new economic model to ensure employment and a decent standard of living. The EU maintains that the export-led growth model it promotes through its trade agreements will support the demands of the Arab Spring and strengthening the transition process by bringing jobs and growth. In the words of EU Trade Commissioner Karel DeGucht: "We are offering Egypt, Jordan, Morocco and Tunisia progressive economic integration into the EU single market and want to improve the conditions for market access to the EU for these four WTO members as they engage in a process of democratic and economic reform."[1]

But the DCFTAs as they have been mandated are not the answer. On the contrary. They are highly unlikely to bring the inclusive growth and social justice the people of the Arab world demanded.

The DCFTAs will not be about sustainable development and the interests of ordinary workers and small producers will come first in the negotiations. On both sides, the agenda is set by business elites. The powerful lobby

of the EU's transnational business elites capturing Europe's negotiating agenda has been well-documented.[2] In addition, the balance of power in the negotiations will be highly uneven. Europe as a powerful global player has much more bargaining power than its low-income North African negotiating partners. This is compounded by the fact that the EU will not negotiate with Egypt, Tunisia, Morocco and Jordan as a group to establish a region-to-region agreement, which might have increased their bargaining power and helped to promote their efforts towards enhanced regional integration under the Agadir Agreement in force since 2007. Promotion of regional integration is in fact a professed goal of the Euro-Mediterranean trade partnership. Instead, the EU has opted to negotiate reciprocal trade agreements with each country individually. Hence, any outcome of the negotiations will almost as a matter of course be biased in favour of European big business.

EU TRADE DEMANDS

Since the start of the Euromed Partnership (Barcelona, 1995), Association Agreements were signed between the EU and Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Tunisia and Turkey. These agreements already contain protocols on the liberalisation of trade in agricultural and manufactured goods, services and investment establishment, as well as mechanisms for dispute settlement. The EU's proposed DCFTAs will consolidate and build on these provisions to deepen liberalisation, speed up market access and do away with all remaining exemptions and safeguard measures. The aim is to further open up the domestic markets of the countries concerned to goods from Europe.

Small local producers are unlikely to be able to compete against modern EU businesses, let alone to export their own goods to sell in the European markets. The EU also seeks unrestricted access for its services providers, including in health care, business services and tourism. Experience with, for example, liberalisations in tourism have learned that big travel operators are likely to capture the market, while to a large extent flying in their own staff and catering products, with little spin-off benefits for the local economy.

The DCFTAs will introduce an investment protection chapter as a new element. European bilateral investment agreements typically give investors the right to challenge public measures that might impact negatively on their expected profits. Investment arbitration tribunals – which operate largely behind closed doors – have ordered governments to pay out hundreds of millions of dollars in public money in compensation for alleged damages to private foreign investors. Foreign investors challenged many of the measures that Argentina took to address the impacts of the social and economic crisis that hit the country at the start of the millennium, and which included a rolling back of the privatisation of public services companies during the 1990s. To date, investment dispute cases have cost Argentina over $900 million of much-needed public funding. Foreign investors also challenged legitimate environmental measures taken by Canada and Germany and won. The threat of investment disputes can thus create a regulatory chill that would scare even a progressive government from taking legitimate general interest measures. It constitutes a major obstacle to the policy space that in particular countries engaged in a reconstruction of their development model so urgently need.

Incidentally, access to public procurement markets is another key demand of the EU. Public procurement in developing countries can be an important development tool to boost local industries, employment and the use of locally sourced and processed raw materials. The positive impact of public procurement contracts on social and environmental objectives can be significant. The Agadir countries are no exception in that they use public tender provisions to promote local economic actors and activities. The EU in its trade negotiations seeks the opportunity for its business sectors to respond to the tenders of the state and local authorities under the same conditions as local companies. Thus, procurement liberalisation would provide Europe's modern big business with ample opportunities to capture the procurement markets in the EuroMed countries, while local businesses remain insufficiently developed to capture a share of the European market. In addition, the EU's deregulation agenda would seriously impair public authorities' policy space to set social and environmental policy objectives in this area.

Capital liberalisation, on which the EU keeps insisting, is another highly contentious issue, as it allows investors to repatriate their profits without any obligation to reinvest in the local economy and jobs. This clearly highlights how, despite the lessons of the current financial and economic crisis, through its trade negotiations the EU continues to propagate an export-led, neoliberal growth model that only serves to make countries more dependent on the volatility of international markets instead of firmly rooting their development in the strengthening of their own production base. Decent work standards and environmental protections are eroded both in the EU and beyond as everyone and everything is made subservient to this competition-based model. Meanwhile, the EU continues to dress its aggressive trade strategy in a cloak of benevolent altruism: its trade agreements will not only benefit its own economy, but will also create wealth and jobs and foster sustainable development and innovation in the economies of its trading partners.

ADVERSE IMPACTS

But even the EU's own Sustainability Impact Assessments have to admit that the reality is somewhat less rosy. These so-called SIAs are carried out by the EU on all its trade negotiations to assess the impact of the provisions of the free trade deals under negotiation on sustainable development. In the case of the Sustainability Impact Assessment of the Euro-Mediterranean Free Trade Area (EMFTA SIA), the findings were particularly negative. These outcomes are particularly relevant for the proposed negotiations with the Agadir countries. Unfortunately, such contrary SIA outcomes have rarely been found to meaningfully influence the negotiating process.

In its scenarios, the EMFTA SIA indicates an expected employment loss of around 3 per cent for Jordan and 8 per cent in Egypt, Morocco and Tunisia, with an accompanying downward pressure on wages, resulting in deepening poverty.

The manufacturing industry in the countries concerned are expected to shrink dramatically as a result of the removal of tariffs, by 29.6% in Jordan, 69.6% in Egypt, 64.1% in Morocco and 65% in Tunisia.

The SIA predicts a significant downturn in production in electrical machinery, wood,

furniture, paper and printing. In important sectors such as food and beverages, textiles, clothing, leather and footwear, the SIA predicts a decline of over 90%!

In addition, the SIA finds negative effects in the distribution of income as a result of free trade, as potential welfare gains will predominantly benefit wealthier consumers rather than the poorer segments of society and small producers.

The SIA further states:

> 'In the absence of appropriate preventive and mitigating measures, the potential impacts of greatest concern are:
>
> - a significant short term rise in unemployment, which could continue into the long term if not s successfully mitigated, particularly for liberalisation of EU-MPC trade in industrial products and agriculture, and to a lesser extent for services and south-south liberalisation;
> - a fall in wage rates associated with increased unemployment;
> - a significant loss in government revenues in some countries, with potential for consequent social impacts through reduced expenditure on health, education and social support programmes;
> - greater vulnerability of poor households to fluctuations in world market prices for basic foods;
> - adverse effects on the status, living standards and health of rural women, associated with accelerated conversion from traditional to commercial agriculture.

Similarly, both positive and negative environmental impacts are expected in MPCs. In the absence of preventive and mitigating measures, the main potential adverse impacts that have been identified are:

- significant local impacts on water resources, soil fertility and biodiversity in areas of high existing stress;
- higher environmental stress in cities, resulting from declining rural employment and accelerated rural-urban migration;
- higher air pollution and coastal water pollution from greater international transport;
- higher waste generation from greater use of packaging materials.

Many of these potential impacts would occur primarily in the short or medium term, although this may be as long as ten to fifteen years over the full period of adjustment. Unless effective action is taken in the short term, some impacts may continue into the long term.'[3]

The EMFTA SIA (Phase 2) says that 'where an increase in economic welfare is projected, this is associated with large increases in imports and short term falls in domestic production'[4] and goes on to conclude that without flanking measures a long-term decline in production can be expected: 'For Jordan and Syria the decline in production output is fairly steady over a 14 year period. In Egypt, Morocco and Tunisia a significant drop occurs in the first year, followed by continuing decline, with most of the production losses occurring in the first 8 years.'[5]

Finally, in relation to the Millennium Development Goals, the EMFTA SIA says 'there will be a small but significant adverse effect on Goals 1 (poverty), 2 (education) and 4 and 5 (health).'[6]

However, based on its scenarios, the SIA remains undecided about whether or not a free trade agreement will raise or lower national welfare. The researchers stress that much rests on the ability to introduce appropriate domestic policies to counteract adverse impacts. The irony is that past practice shows that the standard clauses in EU trade and investment agreements tend to limit that policy space.

The Commission has indicated it plans to launch a call in April for independent consultants for four new SIAs for the four new DCFTAs. The Commission has stated explicitly that these SIAs will be a consultation process, with a place for civil society to be heard, but also indicated that this SIA process will not be explicitly linked to the timeframes of the negotiating process.[7] In other words, there will be consultations with civil society, but only to prepare a report that is likely to be finalized only after the legally binding trade and investment agreements have been negotiated and signed behind closed doors. Contrary to current practice which takes a rather narrow approach, sustainability impact assessments should be conducted according to a scheme that covers all impacts, including impacts on the narrowing of policy space, and the outcomes should influence the negotiations. The negotiating parties should regularly report on how the SIA process feeds into the negotiations and how clauses creating negative impacts are withdrawn or adapted.

NO GUARANTEES ON HUMAN RIGHTS, DEMOCRACY AND SUSTAINABLE DEVELOPMENT

Since the Treaty of Lisbon (2009) the EU is legally bound to promote human rights, equality, sustainable development, free and fair trade and the eradication of poverty in all its policies, including its trade and investment policies, in accordance with the general principles enshrined in the EU Treaties. The Commission offers this as a reassurance to civil society since it means that the whole agreement, including its trade provisions, could be suspended in case of violation of human rights or democratic principles. But the existing association agreements that the DCFTAs will build on also clearly state that respect for human rights and democratic principles constitutes an essential element. At the same time, the agreement with Tunisia has been in force since 1998 and the one with Egypt since 2004. Clearly, the violations of democratic principles and human rights by the Ben Ali and Mubarak regimes were not considered sufficiently severe to consider suspension of the treaty.

The EU also seeks to reinsure civil society in relation to sustainable development, by stating its intention to add a sustainable development chapter to its DCFTAs that is "as good as the one in the EU-Korea FTA" , which is the Commission's flagship FTA. However, this text does not foresee in some of civil society's key demands, which include compliance with all international social and environmental standards; periodic impact studies and civil society consultations, before, during and after the negotiation, with systematic interaction with the negotiation process; monitoring committees of independent experts for the application of the agreements, with a power to modify, suspend and suppress measures with serious social or environmental impact; access to justice for victims of any activity covered by the agreements.

TRANSPARENCY!

In spite of their potentially damaging effects on people's livelihoods, trade negotiations tend to be carried out on the basis of secrete mandates and behind closed doors, away from public scrutiny and democratic accountability. This stands in direct conflict with the process of political and social transformation that the Agadir countries are currently engaged in, a process that seeks to redefine the relationship between the state and its citizens and to (re-)establish political, social, economic and cultural rights at the center of public policy. In this context, an open debate that includes both the people's elected representatives as well as civil society organisations and social movements on policy choices, including in relation to economic, monetary and trade and investment policy decisions, is essential. An early conclusion of a deep and comprehensive trade agreement with the EU would interfere with this process of economic and social emancipation as it would tie the hands of the people's leaders for decades. The launch of trade negotiations before the parameters of national trade policy that takes into account the calls for change of the Arab Spring have been democratically determined must be considered premature.

