

SETTING COURSE FOR SUSTAINABLE TRADE

A NEW TRADE AGENDA THAT SERVES
PEOPLE AND THE ENVIRONMENT



**Friends of
the Earth
Europe**

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Intro- duction

By Friends of the Earth Europe





This paper builds on existing visions for a just trade policy developed by civil society organisations and academic institutions across the globe. It draws upon valuable contributions from experts in the field of trade and climate, including academics, lawyers, farmers' organisations, entrepreneurs, organisations from Southern countries and local action groups.

The resulting paper provides Friends of the Earth Europe's perspective on globalisation, trade and trade agreements, and presents proposals for a radical shift in EU trade and investment policy and treaties. Not all policy areas that are affected by trade and investment are addressed in this paper, but it will hopefully serve as a starting point for others to develop similar proposals in order to stimulate further discussion on urgently-needed next steps and measures.





IT'S TIME FOR A NEW TRADE AGENDA. BUT WHO WILL DECIDE WHICH WAY TO GO?



Who will decide upon our future international trade rules? Will it be right-wing nationalists like Donald Trump, who view trade as a zero-sum game? Or will it be the more mainstream politicians, who have brought us to where we are now?

Will multinational corporations and lobbyists continue to have the power to shape the political agenda behind closed doors? Will emerging economies, like China and India, be the ones setting the rules from now on? Or will it be the diverse coalition of progressive groups who took to the streets in their thousands to protest against TTIP, TPP and other trade agreements?

One thing is certain: business cannot continue as usual. Many international trade and investment rules are irreconcilable with the measures that need to be taken to achieve more sustainable economies. Current trade rules stand in the way of a just transition. Continuing on the current trajectory will aggravate economic insecurity and deepen global inequality, continue to erode national and regional control over the structure of our economies, and set us on a collision course with planetary boundaries.



Growing discontent

The imperative for a paradigm shift is underscored by growing discontent with the current system. Criticism of TTIP and CETA originated in a highly diverse, progressive community of trade unions, farmers, entrepreneurs, academics and activists, and was strengthened by the voices of over 3.3 million European citizens who signed the self-organised European Citizens' Initiative to stop TTIP and CETA, many of whom also took to the streets. Yet, worryingly, there is also a right-wing nationalist backlash against economic globalisation for other reasons, which manifested itself in the successes for Trump and the Brexit vote and which threatens to increase social divisions and cause irreversible environmental damage.

The time has come for a progressive trade agenda

The ratification of the Paris climate agreement and the adoption of the Sustainable Development Goals (SDGs) show there is world-wide consensus regarding the urgency of tackling climate change and transitioning to more sustainable economies. Concurrently, the widespread public resistance to TTIP and CETA has made it clear that European citizens want a change in trade policy. We are at a historic turning point, and have not only the opportunity but also the responsibility to radically revise our current trade model. New, viable alternatives are urgently needed that will contribute to phasing out fossil fuels, ensure that our resource consumption remains within planetary boundaries, complete the transition to an agro-ecological and sustainable model of agriculture, and create an economy founded on principles of social justice and free of pollution, wastage and exploitation.

Our ecological problems present a challenge that must be tackled collectively. For this to be done effectively, it is essential to reverse the power transfer that has been occurring from democratic governments towards international markets and multinational companies. In order for there to be a shift towards a fair and sustainable society, markets and multinationals must be brought back under democratic control.

Resetting trade policy

This Friends of the Earth Europe discussion paper outlines proposals to ensure that EU trade and investment agreements contribute to an economic agenda that is fair, sustainable and democratic. Achieving a progressive economic agenda requires a radical break with the foundations of current trade policy. Trade and investment should not primarily serve economic interests; they must be a means to serve the public interest.¹ International trade agreements should not focus on maximising and liberalising trade and investment by reducing the transaction costs for corporate industry; they should focus on how trade and investment can contribute to a healthy environment, decent work, a sustainable economy as well as food and energy security within Europe and beyond.

In our view, a genuine resetting of trade policy shouldn't end with concluding new trade and investment agreements on the basis of this new agenda; existing trade and investment agreements will have to be amended, or even terminated. Changing direction is complex, but imperative: there is too much at stake.



WHAT ARE THE SHORTCOMINGS OF THE CURRENT TRADE AND INVESTMENT AGENDA?

International trade and investment have had profound impacts on the global economy. In twenty-five years, the value of world trade has increased fivefold, from 8.7 trillion dollars in 1990 to over 46 trillion in 2014.² According to the World Trade Organisation, global export volumes increased 32-fold between 1950 and 2010.³ This enormous increase in global trade has contributed to worldwide economic growth and has resulted in large increases in income and improved living conditions for part of the world's population.

However, the growth generated through globalisation is not evenly distributed and, for many people, globalisation has generated economic insecurity. According to the American economist Jeffrey Sachs, international trade treaties are remnants of the last century and will only reinforce a globalization process that is flawed⁴ – with detrimental effects on quality of life on our planet, deepening global inequality, a reduction in democratic control over our economies and ever more powerful multinational corporations.

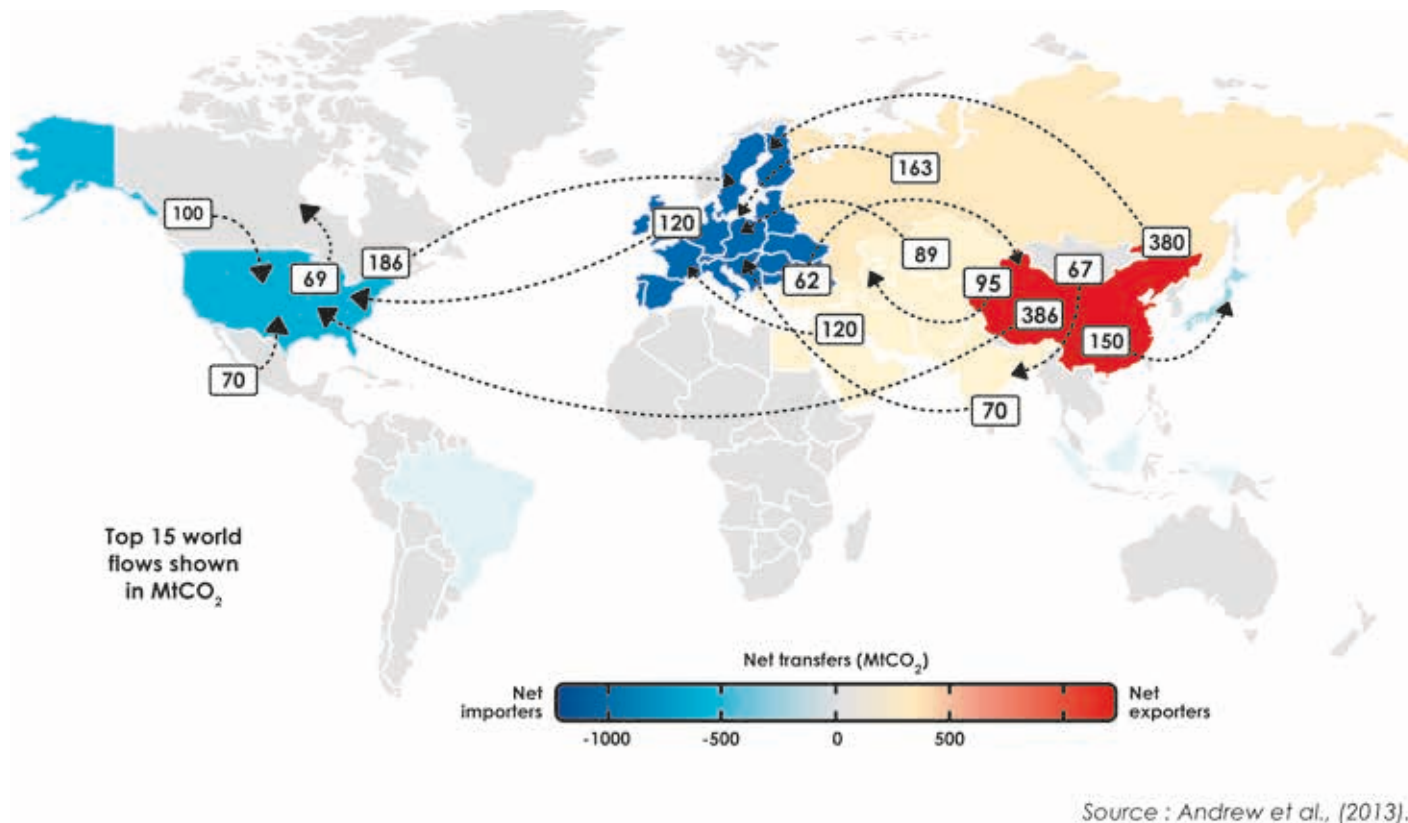
Incompatible with sustainable economies

In order to transition towards economies that respect ecological boundaries, ensure that our planet remains habitable and use a fair share of resources, it will be necessary to make some difficult choices and prepare for fundamental changes.

