FOR THE MANY, NOT THE FEW

TOWARDS A PROGRESSIVE MODEL FOR INTERNATIONAL TRADE AND INVESTMENT

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INTRODUCTION

Over the last decades, international trade has played an important role in promoting economic growth, job creation and better living standards at the global level. At the same time, international trade has been linked to a form of unregulated globalisation, causing uneven and unjust results for significant parts of our societies.

As a consequence, **trade has become synonymous with globalisation**. The focus of recent trade agreements has strayed from setting rules supporting market access in goods and services to incorporating issues related to trade, like investment and intellectual property rights. As a result, global market opening has become deeply interwoven with investment liberalisation and protection, free capital flows and financial liberalisation, with effects spilling over into issues related to labour, environment, and technological change. Insufficiently regulated trade - but more drastically, unregulated capital flows and investments - have exacerbated social, economic and environmental inequalities and exploitation; the gains for consumers have often resulted in job losses and income degradation which have not been fairly compensated.

Moreover, although trade agreements aim to set rules for trading fairly, they have frequently been **negotiated in an opaque manner, driven by a corporate agenda and designed to advance the interests of those in the top income brackets**. They have facilitated a process of multi-localisation of production systems, both for goods and services. In some instances, this process has eroded social systems and standards.

Progressives cannot remain split on such a crucial issue. In many instances, political movements (including ours) have been unable to articulate a significant political response to these developments. During the last few years, some of the most outspoken resistance to trade agreements has come from progressive groups, such as labour unions, NGOs and social movements. Yet, the progressive movement is the traditional political force behind openness, internationalism, equality, and the reduction of global poverty. It is therefore our responsibility to redress these failures and become the driving force in rectifying these imbalances and injustices.

> *“The traditional approach, which argues that ‘trade is good, but we need to work on the side effects,’ is outdated.”*

The traditional approach, which argues that ‘trade is good, but we need to work on the side effects,’ is outdated. In today’s changing world, ‘business as usual’ does not work. Progressives must guarantee that global trade and investment benefit the many and not the few. Progressives must ensure they promote sustainable development, reduce global poverty, neutralise structural inequalities that exclude certain genders and populations from the global economy, and raise living and welfare standards. Between the faithful and unconditional promoters of free trade and the populist critiques defending protectionist and nationalist visions of the world, **there is a critical political space for progressive forces to defend a regulated vision of globalisation**.

There is political responsibility in **safeguarding an even distribution of trade’s positive effects both within our societies and between developed and developing countries**. It no longer suffices to wait to realise long-promised trickle-down effects or to offer paltry compensation to those disadvantaged by global trade. Instead, progressives must ensure the right conditions are in place in our societies as we conclude trade agreements. **Trade and investment must be embedded in a broader economic development strategy in order to create added value for our economies.** At the same time, trade should be complemented by a new social contract, one that ensures equitable distribution of trade’s benefits through adequate and extensive social policies and redistribution mechanisms.

The EU is the richest and largest single market on earth. Dozens of countries target our markets to sell their goods and services and seek European partnership via trade and investment agreements. Accordingly, the EU **must use its economic relevance, among other instruments, to promote global and binding standards** on development, fiscal fairness, consumer protection, labour rights, and climate change in all international fora. In this respect, binding corporate social responsibility standards should form an integral part of trade and investment agreements, shifting the burden of compliance from developing countries to the transnational companies operating and profiting from global value chains.

> *“A progressive trade and investment policy must reinforce processes on issues such as development, fair taxation, corruption, labour, and climate change.”*

A progressive trade and investment policy must reinforce processes on issues such as development, fair taxation, corruption, labour, and climate change, both in the World Trade Organisation (WTO) and through bilateral and regional trade agreements. Trade and investment agreements must prevent large and powerful trading partners from engaging in unfair trading practices and ensure that countries do not evade international environmental obligations to obtain trade advantages. They must also be linked to commitments to international standards aimed at fighting tax avoidance and tax havens, and aim to fight corruption, which often stands as an obstacle to the full development of economic relations between the parties. Where parties to international trade agreements do not have them or do not implement them, agreements should include specific anti-bribery rules.

Because trade policies can create benefits or costs for countries or for particular actors within countries, a **progressive trade policy should also be structured to encourage specific actions or discourage specific harmful consequences in a holistic manner**. Taxation, education and training, competition, anti-corruption and social protection are a few of the relevant policy areas that impact whether and how citizens benefit from trade. Multinational corporations' profits, for example, should be taxed in the location where they are generated, and trade agreement should include provisions for fiscal transparency and exchange of fiscal data.

Trade results in gains and pains and, as far as the EU is concerned, the place for addressing pains should be both at the national and the European levels. This includes adopting flanking measures at both levels that ensure a fair distribution of wealth, particularly for those worst off. **National governments have so far done too little to secure the benefits of trade for all.** Redistribution, empowerment through education, proactive labour market policies and strengthening of trade unions are trade-related topics that fall within domestic governments' policy scope. Yet, since the Union has an exclusive competence on trade, **the EU should also take up the responsibility for consequences that arise from its trade agreements**. The EU's Globalisation Adjustment Fund should be enhanced and redesigned as a European Transformation Fund.