Civil society organisations, including trade unions, and parliamentarians must insist that they are timely and meaningfully involved in the methodology and process of the negotiations. Immediate clarity on the process surrounding the scoping exercise launched by the European Union is urgently required. The EU will conduct additional impact studies in relation to the proposed DCFTAs. A tender is expected early April 2012. The negotiations should not begin before these assessments have been completed, so that the outcomes can be taken on board by the negotiators. A wide representation of social movements and civil society organisations should be involved in this process. Steps must be taken to avoid the negotiating agenda being captured by corporate industry and to ensure that all other societal stakeholders are heard.

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EUROPE'S AGRICULTURAL POLICY AND ITS IMPACTS ON FOOD SECURITY.

The European Union's Common Agricultural Policy (CAP) is a system of agricultural production schemes, subsidies and price support mechanisms (including guaranteed minimum prices)that was created by the Treaty of Rome (1957) to ensure farmers a basic standard of living and guarantee consumers quality food at affordable prices.

The CAP, which takes up the bulk of the EU's budget expenditure, is a highly controversial policy. It is criticised as an unfair way of protecting Europe's farmers from foreign competition. It has also come under increased criticism that because of Europe's importance as the leading world power in agricultural trade, the EU's agricultural policy has profound effects on food security world wide.

The CAP has fostered the creation of an intensive, industrialised and highly trade-oriented agricultural model. While it was reformed several times, the levels of agricultural subsidisation were never substantially reduced. The European Commission's latest reform proposals, which include include environmental measures and deal with the challenges of globalisation, continue to fall short of the substantial reforms needed to assure the CAP's coherence with stated development objectives like the eradication of poverty and hunger.

The European Union is a leading world power in agricultural trade: Its food exports count for 17% of the international market. The EU is the largest exporter of processed food, the second largest exporter of dairy and pork and the third largest exporter of poultry and wheat. Many of these products benefit from generous CAP subsidies awarded to European farmers and food processors. The EU protects its farmers by deterring imports from outside the EU by levying import tariffs. The EU also protects its agricultural producers against price drops by buying up and storing or destroying surplus crops or exporting them to poor countries at below-market prices.

At the same time, the EU's free trade agreements (FTAs) force developing countries to open up their markets for European surplus production which has been stimulated by generous CAP support. But local farmers and processors in the Global South who cannot compete with subsidised European goods face the risk of being displaced by unfair competition. An infamous example of how such dumping practices can flood developing country markets with cheap imports is the dumping of chicken legs on African markets that destroyed local farmyard producers.[1] The EU is also a large importer of farm products, particularly animal feed like soybeans, thus occupying millions of hectares of farmland abroad which cannot be used for local food production anymore. Therefore, any changes of the EU's demand and supply have strong impacts on agriculture and food security in the world.

The EU's Common Agricultural Policy continues to be based on productivity and global competitiveness of the European agri-food industry. In the vision of the European Commission, agriculture has to serve the needs of the export-oriented food business: "A strong agricultural sector is vital for the highly competitive food industry to remain an important part of EU economy and trade." In this vision, the main role of agriculture is to supply cheap raw materials to enable the food industry's export success.

The UN Special Rapporteur on the Right to Food, Olivier De Schutter, criticises the EU's focus on productivity and trade, since food availability as such does not guarantee its adequate distribution: "The question of global food security cannot be reduced simply to a problem of supply or production." If food production would rise in tandem with further marginalisation of small-scale farmers in the South, "the battle against hunger and malnutrition will be lost".

Yet, further marginalisation of small farmers is precisely the risk associated with ongoing dumping of EU food products on world markets and the growing imports of particularly feedstuffs for the European livestock industry.

By fostering competitiveness and exports of European agribusiness, the EU ignores the main challenge for food insecure countries today: the reduction of their import dependency.

Since the 1980s, the majority of developing countries switched from net exporters to net importers of food. Nowadays, two thirds of them suffer from food trade deficits and growing expenses for purchases of cereals, dairy products and vegetable oils on the world market. In order to reduce their vulnerability against price spikes and recurrent food crises, these countries urgently need a policy shift that fosters domestic agricultural production and limits import dependency. Given Europe's international responsibility in the fight against hunger, the EU should make every effort to support such a shift. But unfortunately, the CAP in its present form heads in the opposite direction. It deepens import dependency in the South to secure export markets for the European food industry.

Past reforms of the Common Agricultural Policy largely neglected its contribution to poverty and malnutrition. Although European policy makers adapted the CAP to changes of the international political landscape, they never seriously tried to

assure its coherence with stated development objectives like the eradication of poverty and hunger. For the EU to fulfill its global responsibilities, a far more profound reform of the CAP than what is being currently proposed would be required.

The neoliberal model that underpins the CAP has been heavily criticised for prioritising international trade over the principle of 'food for the people'. A transition is needed towards sustainable and climate-friendly agriculture that supports food security world wide. La Via Campesina, as an international farmer's movement that represents some 200 million farmers in over 70 countries and which defends small-scale sustainable agriculture as a way to promote social justice and dignity and strongly opposes corporate driven agriculture and transnational companies that are destroying people and nature, advocates a global farming model that takes food sovereignty as its starting point.[2] La Via Campesina is not opposed to trade as such, but to the priority given to exports at the expense of food security.

La Via Campesina argues in favour of a model (under auspices of the United Nations), that:

- prioritizes local and regional production before export,
- allows the Countries/Unions to protect themselves from too low priced imports,
- permits public aids to farmers, provided these are not intended directly or indirectly to export at low prices,
- guarantees stable agricultural prices at an international level through international agreements of supply management.

La Via Campesina underscores that access to international markets is not a solution for farmers, as access to international markets affects only 10 % of the world production, which is being controlled by transnational companies and biggest agro-industrial companies. According to La Via Campesina, the core problem for most farmers is a lack of access to their own local market because the prices are too low for their products and the import dumping they are confronted with. Therefore, says Via Campesina, agricultural policies have to support sustainable family farm based agriculture in the North and the South: "In order to be able to make their food sovereignty work, countries in the North and in the South have to be able to support their agriculture to guarantee the right to food of their populations, to preserve their environment, to develop sustainable agriculture and to protect themselves against dumping."

The EU's Common Agricultural Policy creates a dangerous dependency on international markets. Coupled with the EU's trade policy, it provides the EU's transnational agribusiness with their dominant market power unrestricted access to developing country markets, where their cheap imports flood market and small farmers are pushed out of business. Figures from the FAO, which confirm that even today the agricultural sector provides for the livelihood of 70 per cent of the world's poorest people, clearly illustrate how damaging the effects of such a dynamic can be. The transition in the South is increasingly towards a large-scale, export-oriented model of farming aimed at catering to Europe's demand for agricultural commodities and raw materials, that benefits the local farming elites. In 2007, the EU imported around 20% of the world agricultural products. The EU's demand for agricultural commodities is further fuelled by its increased demand for agrifuels. Land-grabbing – the concentration of land in the hands of large (inter)national economic actors – is an issue of growing importance. Not to mention the large-scale and often irreversible ecological damage caused by industrial farming, which includes inter alia large-scale deforestation, the exhaustion of natural resources, loss of biodiversity through monocultures and the pollution of the environment by agrochemicals. Meanwhile, trade agreements restrict the ability of governments to address the dominance

of commercial agricorporations in the food business, and agroindustry.

A new logic is needed for agricultural production, trade and investment - not just for the EU, but globally - based on the right to food; the eradication of hunger and poverty; the fulfilment of basic human needs; environmental sustainability; and global climate justice. The rules that govern the trade in agricultural commodities and processed agrifoods should be designed to support these objectives. Instead of promoting exports for profit, trade measures should be designed to support food security and food sovereignty, viable rural areas; environmental and climate protection; and social development and poverty reduction world wide. These should be among the key principles guiding both the EU's CAP reform proposals, and the EU's negotiations to conclude (and revise) trade and investment agreements.

FOR FURTHER READING,
SEE FOR EXAMPLE:

Globalising Hunger. Food security and the EU's Common Agricultural Policy (Draft) by Thomas Fritz, Transnational Institute, October 2011. At: www.tni.org/globalising-hunger

1. See for example the 2007 ACDIC/ICCO/Aprodev/EED publication 'No More Chicken Please'.
   At: aprodev.eu/files/Trade/071203_chicken_e_final.pdf
2. La Via Campesina on food sovereignty, at: http://viacampesina.org/en/index.php?option=com_content&view=article&id=47:food-sovereignty&catid=21:food-sovereignty-and-trade&Itemid=38

THE EU-CANADA COMPREHENSIVE ECONOMIC TRADE AGREEMENT (CETA).

TOWARDS A NEW FTA TEMPLATE?

In 2009, the European Union (EU) and Canada announced the launch of negotiations for a deep Comprehensive Economic and Trade Agreement (CETA). The negotiations are expected to in 2012, with the agreement entering into force end 2012 or early 2013.

The CETA was strongly supported from the start by the Canada-Europe Round Table for Business (CERT), which was established in 1999 "in response to the need for an effective Canada-Europe business dialogue and to advocate for comprehensive bilateral free trade and investment liberalization."

The agenda for the CETA negotiations is very broad. It covers not only trade in goods and services but also investment, government procurement, intellectual property rights and regulatory cooperation matters. As such, the proposed agreement extends much further into national policy space and governance than traditional trade agreements focussing primarily on border measures affecting trade in goods

A major concern regarding the negotiations is the option for a so-called negative listing approach to services. Under negative listing, member governments must list those services and regulatory measures to which the agreement will not apply. This contrasts with the positive listing approach used in previous EU bilateral free trade agreements and in the General Agreement on Trade in Services (GATS) negotiations, where member states can decide which sectors they would prefer to liberalise. Under the CETA, governments will need to anticipate current and future regulatory needs so as to expressly exclude in advance sectors, services and potentially non-conforming regulatory measures from the agreement.

As a result of the EC's strengthened mandate to negotiate investment protection since the entry into force of the Lisbon Treaty (2009), the CETA is likely to include substantive protections for foreign investors, which will likely include an

extremely broad definition of investment, right of establishment, compensation for direct and indirect expropriation, minimum standards of treatment and prohibitions against performance requirements. Together with an investor-state dispute settlement mechanism, these provisions will greatly strengthen the position of investors and investor rights. They will give investors new opportunities to claim compensation from regulatory measures, including social and environmental regulations, that may be construed as expropriations, even if such measures were taken to enhance the access, affordability or quality of a service. Private investors may thus challenge regulations of public authorities at all administrative levels before international tribunals for losing them opportunities to make profits. As such, the CETA may have significant consequences for public policies.

The negative list approach will ensure deep and far reaching liberalisation, while stronger investment protections will make reversing privatisation—even failed privatisation— more difficult and costly as they open up future government decisions to reduce the scope of services privatisation, contracting out or outsourcing to expensive legal proceedings and compensation claims.

Public services under threat

The EU is aiming for an agreement that will allow European corporations to bid for a wide range of services currently provided in the public sector, including postal services, waste disposal, water and water treatment services and health care. CETA would hinder local governments in maintaining green, ethical and local content policies in support of local job creation or buying locally produced goods and services to reduce their carbon footprint. Because CETA aims for extensive public procurement liberalisation, it will also prevent public authorities from excluding for-profit transnational corporations from bidding for public service contracts. Canadian authorities may expect to see such policies challenged before unaccountable international investment tribunals if transnational investors feel unfairly treated, discriminated against or compromised in their expected future profits.