To keep global warming below 1.5 degrees Celsius, 80 percent of coal, half of gas and a third of oil reserves will have to be left in the ground.⁵ Europe will have to phase out fossil fuels for energy by 2030. Considering the growing global population and our increasing consumption levels, it is vital that we stop depleting non-renewable natural resources and reduce our consumption of all resources. Since the 1970s, our global ecological footprint has exceeded the planet's biocapacity, and the gap continues to increase every year.⁶

Research into the impact of international trade on greenhouse gas emission shows that an increasing share of global carbon dioxide emissions is connected to internationally traded goods (in 2011 they accounted for almost a quarter of worldwide CO₂ emissions).⁷ The expansion of global trade causes extra greenhouse gas emissions as a result of increased transport by aeroplane, seagoing vessels and freight trucks. Shipping and aviation industries alone are currently responsible for four percent of global carbon dioxide emissions, and their share could reach almost 40 percent in 2050 if left unchecked, as both sectors continue expanding as a result of the increase in global trade.⁸

Trade and investment rules also hamper opportunities to leave fossil fuels in the ground and protect our natural resources.⁹ A large proportion of the more than 800 known



The map shows the most important flows of trade-related carbon emissions in the global economy, from the production location (export) to the consumption location (import). The United States, the EU and Japan form the top-3 for trade-related emissions in terms of imports, while China is number 1 in terms of export-related emissions. These same nations are involved in concluding today's mega-trade deals.

investment claims worldwide are associated with measures to protect our climate and the environment.¹⁰ Examples include Canada's moratorium on fracking; stricter standards for coal-fired power plants and the phasing out of nuclear energy in Germany; and a court order to clean up oil pollution in the Ecuadorian Amazon. The (threat of) multimillion-dollar claims act as insurance for fossil fuel companies against measures that aim to phase out oil, gas, coal and nuclear power, thereby impeding or derailing effective climate or other environmental policies.

Growing inequality and economic insecurity

The benefits of economic globalization are not evenly distributed. Over the last 30 years, more than half of all economic growth has gone to the richest five percent of

the world's population.¹² Research by Oxfam shows that as few as eight men own as much wealth as the 3.6 billion people who make up the poorest half of humanity.¹³ The poorest ten percent have not seen any progress in their incomes over the past 30 years. Many of these people have even experienced income losses or have lost their jobs due to the outsourcing of production to low-wage countries.¹⁴ Those who have benefited from globalisation are the middle classes in emerging economies, such as China and India, as well as the super-rich in the United States, United Kingdom, Japan, France, Germany, Brazil, Russia and South Africa. Those who have suffered as a result of globalisation are the poorest in sub-Saharan Africa, as well as the lower and middle classes in industrialised countries and transition (former communist) countries who have seen their incomes stagnate and sometimes decline.

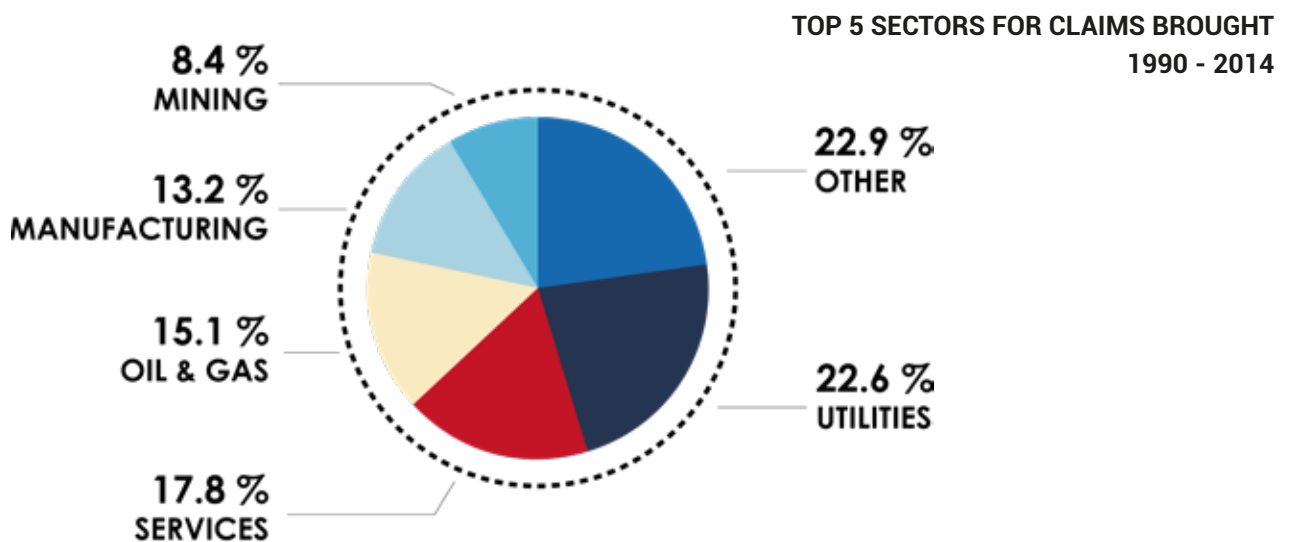


ISDS

Trade agreements often contain an 'investor-to-state dispute settlement' (ISDS) clause, which enables foreign investors to bypass the national legal system and submit multimillion-dollar investment claims to international tribunals when they want to challenge government measures or decisions. Multinational corporations have already filed hundreds of claims against governments for public health, environmental, or other public interest measures.

ISDS has been widely criticised for giving VIP rights to foreign investors through business-friendly tribunals while restricting governments' right to regulate in the public interest.

The European Commission is currently proposing a revised system for its trade agreements: the Investment Court System or ICS (featuring in the agreements with Canada and Vietnam) and the establishment of a Multi-lateral Investment Court (MIC). The ICS and MIC are more transparent than ISDS and adjudicators are publicly appointed. However, they still fall far short of what is needed, as fundamental problems of the system have not been addressed. It remains a one-way system that gives only rights and no obligations to companies. All substantive and far-reaching rights for investors (like 'fair and equitable treatment', 'legitimate expectations', 'indirect expropriation') remain untouched, and the system still allows international investors to bypass domestic courts.¹¹



Source: Wellhausen R., 2016. *Recent Trends in Investor-State Dispute Settlement*, *Journal of International Dispute Settlement*, 2016, 0, 1–19.

Corporate freedom from responsibilities leads to employment insecurity for workers. Globalisation makes it easier for companies to assemble or manufacture products or parts wherever the conditions are most favourable, eroding the negotiating position of many lower-skilled workers worldwide, which is reflected in their wages, labour conditions and in the flexibilisation of labour markets.¹⁵

