



**Friends of
the Earth
Europe**

Friends of the Earth Europe
WTO Position Paper

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Don't let big business rule the world

Key recommendations for the on-going WTO negotiations

Friends of the Earth Europe (FoEE), as part of Friends of the Earth International (FoEI) – the world's largest grassroots environmental network – is seriously concerned with the current position of the EU in the on-going WTO negotiations. With a new European Commission and European Parliament in an enlarged European Union, it is time to change course. EU trade policy making should be socially and democratically accountable and above all centred on sustainability.

The EU must take the lead in calling for fundamental changes to the world's trading system in line with its own sustainable development and human rights objectives. The EU must review its overall position for the 'Doha Development Agenda'. Instead of more rights for big business, greater rights for people and the environment must be created.

Europe should:

1. Counterbalance the WTO and strengthen environmental governance;
2. Shift negotiations on the relationship between WTO rules and Multilateral Environmental Agreements (MEAs) to the UN;
3. Halt the GATS negotiations and agree to a full, independent review of the potential environmental and developmental impacts;
4. Halt the NAMA negotiations and agree to a full, independent review of the potential environmental and developmental impacts of NAMA;
5. Commit to eliminate export subsidies and dumping and promote food security, food sovereignty and non intensive agriculture instead;
6. Resist US pressure to let trade rules trump genetically modified food and farming precautions, and promote the Biosafety Protocol as the right forum to address GMO questions;
7. Reform the dispute settlement body so that it takes account of the precautionary principle, other UN treaties and does away with any "necessity test" for environmental measures;
8. Commit to full transparency and enhanced democracy of the WTO and EU trade policy making, enabling the full participation of developing countries, civil society and parliamentarians;
9. Review the impacts of WTO rules on environmental sustainability, development, democracy and the lives of women and indigenous people and rectify existing agreements;
10. Develop a truly sustainable and equitable trading system.

Detailed recommendations for the European Union:

<p>Greater rights for people & the environment not for big business</p>	<p>The EU must take the lead in calling for fundamental changes to the world's trading system in line with its own sustainable development and human rights objectives. The EU must review its overall WTO position. Instead of more rights for big business, greater rights for people and the environment must be created.</p> <p>Specifically the following steps are needed:</p>
<p>Trade, Environment and Global Governance</p>	<p>Counterbalance the WTO and strengthen not weaken environmental governance</p> <p>In recent years, the WTO has acted as a global governance organisation, and extended its work programme to new areas of competencies, thereby frustrated the more appropriate and competent institutions. The enforcement of existing, or the development of new environmental legislations relating to Multilateral Environmental Agreements (MEAs), such as the Biosafety and Kyoto Protocol, cannot be chilled, or in fact subordinated to free trade and competition rules. These legislations cannot be overruled by trade experts or the panelists of an International Trade Panel working in clinical isolation.</p> <p>However, the worsening of global environmental crisis coupled with the fact that the WTO is used by some governments to undermine environmental laws means that inaction is not an option. Europe must lead the call for a global governance system, within which trade rules do not limit or undermine environmental protection, on the contrary, global environmental governance is strengthened.</p> <p>At the same time, the WTO has to be brought back under the UN umbrella, and the scope of its competencies reduced in favour of more appropriate UN institutions.</p> <p>Europe must stand at the forefront of advancing a global governance system, within which trade rules do not limit or undermine environmental protection. The WTO must consider environmental impacts in each and every set of negotiations, fully comply with international environmental laws, recognise the authority and autonomy of the existing and future MEAs and facilitate their implementation and enforcement. It has however, neither the competence nor the expertise to negotiate and decide on environmental issues such as trade measures related to MEAs, the use of eco-labelling schemes, and the definition of environmental goods and services.</p> <p>As a matter of priority, therefore, we consider that European governments should strengthen the environmental governance within the UN system, in order to counterbalance the overweighting of the economic pillar. This translates into:</p> <ul style="list-style-type: none"> • Strengthening MEAs, their compliance and dispute-settlement mechanisms; • Supporting the upgrading of UNEP to a UN Environment Organisation. • Giving a mandate to UNEP and its Governing Council to take the lead in trade and environment discussions. <p>The UN would be legitimate and should be central in addressing trade and environment issues, including the relationship between MEAs and the WTO, ecolabelling, environmental goods and services.</p>

**MEAs vs
WTO rules**

Shift WTO negotiations on MEAs to UN and strengthen MEAs

In a body dominated by trade officials and with a general climate of “tit for tat” economic bargaining, no positive outcome for multilateral environmental agreements (MEAs) is foreseeable.