CETA and water

Because of the threat to public services provision, the Trade Justice Network has called for an immediate halt to the CETA negotiations. The Council of Canadians and the Canadian Union of Public Employees have joined this call. These organisations warned in their report 'Public Water for Sale' (December 2010) that if water services weren't carved out of Canada's services and investment offers it would spell big trouble for municipal governments in the future. Existing privatization would be locked-in, they said, and introducing new rules or regulations on drinking water or wastewater services would become difficult and subject to investor-state challenges by private water firms.

Access to Canadian water and wastewater services is a key incentive for the EU in the CETA negotiations. Canada has allowed drinking water, including municipal procurement of water services, to be fully covered under an international trade treaty. The Canadian Union of Public Employees and the Council of Canadians note with great concern that no province or territory has safeguarded water services (drinking water and wastewater) from their initial Comprehensive Economic and Trade Agreement (CETA) offers. The EU trade deal as proposed would lock in existing privatization and encourage the further commercialisation of water and wastewater services while complicating regulation of the sector.

Countries such as Argentina, Bolivia, Tanzania, Germany, Canada and others have already found themselves before non-transparent investment tribunals for government decisions related to the management of water services or the

protection of water sources. Claims can run into the hundreds of millions of dollars and are increasing with each new investment treaty. With European firms dominating the global water and wastewater sector, and with any new CETA investment protections for these firms automatically extended to American and Mexican water companies under NAFTA's Most Favoured Nation clause, Canada is opening itself wide to corporate lawsuits by not protecting water services in the Canada --EU deal.

European water firms, including Veolia Environment and GDF Suez, are already making inroads into private water in Canada through public-private partnerships endorsed by federal and provincial government policy and funded with public dollars.

CETA and Health

In the CETA negotiations, the EU is targeting the health sector as a profit-making opportunity for its corporate industry and pushing for the liberalisation of health care. Canadian civil society has warned that the CETA will expose the Canadian public health care system to privatisation pressures more than any other trade deal has in the past. An additional threat is that, under the Most Favoured Nation clause of the NAFTA agreement with the US, Canadian public authorities would have to offer the same access as they grant EU firms to private health corporations from the United States.[1] CETA liberalisations will hinder any expansion of public health schemes, as they would likely lead to compensation claims from private EU health insurers operating in the Canadian market who would view an expansion of public services as an attack on the profitability of their investments. CETA would also contribute to higher health care expenditure through the EU's demands for stronger patent protection, which would mean that it would take longer for cheaper generic drugs to reach the market.

At the same time, the EU member states have demonstrated their own reluctance to open up their health services to for-profit competition by jointly excluding health services from the scope of the services directive liberalising the EU's internal services market.

Environmental Impacts: CETA and Tar Sands

Canada is currently engaged in the development of its tar sands, the exploitation of which contributes significantly to climate change. The Canadian government is currently threatening to challenge new EU regulations that recognise the higher green-house-gas intensity of fuel produced from tar sands and oil shale (Article 7a of the European Fuel Quality Directive) under international trade rules.

As the Canadian Trade Justice Network says in its leaflet 'Top Ten Reasons Why CETA Is Bad For Canada'[2]: "Free trade agreements over the past few decades have contributed hugely to the global ecological crisis we find ourselves in today — global warming, depletion of natural resources, collapsing ecosystems, and global food and water crises. [...] Canada should be strengthening its environmental laws and honouring its commitments to existing international environmental agreements — not making more free trade agreements that guarantee corporate rights."

Meanwhile, CETA will stand in the way of any future attempts to regulate the tar sands in the interest of environmental protection and sustainability. The investment protections envisaged in the CETA, combined with the customary investor-to-state dispute settlement mechanism, will lead investors to challenge new environmental regulations and sue for compensation if their operations to exploit the tar sands are in any way restricted, regardless of the underlying rationale.

CETA - A STEPPING STONE IN A TRANSATLANTIC POWER PLAY?

The collapse of the multilateral trade talks at the WTO have provided the EU with a renewed interested in expanding its transatlantic relationship with the US. The European Commission underscores that together the EU and the US account for about half the entire world GDP and for nearly a third of the world's trade flows. "The transatlantic relationship", the EC writes, "defines the shape of the global economy as a whole as either the EU or the US is also the largest trade and investment partner for almost all other countries in the global economy."[3] There has been an ongoing dialogue to further unlock the potential of the transatlantic relationship through closer economic integration, regulatory convergence and the elimination of other barriers to trade, but so far the results have been, from a business perspective, disappointing.

It has been suggested that a successful conclusion of the CETA negotiations will help bring an EU-US deal back on the table. Canada's former Minister for International Trade and current co-chair of the Canada-Europe Roundtable for Business (CERT), Roy Maclaren, suggests that a broad transatlantic deal that includes the EU, Canada and the US would help the North Atlantic block re-stabilise its position as a global economic player. Maclaren writes: "With the indefinite suspension of the Doha Development Round, North America and Europe have a clear mutual interest in increasing their leverage vis-à-vis Asia, in light of fundamental power shifts in the global economy. The United States and Europe are losing their economic lead over their Asian rivals, notably China and India, and were accordingly unable to engineer an acceptable outcome of the Doha Round discussions, as they did at the conclusion of the Uruguay Round in 1994. They failed signally to find common cause with Asia. Worse, they now risk being left outside the grand free trade arrangements that are being designed among themselves by China, India, the ASEAN group, and other Asian and now African countries. Asia would find it impossible to ignore a transatlantic free trade agreement, which would fundamentally transform the international economic dynamic. It would place, perhaps for the last time, ineluctable pressure on China, India, and others to negotiate seriously with a transatlantic bloc for fear of losing their competitive access to a newly integrated — and massive — North Atlantic economy."[4] As such, CETA must be seen as a strategic building block in preserving the wider transatlantic influence of North America and Europe in a globalising world where the balance of economic power is shifting.

WWW.S2BNETWORK.ORG

1. http://www.canadians.org/trade/documents/CETA/CETA_ten.pdf
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EPAs.

THE EU's FAILURE TO IMPOSE COMPREHENSIVE, DEEP INTEGRATION AGREEMENTS ON AFRICA AND THE PACIFIC.

The European Union has been in the process of negotiating Economic Partnership Agreements (EPAs) with some 76 countries from Africa, the Caribbean and the Pacific (the so-called ACP countries) since 27 September 2002. Despite their development-friendly sounding name, EPAs were in fact conceived by the EU as far-reaching "comprehensive, deep integration" free trade agreements. Most ACP countries, especially the least developed African and Pacific countries, were never enthusiastic about the scheme and have continued to resist it. In a changing global context, the EU appears to have given up hope of concluding full EPAs with all the ACP countries and would seem prepared to settle for a 'goods-only' agreement with some of the ACP regions instead.

EPAs are quite unique. They are the first *comprehensive deep integration agreements* negotiated between a developed country block and a group of developing countries, most of which are least-developed countries.

They are also the only negotiations with a group of developing countries that *will lose market access* if they refuse to negotiate. Also, they are promoted as *"instruments for development"*, which means that the EU claims that it does not have any offensive interests in the negotiations and that it only insists on the negotiations because they would be in the interest of the developing country partner. Yet at the same time, the EPAs *would make the EU the most privileged partner* of this resource-rich developing country group, providing it with an access to their economies that is unmatched by any other country or group of countries.

The EU's development take on the EPA negotiations involves a comprehensive and deep integration between the EU and the ACP countries and an improved business climate to make the ACP markets more attractive to international investors who would bring in the capital and know-how required for development. As EU investors would benefit from access to larger integrated markets, the EU initially opted to enhance ACP regional integration by negotiating not with the ACP countries individually, but rather with ACP subgroups based on the existing regional integration efforts of the ACP countries themselves. For the purpose of the EPAs, six regional configurations were identified: the Caribbean region, Eastern and Southern Africa, Central Africa, Southern Africa, West Africa and the Pacific.

According to the EU, boosting the ACPs' attractiveness would require more than the mutual or reciprocal liberalisation of the trade in goods through the elimination of essentially all import taxes. EPAs should comprise a *comprehensive* package of investment, government procurement and trade in services liberalisations. They should also strengthen the protection of intellectual property rights and provide disciplines in the field of data protection, competition policy and trade facilitation. This *deep integration* between the EU and the six ACP regions was to be advanced by targeted aid from the EU to assist the ACP countries in building negotiating capacity and implementing the comprehensive economic reform programme laid down in the agreements.

Although the professed overriding objective of the EPAs was development, the EU tabled texts that were exact copies of chapters proposed in its FTAs with more developed countries and that were not all adapted to the ACP reality. The EU's public rhetoric about partnership, development and flexibility was contradicted by its rigid, patronising and even bullying behaviour at the negotiating table. The EU ignored the fact that many of the ACP countries lacked the advanced (regional) institutions to enable them to conduct such complex negotiations and turned a deaf ear on ACP objections that its liberalisation agenda was a bridge too far in that it went well beyond what they had so far established domestically or regionally among themselves. The EU would not listen to ACP regions comprising a large number of least-developed countries that insisted that they could not go further than a 60 or 70% liberalisation in 20 or 25 years of trade in goods, where the EU demanded 80% tariff elimination in 15 years. It would not accept the ACP countries' refusal to negotiate the progressive liberalisation of services, investment or government procurement. In fact, the EU has long even refused to recognise that the elimination of import tariffs could have a negative impact on the fiscal revenue of the ACP countries. And it took four years to accept that EPAs would contain provisions on cooperation outlining how the EU and the ACP countries would work together to build the ACP countries' productive and regulatory capacities – in blatant disregard of the ACP countries' insistence that the EU would agree to assist the ACP countries with the necessary capacity-building prior to liberalisation and an aid commitment at least as solid as any of the proposed liberalisation commitments of the ACP countries. However, instead of showing flexibility in the interest of development, the EU has continued to reject such counter proposals.

FROM PREFERENCES TO RECIPROCITY

If the ACP countries are so opposed to the EU's approach to the negotiations, why do they not walk away? The main reason is that many of them will lose market access to the EU if they do not negotiate EPAs. This has to do with the fact that for many years the EU offered unilateral preferential market access to the ACP countries, based on a special permission ("waiver") from the WTO. That waiver was to expire on 31 December 2007 and to be replaced with WTO-compatible trade agreements.

The EU has always maintained a special relationship with the ACP countries which are all former European colonies that gained their independence after World War II. The EU provided development aid and granted them preferential market access for their exports (of rather, for the exports of the EU investors, planters, miners and traders that had stayed behind). Preferential market access means that goods can enter a market at better terms that goods from other countries (meaning at reduced or no import tax at all).

The special EU-ACP relationship was laid down in successive association agreements known as the "Lomé Conventions". When these came up for renegotiation, the EU proposed to replace its previous unilateral preferential market access with reciprocal WTO-compatible EU-ACP free trade agreements, in which both sides would commit to eliminate the customs duties on the imports from each others goods.

An important reason for this change in approach had to do with the fact that WTO members cannot give each other preferences just like that. Rich countries can give preferences to all developing countries and all least developed countries, but they cannot give preferences to *some* developing or least-developed countries and not to others, unless they ask and obtain a waiver from the whole of the WTO membership. The EU did not want to have to go back to the WTO every five years to renew this permission, particularly since some WTO members had been criticising the preferential treatment for the ACP countries and were seeking compensations. Free trade agreements, by which countries open their markets to each other, do not have to be renewed once they have been approved by the WTO.