Getting the rules right on trade is not enough. Not only must the content of our trade agreements change, but so, too, must the way we negotiate them. **Secrecy in trade negotiations brings more harm than good- trade agreements cannot be negotiated behind closed doors.** Only by empowering democratic mechanisms can we enhance trade's legitimacy and expand the number of opportunities trade offers. Negotiations must be carried out in full transparency towards citizens and with full engagement of civil society and social partners, and not just those representing the most organised interests. When it comes to negotiating an agreement, all legal documents must be made public without exception. The model should be the UN Climate negotiations. A broad societal discussion regarding both the objectives of the ongoing trade negotiations and their state of play during the negotiations should be a cornerstone of the processes establishing trade rules. Improved transparency hinges on additional efforts by the agreements' negotiators, the national governments and, where applicable, the WTO itself. At a national level, this higher level of transparency on the part of the governments must safeguard accountability to the parliament and the general public.

> *“Secrecy in trade negotiations brings more harm than good - trade agreements cannot be negotiated behind closed doors.”*

A NEW VISION

A key objective going forward must be forging a new consensus on trade and investment contingent on the principles of employment, broad-based prosperity, equality, transparency and sustainability. What follows presents a vision that can form the core of a new, forward-looking progressive model for trade and investment:

Changing nature of trade agreements: The focus of trade agreements has moved away from trade liberalisation to covering a range of trade-related issues, like investment liberalisation and protection, and intellectual property rights, with important social, economic and environmental repercussions. We need to acknowledge and tackle the issues arising under these new types of economic agreements, in particular in relation to unregulated capital flows and investments. We also need to redress the often opaque manner, in which these comprehensive trade and investment agreements have been negotiated, often designed to advance the interests of those in the top income brackets.

Europe as a leader for a progressive agenda: To address these challenges, we believe that the EU must use its economic weight to advance a progressive trade and investment policy at the multilateral and the bilateral level. To achieve this goal, we propose an agenda that reinforces the multilateral trading system while improving its fairness for the poorest and enhancing Europe's contribution to trade and development. Further, we propose to better integrate trade with labour and environment, and rethink investment and capital flows to advance sustainable development, as well as develop rules to govern the digital revolution and ensure the fairness of the intellectual property regime. To complement these elements of a new progressive vision of international trade governance, we propose the establishment of a new European fund to address the negative consequences of globalisation.

Multilateralism: We see the multilateral trading system as the preferred option for building international rules on trade. Multilateralism is fairer with a wide diversity of strong and weak, big and small economies. It is more efficient in providing a stable and predictable environment to a maximum number of operators. For these reasons we believe states should conclude the negotiations on the Doha Development Agenda. They should rebalance the specific trade disciplines that govern the agricultural sector that is currently tilted in favour of developed countries. They should also strengthen WTO disciplines in areas such as subsidisation, conduct a review of the "special and differential treatment" principle in order to adapt to present realities, and modernise the WTO framework in areas of growing importance.

The EU's Role on Trade and Development: The EU has an important role to play in its bilateral economic relationships, especially with developing countries. As part of the post-Cotonou negotiations, the EU must expand unilateral trade preferences and preferential treatment to all low- and lower middle-income countries in Sub-Saharan Africa, in order to support the region prioritising its own regional integration. This would allow for the creation of jobs, increased incomes, and ultimately, to reduce poverty and aid dependency. To achieve Sustainable Development Goal (SDG) 2 on ending hunger, we need to "correct and prevent trade restrictions and distortions in world agriculture markets." Accordingly, further reform of the EU Common Agricultural Policy (CAP) will help achieve SDG 2. Finally, the EU must live up its commitments regarding Official Development Aid (ODA) in accordance with SDG 17.2.

Labour: All areas covered by trade and investment agreements impact employment and labour conditions. Trade policy must therefore play a vital role in encouraging and helping trade partners to implement the International Labour Organisation's (ILO) core labour standards. Parties must firmly commit to implementing core labour standards. Implementation and enforcement of core labour standards must be adapted to the partner country's level of development, and coupled with support. Further, the comprehensive and effective involvement of social partners and civil society is essential for the successful execution of labour provisions in trade agreements. A progressive labour chapter should also provide a suitable framework for continuous and guided cooperation aimed at progressively advancing labour protection. Finally, labour provisions should be complemented with traditional state-to-state dispute settlement as well as an innovative collective complaint procedure.

Environment: Trade and investment rules should not pose barriers to solving environmental challenges, such as climate change, biodiversity loss, and water scarcity. In the area of climate change, to avoid any potential regulatory chilling effect, states should clarify that strong, potentially disruptive, non-protectionist climate action is needed and is not prohibited under international trade and investment rules. At the same time, trade rules should help discipline certain types of measures, such as fossil fuel subsidies. The design of climate measures with trade impacts, whether border carbon adjustments or other measures, must apply differential treatment and exemptions to exports from poor and middle-income countries whose CO_2 emissions per capita are low. Policy space for green industrial policies and green subsidies should be permitted, and agreements should be designed or adapted accordingly.