Corporate capture of our democracies and the rule of law

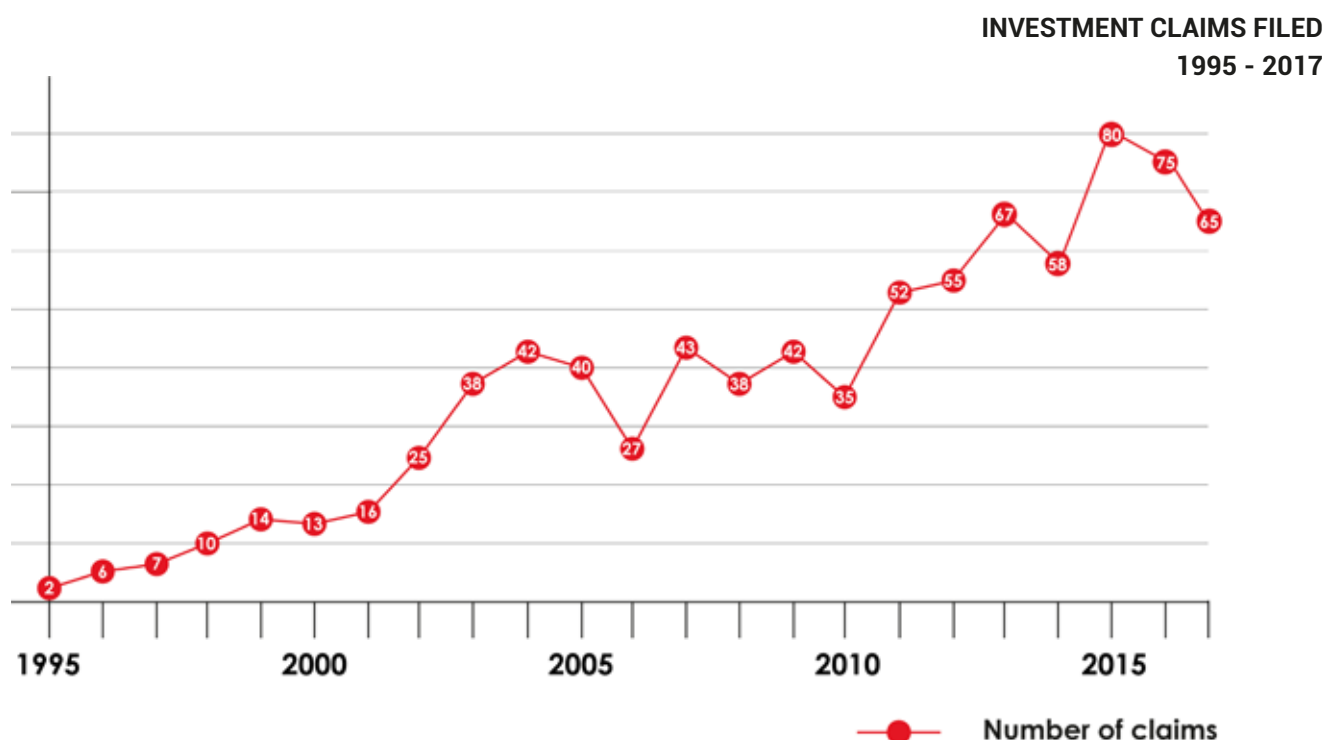
International trade agreements reduce the control that governments have over our economies. They contribute to the accumulation of companies' global power and influence

and establish excessive rights for multinationals. International companies benefit enormously from countries competing with each other to offer favourable conditions and enjoy investment protection through a parallel legal system. Faced with the strong position of multinationals, national democracies, especially in the Global South, can be left virtually powerless.

Multinationals have privileged access to trade negotiations, which enables them to access and even co-design international trade and investment rules.¹⁶ Recently, trade treaties have started to contain agreements to change national rules: so called 'non-tariff-measures'. Foreign international companies now use these agreements to push back against what they deem to be 'cumbersome barriers to trade', which

may include health rules, safety standards, environmental regulations, or labour laws.

International trade agreements ensure that corporate interests are better protected than the interests of workers, the environment or sustainable agriculture. Trade rules can be enforced at the World Trade Organisation (WTO) via tribunals, and investments are protected through binding and enforceable ISDS mechanisms. In contrast, in cases of environmental damage or human rights and labour violations, complaints mechanisms (such as the OECD guidelines for multinationals) lack binding enforcement mechanisms, effectively making the rules and standards voluntary.



Source: UNCTAD (2018), *Investment Dispute Settlement Navigator*, <http://investmentpolicyhub.unctad.org/ISDS/FilterByYear>.

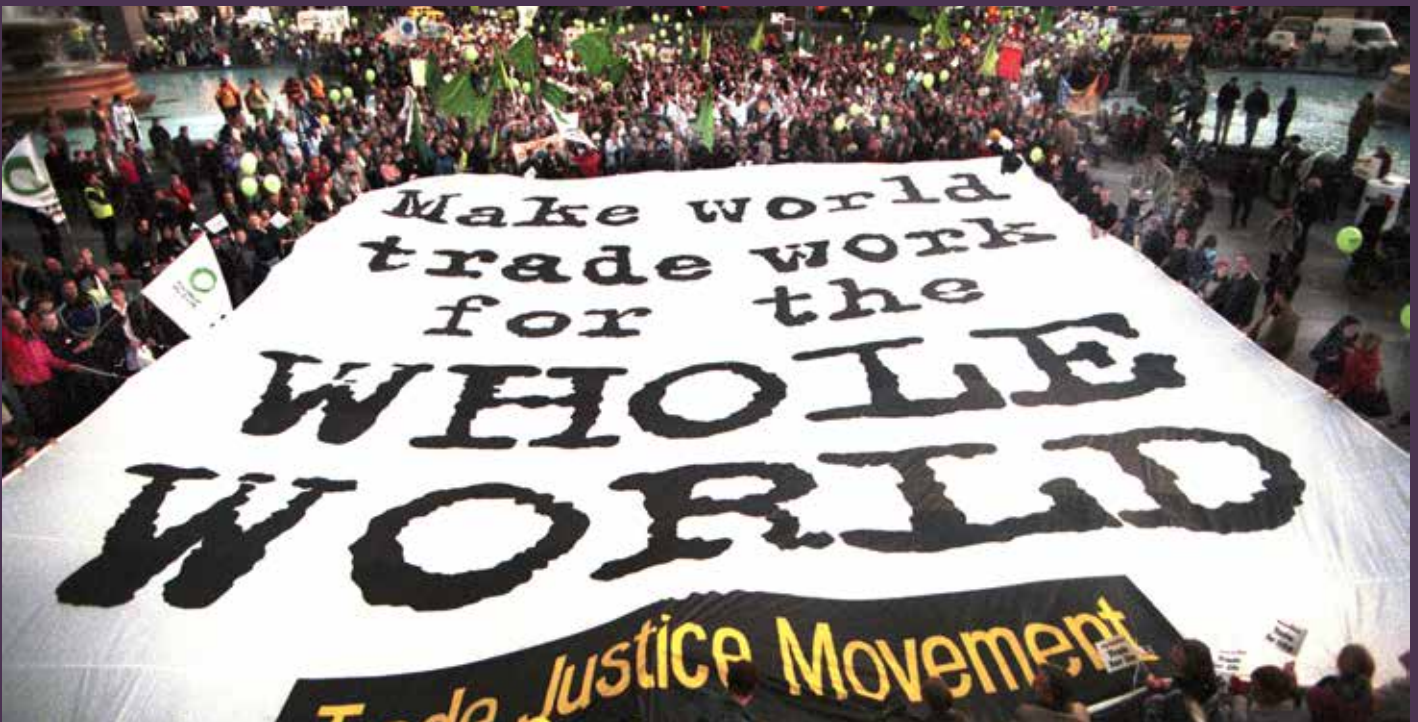
Regulatory cooperation

In CETA, the agreement between the EU and Canada, various 'joint committees' have been tasked with aligning regulations and standards – without appropriate parliamentary oversight. Harmonisation and mutual recognition processes ensure that rules and standards are assessed mainly in terms of their impact on trade and their costs to companies, and this exerts downward pressure on the rules and standards that aim to protect the welfare of people, animals and the environment.



WHAT WOULD THE IMPACT OF OUR ALTERNATIVE TRADE AGENDA BE?

What outcomes would we like to see if our proposals for a fair and sustainable trade and investment agenda were implemented? Our objectives are:



International trade and investment that promotes sustainable economies

In a truly sustainable economy, oil, gas and coal will have been replaced with green energy, our overall consumption will have been greatly reduced, and we will have become

more efficient in our use of all resources.¹⁷ We will reuse and recycle non-renewable resources in manufacturing and agriculture, and successfully prevent large-scale soil depletion, deforestation and pollution.

These proposals promote a transition from extractive economies towards just, fair, and sustainable economies.¹⁸

We aim to make sustainable energy more accessible while curtailing the use of fossil fuels and non-sustainable products. Food production will be more sustainable, and more locally and regionally oriented through the introduction of custom duties on products originating from intensive farming, calculated on the basis of the products' ecological and social impacts. Production processes will gradually become more sustainable, as the protection of industries and sectors threatened by environmental dumping is made easier. A race to the top for environmental standards will be initiated by providing preferential treatment for the most sustainable products and production processes. The 'polluter pays' principle will be respected and the most prosperous countries will support the sustainable development of countries in the Global South through knowledge transfers, cooperation and financial support.