The ACP countries were less than enthusiastic, but in the end yielded to the EU's pressure. The renewed association agreement signed in 2000 in Cotonou (Benin) contained a chapter on the principles that would guide negotiations that were to lead, before the end of 2007, to a new reciprocal trade regime that would come into force on 1 January 2008. On this basis the EU turned to the WTO to ask for a final waiver that would extend to the end of 2007. However, by doing so, 31 December 2007 became a hard deadline for the negotiations: if no EPAs were concluded by that time, ACP countries would lose their preferential market access.

This hard deadline gave the EU great leverage over the ACP countries – except the least developed countries (LDCs) among them, who, since 2002, enjoy "duty free, quota free" market access to the EU under a special preferential scheme called "Everything But Arms". ACP LDCs therefore do not need EPAs to maintain their market access to the EU. In a region like West Africa, this means that only 3 countries (Nigeria, Ghana, Ivory Coast) out of 16 will lose preferential market access if they do not conclude an EPA. However, many West-African countries are a member of the customs unions WAEMU, while all are trying to build an larger West-African customs union. If only the three non-LDCs would conclude an EPA while the LDCs would not, then EU exports would enter the customs union via the three non-LDCs and spread to the LDCs, even if they did not agree to open their markets for these EU products. The only way to stop such penetration would be to (re- introduce border controls with the regions. All ACP countries thus face a difficult choice between regional solidarity and safeguarding their own sensitive sectors.

At the end of 2007 only one region was ready to conclude a full comprehensive EPA with the EU: the Caribbean region, which is also the richest ACP region (with for instance only one LDC: Haiti). Other regions were not at all ready, and were hoping that the EU would go for an extension of the waiver. This the EU refused. Instead it put great pressure on the non-LDCs to accept individual interim EPAs that would deal with goods only and that would allow for the continuation of preferential exports to the EU.

These interim EPAs were threatening to split the regions and undermine regional integration. Some 20 countries in all, including some LDCs, accepted interim EPAs in order to sustain regional integration. In East Africa, for instance, the LDCs Uganda, Tanzania, Rwanda and Burundi accepted an interim EPA together with non-LDC Kenya in order to maintain the East African Customs Unions that they are all members of.

The pressure exerted by the EU and the splits that this caused within the ACP regions brought EU-ACP relations to their lowest point. More so when it became apparent that the interim EPAs which were tabled by the EU at the last moment proved to be full of questionable provisions, like an immediate stand-still for all customs duties (including those that were excluded from elimination), a ban on export taxes, weakened infant industry and food security safeguards, etc. This only served to further complicate matters and make the EPA negotiations even more controversial.

Since this dramatic turn of events, the EPA negotiations have never gotten back on track. Today many interim EPAs remain not signed or ratified, and no new EPAs have been concluded.

Most regions are refusing to go beyond the liberalisation of the trade in goods and the EU has been forced to accept that EPAs will not be the comprehensive deep integration agreements that they have been pushing for.

The EU's loss of leverage over the ACP countries has much to do with the changing patters of global trade over the past ten years. Emerging countries have come to the fore as new donors and trading partners of the ACP countries, prices of raw materials have gone up, new mineral deposits and oil fields have been discovered and new trade deals between the EU and non-ACP countries have reduced the value of the market access of the ACP countries to the EU. The recent proposal of the EU Commission to withdraw market access for those ACP countries that have not begun to ratify their (interim) EPAs be the end of 2013 has failed to encourage those ACP countries to step up their ratification processes or to finalise regional EPAs. On the contrary: it has again angered them and further reduced their confidence in the EU as a development partner. More and more ACP countries are leaving the EPAs for what they are and are focusing their attention instead on regional and other South-South partnerships.

BETWEEN WTO AND FTAs.

THE EU's TRADE POLICY AT MULTILATERAL AND THE BILATERAL LEVEL.

The European Union (EU) was the main driving force in the launching of the current multilateral trade negotiation round at the World Trade Organisation (WTO). At the same time it was and is world champion in the negotiation of bilateral trade agreements. The EU's push to expand its network of bilateral trade agreements is only partly inspired by the lack of progress at the WTO.

THE EU PUSH FOR COMPREHENSIVE WTO NEGOTIATIONS

In 1946, in the wake of the Second World War, a multilateral framework was set up to govern international trade: the General Agreement on Tariffs and Trade (GATT). In 1995, at the end of an eight year long round of international trade negotiations (called the Uruguay Round), the GATT was succeeded by the World Trade Organisation (WTO).The WTO would be a permanent forum for the negotiation of trade agreements and make time and energy consuming negotiating rounds superfluous. The WTO even had a "built-in" negotiating agenda: negotiations on the further liberalisation of services and agriculture, for instance, would have to be launched within six years after the conclusion of the Uruguay Round.

But for the EU this built-in agenda was not ambitious enough. The EU considered that it was too narrow and that it offered the EU insufficient possibilities for trade-offs. If the EU was to further liberalise its agriculture, it wanted compensations in more sectors than just services. Therefore, the EU proposed a new comprehensive round of multilateral trade negotiations that would also deal with further liberalisation of the trade in goods and include negotiations on the so-called "Singapore issues": investments, government procurement, competition policy and trade facilitation (named after the WTO Ministerial meeting that created working groups to examine them). The round would also deal

with trade and environment, social standards, anti-dumping, dispute settlement, etc.

By the time of the third bi-annual WTO Ministerial in Seattle at the end of 1999, the EU had a blueprint for a comprehensive "Millennium Round" worked out. However, the idea to give the WTO new competences and to deepen the existing ones met with resistance both inside and outside the WTO Ministerial. Most developing countries were not at all enthusiastic about new, far-reaching negotiations. Instead they called for an R-R-R round: one that would **r**eview and **r**epair the existing agreements and **r**eform the functioning of the WTO in order to make it more transparent and inclusive. "Seattle" failed, but two years later in Doha, the EU, this time with more backing by the US, managed to obtain the launch of a new round at the 4th WTO Ministerial in Doha (Qatar). In order to get the developing countries on board, the new round was presented as a "development round" that had sustainable development as a key goal and would effectively take into account developing countries' needs. It was to start with a review of the existing WTO agreements and make the special provisions for developing countries included in these agreements more operational. A next WTO ministerial would take stock of the progress made and decide on the launch of negotiations on the Singapore issues.

THE EXPANSION OF THE EU's BILATERAL NEGOTIATIONS

However, by the time of the 5th WTO ministerial in Cancún in 2003 it had become clear that not much was to come from the "review" and" repair" of the existing WTO agreements and that the EU and other developed countries were seeking more ambitious market access concessions from the developing countries than the multilateral trading system had ever seen. In reaction, the developing countries refused to agree with the launching of the Singapore issues, except for trade facilitation. As a result, ever since "Cancún", the Doha Development Round has lingered on without any major break through.

The US was the first to react to the failed Cancún Ministerial with an increased effort to negotiate bilateral free trade agreements outside the WTO under the motto "if there is no willingness in the WTO, we will continue to negotiate with the willing". The EU maintained that it would continue to give priority to the multilateral level and not launch new bilateral negotiations until, at the end of 2006, the EU Commission issued a new trade strategy document called *"Global Europe. Competing in the World"*. In this document, the EU Commission analysed that the rise of emerging developing countries posed a threat to the relative share of the EU in world trade. If the EU was to maintain its position as a key global player, it could not afford to wait for an outcome at the WTO. Instead, it would urgently need to expand on its network of comprehensive bilateral free trade agreements (FTAs), in particular in Asia where it did not yet have such agreements. The Global Europe strategy paper was immediately followed up by the launch of FTA negotiations with Central America, the Andean region, ASEAN, India and South Korea in 2007.

In spite of the rhetoric, the launch of new bilateral negotiations was not a major shift in EU policy. In fact the EU has always been a zealous bilateral negotiator. It made use of bilaterals intensively to build and enlarge the European common market. FTAs indeed started as RTAs, i.e. "regional trade agreements" between countries within a geographical region, which aimed at building larger common markets. The then European Community negotiated RTAs with its neighbours as stepping stone to their accession into the Community or in order to establish a larger economic zone around it (for instance, the Southern rim of the Mediterranean). Europe later started to use the same approach to expand its long-distance trade relations and to counterbalance for RTAs negotiated by the US, for

instance to negotiate FTAs with Mexico, Chili and MERCOSUR in reaction to the North-American FTA between the US, Canada and Mexico. In 2000, the EU concluded an FTA with South-Africa and in 2002 it also launched free trade negotiations with no less then 76 countries from Africa, the Caribbean and the Pacific simultaneously. These so-called Economic Partnership Agreements (EPAs) are set to replace the preferential trade agreements that the EU maintained with the ACP group, made up mostly of former European colonies, with reciprocal free trade agreements.

So in fact, at the time of the launch of Global Europe, the EU's FTAs already covered most of Europe, Africa and Latin America; only Asia had so far been a blind spot on the EU's FTA map. The EU is eager to capitalise on the trading opportunities of Asia's rapidly expanding markets.

For a long time the EU preferred to embed its FTA negotiations in a region-to-region approach to strengthen regional integration and to create trade blocs that would give the EU access to larger, integrated markets. However, here the EU's expanded FTA drive seems to be running into difficulties. The EU-MERCOSUR negotiations stranded in 2004, the EPA negotiations (except for the EPA with the Caribbean region) stranded in 2007, and EU-Andean and EU-ASEAN negotiations in 2008. Supporting regional integration outside Europe has been a long-standing pillar of EU foreign and cooperation policies. However, the EU has not hesitated to drop the region-to-region approach if it becomes a hindrance rather than a help to the expansion of its trade network. The EU preferred to continue with Colombia and Peru, instead of lowering its trade ambitions when the two other countries of the Andes region, Ecuador and Bolivia, objected to elements of the EU's expectations. The EU swapped the negotiations with the ASEAN region as a whole for bilateral negotiations with some individual ASEAN members when the negotiations failed to make progress. The EU chose to conclude bilateral interim- EPAs with individual ACP countries when it became clear that most ACP regions were not ready to conclude full regional EPAs.

In 2009, the EU could finally announce the conclusion of its first major FTA in years: the far-reaching and comprehensive FTA with South Korea. This was followed by the announcement in 2010 of the "conclusion" of FTAs with Colombia/Peru and Central America. However, the "concluded" texts still required much work and in mid-March 2012 both were still waiting to be signed. Negotiations with India, Singapore and Malaysia are still on-going, and negotiations with other ASEAN countries continue to be postponed. Also, since 2007 no new EPA has been concluded. Negotiations with MERCOSUR were reopened in 2010, but do not seem to be making much progress.

While the multilateral negotiations remain stuck, and the EU's bilaterals with the developing world continue to meet with ups and downs, the EU has opened a new direction with the launch of FTA negotiations with Canada in 2009. The Commission's updated trade strategy document of 2010 called 'Trade, Growth and World Affairs' confirmed that the EU would hence also explore the possibilities of FTAs with (non-neighbouring) developed countries, with Japan and the US as the first countries on its wish list.

THE FTA BETWEEN THE EU AND COLOMBIA/ PERU.

After failing to negotiate an Association Agreement on a region-to-region base with the Andean Region as a whole, the EU went ahead and negotiated bilateral Free Trade Agreements (FTAs) with Peru and Colombia alone. These FTAs would replace the preferential scheme for Colombia and Peru, the General System of Preferences, known as GSP+.