Investment: Most comprehensive trade agreements today include chapters and provisions on investment. These chapters have focused on investment protection, investment liberalisation, and investor-state disputes settlement. The focus of these treaties should be reoriented to promoting quality investment that advances SDGs. First, the treaties should guarantee the policy space needed to regulate incoming and operating investments. The EU should accordingly re-examine and adapt its approach to pre-establishment and market access rules and the prohibition of performance requirements. Second, EU treaties should ensure that investment protection provisions do not limit the state's legitimate right to regulate. Moreover, they should also be rebalanced to include not only investment protection but also responsibilities for investors, including with respect to responsible global value chains. The EU should continue leading on reforming investment-related dispute settlement and explore alternatives to investor-state dispute settlement. EU member states should proceed with terminating and redesigning the over 1000 outdated investment treaties of EU member states.

> *“EU treaties should ensure that investment protection provisions do not limit the state's legitimate right to regulate.”*

Capital flows: In light of the increasing evidence in favour of regulating excessive capital flows to respond to concerns about macro-economic instability and major economic costs that external capital flows and ensuing currency crises may create, countries should use capital flow management measures alongside other macroeconomic policies. Many trade and investment agreements prohibit such capital account regulations or lack the appropriate safeguards on capital account management. This erosion of policy space to implement such policies must be avoided. In future, neither the WTO, nor investment treaties and chapters in free trade agreements should contain provisions that limit an individual country's ability to freely manage its capital accounts and regulate capital flows. If there are commitments to capital account liberalisation, appropriate and sufficient safeguards must be in place to allow countries to implement capital account regulations for prudential or balance of payments reasons, ideally on a permanent basis. Existing treaties should be promptly amended accordingly.

Digitalisation: Technological innovation is deeply interwoven in our globalised world. Fuelling cultural and economic exchanges, tech advancements spawned a global community, reaching the most remote regions of the world. Few economic or cultural realms lie outside the reach of technological innovation and some, like employment, grapple to reconcile old and new structures of social organisation. Specific policies regarding digital trade, data flows, intellectual property rights, and net neutrality must embody and uphold democratic principles and a strong commitment to achieving the Sustainable Development Goals. This implies revising policies on data provisions, data localisation, research and development, national tax systems, the digital single market, and a reconsideration of investment screening mechanisms.

European Transformation Fund (ETF): Ten years ago, the European Globalisation Adjustment Fund (EGF) was established to support victims of industrial transformation in Europe because of global economic changes. The EGF remains too modest in size and too narrow in focus given current needs. It must be redesigned both in terms of budget and scope. For the EGF to be effective, the EU must conduct sound and transparent impact assessments before concluding new trade and investment agreements. This analysis should be as accurate as possible and identify the consequences and changes on different economic sectors and on European regions. The new Globalization Adjustment Fund, to be renamed as the 'European Transformation Fund' (ETF), must be designed to support the restoration of an ambitious industrial policy, one based on permanent, prospective analysis of economic and technological changes, including the effects of trade, allowing for the necessary strategic investments to prevent negative consequences of trade and investment treaties in Europe.

Further, the new ETF must be better integrated with the existing Cohesion Fund and Social Fund and be accessible in cases of major economic traumas (such as the closure or delocalisation of a major company); as well as in regions suffering from gradual and cumulative economic decay.

THE GLOBAL CONTEXT

Achieving the Sustainable Development Goals must be the ultimate goal for trade and investment agreements. Trade can be a powerful tool to promote sustained and sustainable economic growth. It can drive inclusive growth, incorporating all into the global economy regardless of gender, ethnicity, age, disability, sexual orientation, or financial means. It can also support full and productive employment and decent work for all. At the same time, trade agreements must take into full account international climate and environment commitments and should encourage sustainable production and consumption patterns.

> *"Achieving the Sustainable Development Goals must be the ultimate goal for trade and investment agreements."*

The 2030 Agenda for Sustainable Development, agreed at the UN, recognises international trade as an engine for inclusive economic growth and poverty reduction, and an important means to achieve the SDGs. "Significantly increasing the exports of developing countries" is one target therein. Trade has helped hundreds of millions of people in developing countries escape poverty and improve living standards. It enhances growth, and growth helps reduce poverty. As far as developing countries are concerned, one thing is clear: they need more – not less – trade, and they need more- not less- access to rich consumer markets.

Accordingly, the EU should redouble its efforts as agreed in Sustainable Development Goals 17.10 - 17.12 to:

17.10: Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda.

17.11: Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020.

17.12: Maintain the EU's duty-free and quota-free market access for all least developed countries, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access.

CHAMPIONING MULTILATERALISM

International trade is an engine for inclusive economic growth and poverty reduction and contributes to the promotion of sustainable development. We will continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as meaningful trade liberalisation. We acknowledge and support the importance of incorporating a gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socio-economic development as stated in the Joint Declaration on Trade and Women's Economic Empowerment adopted on occasion of the WTO Ministerial Conference in Buenos Aires, in December 2017.[1]

Since the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, which morphed into the WTO in 1994, a growing number of countries have joined a consensus according to which trade opening (i.e. reducing obstacles to trade) can work to increase welfare. These states have agreed that this can happen under certain conditions: both adequate international disciplines and proper domestic politics, for example, must be in place.