Considering the risks for international environmental governance engendered by WTO negotiations under paragraph 31(i) of the Doha ministerial Declaration, Friends of the Earth calls on governments to recognize these risks and take the initiative to halt the WTO negotiations on the relationship between WTO rules and MEAs and to transfer them to the United Nations immediately. WTO member states should recommend the UNEP Governing Council to initiate negotiations on the relationship between WTO rules and MEAs, building on and strengthening existing initiatives and providing an appropriate platform for the negotiations. (Specific ways of initiating a discussion forum under UNEP auspices are described in the joint Friends of the Earth Europe/Forum Umwelt und Entwicklung/Greenpeace discussion paper: The new EU approach to the WTO negotiations related to MEAs, global governance and the need to address the MEA trade linkage in the UN system, July 2004.)

In addition, governments must recognise that it is essential to establish a mechanism of international environmental governance that is independent of the WTO and that therefore:

- countries are not prevented from complying with their MEA obligations due to WTO rules or other economic interests;
- the treatment of non-MEA parties vis-à-vis MEA trade provisions is determined solely by the provisions of the MEA concerned;
- MEAs' compliance and dispute settlement mechanisms are reinforced;
- relevant provisions of MEAs are reformulated to ensure that they effectively protect the environment and promote social justice;
- only the UN has the authority to consider and adjudicate on any potential and actual conflicts between the two governance systems;
- and information exchange arrangements between environmental bodies and the WTO need to be improved and institutionalised.

Critically, WTO member states must not permit international environmental governance (through the MEAs) to be made subject to economic and trade considerations. Nor should they allow the WTO to encroach upon areas of international policy in which it has no competence. To this end, governments must not mandate the WTO to:

- set rules or criteria that might in any way define or restrict the use or national implementation of any trade measures agreed to in MEAs;
- set rules or criteria for national implementation of MEAs resulting in a limitation of government's rights to regulate in favour of the environment, such as through *least trade restrictiveness tests*;
- define a set of MEAs, or a set of trade measures, that are WTO-consistent thereby making others WTO-inconsistent regardless of their merits;
- agree to any principles other than those that clearly recognize the primacy and authority of MEAs.

In order to achieve this goal governments must:

- grant UNEP and the Secretariats of MEAs with trade-related provisions, objectives, or obligations permanent observer status in all relevant bodies of the WTO.

	<p>- call for an independent, comprehensive and participatory social and environmental impact assessment of trade liberalization to ensure that all WTO negotiations reflect and address environmental and development concerns (see point review).</p>
<p>GATS</p>	<p>Halt the GATS negotiations and undertake a proper assessment</p> <p>The EU has been a key driver of the GATS negotiations, submitting requests to 109 countries to open up their services, including in the field of environmental sensitive sectors such as water, waste, energy, tourism and transport. The EU has also taken the lead in expanding general obligations of the services agreement. The expansion of service operations and commitments will have substantive environmental and social impacts. Governments will be increasingly constrained in their efforts to protect the natural world from harmful service operation of big companies.</p> <p>The EU should halt the GATS negotiations and instead:</p> <ul style="list-style-type: none"> • support the conduct of a proper independent assessment of actual and potential environmental and social impacts, including those on local communities and within developing countries in all sectors • propose to re-examine the commitments already made under the GATS provisions that are in fact multinational investment disciplines (Mode 3 - “commercial presence”) and explicitly reject any further commitments • create clear and strong across the board exceptions are adopted so that no environmental law or regulation will be undermined by GATS rules • exclude any services related to natural resource extractions (water, energy, minerals, timber etc) as well as nuclear energy • exclude any publicly provided and essential services from GATS disciplines • exclude environmentally harmful activities from the definition of environmental services and permit distinctions between different types of energy technologies • remove article VI provisions, including any necessity test, that restricts the right of governments to adopt laws and regulations protecting the public interest and the environment • ensure that developing countries in particular have the right to protect their environment and social needs, through special safeguard measures.
<p>NAMA</p>	<p>Stop further liberalization of natural resources such as forests, fish, oil, gas and mining in the NAMA negotiations</p> <p>In NAMA, <i>all</i> natural resources are effectively currently on the table for either partial or complete liberalisation. Other trade restrictions (known as non-tariff barriers or NTBs, which include measures designed to protect the environment and promote social welfare) and often used as protective measures) are also at risk. For example, in relation to the environment, the following, have already been listed for further consideration by the WTO: the certification of wood products, restrictions on trade in chemicals and viruses put in place for ‘strategic reasons’, the tracing and labelling of fish and fish products; general import prohibitions for environmental purposes; and packaging, marketing and labelling requirements.</p> <p>Developing countries also face the prospect of deindustrialisation and loss of significant quantities of government custom revenue, as industrialised countries aggressively pursue negotiating tactics specifically designed to open developing country markets . Developing countries also risk losing the use of and loss of trade measures as affordable tools allowing them to</p>