Inter-regional trade has traditionally received strong support in the European Union for its potential to boost growth by providing access to larger integrated markets increase investment, create jobs and build linkages and mutual ties between regions. However, it is widely agreed that commercial needs can not take precedence over human rights, tackling poverty and environmental degradation, and the need for sustainable development. The European Union's own documents assert this:

> *"Within the broad context of EU policy making, coherence is a multidimensional commitment which needs to take place within the overall framework of the EU sustainable development strategy. Non-development policies [trade, agriculture, fisheries, food safety, transport and energy] should respect development policy objectives..." (European Commission, 2005:3).*

Which is why the European Trade Union Confederation (representing 60 million members from 36 countries) along with more than 200 civil society organisations and social movements from Europe and Latin America are shocked that the EC is prepared to sign deals with Colombia and Peru – which will legitimise a country responsible for the highest levels of assassinations of trade unionists, and exacerbate violations of indigenous rights across the Andes and the Amazon.

EU FTAs ARE UNDERMINING REGIONAL INTEGRATION PROCESSES IN THE ANDEAN REGION

Strengthening of regional integration in the Andean region has been a declared core objective of the European Union since negotiations with Andean countries started in 2006. Both the negotiating mandate for an Association Agreement with the Community of Andean Nations (CAN) (European Commission, 2007) as well as the European Commission's Regional Strategy Paper for the Andean Community 2007-2013 (European Commission, 2007a) explicitly stated that supporting the strengthening of CAN integration system was crucial to creating political stability, economic growth and sustainable development in the region.

By refusing to allow for a differentiated approach as agreed by CAN countries at their meeting in Tarija in June 2007, the European commission caused a breakdown of negotiations with all CAN member states. The EU decision to pursue bilateral negotiations with Peru and Colombia on an individual basis has aggravated the already existent tensions within CAN, and will almost certainly affect the advance of the Andean integration process – one of the oldest regional blocks in Latin America. This is evidence of the lack of policy coherence between the trade and cooperation aims of the EU.

The text agreed with Colombia and Peru, includes an accession clause stipulating that any future negotiation with other Andean countries will be on the basis of the agreement with Colombia and Peru. This clause limits the flexibility of Ecuador and Bolivia to negotiate agreements with the EU based on a different trade model.

SERIOUS NEGATIVE SOCIO-ECONOMIC AND ENVIRONMENTAL IMPACTS EXPECTED FROM THE EU FTAs

The European Commission argues that the agreement is a good deal because it requires ambitious commitments from all sides. It assumes that the EU, Colombia and Peru are equal partners, yet there are huge asymmetries between the EU on one side and Colombia and Peru on the other. For example, the gross national income (GNI) per capita of the EU is 3.3 times the GNI per capita of Colombia and 3.6 times the one of Peru. According to the EU-Andean Sustainability Impact Assessment (SIA, 2009: 24, 27), "by 2000, it was estimated that 45 percent of children in Colombia live in poverty. High income inequality and demographic transitions are among the most significant factors that help to explain this pattern". The report also noted that

> "widespread inequality was observed in terms of income, poverty rates and most related social indicators (for instance, access to healthcare and educational services)".

Decreasing these differences among and within the regions was to be a priority of the negotiations. However, the agreements do not incorporate effective mechanisms that take into consideration the existing wide asymmetries. Rather, they are likely to increase these inequalities. This concern has been

expressed by the UN Economic and Social Council that in 2010 referring to Colombia stated:

> *"The Committee is concerned that bilateral and multilateral trade agreements signed by the State party may affect the enjoyment of economic, social and cultural rights, in particular of disadvantaged and marginalized groups, such as indigenous and Afro-Colombian peoples and persons living in rural areas" (UN, 2010a:3).*

In addition to demands for trade liberalization, the Colombia and Peru FTAs with the EU contain provisions related to investment, intellectual property, competition policy, government procurement and services. The inclusion of far-reaching demands in these areas will require crucial changes in national law and policy in these developing countries. Furthermore, it will likely reduce Colombia and Peru's policy space to promote policies of sustainable and equitable development in these critical areas.

TRADE LIBERALISATION TO DECREASE TAX REVENUES AND UNDERMINE AGRICULTURAL SECTORS IN COLOMBIA AND PERU

Because import taxes in Peru and Colombia for EU products are higher than EU import taxes, the FTA requires substantially more effort from these Latin American countries in reducing tariffs. As a consequence governments will see large reductions in tax income that they could have otherwise used on social expenditures.

In the case of Peru, a decrease in tariff revenues of 27.8 percent is expected. Furthermore, many domestic sectors will be affected negatively by the increased competition from abroad, as shown in the simulations carried out by the International Food and Policy Research Institute, particularly in the area of agricultural products and some manufactured goods (Bouët, Mevel and Thomas, 2008).

There is one sector which will particularly suffer: dairy farmers. The EU is the main milk producer and the main exporter of dairy products in the world. The EU provides high levels of subsidies to dairy producers which lead to overproduction in the European Union. This compromises the feasibility of a sustained milk sector in Peru and Colombia and constitutes a danger to food security and food sovereignty in the region. (Grupo Sur, Aprodev and ALOP, 2010; Elejalde, 2010). In 1994, the Andean region introduced the "Andean price range system" (Sistema Andino de Franja de Precios) as a mechanism to stabilise the import prices of agricultural products and defend national producers and consumers from fluctuation and distortion of prices caused by subsidies in other countries (CAN, 1994). The EU FTA with Colombia and Peru will dismantle this mechanism.

The Colombian Federation of cattle farmers, FEDEGAN (2010), has warned the Colombian government that by signing the FTA, 400 thousand small producers will be bankrupted by the inundation of the market with European milk.

SERVICES LIBERALISATION TO UNDERMINE PUBLIC PROVISIONS AND FINANCIAL STABILITY

Liberalisation of services will threaten public services and capacity to regulate financial flows

The services and establishment commitments obtained from Colombia and Peru by the European Commission match the interests of key European corporations, by granting increased access to many services sectors, including sensitive public services and financial services markets, limiting the ability to apply performance requirements, and offering powerful multinational companies equal treatment with smaller domestic companies ('National Treatment' principle). These commitments will seriously undermine Colombia and Peru's possibilities to provide public services for all sectors of society.

Furthermore, the agreement's rules and commitments will limit Colombia and Peru's policy space to regulate financial services and to apply preventive measures against financial speculation and volatility (Vander Stichele and van Os, 2010). The agreements will liberalise many (although not all) capital movements between the parties. However, the current economic downturn has shown that measures previously judged sufficient were unable to prevent severe financial instability. As parties to the agreement, the EU, Colombia and Peru are all committed to liberalising the risky speculative trading in derivatives, including food commodity derivatives, which hugely contributed to the financial crisis. This in sharp contrast with new EU legislation that is under way since September 2010 to limit and where possible forbid such derivatives trade. The FTA provisions stipulate that all national prudential measures e.g. to protect the stability of the financial system of a party, should be "not more burdensome than necessary". Meanwhile, the agreement provides the financial industry with a new institutionalised channel to lobby against national laws by encouraging all the countries to give interested stakeholders the opportunity to comment before a new financial law is decided.

SMALL AND MEDIUM-SIZED ENTERPRISES UNDER THREAT FROM LIBERALISATION OF PUBLIC PROCUREMENT

The EU-Colombia/Peru FTAs give the EU new access to government procurement markets. EU operators will benefit from full access to the procurement of local municipalities, equal access as domestic firms (national treatment) in service concessions and airports as well as purchases of engineering services and printing services (Colombia). As engineering services are often coupled with construction works, EU companies will have an overwhelming advantage in their bids for contracts for public works in Colombia and Peru. This will seriously undermine Colombia and Peru's policy space to support small and medium-sized enterprises (SMEs). This is particularly critical during times of economic recession (as we have seen in stimulus plans throughout Europe, Asia and the US) where government procurement remains an important tool to boost domestic production.

ON-GOING HUMAN RIGHTS VIOLATIONS

The new government of Colombia has launched a campaign to clean up their image in terms of violation of human rights and labour rights in particular. However this attempt at ethical-washing can not obscure the fact that the current president of Colombia, Manuel Santos Santos Calderón, was the Defence Minister- in charge of military and national police forces - during Uribe's term, when some of the most atrocious human rights violations took place. It was during his term that 500 trade unionists were killed. The European Commission argues that the new government of Santos, despite his track record, has genuine intentions to improve the human rights situation. However, evidence by international human rights groups and UN institutions clearly show that Colombia's appalling track record on human rights is not improving and the conditions and structures that could lead to improvements are not being put in place. In 2010, extra judicial executions, assassinations of trade unionists, forced displacement, torture and forced disappearances were all on the rise. The European Commission's decision to ignore these concerns and prioritise commercial interests above anything else is a deeply disturbing precedent for the European Union and its reputation worldwide.

WILL FTAs HELP TO IMPROVE HUMAN RIGHTS SITUATION IN COLOMBIA AND PERU?

One of the main arguments by the European Commission in favour of the FTAs with Colombia and Peru is based on their incorporation of a "solid human rights clause" (De Gucht, 2010). However, the leaked version of the negotiated text shows that what is included in Art. 16 is a General Declaration of Principles completely lacking in enforcement mechanisms and binding rules. The European Commission recognises this:

> *"In so far as human rights and democratic values are concerned...the trade agreement will not regulate those issues in detail" (European Commission, 2010: 9-10).*

In fact, there is compelling evidence that the FTAs between the European Union and Peru and Colombia will have negative socio-economic and environmental impacts in Colombia and Peru in key sectors and will legitimise and potentially exacerbate ongoing human rights violations in Colombia and Peru.

The FTA's human rights provisions are weaker than the commitments on human and labour rights that are part of the current GSP+ scheme. For example, reference to the International Covenant on Economic Social and Cultural Rights is not included. Equally, the FTA text does not demand that Colombia and Peru ratify and implement ILO Labour core standards (TUC, 2010).

As such, the FTAs' 'human rights clause' appears to be little more than window dressing. Human rights organisations in particular have pointed to the likelihood of European investments in extractive industries like mining, energy and agriculture worsening existing forced displacement (Fritz, 2010). The EU – Andean Trade Sustainability Impact Assessment (SIA), commissioned by the European Commission,

drew attention to the fact that the expansion of biofuels and mining as a result of the FTAs was likely to cause further displacement of peasants and indigenous people (SIA, 2009). The EC's SIA also noted the likelihood of increased violence and repression of indigenous communities by their governments due to the fact that FTAs promote "the easing of entry conditions for large foreign investments in indigenous territories" (SIA, 2009:54). Previous experience shows that Colombia and Peru are willing to give up these lands without prior consent of indigenous communities, required under ILO Convention 169.

CALL TO NOT RATIFY THE EU-COLOMBIA/PERU FTAs

Civil society organisations across the world are supporting the call from Colombia's trade union movement to not reward the state with trade privileges until its human rights record has demonstrably improved. Countries like US, as well as the European Free Trade Association (EFTA) comprising Iceland, Norway, Switzerland, and Liechtenstein, have halted their FTAs negotiations with Colombia. In March 2010, the Flemish regional government announced they would no longer pursue the ratification of a Bilateral Investment Treaty (BIT) agreement that Belgian and Luxemburg had signed with Colombia on 4 February 2009. A few weeks later the Walloon government followed suit, suspending the ratification process of the Colombia BIT.