> "*The preferred option for building international rules was and should remain the multilateral track.*"

The preferred option for building international rules was and should remain the multilateral track. It is fairer: it encompasses a wide diversity of strong and weak, big and small economies. It is more efficient: it provides a stable and predictable environment to a maximum number of operators. It is the preferred negotiating venue for the world's developing states and, to date, is the system that has inserted the strongest semblances of democratic processes into global trade negotiations. Under its WTO version, it is more resilient, as it is organised to deliver what is expected from a regulatory system: negotiate the rules, monitor their implementation, and settle disputes when they arise.

This does not preclude or replace other avenues for reducing obstacles to trade: bilateral, plurilateral, regional and even unilateral trade opening can also bring benefits. The benefits of these non-multilateral trade opening efforts, though, are smaller and often reflect relative positions of strength that can lead to unbalanced results.

The overall consensus in favour for trade multilateralism has recently- and for the first time in 60 years- been under attack by the United States. According to U.S. President Donald Trump, who was elected on a protectionist platform and whose view is that the WTO system does not work for the US interests, that the US would be better served by bilateral deals and that the US trade deficit as evidence for the need for greater protectionism. A series of protectionist US initiatives and a systemic critique of the WTO have stemmed from this belief, as has an offensive to destabilise the organisation's dispute settlement system.

The EU, together with other WTO members, has recently taken steps to resist this attack and to defend a multilateral, rules-based trading system. It should firmly keep this posture. Multilateralism is where EU values and EU interests intersect. It is an important part of a global progressive agenda.

The US stance, excessive and erratic as it may be, is not fully unfounded. The WTO system needs serious repairs and improvements if is to remain the principal architecture of international trade. The WTO system has not been significantly changed in 25 years. As it is today, the system suffers from serious flaws:

a. Some trade rules remain unbalanced against developing countries, especially in the area of agriculture.

b. Certain principles such as "special and differential treatment"- according to which all developing countries benefit from flexibilities not available to developed countries- must be readjusted in order to factor in the new strength of emerging countries.

c. Some WTO disciplines remain too weak to prop-

1. https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

erly level the playing field in an international economy which has globalised rapidly in recent decades notably in the area of subsidisation.

d. The relative importance of obstacles to trade are changing (e-commerce, non-tariff measures) creating a necessity to adapt.

e. The negotiating process has become excruciatingly complex as the size of the WTO membership expanded to more than 160 countries.

f. The rule-making function of the WTO has remained clogged since the 2008 Doha Round impasse, the burden of adjusting regulation has shifted to litigation, thus entailing a growing perception that while the "legislator" is important, the "judiciary" is calling the shots.

g. The capacity of the WTO secretariat to monitor a rules-based global system is too weak, as is its ability to deliver solid contributions to the public debate about the benefits and costs of trade opening, particularly on social and environmental issues.

The EU should lead the effort to reinvigorate multilateral trade negotiations and initiate efforts to strengthen the WTO as an institution. Updating the multilateral rule book and modernising the organisation can eradicate these weaknesses and consolidate the multilateral system. The main objective should be to unfreeze the negotiating process. This can only happen on the basis of a multipurpose proposal, one which all members could accept to move rule-making negotiations forward and one which allows each member to recognise their unique advantage in negotiating a new, broad-ranging package.

First, countries should conduct a thorough review of the "special and differential treatment" principle, which allows asymmetric trade opening in favour of poorer countries. This principle has underpinned the WTO since its inception but does not fit with present realities. It should be recognised that the emergence of major developing countries such as China, has created a new category of "in-between" economies. This category must be recognised and organised. The negotiating process will remain clogged by a US-China impasse as long as China remains a rich country with many poor in the eyes of the US, and a poor country with many rich in the eyes of China.

Installing a graduation process could resolve this contradiction. This process would progressively reduce the asymmetry in both market access and in various areas of rules (such as subsidies) between rich and poor countries as the GNP/head difference between them narrows. Such systems already exist elsewhere in the international arena (i.e. the UN, the World Bank).

Even if the average trade-weighted tariff is only 5% worldwide today, myriad tariff barriers remain in sectors of particular interest to developing countries. Graduating emerging countries from Special and Differential Treatment (SDT) would increase the benefits of SDT for least developed and low-income/lower middle-income countries.

SDT can be applied beyond traditional market access. In the TRIPS agreement, for example, SDT ensures a fair balance between protecting international property rights and poor countries' development needs. Poorer countries also sometimes lack the institutional capacity to implement all commitments required under the various WTO agreements, some of which are not high development priorities. SDT could thus take the form of assistance to implement commitments over time as they transform their economies, as was recognised in the Trade Facilitation Agreement, which allows differentiated implementation.

Also, SDT can provide more flexibility for poor countries regarding WTO rules that limit policy space. For example, when rules touch on administering precaution in the SPS and TBT agreements, SDT could be applied by having rich importing countries pay poor producers for certification, this preferably in addition to aid budgets.