A fair distribution of the benefits and costs of international trade

Any company's success is enabled, at least in part, by wider society. Businesses benefit from a wide range of public services and public goods ranging from education and science to infrastructure, regulatory standards and market rules. A fair distribution means that society – especially the least well off within it – benefits from international trade, while those profiting most – successful companies and rich individuals in particular – provide the means to transition to a sustainable economy.

Our proposals also go some way towards addressing the problem of the unequal sharing of costs and benefits. If our proposals are heeded, investors will be unable to challenge governments before extrajudicial tribunals, and the far-reaching protections that shield investors from democratic policy changes will be abolished. Productive and socially beneficial investments will be promoted over speculative investments, inter alia by a tax on international capital flows. In addition, companies operating internationally will not enjoy preferential tax rules in comparison with national companies, to ensure that the former contribute fairly to the countries in which they operate.

Democratic control over our economies

Our economies need to work for everyone. However, control over our economies has, to a large extent, been outsourced and offshored through intrusive trade and investment agreements, banks and powerful international institutions. New international treaties and agreements must be

established on the basis of a transparent and democratic process. The progress of negotiations must be reported on openly, and draft texts and proposals must be made publicly accessible. Government must regain the ability to place conditions on foreign investors – for instance, requirements to employ local workers; and the influence on domestic policy that trade agreements have accorded to multinational companies must be reduced. Companies must be held accountable internationally for human rights violations and environmental pollution.

Countries must gain the policy space needed to ensure that the greening of the economy results in domestic employment gains. This is essential, as workers in polluting sectors stand to lose their current jobs. The transition to fair and sustainable economies will create many jobs,¹⁹ but governments must not be constrained by trade rules when trying to ensure that there are employment opportunities for workers who have lost their jobs in the transition to the green economy.

Prosperity being less dependent on international trade

Our proposals will reduce the overall volume of international trade, but this is far from being a cause for concern, as there will be a shift in focus from unfettered growth to sustainable development. Sectors that are beneficial to society will be able to grow, while sectors that cause excessive damage, such as the fossil fuel industry and intensive livestock farming, will start to shrink. Economists, including the Nobel laureate Joseph Stiglitz, argue that new trade agreements exacerbate existing problems and advocate focusing on domestic investment.²⁰

There is sufficient wealth in the world to ensure a prosperous and dignified existence for all. For that to happen, we have to make sure that the benefits of our economic activity are distributed evenly.

Old and new treaties being reviewed

Many of these crucial measures are not possible within the current international trade and investment regime. It is therefore necessary not only to model new treaties on the proposals we will set out in chapter four, but also to fundamentally review the large number of existing trade and investment treaties, in order to bring them in line with the objectives of an equitable and sustainable economy.



SEVEN BUILDING BLOCKS FOR AN EQUITABLE AND SUSTAINABLE TRADE AND INVESTMENT AGENDA

The previous chapters outlined the objectives, prerequisites and principles that, in our view, should underpin a resetting of the trade agenda. This section deals with how these objectives can be achieved. Our trade agenda for an equitable and sustainable economy is based on seven building blocks, each with concrete proposals. These proposals aim to ensure that trade and investment contribute constructively to a healthy living environment, a just transition, the expansion of agro-ecology, and fair conditions for small and medium-sized enterprises and family farms in agriculture.

The seven building blocks discussed below form the basis for a radical revision of trade policy that places people and planet on a higher level than profit.



1

Moving towards an environmentally sustainable trade in clean goods and services

Current trade agreements facilitate the expansion of energy-intensive industry and intensive agriculture: sectors which, due to their dependence on fossil fuels, are responsible for a great share of the continuing increase in greenhouse gas emissions. Lowering trade barriers for goods and services regardless of their climate footprint encourages the expansion of polluting industries and agriculture.²¹ Furthermore, the construction of the infrastructure necessary for transporting goods around the globe has a devastating impact on the environment and contributes significantly to climate change.

Our proposal

We would like to see a fair and sustainable trade policy that discourages trade in unfair and polluting goods and services and promotes trade in fair and clean goods and services. Countries must remain able to protect sustainable industries, particularly those that are emerging, in order to make them competitive and achieve our goal of living on a sustainable and just planet.

This includes the following interventions:

- ▶ The goods and services that are responsible for high levels of greenhouse gas emissions should be excluded from liberalisation in trade agreements. Tariff reductions for 'green goods' should be established, while ensuring that producers in the Global South are not unduly affected. Definitions and criteria must be clear and specific, as inadequate definitions

could unintentionally stimulate trade in damaging goods.²² On the other hand, governments must be able to continue using tariffs to foster the development of domestic sustainable and climate-friendly industries.

- ▶ A carbon tax on goods produced in developed countries that remain outside the international climate change mitigation regime and do not place an equivalent price on carbon emissions should be levied at external borders as an adjustment mechanism (Border Carbon Adjustment). The revenues raised by the carbon tax should be reinvested in the energy transition of countries with historically low emission levels to raise their prosperity through a greening of their industries and energy provision.²³

- ▶ A tax on aviation and shipping transport emissions should be

introduced. Current trade agreements increase greenhouse gas emissions due to their role in the expansion of maritime and air transport, which are sectors that are not subject to effective greenhouse gas reduction efforts.²⁴

- ▶ Countries' ability to tax products that have significant environmental impacts at their production, processing, transportation and end-of-life stages must be safeguarded. An equivalent levy should be imposed when these products and services are imported.

- ▶ The introduction of a ban on (production, transport and processing) subsidies for fossil fuels, as these promote the use of polluting energy.

- ▶ A ban on products with severe negative human rights impacts.



2

Working towards sustainable investment

Current trade treaties provide foreign investors with far-reaching protection. They enable them to file claims before international arbitration tribunals (circumventing national legal systems) if they consider that government regulations or decisions unjustly affect them. Vague and broadly formulated provisions such as ‘fair and equitable treatment’ and ‘legitimate expectations’, as well as protection against ‘indirect expropriation’ have provided the legal basis for hundreds of claims by multinationals relating to climate, environmental, public health and other public interest areas against governments around the world.²⁵ There is a real risk that governments will hold back from tabling new bills or developing stricter standards to avoid large claims for compensation by foreign investors.

This ‘regulatory chill’ can put the brakes on ambitious climate and sustainability policies, as the case of the lowering of water protection measures in Germany after an ISDS claim by coal power plant operator Vattenfall shows.²⁶ Fossil fuel companies are increasingly resorting to investment arbitration, demanding financial compensation for the implementation of climate and environmental policies. Perversely, foreign investors cannot be held accountable at the international level for (their complicity in) the violation of human rights or environmental destruction, due to the lack of legally binding and enforceable obligations on them.

Our proposal

A fair and sustainable trade policy steers clear of this type of far-reaching, one-sided protection of multinationals. Investment should not generate profit for a small group of beneficiaries, but result in benefits for society as a whole. New trade agreements must aim to encourage investments that contribute to sustainable development, the creation of decent work and the transfer of know-how and clean technology. Governments must regain and retain the policy space necessary to regulate in the public interest (e.g. in the fields of sustainable development, climate policy, human rights, public health, labour rights and environmental protection) and to introduce and enforce rules that allow citizens to hold companies to account for their actions.

This entails the following:

- Trade and investment agreements must contain binding and enforceable obligations for investors. Foreign investors and their subsidiaries entering a market should become ‘economic citizens’ of the host country. Instead of far-reaching investor rights, they would be under obligations not to pollute the environment, violate human rights, engage in land grabbing, or be involved in corruption.

- In the case of violations, European legislation must ensure that affected communities and civil society gain access to legal remedy, both in the home and the host country, so that

multinationals and their subsidiaries can be held legally accountable when they are in breach of their obligations. At the international level, governments must work actively towards a binding UN Treaty on transnational corporations and other business enterprises with respect to human rights.²⁷

- Trade and investment agreements should not grant rights to foreign investors. Investors who wish to challenge a government measure are able to do so in domestic courts; they ought not to have standing in the dispute settlement mechanism of the agreement. Foreign investors should carry their own investment risk and can protect themselves, if necessary, with insurance.



► Governments should set performance requirements for foreign investors, such as using local resources, employing local workers, engaging in joint ventures with local entrepreneurs, and transferring green technology.²⁸ Requirements such as these aim to ensure that investments correspond to local needs and to embed foreign investment in local and national economies.²⁹ Obligations of this kind are important for sustainable development strategies

and help to maximise benefits for local communities.