The EU and member states should also send a clear message that they will not reward or be complicit with governments that commit systematic human rights violations. It is time for the European Union and its member states to draw the line and reject ratification of the EU-Colombia/Peru FTAs. At the very least, they must open up the debate for a rigorous assessment of the agreement to examine whether it meets the EU's declared goals of policy coherence and respect for human rights.

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FINANCIAL SERVICES LIBERALISATION IN EU TRADE AGENDA.

INTRODUCTION

The recent financial crisis has resulted in a wide-ranging reform agenda in the EU and other countries, which recognises the need for re-regulating the financial sector and reversing financial liberalisation. However, so far little attention has been paid to the pre-crisis model still being used in continued negotiations on the General Agreement on Trade in Services (GATS) and other free trade agreements (FTAs). Free trade negotiations of the EU and many other countries aim to liberalise financial services. They continue to propagate deregulatory rules as if everything is business as usual. Within Europe, the 'light-touch' regulation of the last decades has shifted to a more restrictive regulatory model – but this has not yet found solid ground in on-going trade negotiations. These negotiations not only seek to further liberalisation of trade and investment in a wide range of financial services, including harmful and destabilising derivative trading, but are also in direct conflict with many of the financial reforms which countries are undertaking. For example, the EU itself is proposing new and more stringent financial regulations that could conflict with the rules of the WTO-agreement on the liberalisation of trade in services (GATS). At the same time, in its Economic Partnership Agreement negotiations with the Cariforum states, as well as in its FTA negotiations with South Korea and India, in complete disregard of the lessons of today's financial crisis, the EU has continued to insist on the full liberalisation of all capital flows.

FINANCIAL SERVICES AS A PUBLIC GOOD

It is of highest importance to encourage a wide public and political debate about the dynamics of continued financial services liberalisation. So far, this has been discouraged by the technical nature of the issue and the lack of transparency in the decision-making process. The lack of attention for adequate regulation and supervision in the GATS and FTA rules is inextricably linked to the fact that their deregulation agendas are one-sidedly geared to the interests of the financial and other

services industry.[1] They have been very successful in their lobby to portray stricter regulation and supervision as an unnecessary cost that would make the financial industry less competitive and innovative and less efficient. However, the current financial crisis has led to a widespread realisation that financial stability is an important public good. Logically, this should go hand in hand with an acknowledgement that the GATS and EU FTAs should refrain from contributing to financial instability and promoting the interests of the financial sector itself, but should rather serve the economy at large. Government bailouts of banks and risky, even speculative operators makes clear how the financial industry seriously impacts on the wider economy and society as a whole. This should lead to a formal recognition that the financial sector must serve the public interest and contribute to a sustainable and equitable society – a concept not integrated in the GATS and (EU) FTAs. Rescuing the financial sectors has come at a cost that could have saved millions from poverty and hunger. This implies a moral obligation to take all possible measures to avoid any future recurrence of this situation.

The impact of EU liberalisation requests can be derived from experience that has shown that as soon as developing countries begin opening their markets, foreign financial firms frequently rapidly take over a large part of the domestic financial industry. For instance, the foreign financial industry increased its presence, through acquisitions etc., by 364 % in Latin America in four years (1996-2000). As a consequence, local banks have little chance to survive in poor developing countries although some of them are much better in serving local small companies and poorer clients. The problem is that foreign banks and insurance companies focus on rich clients and rich regions ('cherry picking'): this results in lack of lending to small and medium enterprises, farmers, the poor. In Mexico and Argentina, for example, the lack of lending by foreign banks has led to a lack of funds to stimulate the industry and economy of those countries. The focus on the rich clients has widened the gap between rich and poor.

GATS undermines new financial regulation

The GATS rules and liberalisations embedded in FTAs severely restrict the right to regulate of parties who have committed to financial services liberalisation. Many financial regulations, laws, measures, qualitative requirements and administrative decisions maybe considered forbidden barriers to trade according to existing or proposed GATS and FTA rules.

New regulation is only allowed under FTA and GATS rules in highly exceptional circumstances. The GATS Annex on Financial Services, and subsections regarding the financial regulatory framework in FTAs allow countries to take prudential measures "to ensure the integrity and stability of the financial system" and to protect investors, depositors or clients of a financial services. But what constitutes a prudential measure is not defined, which makes this 'prudential carve-out' a grey area with lots of uncertainties. Prudential measures can be challenged before a WTO or FTA dispute settlement panel and run the risk of being sanctioned. This undermines the priority that should be given to the stability of the financial system and the economy as a whole.

EU FTA negotiations

As a way to avoid a recurrence of the current financial crisis, the EU itself is proposing stricter capital reserves as a centre piece of the reforms to reach financial stability. The EU seems to have forgotten that during the previous financial crisis in 1997, during the GATS negotations it was quick to challenge the laws and regulations that other countries put in place as a remedy against future financial crises, such as a requirement for foreign banks to increase their capital reserves in order to protect tax payers and savers.

But while today even the International Monetary Fund (IMF), once a staunch advocate of capital liberalisation, is in favour of a limited use of capital and currency controls, the interpretation of existing GATS and FTA rules can seriously restrict policy space.

For example, the EU is currently considering limiting the trade in derivatives, as their risky and speculative nature and lack of transparency have been shown to aggravate financial crises. However, rules to limit, for example, the number of commodity derivative contracts aimed at preventing food price speculation may well be against the GATS and FTA rules that prohibit limitation of the total number or quantity of services operations or the total value of service transactions, expressed through quotas. The European Commission has also expressed doubts as to whether a tax on financial transactions, as proposed by civil society and some EU leaders, would be compatible with Article XI of the GATS.

The EU's new insight that there is a need to avoid and counteract destabilising capital flows, does not seem to have filtered through to its trade agenda, where the EU continues to pursue financial deregulation and liberalisation in a bizarre show of beggar-thy-neighbour. While countries like Brazil, Taiwan, South Korea and Indonesia have all placed some restrictions on cross-border capital flows as a protection against excessive financial speculation, in its FTAs with, for example, India, Singapore and Malaysia, the EU continues to negotiate agreements that call for full relaxation of cross-border capital controls and far-reaching clauses on financial services liberalisation. Concluded agreements between EU-Korea FTA and the Cariforum-EU EPA contain a separate chapter on the 'regulatory framework', which specifies domestic regulation in general and financial services in particular. This chapter in each FTA is different, but they all include disciplinary elements of the GATS rules, new disciplines on domestic regulation that so far have remained undecided in the current GATS negotiations, and elements of the GATS Understanding on Commitments in Financial Services, an optional GATS protocol fostering the most extensive liberalisation possible.

What next

Notwithstanding the growing recognition of the need for stringent reform in the wake of the financial crisis, all measures taken will have to be justified under the aforementioned prudential regulation carve-out of the WTO/GATS agreement. Quite apart from the fact that the GATS does not foresee in financial (re-)regulation for other than prudential purposes, e.g. to keep housing and food affordable, this clearly indicates that the current GATS model is a wholly inappropriate framework for the governance of the financial sector.

Ultimately, financial services and free movement of capital should be taken out of GATS and FTAs. Regulation of trade in financial services and capital movements should be developed by democratically structured and accountable international financial and standardsetting bodies and integrated in wider global financial reforms aimed at stopping the increased inancalistion of the economy, the integration of the public function of financial services and ensuring that the financial sector is subservient to environmentally and socially oriented sustainable development world wide.

A new system, that breaks with the logic of a financial sector that puts profit before planet and people and contributes to social exclusion and environmental degradation and climate change in its pursuit of private gain, is required.

The road to reform includes policy proposals that range from modest first steps to more long-term fundamental changes:

A. Rolling back commitments

- Developing countries that have agreed to comprehensive financial services liberalisation commitments under the GATS that pose a risk to their economic and financial stability, should be allowed to withdraw their commitments without compensation. GATS article XXI allows for such a withdrawal, but it rests largely on the goodwill of other WTO members, including the EU, to refrain from request for compensation.
- Under FTAs already concluded by the EU, developing countries should be able to withdraw

their financial services sectors commitments without compensation.

- If the EU, or any other developed country would like to withdraw their financial services commitments to allow for essential financial reforms, they should compensate developing countries and not the developed countries that were the driving force behind the incorporation of financial services deregulation in free trade agreements.
- No compensation should be offered or sought if withdrawal of commitments is fully based on (new) international financial standards established by international standard-setting bodies in which all members of the WTO (or relevant FTAs) have a say.

B. Prudential regulation to be fully applied and not abused

- Countries should be allowed to fully use their right to regulate and introduce prudential regulations that are not only based on widely accepted international standards, but include measures required by specific circumstances in a country or resulting from democratic decisions as opposed to lobbying by the financial services industry.
- A new external panel of independent supervisors and financial regulatory experts should be established to avoid that (new) financial and prudential regulations and withdrawal of commitments are abused to prevent financial services operators from developing countries to enter other WTO member markets. The panel should have the authority to distinguish between genuine financial prudential regulations and abusive protectionist measures. This panel might also arbitrate in differences of opinion in relation to similar issues in the GATS (request and offer) negotiations, which currently take place behind closed doors between WTO members bilaterally.[2] It could be an alternative to demands by some WTO members to tighten the disciplines on domestic regulation, rather than safeguard the policy space for essential financial regulation in home markets.

C. No liberalisation of financial services without new global financial reform

The lessons from today's financial crisis that full trade liberalisation and unregulated free markets contain many risks and create economic crises, should reverse the non-interventionist approach in all free trade negotiations. No WTO Doha Deal nor any EU FTAs should be concluded that include liberalisation of financial services and capital movement until a new framewok for global financial regulation and supervision, to be determined by international standards setting bodies and the UN, has become operational and shown to be effective.

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THE IMPACT OF EU TRADE POLICY ON LABOUR STANDARDS.

Globalisation has heightened the interconnectedness of countries through trade, investment and the delivery of services. Neoliberal policies promoting market access, free trade and investment protection have created conditions for an almost exponential expansion in trade and international capital flows. The argument to sell these policies was a simple – and in retrospect over-simplified – one: trade and investment would foster economic growth, and economic growth in turn would automatically trough trickle-down effects lead to a reduction in poverty.

However, the global logic of free trade and investment puts all states and all factors of production worldwide into competition with each other. Vying for a piece of the pie has led to a substantial lowering of standards to lure in foreign investors. In reality the race to the bottom set in motion by the economic *liberalisation* often impacts negatively on the viability of local small and medium-sized enterprises, with associated significant job losses. In this way, trade has immediate impacts on the structure of employment and the quality of jobs. Trade agreements and foreign direct investments (FDI) have an effect on the restructuring of the economy, and both employment and the gains from trade tend to be unevenly distributed. Market opening does not lead to automatic gains in prosperity for all, as the experience of the economies of the Global South shows, where a large proportion of the profits which emerge from the liberalised export economy are creamed off by the business elites and/or are expatriated[1].

The logic of free trade agreements (FTAs) is part of a neoliberal economic model that advocates enhancing competitiveness through the 'flexibilisation' of labour markets. In practice this meant reduced job security, worse labour conditions and reduced social security in developed countries, in-formalisation and prioritisation of labour in developing countries, through practices like the re-localisation of the production and outsourcing. A form of international blackmailing pressure over the workers around the world had been set up: the workers of developed countries had to accept a gradual but dramatic reduction of their labour and civil rights, in order to prevent the re-localisation of industrial productions; the workers of the Global South had to accept maintaining miserable labour and social conditions in exchange for the creation of new jobs. In an attempt to save their public image from the increasing number of charges of exploitation of workers in the Global South - often employed under near-slavery conditions that openly violate the international labour standards - multinational corporations adopted elaborate codes of conduct, outlining their social responsibilities. However these conditions generally do not apply to the many – and, to the eye of the public, invisible - suppliers that they outsource to. In addition, these codes of conduct are largely voluntary schemes that are rarely comprehensively implemented and monitored.