Second, countries should rebalance the specific trade disciplines that govern the agricultural sector. There is a case for farm and food to be treated differently from manufacturing and services given the specificities of this sector, allowing for some moderately trade distorting protection - whether through tariffs or subsidies. However, developed countries enjoy a larger margin of manoeuvre to support agriculture than developing countries do. This must be redressed.

There are three ways to move forward: the space for subsidisation in the "North" can be reduced, the space for subsidisation it in the "South" can be increased, or both approaches can be combined. As far as EU is concerned, this would have a limited impact on the Common Agricultural Policy (CAP) -- the specific European combination of market mechanisms,

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protection for sensitive products or geographical areas/territories, and environment constraints will keep evolving in the future. The EU still has a way to go to find the right balance between executing the specificities of a 21st Century agricultural policy and stabilising a specific European model for farming and food.

Third, a work program to modernise the WTO rule book in areas of growing importance should be developed. Areas would include, as per the Doha Round mandate, a renegotiation of the Subsidies Agreement. This will level the playing field, reinforcing discipline, in particular, on state owned enterprises. At the same time, a window for moderately trade distorting “environment” support, which existed in the past and lapsed in the 90’s, should be reinstalled in the Subsidies Agreement.

Such a program could further include rules on e-commerce, including in relation to data accessibility, localisation, storage, privacy, internet neutrality etc. (see section on digitalisation below), and on precautionary measures, which protect consumers from various risks, and which build, for example, on the existing sanitary and phytosanitary agreement as well as on the agreement on technical barriers to trade; and competition regimes.

WTO members should also review the Trade-Related Aspects of International Property Rights (TRIPS) agreement to ensure that it meets poor, developing countries’ needs for technology transfer and access to essential medicines. They should also uphold women’s rights, ensuring that intellectual property rights do not infringe women’s access to healthcare and medicine, and that sexual and reproductive rights are preserved.

Further, WTO rules should establish more clearly than in the past the coherence between trade rules and other areas of international regulation, such as environment, labour standards, taxation, corruption. Coherence can also be promoted by

a. Strengthening the Peer Review Process, while including in Trade Policy Reviews the impact of the country’s trade policies on the Sustainable Development Goals; on different domestic groups and regions; and, in the case of major economies, the impact on low-income developing countries and LDC’s, and

b. Revitalising the work of the WTO Committee on Regional Trade Agreements to better assess the compatibility of such agreements with WTO rules, or the effects of RTAs on third countries, particularly low-income developing countries and LDCs.

WTO members should also reform the negotiating process in WTO to align the WTO with other international organisations by recognising the right of the Secretariat to table proposals to be discussed and negotiated by the WTO’s various organs. This would break the present (and outdated) monopoly of initiative conferred to the members. Finally, a larger amount of resources should be allocated to the WTO Secretariat in order to increase its capacity to provide more expertise for developing countries and to disseminate more research on trade related issues, including impact assessments of trade opening.

THE EU'S ROLE ON TRADE AND DEVELOPMENT

In addition to taking on a leading role in the multilateral context, the EU also has its role to play in its bilateral economic relationships, especially with developing countries. As part of the post-Cotonou negotiations, the EU must expand unilateral trade preferences and preferential treatment to all low-and lower middle-income countries in Sub-Saharan Africa. These are currently the world's poorest: as an example, Sub-Saharan Africa accounts for a minuscule 2% of world trade, half its share in the 1980s. Sub-Saharan Africa must expand exports to create jobs, to raise incomes, and ultimately, to reduce poverty and aid dependency. The EU must help make this happen, especially given that Europe's past carries a special responsibility for the future of Sub-Saharan Africa. Economic Partnership Agreements must be made compatible with African countries own economic and trade regional and continental integration systems. The negotiation of the Post Cotonou EU-Africa new partnership which has just started is the occasion to redress the EU-Africa trade regime. This should include inviting African partners themselves to propose solutions on how a new trade regime can benefit their development and contribute to progressing with both regional sub-continental economic integration and the implementation of the Continental Free Trade Agreement.

Most of the world's poor, the majority of which are women, live in rural areas and depend on agriculture. Access to our rich consumer markets will help lift poor producers out of poverty. SDG 2 on ending hunger reflects this, stating the need to "correct and prevent trade restrictions and distortions in world agriculture markets." Showing willingness for further reform of the Common Agricultural Policy will help achieve SDG 2.

Relatedly, the EU must establish ex ante and ex post gender impact assessments at country and sector levels when considering new trade and investment agreements, or when assessing their impact ex post. Although women workers predominate in worlds' food production (accounting 50-80% of the workforce), they own less than 20% of the land mainly due to inheritance laws and a lack of access to credit. Efforts must be made to improve the positive impact of trade on women in the agricultural sector specifically; more generally, gender-disaggregated quantitative and qualitative analysis of the labour evolution, ownership of assets, and financial inclusion in sectors that have been impacted by trade is urgent.

> "*The EU must establish ex ante and ex post gender impact assessments when considering new trade and investment agreements.*"

Europe should also live up to its commitments regarding Official Development Aid (ODA). SDG 17.2 states: "Developed countries to implement fully their official development assistance commitments, including the commitment by many developed countries to achieve the target of 0.7% of ODA/GNI to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries". While the EU had promised to achieve the 0.7% target by 2015, presently only the UK, Sweden, Denmark and Luxembourg do so.