	<p>protect their environment and promote domestic economic development. This could lock many developing countries into their existing commodity dependence and discourage diversification; and benefit processing industries in importing countries to the detriment of both the environment and potential processors in countries confined to exporting the raw materials.</p> <p>Given these serious concerns, it is imperative that governments take the following actions:</p> <ul style="list-style-type: none"> • Halt the NAMA negotiations and agree to a full, independent review of the potential environmental and developmental impacts of NAMA. • Protect governments' policy space, including through the use of tariffs and non-tariff barriers genuinely intended to develop fair and sustainable economies and protect their environment, including through the sustainable management of natural resources. • Promote resource conservation by stopping further liberalisation of natural resources, such as forest, fish, oil, gas and mining products in the WTO and elsewhere.
<p>Agriculture and patents</p>	<p>Promote food security, food sovereignty and non intensive agriculture, not multinational agro-industry, and patents on life</p> <p>In the short-term and as a first step the EU should make immediate and unilateral efforts to eliminate all forms of export support immediately and stop the dumping of agricultural products as part of measures to signal genuine intentions towards the developing world. It should fundamentally reform the Common Agricultural Policy to support rural development and agri environmental measures.</p> <p>Furthermore multilateral rules need to support sustainable methods of agriculture and a trading system that does not favour large-scale export oriented, fossil fuel and pesticide dependent farming and multinational agro-industry but rather meets the needs of people and the environment.</p> <p>Diverse sustainable agricultural practices should be supported that reduce and reverse the loss of biodiversity, including by:</p> <ul style="list-style-type: none"> • phasing out domestic subsidies that promote unsustainable land use and inequitable land tenure patterns; • encouraging socially, environmentally and economically sustainable farming techniques through the use of targeted domestic subsidies, controls and other incentives for local varieties and local consumption; • recognising countries' rights to implement import controls for agriculture products which are harmful for the environment and human health , including tariffs, in food and agriculture, to support sustainable food production for local consumption; • introducing "non trade concerns" to support sustainable agriculture; • and banning all forms of patents on life. <p>The EU should also support an independent Sustainability Impact Assessment on the social and environmental impacts of the implementation of the AoA, TRIPS, SPS and TBT agreement.</p>

<p>GMOs</p>	<p>Since the launch of the US led trade dispute on GMOs at the WTO, the European Commission has approved 2 GM crops despite scientific uncertainty and potential environmental and health problems. In addition, EU member states that maintain national safeguard measures to protect their citizens and their environment are now targetted by the European Commission to lift their bans.</p> <p>Governments' right to ban or otherwise restrict the production of and trade in genetically modified seed, food, animal feeds and related products must be respected and protected.</p> <p>Instead of caving in under WTO and US pressure, the EU must take a precautionary approach to GMOs recognising the potential risks for its citizens and the environment from GM food and farming.</p> <p>In the WTO, the EU should ensure that the WTO recognises:</p> <ul style="list-style-type: none"> ▪ the rights of governments to develop laws to protect humans, animals and plants from the risks of genetically modified food and farming, including the right to impose a ban on such products or strict labelling requirements; ▪ the Precautionary Principle which requires that, where there are threats of serious or irreversible damage, it is better to regulate despite the lack of scientific certainty; ▪ that decisions concerning regulation of international trade in GMOs should be made in accordance with the UN Biosafety Protocol and not by the World Trade Organisation.
<p>Dispute Settlement</p>	<p>Reform the dispute settlement body</p> <p>Current dispute settlement procedures are undemocratic and secretive and usurp the rulemaking and legislative role of nations. Therefore, the EU should request the dispute settlement procedure to:</p> <ul style="list-style-type: none"> • take cognisance of the precautionary principle as a customary norm of international law; • do away with any “necessity test” for measures sought to be justified on public health or environmental grounds; • ensure that the burden of proving that a disputed measure is adopted solely for trade-protectionist or trade-discriminatory purposes rests on the country challenging the measure; • ensure that the disputed measure is deemed to be prima facie compliant with international trade rules in the absence of substantial evidence being presented regarding the trade-protectionist or trade-discriminatory intent or impact of the measure; and • take cognisance of existing customary norms of international law and provisions of other multilateral treaties in force - such as those relating to the environment, human rights, and health standards - as part of the body of international law that should be relevant to and must be taken into account in international trade dispute settlement cases.