Cutting labour and training costs is a main driver behind these practices: companies relocate business processes to countries where regulatory costs and labour ad training costs are lower. In doing so, transnational companies deliberately take advantage of the absence of 'decent work': wages are often lower because there is no minimum or living wage, no or limited social security, health care, health and safety protection, etc.

Even the International Labour Organisation (ILO), which as a tripartite international organisation that tends to be rather cautious and conservative in its outlook, has admitted that 'the policies and agreements that regulate trade and investment have a great impact on the world of work. They affect employment in quantitative terms, quality of jobs and opportunities for creating sustainable enterprises. Consequently, those who seek to promote Decent Work have no choice but to be actively engaged in discussions about trade and development policies[2]'. In its promotion of 'decent work' as a prerequisite for just globalisation and an equal redistribution of wealth, the ILO stresses that 'decent work must be at the centre of government actions to bring back economic growth and build a new global economy that puts people first[3]'. The ILO recalls that currently 80 per cent of the world's workers have little or no social security and stresses the need to move towards a global social floor[4].

However, while it is clear that the principle of all-encompassing competition that lies at the heart of the neoliberal model must be seen as the root cause of the on-going commodification of labour, the ILO does not fundamentally challenge this model as such. It does not condemn the binding liberalisations and the flanking framework of trade and investment agreements, that tend to be biased in favour of corporate industry and that hinder the policy space of governments to re-regulate the economy and implement the strong social policies needed.

To shape and change globalisation for the better, the ILO is calling for a series of common principles to be addressed, including respect for core labour standards, expanding social security, a framework for managed labour migration, education and training and upgrading the informal economy'.

The ILO underlines that 'since the beginning of the 1990's, the need to create a minimum social foundation for the development of trade - one that guarantees certain safeguards against social dumping – has resulted in the signing of an increasing number of Free Trade Agreements

(FTAs) which include a labour dimension, either in the agreement itself or in a parallel agreement.' As these labour clauses contain minimum commitments for the protection of human rights at work and refer to specific international labour standards adopted by the ILO, the organisation apparently considers this a meaningful safeguard against the on-going downward pressure on labour standards.

However, not only is the effectiveness of labour (and other social and environmental) clauses in free trade agreements in protecting internationally recognised workers' rights limited, as they tend to be included in a non-binding way and are not backed up by effective monitoring and enforcement mechanisms. Equally, a reference to ILO standards becomes meaningless when countries have either not ratified or fail to implement the fundamental ILO conventions. To date, there hasn't been a single case where a violation of the labour provisions of an FTA has resulted in any concrete sanctions for the party responsible of the violation: there have been no suspensions of trade benefits for the country nor fines for the companies concerned.

A case in point is the free trade agreement between the EU and Colombia and Peru that was signed in 2011 and currently awaits ratification. Human Rights Watch lists Colombia as the most dangerous country in the world for trade-unionists, with the number of trade unionists killed every year higher than any other country in the world[5]. However, this did not prevent the EU to negotiate and conclude an FTA which many activists perceive as a legitimation of the worst practises in Colombia. This opinion has been for long shared by the US Congress and President Barack Obama, who decided not to ratify the US-Colombia FTA signed by Bush Jr. in 2006[6]. The EU has always professed its concern for human rights, which makes its disregard for the human rights violations in its push for an FTA with Colombia all the more embarrassing. Social movements and trade union movements both inside and outside Colombia denounce the FTA as an agreement that unashamedly puts business interests before human rights[7] and is trading away human rights.[8]

With the EU openly advocating that Europe should export its way out of today's crisis, the race to the bottom that pits workers and citizens of Europe against those of other regions as one of the key dynamics of corporate globalisation continues. To ensure that the EU can jump on the bandwagon of the emerging economies (China, India, Brazil and so on) and achieve favourable market access and "protection" (read privileges) for its companies and investors, Europe will have to offer similar conditions to its partners, which means more liberalisations, more privatisations, more protection to investors in Europe, free access to key markets (public procurement, health, educations etc.). The pressure to lower standards might increase.

Europe continues to advocate aggressive market opening and international competition as the way forward. The aim of the EU's trade policy is to 'open markets and connect Europe to the main sources and regions of the global growth'[9], based on the idea that 'trade is working for Europe's economic recovery by ensuring growth and jobs'.[10] Significantly, there is no mention of the quality of jobs. A report by War on Want (2009), entitled 'Trading away our jobs' [11] summarised the empirical findings on the actual effects of free trade agreements on the labour market, listing systematic deindustrialisation, job losses and substantial wage drops.

That the opening up of markets has contributed to a global increase in in-formalisation and casualization is acknowledged in a recently published study by WTO and ILO.[12] This report highlights the drop in legally protected employment relationships, accompanied by increases in contract work, temporary work, part-time work, casual employment and a strong growth in various forms of the informal economy in Latin America. In Mexico, the purchasing

power of the minimum wage fell to one fifth of its original value between 1976 and 2000, as a result of the NAFTA free trade agreement with Canada and the USA[13].

Similarly, following market opening, an export surge of subsidised agricultural products by the EU (and the US) are destroying small scale rural livelihoods in Africa. Tens of thousands of jobs in the formal sector disappeared: in Ghana, for example, the labour market in the industrial sector shrank by 17% in the first eight years of trade liberalisation[14].

Even the EU's own Sustainability Impact Assessments forecast severe job losses as a consequence of various bilateral agreements. The EU's SIA for the proposed Europe-Mediterranean free trade area (EMFTA) predicted the collapse of the manufacturing sector in Egypt, Morocco, Algeria and Tunisia as well as a severe contraction in manufacturing in Syria, Jordan and Lebanon, with an estimated total job loss of 3.4 million as a result of such an agreement. Similar outcomes are predicted for the EU's proposed FTAs with the MERCOSUR-countries[15] in Latin America and for China and India[16]. These severe impacts have not, however, led to any significant shift in the EU's trade and investment policy. On the contrary, Europe now seems ready to accept that globalisation will know both winners and losers. In his introduction to Trade Growth and World Affairs (2010)[17], the last official strategic trade document of the EU Commission, Trade Commissioner De Gucht wrote: "My aim is to ensure that European business gets a fair deal and that our rights are respected so that all of us can enjoy the benefits of trade". In other words, the EU advocates of free trade continue to champion the aggressive opening of markets demanded by its export industries. However, they no longer sell this on-going push for economic liberalisation as a 'development policy' that will lead to more jobs and better wages for all. They have modified this to "all of us".

Nonetheless, it would be wrong to think that the workers of the European Union will emerge scot free: The EU's own analyses show that the liberalisation of trade will also lead to large scale redundancies and a worsening in working conditions within the EU's internal market. The dynamics of free trade endanger jobs, wages and working conditions in developed and developing countries alike. It is only transnational corporate industry that comes out on top.

Workers and trade unions rightly fear the threat of a global race to the bottom as a consequence of the neoliberal free trade agenda. However, in a world where progressive liberalisation and deregulation continues to be the norm, trade unions struggle with answers how to promote access to decent employment, social rights, social protection and social dialogue for workers worldwide.

On the other hand, trade unions in their efforts to defend workers´ rights, and their campaigns for "decent work", continue to be hampered by the fact that to date they remain largely nationally organised. To transnationally speak with one voice and defend common positions remains a major challenge for the trade unions of countries engaged in the negotiation of free trade agreements. Fortunately, the labour movement has moved several steps forward from the time in which the first big free trade negotiation of the neoliberal era, the NAFTA[18], started. At that time the main Mexican trade unions were supporting NAFTA, while the main Canada and the US trade unions were opposing it. Today trade unions are seeking new forms of international solidarity to halt the race to the bottom set in motion by the neoliberal export-led growth model. They seek to strengthen their impact along global supply chain by building cross-border alliances with other trade unions; and they are building alliances with other social movements to mobilise against the negative impacts of free trade agreements on workers' rights and working conditions and beyond. As stakeholders, they are demanding

transparency and participation in trade negotiations; they are lobbying for meaningful and binding social clauses within FTAs and engage with civil society initiatives to promote alternatives to the current trading system stemming from an awareness of the limitations of our current profit-seeking competitive model of over-production and over-consumption that brings us up against the boundaries of what our planet can support and that is thrown into sharp relief by today's crisis[19].

At the same time, the global trade union movement is very diverse and trade union positions on free trade differ from union to union and from region to region. While trade unions of the Americas and Asia have developed very critical positions on FTAs as well as alternative visions to the current trade model, European trade unions have been, and continue to be, more pro-free trade. European trade unions – compared to their counterparts in other regions - have engaged much less with critical FTA campaigns. The European trade unions buying into the neoliberal ideology may change as the current financial and economic crisis painfully drives home the message that neo-liberalism benefits the economic elites and that trickle-down theories will not protect Europe's workers as transnational corporations and footloose capital in a liberalised global economy know no geographical loyalty. The European trade union movement must come to realise that the EU Commission's promise to 'export the EU out of the crisis' (De Gucht, 2010) is a false one, that works to the detriment of workers both in and outside Europe. The demand for a better Europe for the EU's citizens demands that we build another Europe in the world that includes a different relationship of Europe's economy with the planet and its resources and with the peoples of other regions.

1. Free Trade instead of decent work? WTO and Global Europe as a danger for Decent Work, Briefing by EED, Weed, WIDE and War on Want, 2009. At: http://www.eed.de/en/en.eed/en.eed.pub/en.pub.de.437/index.htm
2. http://www.ituc-csi.org/world-day-for-decent-work.html?lang=en
3. Ibidem
4. http://www.ilo.org/global/about-the-ilo/press-and-media-centre/insight/WCMS_085113/lang--en/index.htm
5. http://www.s2bnetwork.org/fileadmin/dateien/downloads/wr2012_Colombia.pdf
6. Under the pressure of the crisis and the difficulties of facing a new Republican majority in the Congress, the Obama administration finally accepted to allow the Congress (with a Republican majority this time) to ratify the FTA with Colombia.
7. http://www.s2bnetwork.org/fileadmin/dateien/downloads/FS_ColombiaENG.pdf
8. http://www.s2bnetwork.org/fileadmin/dateien/downloads/EU-Colombia_FTA_Report.pdf
9. EU Trade Commissioner Karel De Gucht, in http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf
10. Ibidem
11. http://www.waronwant.org/campaigns/trade-justice/more/inform/16486-trading-away-our-jobs
12. Globalization and Informal Jobs in Developing Countries, WTO/ILO, Geneva 2009. At: http://www.wto.org/english/res_e/publications_e/jobs_devel_countries_e.htm
13. Free Trade instead of decent work? WTO and Global Europe as a danger for Decent Work, Briefing by EED, Weed, WIDE and War on Want, 2009. At: http://www.eed.de/en/en.eed/en.eed.pub/en.pub.de.437/index.htm
14. Ibid.
15. Argentina, Brazil, Uruguay and Paraguay; full membership of Venezuela is pending.
16. The Sustainability Impact Assessments for the EU's various trade negotiations can be accessed at: http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments/
17. http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf
18. The North American Free Trade Agreement (NAFTA) is an agreement signed by the governments of Canada, Mexico, and the United States, creating a trilateral trade bloc in North America. The agreement came into force on January 1, 1994. It superseded the Canada – United States Free Trade Agreement between the U.S. and Canada.
19. Free Trade and Trade Unions of the Americas, Bruno Ciccaglione, Arbeiterkammer Wien, 2009. http://www.arbeiterkammer.at/bilder/d107/FreeTradeandTradeUnions.pdf

INFLUENCING TRADE POLICY.