European donors need to ensure aid is focused on poor countries, particularly in Sub-Saharan Africa, and that it is effective in supporting partner countries' own development strategies instead of being subordinated to migration and security interests. In general, the EU's external instruments should take the SDGs into account to ensure, review, and support long-term sustainable development in poor countries.

INTEGRATING TRADE, LABOUR, AND ENVIRONMENT

LABOUR

Decent work for all must be a main objective of every trade agreement. All areas covered by trade agreements - investment, public procurement, services, environment, etc. - impact employment and labour conditions. Trade policy must verify the social dimension of trade and take into account any agreement's impact on core labour standards.

> ***"Decent work for all must be a main objective of every trade agreement."***

In this vein, each trade agreement should incorporate an ambitious and fully enforceable chapter on labour standards. A balance must be struck between enforcing labour standards and assisting our trade partner in order to improve the situation on the ground. The chapter should recognise core labour standards as universal basic values, including:

a. freedom of association and collective bargaining;

b. prevention and, ultimately, eradication of child labour and forced labour; and

c. the principle of non-discrimination.

Almost all the members of the WTO have ratified the core ILO conventions- these conventions serve as the building blocks of a values-based approach to improving global labour conditions via trade. For its part, trade policy must play a vital role in encouraging trade partners to implement these standards. A labour chapter in a free trade agreement, then, must incorporate four core elements: (1) Integration and implementation of core labour standards; (2) Institutional and civil involvement; (3) Detailed cooperative and promotional activities; and (4) Effective dispute settlement and a collective complaints procedure.

1. Integration and implementation of core labour standards

First and foremost, a labour chapter must urge partnering states to integrate and implement core labour standards. These chapters must also incorporate state of the art international rules and guidelines on labour protection. Countries engaging in trade agreements must ratify and implement the fundamental ILO Conventions and Protocols. Depending on the trading partner, attention should also be given to standards on occupational safety and health, decent living wages and working hours. Horizontal challenges for labour protection, such as global supply chains and specific modes of labour (e.g. domestic labour, migrant labour) demand special consideration.

Striking a balance between assistance and enforcement on these issues is imperative and must be contingent on the partner country's level of development. Varying country characteristics demand individualised approaches to designing and implementing labour standards. Trade partners must pay special attention to core labour conventions throughout the negotiation process, working together to establish a clear path towards meeting these standards. Where developing countries are at the negotiating table, chapters calling for labour standards must:

a. Be accompanied by an appropriate mechanism for "burden-sharing." This mechanism includes capacity-building measures to improve developing countries' exporting capacity to comply with labour standards.

b. Not block developing countries' market access while they progress towards meeting core ILO standards

2. Institutional and civil involvement

The comprehensive and effective involvement of social partners and civil society is essential for the successful execution of an agreement's labour provisions. A progressive labour chapter in an agreement ensures social and civil partners' continuous participation in all labour-related activities. Establishing permanent civil society and social partner bodies, who are charged with the implementation of the trade agreements, introduces avenues for representation and participation. Detailed rules on competences and procedures should ensure an effective and prominent role for representative organisations and give employees and employers a balanced, equal say.

> "*Labour chapters in trade agreements should also provide for dispute settlement procedures.*"

3. Cooperation

A progressive labour chapter should provide a suitable framework for continuous and guided cooperation aimed at progressively advancing labour protection. Such a framework should be designed to increase protections during each phase of the agreement's negotiations and implementation. It must include continuous bilateral cooperation meetings between partnering countries and consultation with the social partners and organised civil society. Moreover, an independent international institution, such as the ILO, should properly review the impact of the labour chapter over time.

For a labour chapter to be effective, especially when developing countries are involved, it must include flanking measures to bolster capacity building and technical assistance. These are essential for developing partners to participate in a constructive dialogue on labour protection. Because most developing countries do not have established, structured social dialogue processes, more developed trading partners must provide the support necessary to make this dialogue process a reality.

4. Effective dispute settlement and a collective complaints procedure

Labour chapters in trade agreements should also provide for dispute settlement procedures. Dispute settlement should take the form of a more traditional state-to-state dispute settlement approach in combination with a new and innovative collective complaint procedure, allowing workers, employers or other civil society organisations to directly initiate proceedings to enforce the agreed labour standards.

Dispute settlement between state parties to a trade agreement would involve a legal review of adherence to labour obligations detailed in the agreement's labour chapter with a legally binding report by an independent panel of experts. Effective enforcement would be available through remedies such as consensual compensation, monetary assessment and – as a last resort - the suspension of obligations. Priority, however, should be given to monetary assessment.

The proposed collective complaint procedure is a progressive, ambitious approach that empowers social partners to initiate a process with an independent panel to enforce a trade agreement's labour obligations on their own. For instance, workers' organisations would have the right to file a collective complaint on their own behalf, but also on behalf of one of its members alleging the violation of a state party's obligation under the labour chapter. Such a procedure would be complementary to other development assistance aimed at reinforcing access to justice and could only be initiated after exhausting national legal remedies.