► International capital flows should be effectively monitored and be subject to taxation. Governments should retain the right to impose capital controls in order to avert or mitigate financial crises.³⁰

► Trade agreements must promote the upward harmonisation of corporate tax

levels and include measures to end tax evasion. Governments need to combat tax evasion and impose adequate levels of taxation and royalties. The current trend of reducing corporate taxes in many EU member states has led to a race to the bottom, which must be reversed. Trade agreements should not allow for foreign investors to enjoy more favourable tax rulings and conditions than national companies and domestic SMEs.



3

Guaranteeing high standards to protect people and the planet

As trade tariffs, with the exception of agriculture, are already relatively low, recent trade agreements focus increasingly on other so-called 'trade barriers', often national or European rules and regulations. The proposals for TTIP and JEFTA as well as the CETA text include provisions on regulatory cooperation. These provisions aim to harmonise or mutually recognise not only existing but also future regulations and procedures, in order to reduce 'unnecessarily burdensome, overlapping or divergent regulations'.³¹

Through the mutual recognition of each other's regulatory frameworks as equivalent, products that do not meet European standards may yet find their way onto European markets.

European producers, manufacturers and farmers may as a result be exposed to competition from cheaper products produced according to less stringent food security, environmental, animal welfare, labour, and consumer protection standards.³²

Additionally, the European precautionary principle, which prescribes that products should only be allowed onto European markets when proven to be safe for consumers, the environment and public health, was insufficiently protected during the TTIP negotiations and is not mentioned in CETA.³³ Regulatory cooperation in trade agreements threatens to weaken European norms and standards. It also gives corporate lobbyists additional influence and opportunities to frustrate or weaken new regulations, or even to ensure that they are abandoned altogether.³⁴

Our proposal

Exchanging best practices and aligning regulatory standards in the public interest can be of value. However, for this to be the case, regulatory cooperation cannot have as an overriding objective reducing costs for corporations and boosting trade but, rather, protecting people and the planet and improving quality of life. Social and environmental standards must not be viewed as barriers to trade, but as valuable prerequisites for a clean and sustainable future.

Negotiations and agreements on regulatory standards in any given policy field should remain the responsibility

of experts and politicians working in these areas, and not of trade negotiators. New regulations and standards should be evaluated in terms of their impact on climate, sustainability and other public interest objectives, rather than of in terms of their contribution to increasing trade and reducing costs for business.

This requires the following:

- ▶ Regulatory cooperation must not lead to a weakening of rules and standards. It must be used as an instrument to encourage a race to the top for sustainability, with governments aligning their

regulations with the aim of achieving the highest possible standards.

- ▶ Regulatory cooperation must take place in a democratically legitimised and transparent manner, and should be led by experts in the areas of public health, labour and human rights, food security, environmental and climate policy, and other areas of public interest. Setting up regulatory cooperation dialogues in specific areas should be led by the relevant regulators in order to ensure that they strengthen sustainability standards instead of focusing on cost reduction for companies. These discussions should not happen as part of a free trade agreement, and



full parliamentary scrutiny must be guaranteed throughout.

► Regulatory cooperation commitments must not interfere with governments adopting further-reaching measures to protect people and the planet.

► The application and safeguarding of the precautionary principle must be explicitly enshrined in trade agreements in order to protect the environment, public health and consumers.³⁵

► Regulatory cooperation must take place on a strictly voluntary basis and must not be subject to dispute settlement. Governments must retain their right to regulate more ambitiously in the future.



4

Supporting international agreements on climate change and sustainability

Current trade and investment treaties restrict the policy space available to governments to comply with their international obligations to mitigate climate change, promote sustainable development and protect human rights. The binding and legally enforceable trade and investment rules in European trade treaties stand in sharp contrast to the voluntary sustainability clauses relating to labour and environmental standards in the same treaties. Sustainability clauses are generally weak and lack the concrete commitments necessary to arrive at sustainable and climate-friendly policies. In the case of violations of the sustainability clause, parties can usually only resort to non-binding and therefore non-effective consultations and complaints procedures. This makes it virtually impossible for the affected communities and civil society to successfully challenge the violations of these clauses.³⁶

Our proposal

An equitable and sustainable trade agenda should actively contribute to international agreements concerning the protection of human rights, labour rights, and the environment. These values are fundamental to the European Union's legal framework and should delineate the implementation of European trade policy.³⁷ International trade and investment rules must not undermine these values.

This implies:

► Trade agreements should contain binding sustainability clauses. Sustainability chapters should explicitly refer to key international treaties on labour and human rights, climate and the environment.³⁸ This must go hand-in-hand with strengthening the monitoring and compliance mechanisms of these treaties, as well as with providing support for their implementation in the Global South.

► Adopting, implementing and adhering to key international treaties should be prerequisites for engaging in trade negotiations. Domestic laws and regulations must be in line with fundamental labour, environmental and human rights treaties, and a scorecard should monitor the implementation of the treaties by the trade partners.³⁹

► Sustainability obligations should be enforceable by the agreement's dispute settlement mechanism. The enforcement regime should take into account the level of development of the parties and ensure equal access to justice. Remedies should contribute towards the reparation of damages.

► A new EU regulation should be issued that allows individuals, communities, civil society and trade unions to submit complaints to the European Commission directly about any breach of human

rights, social and environmental obligations within the context of specific trade agreements, with a duty for the Commission to instigate an investigation and take action.⁴⁰

► New trade agreements should contain a broad exemption clause for public interest policies, which would imply that public interest measures are exempt from the obligations of the treaty. Such an exemption would prevent public interest measures from being challenged through either the state-state dispute settlement mechanism or at the WTO.⁴¹

► New trade agreements should contain a supremacy clause to ensure that, in case of a conflict, international human rights and climate treaties (and other agreements on sustainable development) always take precedence over trade and investment rules.⁴²





5

Promoting local and sustainable economies

Current trade agreements impede governments from building and strengthening local, sustainable economies. Opening up markets by lowering tariffs, providing additional market access and protection for foreign investors puts pressure on local emerging industries and favours transnationally-operating companies. In addition, current trade rules encourage governments to opt for the lowest-priced tenders in public procurement, while sustainability criteria in government contracts aiming to promote the use and development of sustainable energy are labelled 'unnecessary trade barriers'.⁴³

Our proposal

Subsidies and other incentives are important tools for the development and strengthening of local and sustainable economies. Governments around the world should start making use of special arrangements for the procurement of goods and services to promote important public interest objectives, such as consumer protection, human rights, economic development, environmental protection, public health, and ethnic and gender equality. For example, governments could use so-called 'buy local' schemes in combination with clear sustainability criteria for government contracts in order to boost local industries and employment. Such programmes are important for generating public and political support for the transition to a sustainable economy. Governments should scale up their support for local and regional goods and services as well as incentivise lo-

cal re-use sectors in order to decrease reliance on the consumption of new goods.

For this, we propose that:

- ▶ New trade agreements should include the use of specific sustainability criteria for public procurement. The application of these criteria should be exempt from trade disputes under the broad exemption clause as described above under item four.

- ▶ New trade agreements should allow buy-local schemes, e.g. in the sustainable food, health or other sectors, to be pursued by public administrations .

- ▶ Subsidies and other incentives for the production and use of sustainable energy and clean goods and services should be protected from public or

investment claims under the broad exemption clause outlined under item four.

- ▶ Governments should be able to use tariffs and other trade instruments, such as variable import charges, to promote the local production and development of sustainable goods and services, and be able to set high tariffs on products with large environmental footprints, including electronic goods and waste materials.

- ▶ Countries in the Global South must be able to implement industrial policies to shield domestic economic sectors from foreign competition, to strengthen local economies and to introduce measures to promote their transition towards a sustainable development model.



6

Promoting sustainable agriculture

Increasing competition by opening up agricultural markets promotes the intensification of industrial agriculture and livestock production, which has detrimental impacts on people, animals and the environment. Tariff reductions in treaties such as TTIP and CETA confront European farmers with cheap agricultural imports that have been produced to much lower environmental, food safety, labour and animal welfare standards. This unfair competition adversely impacts family farms and initiatives aiming to promote fair and sustainable food production. Trade liberalisation and the absence of adequate market regulation strengthen the position of large agricultural, processing and trading companies.⁴⁴ Trade agreements enable these actors, aided by subsidies, to dump their excess produce onto the global market. This can force small farmers to produce below their cost price, depriving small farmers, in the Global South in particular, of the means to make a living.