<p>Democracy</p>	<p>Commit to full transparency and enhanced democracy</p> <p>The EU must ensure that national trade policy-making undertaken as a result of their WTO obligations must follow an open, transparent, and genuinely publicly participatory process that encourages the participation of domestic civil society, community and peoples' organisations. In the EU vastly increased scrutiny for all international trade negotiations by parliamentarians from the European Parliament and national parliaments is urgently needed. Furthermore input from the private sector needs to be decreased and input from civil society groups increased in the formulation of the EU's policies.</p> <ul style="list-style-type: none"> • In view of the recognition of the EU that sustainable development should be “the central objective of all sectors and policies”, it is essential that relevant Departments in other Directorate Generals have the proper capacity to contribute to the shaping of EU trade policy. We urge MEPs to increase the budget and staff of these departments to allow for this. • In view of the critical importance of trade policy for sustainable development, Council Working Groups on Development and on Environment should formally extend their purview to contribute to shaping EU trade policy. • The European Parliament should have increased involvement in trade policy decision-making. However, this cannot be limited to nominal ‘consent’ by the Parliament at the end of a round of trade negotiations, which would generate a fig-leaf for the lack of proper Parliamentary involvement. It should also include provisions for <i>ex ante</i> consultation on negotiating proposals, the mandate of the Commissioner and the formal use of European Parliamentary debates on trade negotiations leading to Parliamentary resolutions to be used as guidelines during trade negotiations. <p>In the WTO, developing countries need to be able to fully participate in the conduct of the negotiations. In addition to additional technical assistance and capacity building to developing countries, Mini Ministerial Conferences and Green room sessions should be abandoned.</p>
<p>Review</p>	<p>Review the impacts of WTO rules and rectify existing agreements</p> <p>As outlined in paragraph 51 of the Doha Ministerial Declaration, the Committee on Trade and Development and the Committee on Trade and Environment shall each act as a forum to 'identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.' In order to do so, an review of WTO decisions and rules is necessary to determine whether they support and promote the development of sustainable societies and to ensure that they are compatible with existing UN treaties on the environment and human rights in general. Such an assessment needs to be carried out before the launch of any and all trade negotiations by UNEP and other appropriate UN institutions. Governments should also undertake national independent sustainability impact assessments. The EU must continue to provide capacity building and technical assistance to them.</p> <p>The current assessment-procedures of European Trade policy must also undergo review. The scope of Sustainability Impact Assessments (SIAs)</p>

	<p>must be widened, a new “development” dimension must be introduced, and their policy focus and impact must be strengthened. SIAs’ results must finally become an integral part of EU trade-policy decision-making. The European Commission must do more than provide a response to potential mitigation and enhancement measures. The European Commission’s responses must also relate to possible changes in European negotiating positions. In this respect, SIAs’ must be conducted well in advance of the policy-making process – a process which still requires much openness and transparency. SIAs’ results must also be subjected to systematic evaluation and recommendations by both article 133 Committee and the European Parliament, if the delivery of the negotiating objectives and mandate is to be ensured. A follow-up mechanism on the implementation of the results must also be established. The challenges are therefore directed both to trade negotiators as much as to the SIA process itself.</p>
<p>Towards Sustainable Economies</p>	<p>Develop a truly sustainable and equitable trading system</p> <p>At the beginning of the 21st century, the world needs trade rules that reflect society's current values and needs. Our existing trade rules and institutions and indeed the current global economic system are out of date and do not do this. Instead, they undermine biological and cultural diversity. They are still based on the pursuit of profit regardless of social and environmental costs; and inequitable access to and the overuse of limited natural resources. Current rules also prevent the maintenance and development of locally-appropriate and sustainable systems of commerce.</p> <p>For these reasons, it is vital that the EU agrees to review and rectify both the current trade system and the economic context within which that system operates.</p> <p>It is time to develop a system of international trade that promotes self-determination, environmental protection, sustainable livelihoods, equity and cultural diversity, amongst all nations and people. A new and sustainable framework for the regulation of trade for the twenty-first century needs to be based on the principles of democracy, equity, reduced consumption, co-operation and precaution.</p>