AN UPHILL STRUGGLE.

The current international treaty between the 27 European states that constitute the European Union and that defines its principles, goals ,institutions and functioning and that replaces all previous agreements is the Treaty of Lisbon, in force since 1 December 2009.[1] The Lisbon Treaty defines the EU trade policy as *"an exclusive competence of the European Union"*. This means that while the Member States of the European Union can still organise their own export promotion, for instance by organising trade missions to partner countries, they can no longer design and implement their own trade policy or negotiate their own bilateral trade agreements.

THE ROLE OF THE EUROPEAN COMMISSION, THE COUNCIL AND THE PARLIAMENT

Trade negotiations are carried out on behalf of the EU's Member States by the European Commission, which consists of 27 Commissioners, one from each EU country. These Commissioners are appointed by the European Council. Their appointment is subject to the approval of the European Parliament, which has the power to dismiss the Commission. The current European Commissioner for Trade responsible for defending the trade interests of the EU and the negotiation of the Union's multilateral, bilateral and bi-regional trade agreements is Karel De Gucht.

The European Council is made up of the Member States' government representatives, i.e. the ministers of each Member State responsible for a given policy area. There are ten Council configurations, covering the whole range of EU policies. The Council configuration dealing with international trade is the Foreign Affairs Council. The Council has a remit to legislate on the basis of proposals prepared by the European Commission. Most legislative proposals have to be adopted in a co-decision procedure with the European Parliament.

The Lisbon Treaty has given new legislative powers to the European Parliament, which is made up of 754 elected members from all EU member states. New is that post-"Lisbon", consent from the European Parliament is required for all EU trade agreements.

A one-sided agenda

It is clearly the European Commission that is in the driver's seat of the EU's trade policy. It drafts its trade policy guidelines mainly on the basis of the wish lists of the European business and traders associations and then negotiates the approval of these guidelines with the EU Member States in a working group of the EU Council (of Ministers) called the Trade Policy Committee. In turn, the Member States' positions are largely based on the wish lists of the national members of the same European associations that inspired the Commission's proposals. They therefore do not differ much - save that they stress particular national interests and political flavour. As a result, the mandates that form the starting point for the negotiation of trade agreements by the European Commission tend to be excessively business-oriented. Other stakeholder interests relating to wider economic, social and environmental policies and human rights tend to be delegated to the back seat.

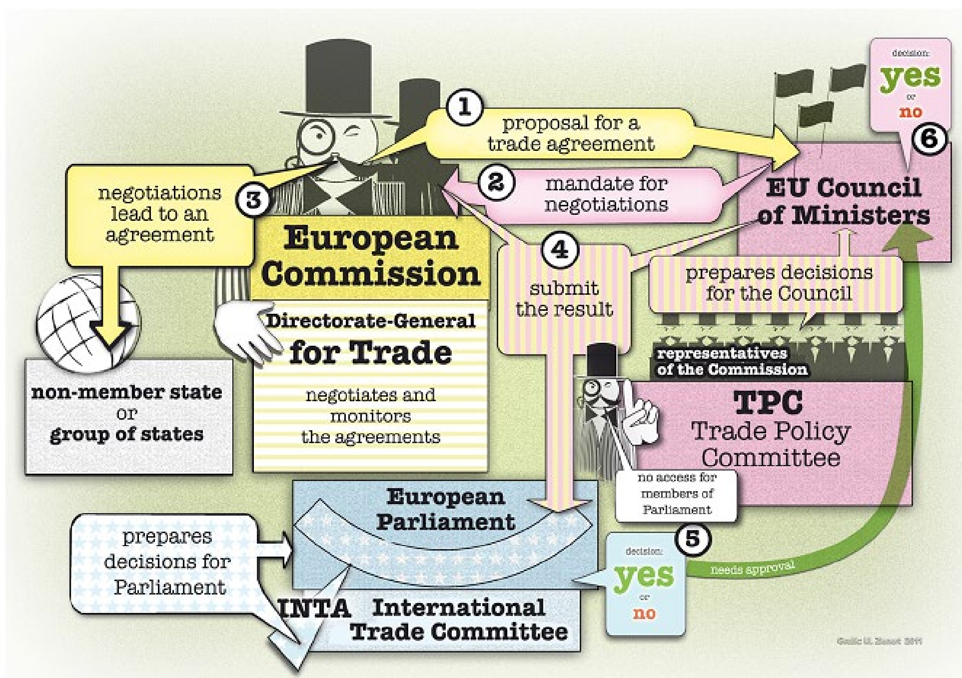
Competences of the EU institutions (Commission, Council, EP) in relation to trade agreements

According to EU procedure, the Commission has to submit all trade agreements and trade legislative proposals to the Council and the European Parliament for approval.

However, it is the Council that gets to examine a proposed agreement first. It is also the Council that, at the start of a negotiating process, provides the Commission with the "confidential" - i.e. secret - negotiating directives or mandates for negotiations. And it is the Council that during the negotiations guides the Commission by further explaining and refining its positions via its Trade Policy Committee. For instance, the Commission will inform the Trade Policy Committee of the market access offers made by a country that it is negotiating with, and subsequently the Member State representatives on the committee will tell the Commission whether this offer is sufficient or not. Only when the Council has agreed with the outcome of a negotiation and has given authorisation to officially sign an agreement on behalf of the European Union, then the EU Parliament is asked to give its consent. In general, the trade committee of the Parliament (INTA) will already begin examining the agreement before it is officially asked to do so. In fact, since the Lisbon Treaty, the EP's INTA committee is entitled to receive the same information about the negotiations at the same time as the Council. This includes any negotiated agreement as agreed ('initialled') by the negotiators of the Commission and the country involved. However, the European Parliament cannot amend a negotiated agreement; it can only approve or reject it. This is why the Parliament usually adopts a resolution along with its approval to better express its opinion on the agreement.

Lack of public scrutiny

The Council's decisions relating to trade agreements are formally taken by the ministers of the Member States responsible for trade. However, when meeting in Council, the Member States' ministers tend to simply endorse lists of items prepared by the so-called Trade Policy Committee, i.e. the Council's permanent working group on trade. The reports of TPC meetings are not public, so that it is impossible for EU citizens to see what positions the representatives of their governments have taken. Worse, it is not a habit of most Member States' governments to reveal anything about their positions regarding specific trade negotiations or specific aspects of the EU trade policy. Member States' governments also rarely consult other groups within society than the business interest groups, nor do they



systematically inform their parliaments. And when questioned in parliament, they tend not provide detailed answers. Indeed, in practically all countries trade policy is a prerogative of the executive power, which can initiate trade negotiations without consulting parliaments. The role of parliaments is usually limited to endorsing the negotiating outcomes. In some EU countries, such as Sweden, ratification does not even require parliamentary approval; in others, like Denmark and Finland parliaments need to be consulted (behind closed doors) about every position their governments take in the EU decision making process.

Limited and biased information

A fundamental critique of the EU's trade negotiating process has been the secrecy by which it is conducted. Negotiations take place behind closed doors, away from the public eye and with very limited democratic scrutiny. This has allowed the negotiating agenda to be hijacked by powerful interests. Negotiated agreements show a strong bias towards corporate interests, with very limited regard for other stakeholders. To gain some insight into what was on the table in the EU's trade negotiations, civil society has had to depend on (frequent) leaks from the complex European decision-making system or information provided by countries or leaked in countries that negotiate with the EU. Otherwise, the main source of information on the EU's trade policy is the European Commission. The EC operates a vast website with country-specific information and data; it publishes policy papers, working documents, assessments, reports and summaries and updates on the state of play of negotiations. It also holds online consultations and organises regular public debriefings (euphemistically called "civil society dialogues"). At the same time, the EC is always very strategic (and manipulative?) in the information that it provides. It carefully keeps its close and exclusive links to its privileged stakeholders – i.e. the representatives of the EU's corporate industry, out of sight. It never reveals any information regarding its internal discussions or policy preparations, let alone that it releases any negotiating proposals.

NEW OPPORTUNITIES FOR CIVIL SOCIETY?

Civil society has long demanded more insight into corporate lobbying and more transparency and democratic control over the negotiating process. Until recently, the European Parliament had no formal role in the EU's trade negotiations, other than officially approving concluded and already signed agreements.

This has changed with the coming into effect of the Lisbon Treaty on 1 December 2009. Although 'Lisbon' still has not granted Parliament a formal role in setting up the mandates or prescribing objectives of trade negotiations and does not provide for parliamentary participation in negotiations, the European Commission is now required to inform Parliament on the negotiation and conclusion of agreements with third states - fully and immediately and at all stages of the process. 'Lisbon' also gives the European Parliament the power to block the framework legislation necessary to implement provisions of a trade agreement. So even though the European Council, as mentioned before, retains an exclusive role in amending and adopting the proposed negotiating mandates and an exclusive right to inform the European Commission's conduct of trade negotiations, 'Lisbon' has given the EP new political clout in the field of the EU's common trade and investment policy.

However, the EP still has to grow into its role to make full use of its new opportunities to influence the content and direction of bilateral and multilateral trade negotiations by voicing its political preferences and flag red lines and preconditions for its final consent early on in the process. [2] While Parliament still needs to develop its capacity and technical expertise in relation to trade policy as a new policy field, both the Commission and the Council are working hard to co-opt Parliament into the circle of secrecy surrounding the EU's trade policy-making. So far, the increased flow of information on trade matters to INTA post-"Lisbon" has not led to more public transparency on the EU's trade policy and its on-going trade negotiations.

While the Lisbon Treaty, by giving the EP more legislative competence in trade matters, has greatly increased the importance of the EP, it has also significantly increased its workload. To avoid being overwhelmed, the EP's INTA committee has appointed standing rapporteurs on specific negotiations and has set up sub-working groups to follow-up on these. As a result less information is shared in the full meetings of the committee. In addition, the Commission insists that its reports to Parliament on the state of play in negotiations are continued to be held behind closed doors.

Even if the post-Lisbon institutional changes appear to provide civil society organisations working for trade justice with new channels to enter into the debate their critical analyses and share the perspectives from their Southern partners on the impacts of EU trade policy choices, it will remain an uphill struggle to effectively be heard.

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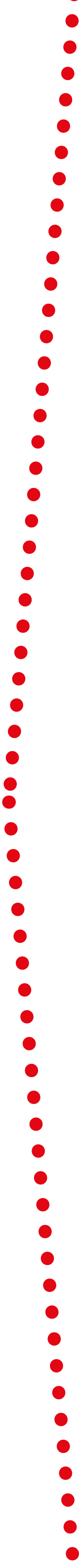
1. The Lisbon Treaty consists of a Treaty of the European Union (TEU) and a Treaty on the Functioning of the European Union (TFEU).
2. This paragraph leans heavily on David Kleimann, Taking Stock: EU Common Commercial Policy in the Lisbon Era, Centre for European Policy Studies (CEPS) Working Paper No. 345, April 2011 for a comprehensive analysis. At: http://www.ceps.eu/ceps/download/5510



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