Agricultural upscaling and intensification also contribute to rising greenhouse emissions. Currently, international agricultural production and activities associated with it are responsible for one third of global greenhouse gas emissions.⁴⁵ Ever increasing competition for arable land (not only for food crops, but also for animal fodder and biofuels) results in deforestation, expropriation and malnourishment among small-scale farmers, predominantly in Southern countries.

Our proposal

An equitable and sustainable trade agenda must contribute to the transition to agro-ecological and sustainable agriculture; that is to say, a fair and forward-looking food system that respects planetary boundaries.⁴⁶ Regions need to become more self-sufficient when it comes to products that can be locally produced; growing protein and oil crops in particular are viable alternatives to importing soybeans, palm oil and biofuels, as the latter three have devastating effects on farmers and the environment in producer countries. Becoming more self-sufficient should take place in combination with reducing meat production and consumption. Within Europe, production should take place as close to consumers as

possible, in order to boost local and regional trade. Increasing the fairness of food distribution is imperative, and the right to food and food sovereignty must be respected.⁴⁷

This entails:

- Raising tariffs and lowering import quotas to better shield local markets from cheap imports that undermine food security and the livelihoods of farmers.⁴⁸ Farmers must be able to sell at stable prices that allow them to cover their costs. Environmental and social costs, as well as costs relating to animal welfare, must be reflected in the consumer price. Southern countries must be able to retain the policy space

needed to develop and protect local and regional food chains and markets, which would serve to diversify agricultural production and food produce further, and help to build up food reserves.

- The trade in agricultural commodities should be reduced, in order to allow other countries to develop their own food systems and to reduce Europe's resource footprint to equitable levels.⁴⁹ In addition, production and processing methods should be recognized as legitimate reasons to deny market access to certain imports.

- Reducing tariffs for the import of ecologically and sustainably produced tropical foods that cannot be produced in



Europe. Trade rules must be adjusted to ensure that production is sustainable and that a fair price is paid to producers. The EU should also provide exporting countries with financial support and the know-how required for them to increase production and export standards without compromising local livelihoods

and food security.

► Reforming intellectual property rights in order to safeguard farmers' right to seeds.⁵⁰ According to the UN Food and Agriculture Organization, genetic diversity in agriculture and animal husbandry is crucial to ensuring that our agricultu-

ral production is equipped to respond to the challenges of climate change.⁵¹ Governments must therefore urgently sign on to the International Treaty on Plant Genetic Resources for Food and Agriculture and implement its conditions, which protect the right to store and share seeds.⁵²



7

Ensuring democratic scrutiny and transparency

Trade and investment treaties currently have significant impacts on the policy space democracies have to shape their economies. However, citizens and parliaments have little say in how these treaties are concluded. The European Parliament, strictly speaking, only has the right to approve or reject a trade treaty after the negotiations have been concluded.⁵³ Negotiations largely take place behind closed doors and negotiating texts are kept away from the general public. Concurrently, corporate lobbyists often have preferential access, enabling them to exert disproportionate influence over the trade agenda.⁵⁴

Our proposal

In order to ensure that an equitable and sustainable trade agenda has democratic legitimacy and social support, we must not only change the substance of trade agreements, but also the way in which they are crafted. European citizens, and the parliaments and civil society organizations that represent them, must be given more opportunities for dialogue and meaningful participation throughout the life cycle of a trade agreement.

In practice, this implies that:

- ▶ The European Commission must conduct full-scale, transparent public consultations before drafting a mandate for a trade negotiation. The draft mandate should be subject to parliamentary debate and include the full participation of civil society.
- ▶ All negotiating proposals and draft texts tabled by the European Commission and its negotiating partner must be made public.⁵⁵
- ▶ The European Parliament should be involved in drafting and approving the negotiating mandate. It should have the power to submit amendments to draft text proposals, which must then be brought to the negotiating table. The ratification of a treaty must always be preceded by a full parliamentary debate.
- ▶ National governments should submit the draft mandate to their national parliaments for discussion and approval; national parliaments must retain full competence over the process for approval. So-called 'provisional application' should no longer be an option.⁵⁶
- ▶ Equitable and transparent consultation and participation must be guaranteed for all stakeholders at every stage of the process, from the drafting of the mandate to ratification. Under-represented and smaller organisations should be supported in order to be able to participate.
- ▶ Trade agreements should be subject to independently conducted ex ante and ex post sustainability and human rights impact assessments, which should include consultations with stakeholders. The assessments should be made public, and their outcomes should condition negotiations. Once a treaty comes into effect, it should be accompanied by periodic, comprehensive evaluations to map its impacts. Parliaments would then be able to use these outcomes to submit new proposals and demand the negotiation of amendments to the treaty.
- ▶ Future trade agreements must contain a termination clause, implying that a treaty can be terminated if thorough evaluations show that its effects are predominantly adverse. Long survival clauses – extending as far as 20 years in the case of investment protection – must become a thing of the past.



Conclu- sion

URGENTLY NEEDED: A NEW WAY OF DOING TRADE



Many rules governing trade and investment today hinder efforts to achieve more sustainable economies. A new trade regime is needed which can help address global challenges. We urgently need a system which contributes to solving problems like accelerating climate change, a broken agricultural model and a loss of trust in democratic processes, rather than aggravating them.

In this paper we outlined some of our key proposals for a fair and sustainable trade system:

- ▶ **Promoting and fostering the trade of sustainable goods and services** rather than focusing on increasing trade flows;
- ▶ **Creating a framework to hold corporations to account internationally** rather than providing investors with more privileges;
- ▶ **Improving standards internationally** rather than facilitating their weakening by corporate lobbyists;
- ▶ **Strengthening the implementation of international agreements on climate change and sustainability** rather than creating trade rules that override them;
- ▶ **Fostering local economies** rather than dispersing production and consumption ever more across the globe;
- ▶ **Supporting sustainable agriculture and promoting regional trade** rather than a global trade in agricultural commodities;
- ▶ **Submitting trade negotiations to democratic scrutiny** rather than negotiating the agreements in secret.

We call on the European Commission, the European Parliament, and national governments and parliaments to radically change the direction of trade and to put sustainability and equity at the heart of European trade policy. Until this happens, new unfair and unsustainable trade agreements – whether already concluded or still under negotiation – should be rejected. Only with this kind of fundamental change in how Europe trades can we construct a more democratic, fair and sustainable Europe.