ENVIRONMENT

Countering environmental challenges, such as climate change, biodiversity loss, and water scarcity, demands examining every area of law and policy, including trade and investment. We must identify the barriers they might pose to solving these crises, and we need to redesign frameworks to eliminate those barriers and work towards solutions from a sustainable development perspective.

> *“Climate change is the most pressing global challenge for the international community to tackle today.”*

International trade and investment law and policy significantly impacts environmental policy-making. The WTO and free trade agreements (FTAs) are particularly powerful because the agreements are enforced through binding international dispute settlement mechanisms. Though enforcement mechanisms exist for national-level laws, no similar mechanisms enforce multilateral agreements in the environmental field. To ensure that the interaction of the different areas of policy-making results in an overall positive outcome, states must ensure coherence between trade and investment agreements on the one hand and environmental agreements on the other. Policy space must be freed up and safeguarded to allow governments to pursue environmental objectives in a non-protectionist way, particularly in relation to pressing environmental issues.

Recognising the urgency of climate change and the need for potentially disruptive action

Climate change is the most pressing global challenge for the international community to tackle today. To reach the two-degree target under the Paris Agreement, states would have to ensure that three-quarters of proved reserves of fossil fuels are not burned (IPCC, 2014). Accordingly, the speed and scale of change needed to economic patterns, requires significant disruption through government action, including new regulations limiting the production or use of fossil fuels.

> *Carbon pricing—whether through a carbon tax or a cap-and-trade scheme—stands at the centre of attention as a means of bringing down emissions.*

This can have serious consequences for the fossil fuel industry and result in assets being 'stranded'. These types of government measures aimed at achieving the two-degree climate target, however, may run afoul of international trade and investment obligations. Existing trade and investment rules may prevent governments from acting out of fear of non-compliance or being challenged under dispute settlement mechanisms.

Several steps need to be taken to address these types of problems:

a. First, states must clarify that there will be circumstances in which climate action, even the most disruptive, is acceptable and is not prohibited under international trade and investment rules as long as it does not result in protectionism.

b. Second and related, states must make clear that trade and investment rules cannot trump agreements reached under the Paris Agreement, and coherence must be guaranteed.

c. Third, trade rules must be tailored to help discipline certain types of actions that contribute to, rather than combat climate change, such as fossil fuel subsidies and trade remedies applied to renewable energy technologies.

d. Finally, the international community needs to acknowledge that measures necessary to combat climate change will have disproportionately negative effects on developing countries. Stranded assets will be potentially devastating for fossil-fuel-rich developing countries- these countries are highly exposed given their dependence on fossil fuels and limited near-term options to diversify their economies. These realities must be considered in the design and application of current and future international frameworks, in line with the principles of just transition.

Carbon pricing and competitiveness

Carbon pricing—whether through a carbon tax or a cap-and-trade scheme—stands at the centre of attention as a means of bringing down emissions and channelling investment away from greenhouse gas intensive activities into cleaner options. But pricing carbon in one country while not doing so in others has raised concerns about competitiveness, given the fact that goods and services generally flow freely across international borders. From the environmental perspective, the potential leakage of emissions from the regulated jurisdiction to other jurisdictions could render unilateral climate action ineffective.

To address the problem of competitiveness and leakage when they arise, countries with a carbon pricing scheme could consider applying various measures such as: border carbon adjustments (BCAs), i.e. charges levied at the border on imported products based on their level of embedded carbon when it is higher than domestic production and rebated at the border to exporting domestic producers; or lower import duties for countries that pursue policies in line with their Paris agreement commitments and higher duties for those who do not. If structured properly, these types of measures have to be recognised as WTO-compatible. Any scheme adopted must take into account the impacts of such measures on developing countries and apply appropriate differential treatment and exemptions.

Phasing out fossil fuel subsidies

Despite the fact that the burning of fossil fuels counts as the largest source of greenhouse gas emissions from human activities, countries continue to heavily subsidise fossil fuels: global subsidies to both fossil fuel production and consumption are estimated at USD 425 billion in 2015 (Merrill et al., 2017)[2]. Phasing them out will be crucial for achieving climate targets. To the extent that they are market-correcting rather than market-distorting, trade and investment agreements should permit subsidies for renewable energy. Such subsidies move prices for urgently needed green technologies closer to the true social cost, internalising external benefits of climate-saving innovations. Accordingly, agreements must be reformed to support fossil fuel subsidy phase-outs and make renewable energy sources more competitive.

The Agreement on Subsidies and Countervailing Measures (ASCM) at the WTO does little to achieve any of these objectives. Its original Article 8 allowed WTO members to

2. Available at: http://www.iisd.org/library/making-switch-fossil-fuel-subsidies-sustainable-energy

provide certain 'non-actionable' subsidies, including for environmental purposes. However, the article lapsed in 1999. This carve-out should be reinstated and redesigned to better achieve climate change objectives, including through the protection of clean energy subsidies. In addition, the ASCM should be amended to declare certain types of fossil fuel subsidies as prohibited. This should also be done in bilateral or regional trade and investment agreements.