- 1.** 'Public interest policies' are defined here as measures with the objective of addressing all basic needs; environmental protection; public health; food safety and consumer protection; financial stability; protection of fundamental freedom; social, economic, cultural and gender equality; access to technology; economic development; and the protection of workers.
- 2.** World Bank, 2016. Potential Macroeconomic Implications of the Trans-Pacific Partnership. Global Economic Prospects, January 2016, Ch. 4.
- 3.** Yoshida, S., 2014. Climate Change, Trade and Emissions Leakage: Trade Measures and Climate Agreements. CIERP, Tufts University, p.7.
- 4.** Hickey, R., 2014. Economist Jeffrey Sachs Says NO to TPP and TAFTA Trade Deals. Huffington Post, 15 September 2014.
- 5.** McGlade, C., Elkins, P., 2015. The geographical distribution of fossil fuels unused when limiting global warming to 2°C. Nature 517, 187–190, 8 January 2015.
- 6.** WWF, 2016. Living Planet Report 2016. WWF, Gland, Switzerland, p.75, figure 32.
- 7.** Fernández-Amador, O., Francois, J. F., Tomberger, P., 2016. Carbon dioxide emissions and international trade at the turn of the millenium. Ecological Economics 125, 14–26.
- 8.** European Parliament, 2015. Emission Reduction Targets for International Aviation and Shipping. Policy Department Study for the ENVI Committee, November 2015.
- 9.** Sierra Club, 2016. Climate Roadblocks: Looming Trade Deals Threaten Efforts to Keep Fossil Fuels in the Ground. Sierra Club, March 2016.
- 10.** United Nations data shows that, between 2011 and 2016, 92 out of the 337 new known ISDS cases dealt with measures relating to mining, oil and gas extraction and fossil fuel-based energy production. Online: UNCTAD Investment Dispute Settlement Navigator, <http://investmentpolicyhub.unctad.org/ISDS> [accessed: 4 January 2018].
- 11.** For additional information see: Seattle to Brussels Network, ISDS: Courting foreign investors, September 2015; Seattle to Brussels Network, ISDS at a dangerous crossroads, March 2017; Friends of the Earth Europe, The Multilateral Investment Court: Locking in ISDS, November 2017.
- 12.** Branko Milanovic, 2016. Global inequality: a new approach for the age of globalization. Cambridge, Massachusetts, Harvard University Press, 2016.
- 13.** Oxfam, 2017. An economy for the 99%. Oxfam briefing paper, published by Oxfam GB for Oxfam International, January 2017. DOI: 10.21201/2017.8616.
- 14.** Branko Milanovic, 2016. Global inequality: a new approach for the age of globalization. Cambridge, Massachusetts, Harvard University Press, 2016.
- 15.** ILO, IMF, OECD and World Bank, 2015. Income inequality and labour income share in G20 countries: trends, impacts and causes. Prepared for the G20 Labour and Employment Ministers Meeting and Joint Meeting with the G20 Finance Ministers, Ankara, Turkey, 3-4 September 2015.
- 16.** Research by lobby watchdog Corporate Europe Observatory (CEO) shows that the doors of the European Commission are always open to lobbyists for multinationals. Of the 600 EU lobby meetings regarding TTIP in 2012 and 2013, 88 percent were with corporate lobbyists. CEO, Who lobbies most on TTIP? <https://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip> [accessed 19 January 2018].
- 17.** Friends of the Earth rejects all false solutions to climate change including nuclear, carbon capture and storage (including BECCS - BioEnergy with Carbon Capture and Storage), REDD (Reducing Emissions from Deforestation and forest Degradation), big dams, agrofuels, large-scale biomass, carbon trading and offsetting. False solutions are already causing human rights and environmental rights violations, and they distract from the real societal change that is needed.
- 18.** Such societies are in harmony with nature and are based on environmental, social, economic and gender justice. We propose five economic justice solutions to transform our global economy: providing public services for all through tax justice; scaling up economies based on social ownership and cooperativism; supporting local markets and fair trade; valuing and measuring the wellbeing of people and planet; and ensuring binding rules to dismantle the power of big business. FoE International, 2014. System Change Guidelines.
- 19.** Greenpeace International, 2015. Energy [R]evolution: A Sustainable World Energy Outlook 2015. Global Wind Energy Council, SolarPower Europe, September 2015.
- 20.** Stiglitz, J. E., 2016. How to Restore Equitable and Sustainable Economic Growth in the United States. American Economic Review 106(5) pp. 43-47.
- 21.** Andrew, R. M., Davis, S. J., Peters, G. P., 2013. Climate policy and dependence on traded carbon. Environmental Research Letters 8(3), 24 July 2013.
- 22.** The proposal to reduce green goods tariffs in the context of an Environmental Goods Agreement (EGA) between 17 WTO members, jointly representing 90 percent of global trade in green goods and services, lacks a good definition and selection criteria for what qualifies as green goods. As a result, products like asbestos, aircraft engines and biofuels are eligible for a reduction in tariffs. Transport & Environment, 2015. Briefing: Environmental Goods Agreement. Brussels, September 2015.
- 23.** WTO members must ensure that a carbon tax does not constitute a violation of the prohibition on excessive taxation of imported goods under GATT Article III:2. To prevent problems with WTO law, member countries should adopt a so-called permanent peace clause to allow governments to adopt a carbon taxation and other measures which aim to combat climate change.
- 24.** Keen, M., Parry, I., Strand, J., 2013. Planes, Ships and Taxes: Charging for International Aviation and Maritime Emissions. Economic Policy, 28(76) pp. 701-749.
- 25.** The number of investment arbitration claims has increased significantly over the past few years. There are now more than 800 known cases, with

2013-2016 being the four years with the highest number of cases recorded (full numbers for 2017 have not been published yet). UNCTAD, 2017. Special update on Investor-State Dispute Settlement: Facts and figures. IIA Issue Note, No. 3, 2017, November 2017.

26. Verheyen, R., 2012. The Coal-fired Power Plant Hamburg-Moorburg. A briefing note on ICSID proceedings by Vattenfall under the Energy Charter Treaty and the result for environmental standards, April 2012.

27. See: Business and Human Rights Resource Centre: Binding Treaty. <https://business-humanrights.org/en/binding-treaty> [accessed 19 January 2018].

28. Countries with high historic emission levels must transfer green technology to countries with low historic emission levels, as per the agreements on the transfer of technology in articles 11 and 12 of the Paris Climate Agreement.

29. Nikiéma, S. H., 2014. Performance Requirements in Investment Treaties. Best Practices Series, International Institute for Sustainable Development, Winnipeg, Canada, December 2014.

30. The IMF recognises that the temporary imposition of direct capital controls can help manage volatile international capital flows. The IMF also acknowledges that clauses in current trade and investment agreements curtail the policy pace for governments to guarantee financial and macroeconomic stability, e.g. Korinek, A., Sandri, D., 2015. Capital Controls or Macprudential Regulation? IMF Working Paper No. 15/218, October 2015.

31. Article x1(2)(c) of the proposal of the European Commission for regulatory cooperation in TTIP: TTIP-EU Proposal for Chapter: Regulatory Cooperation, March 2016. See also: TTIP-EU Proposal for Chapter: good Regulatory Practices, March 2016; CETA Chapter 21: Regulatory Cooperation.

32. TTIP en landbouw-coalitie, 2016. TTIP en CETA: een gevaar voor de hoogwaardige Europese en Nederlandse landbouw, veehouderij en voedselvoorziening. Juli 2016. Manifesto - Keep the farm TTIP- and CETA –free, January 2017 https://www.tni.org/files/publication-downloads/manifesto_-_keep_the_farm_ttip-_and_ceta-free.pdf

33. The US and Canada successfully challenged Europe's precautionary principle at the WTO on several occasions. Both Europe's import ban on American and Canadian beef produced with the use of growth hormones, as well as Europe's moratorium on market access for genetically modified organisms were found to be in breach of the WTO's Agreement on Sanitary and Phytosanitary Measures (SPS). Trade agreements like TTIP and CETA follow the WTO framework, so that the precautionary principle is insufficiently guaranteed. Stoll, P.-T., et al., 2016. CETA, TTIP and the EU precautionary principle: legal analysis of selected parts of the draft CETA agreement and the EU TTIP proposals. Study commissioned by Foodwatch, June 2016.

34. Corporate Europe Observatory and Lobby Control, 2016. Dangerous Regulatory Duet. How Transatlantic regulatory cooperation under TTIP will allow bureaucrats and big business to attack the public interest. January 2016.

35. The precautionary principle is enshrined in article 191 of the Treaty on the Functioning of the EU (TFEU).

36. Marx, A., Ebert, F., Hachez, N., Wouters, J., 2016. Dispute Settlement in the Trade and Sustainable Development Chapters of EU Trade Agreements. March 2017. For an analysis of the sustainability chapters in CETA, see: PowerShift and the Canadian Centre for Policy Alternatives, 2016. Making Sense of CETA. 2nd Edition, September 2016.

37. Article 21 of the Treaty on European Union (TEU) commits the EU to protect and promote, inter alia, human rights, democracy and the rule of law, the sustainable economic, social and environmental development of countries in the Global South, the eradication of poverty, protecting and improving the condition of the environment, and sustainable management of natural resources globally. Article 205 of the Treaty on the Functioning of the European Union (TFEU) confirms that these principles also apply to EU trade policy.

38. These include: the eight Core Conventions of the International Labour Organization (ILO); the main multilateral environmental agreements, including the Paris Climate Agreement, the Montreal Protocol and the Vienna Convention on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention on Biological Diversity (CBD); and the key human rights treaties, such as the Universal Declaration on Human Rights, the Vienna Declaration and Plan of Action of the World Conference on Human Rights, and the International Covenant on Economic, Social and Cultural Rights. For a comprehensive list of international treaties on labour, the environment and human rights, see: Krajewski, M., and Hoffmann, R. T., 2016. Alternative Model for a Sustainable Development Chapter and related provisions in the Transatlantic Trade and Investment Partnership (TTIP), August 2016; and ClientEarth and Transport and Environment, 2015. Sustainable Development and Environment in TTIP. October 2015.

39. Transport and Environment, 'Trade and Sustainable Development: A chance for innovative thinking', October 2017.

40. Client Earth, 2017. A formal complaint procedure for a more assertive approach towards TSD commitments. October 2017.

41. The existing exemption clauses in the current trade treaties do not provide sufficient guarantees to adequately safeguard such public interest measures. These clauses are based on the dated GATT Article XX of 1947, and contain a closed list of limited policy areas that governments can rely on in strictly circumscribed conditions. For different approaches to how to phrase a broad exemption clause in the public interest, see, for example, Van Harten, G., 2015. An ISDS Carve-Out to Support Action on Climate Change. Osgoode Legal Studies Research Paper No. 38 11(08), September 2015. This 'carve-out' would have to be expanded to cover general public interest measures as defined in footnote 1; Krajewski, M., Hoffmann, Alternative Model for a Sustainable Development Chapter and related provisions in the Transatlantic Trade and Investment Partnership (TTIP). August 2016; Krajewski, M., 2017. Ensuring the Primacy of Human Rights in trade and Investment Policy: Model Clauses for a UN Binding Treaty on Transnational Corporations, Other Businesses and Human Rights. March 2017; ClientEarth, 2017. Towards a more diligent and sustainable system of investment protection. March 2017.

42. For an elaboration on such a 'supremacy clause', see Krajewski, M., 2017, Ensuring the Primacy of Human Rights in trade and Investment Policy: Model Clauses for a UN Binding Treaty on Transnational Corporations, Other Businesses and Human Rights. March 2017; ClientEarth, 2017. Towards a more diligent and sustainable system of investment protection. March 2017.

43. See, for example, Article 19.9.1 of the CETA chapter on government procurement; and Article X.9.1 of the proposed TTIP chapter on government procurement. The clauses in these chapters are modelled on the plurilateral Agreement on Government Procurement in the WTO, WTO Revised Agreement on Government Procurement. CETA article 19.9.9 allows the use of 'environmental characteristics' as one of the evaluation criteria for awarding govern-

ment contracts. However, Article 19.14.5 (a) of the same chapter states that a contract must be awarded to the supplier with the 'most advantageous' tender. This provision is not further defined and may be used to side-line more expensive but more environmentally friendly tenders. PowerShift and the Canadian Centre for Policy Alternatives, 2016. Making Sense of CETA. 2nd Edition, September 2016, pp. 64-65.

44. See: Institute for Agriculture and Trade Policy, 2016. Selling off the farm: corporate meat's takeover through TTIP. 11 July 2016.

45. Research by the Consultative Group on International Agricultural Research (CGIAR). Gilbert, N., 2012. One-third of our greenhouse gas emissions come from agriculture. Nature News, 31 October 2012. Figures by the UN's Food and Agriculture Organization show that the emissions of methane and nitrous oxide from livestock and fertilizer in crops such as corn and soy are the main sources of agricultural emissions. An Oxfam report shows that global production of five agricultural products - rice, corn, soybeans, wheat and palm oil - emits more greenhouse gases than all individual countries outside the United States and China combined.

46. Milieudefensie, 2015. Een gezonde en eerlijke landbouw met toekomst. Amsterdam, Netherlands, January 2015. See also: iPES Food, 2016. From Uniformity to Diversity. A paradigm shift from industrial agriculture to diversified agroecological systems. International Panel of Experts on Sustainable Food systems. June 2016.

47. Food sovereignty is the right of peoples to a healthy diet, adapted to local cultures; the right of peoples to the use their own seeds, soil, water, biodiversity, as well as the right of peoples to define and control their own agricultural and nutritional systems without damaging other peoples. Oxfam-Solidariteit, 2008. Voedselsoevereiniteit: Een Agenda Voor De Toekomst. October 2008.

48. At the WTO, Southern countries are advocating for wide application of a Special Safeguard Mechanism, which would allow them to temporarily raise tariffs to counter dumping of cheap imports in order to protect local farmers and food systems. Raja, K., 2016. Developing countries stress on importance of SSM. SUNS 8240, 13 May 2016.

49. See: TTIP en landbouw-coalitie, 2016. TTIP en CETA: een gevaar voor de hoogwaardige Europese en Nederlandse landbouw, veehouderij en voedselvoorziening. Juli 2016. Manifesto - Keep the farm TTIP- and CETA -free, January 2017 https://www.tni.org/files/publication-downloads/manifesto_-_keep_the_farm_ttip-_and_ceta-free.pdf

50. CETA Article 20.31 commits Canada and the EU to comply with the International Convention for the Protection of New Varieties of Plants (UPOV 1991). This convention prohibits farmers and breeders/growers from stocking, re-using or exchanging protected seeds, forcing them to purchase new seeds every season. Under the same CETA article, the EU and Canada also commit to the promotion of UPOV 1991, which involves convincing third countries to join the convention. This favours large seed companies such as Monsanto and Syngenta, and poses a threat to food security, particularly in Southern countries. Chow, H., 2016. CETA's threat to seed freedom. Global Justice Now, 14 October 2016.

51. United Nations Food and Agriculture Organization, 2015. Making genetic diversity part of climate change adaptation. FAO News, 24 November 2015.

52. International Treaty on Plant Genetic Resources for Food and Agriculture, <http://www.fao.org/plant-treaty/en/> . The FAO urges countries to sign this treaty and implement its clauses on the rights of farmers to maintain genetic resources in order to be able to adapt to climate change.

53. The role of European institutes in international trade negotiations is laid down in Article 207 and Article 218 TFEU. Where the European Commission and the Council have formal powers to draw up and approve negotiating mandates, and give guidance during negotiations, the European Parliament will only be indirectly involved, with the European Commission keeping them periodically informed about the progress of the negotiations (Article 207 (3) TFEU).

54. Research by lobby watchdog Corporate Europe Observatory (CEO) shows that the doors of the European Commission are always open to lobbyists for multinationals. Of the 600 EU lobby meetings regarding TTIP in 2012 and 2013, 88 percent were with corporate lobbyists. CEO, Who lobbies most on TTIP? <https://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip> [accessed 19 January 2018].

55. In 2015, a European Ombudsman ruling requested that the European Commission be more transparent regarding the TTIP negotiations.

56. The European Court of Justice recently ruled that the EU does not have exclusive competence to conclude and ratify trade agreements that include clauses on portfolio investments and ISDS. This implies that future European trade agreements containing such provisions must be submitted to the EU's member states and their national parliaments for their consent. European Court of Justice, Opinion 2/15, 16 May 2017.

URGENTLY NEEDED: A NEW WAY OF DOING TRADE

Many rules governing trade and investment today hinder efforts to achieve more sustainable economies. A new trade regime is needed which can help address global challenges.

We urgently need a system which contributes to solving problems like accelerating climate change, a broken agricultural model and a loss of trust in democratic processes, rather than aggravating them.

In recent years, Friends of the Earth Europe and its national member groups have had little choice but to oppose unfair trade and investment treaties, specifically TTIP and CETA. We will continue to oppose rules that exacerbate social and environmental problems and to advocate for equitable and sustainable trade alternatives.

In this paper we outline some of our key proposals for a fair and sustainable trade system:

PROMOTING AND FOSTERING THE TRADE OF SUSTAINABLE GOODS AND SERVICES

rather than focusing on increasing trade flows;

CREATING A FRAMEWORK TO HOLD CORPORATIONS TO ACCOUNT INTERNATIONALLY

rather than providing investors with more privileges;

IMPROVING STANDARDS INTERNATIONALLY

rather than facilitating their weakening by corporate lobbyists;

STRENGTHENING THE IMPLEMENTATION OF INTERNATIONAL AGREEMENTS ON CLIMATE CHANGE AND SUSTAINABILITY

rather than creating trade rules that override them;

FOSTERING LOCAL ECONOMIES

rather than dispersing production and consumption ever more across the globe;

SUPPORTING SUSTAINABLE AGRICULTURE AND PROMOTING REGIONAL TRADE

rather than a global trade in agricultural commodities;

SUBMITTING TRADE NEGOTIATIONS TO DEMOCRATIC SCRUTINY

rather than negotiating the agreements in secret.

We call on the European Commission, the European Parliament, and national governments and parliaments **to radically change the direction of trade and to put sustainability and equity at the heart of European trade policy.** Until this happens, new unfair and unsustainable trade agreements – whether already concluded or still under negotiation – should be rejected. **Only with this kind of fundamental change in how Europe trades can we construct a more democratic, fair and sustainable Europe.**