Transparency in the use of fossil fuel subsidies must be greatly improved. Currently, the ASCM framework relies on self-reporting, which typically does not provide the true or complete picture of subsidy use. WTO members should build on the existing reporting framework under the ASCM and commit to thorough reporting on the use of fossil fuel subsidies as well as on other kinds of subsidies. Beyond reporting on the use of such measures, states should make explicit pledges to eliminate or reduce their fossil fuel subsidies, agree to report on progress towards these pledges, and review each other's progress. This should also be done in bilateral or regional trade and investment deals.

Harmonising product energy efficiency

Global CO_2 savings from harmonised standards could be significant. A 2015 study commissioned by the European Commission predicted that harmonising standards at the highest current levels for things like televisions, industrial pumps and lighting would shave 11% off global energy consumption by 2030- this to the benefit of the climate and consumers, who would save hundreds of billions of dollars, alike. Governments must work towards harmonising energy efficiency standards, acknowledging that it is important to ensure that harmonisation occurs at highest level of efficiency and not the lowest, and that standards are constantly able to evolve upwards.

> ***"Transparency in the use of fossil fuel subsidies must be greatly improved."***

Policy space for green industrial policy

Trade and investment agreements may pose barriers to governments wishing to adopt and implement green industrial policies to support sustainable economic transformation. Green industrial policy tools can include cash grants, preferential tax treatment, export credits, mandated purchase regimes such as feed-in tariffs, to name just a few. Other green industrial policy tools to promote environmentally sustainable production include requirements to purchase domestic content, and requirements to transfer technology or conduct research and development in country.

Such policies may be illegal under the ASCM, the Agreement on Trade-Related Investment Measures, and under international investment law as contained in Bilateral Investment Treaties (BITs) and FTAs, which, inter alia, prohibit performance requirements. The prohibitions in international investment agreements are particularly powerful since they are backed by investor-state dispute settlement (ISDS).

While some industrial tools may be counter-productive or protectionist depending on their design, it makes more sense to discipline such tools to ensure their effectiveness rather than to prohibit them outright. As noted earlier, the ASCM's lapsed Article 8, which included carve outs for environmental subsidies and R&D subsidies within certain constrained parameters, should be resurrected and improved. The revised Article might discipline green industrial policy subsidies by mandating a sunset clause, limiting the value of grants, or requiring that any subsidies address a specific market failure.

Although challenges against industrial policy measures remain rare- and may remain so, especially for smaller countries where trade's impact may be minor-, states should reassert the need for governments to be able to launch green industrial policies that allow for a transformative shift from traditional to green industrialisation while not indulging in protectionism.

RETHINKING INVESTMENT AND CAPITAL FLOWS TO ADVANCE SUSTAINABLE DEVELOPMENT

INVESTMENT

Investment is crucial for sustainable development and for achieving a range of the sustainable development goals (SDGs). Sustainable development requires structural economic change and can only be achieved through new forms of energy production, transport, manufacturing, resource extraction, and so forth. Today's investment treaty framework, however, is not designed to work towards achieving sustainable development. Negotiated over the past 50 years, a web of over 3000 investment treaties – mostly bilateral – form today's international investment 'regime'. These agreements focus almost exclusively on investment protection. Many developing country governments signed these in the hope of attracting investment. Yet, the contribution of investment protection treaties to increased investment flows, let alone sustainable investment flows, remains largely unsubstantiated, and where some evidence is provided, the net benefits remain questionable.

> *"Developing countries are robbed of tools to ensure that incoming foreign investments are guided towards local and national priorities and that they advance environmentally and socially sustainable development."*

Investment law and policy is at a crossroads today. Progressives are already pointing to the current outdated investment framework as too narrowly focused on investment protection and lacking legitimacy. Particularly the ability of investors to challenge host state measures in international arbitration proceedings – known as investor-state dispute settlement (ISDS) - has come under attack by a number of governments as well as civil society around the globe. ISDS allows investors to challenge a broad range of government measures, such as measures related to taxation, environment and health, the granting of development permits, environmental and social impact assessments, insurance schemes, etc.

Problems arising under investment treaties are both substantive and procedural. The narrow objective of these treaties has led many to qualify investment treaties as unbalanced in terms of the allocation of rights and responsibilities between investors, governments and other stakeholders.

The imbalance in rights and obligations between investors, governments and stakeholders has been exacerbated through the ISDS system, which allows investors to challenge legitimate government action before arbitral. Lacking transparency, independence, and predictability, the arbitration system has seen tribunals interpret investor rights expansively, leading to steep awards that have overburdened the public purse, particularly in developing states.

When originally designed, investment treaties were to ensure that investors would receive compensation in case of nationalisation or expropriation. But over the past two decades the rules have been interpreted to reach much further than governments ever expected, with tribunals reviewing legislative measures to protect health or the environment, changes in tax policies, subsidy schemes, or governments' crisis management. This is on the one hand due to the broad language used in investment agreements, and on the other to the investor-state arbitration system. ISDS tribunals need not follow any prior decisions, nor may their awards be reviewed for factual or legal correctness.

Concerns have also arisen with respect to the fact that arbitrators, unlike judges, are appointed by the disputing parties for a specific case once it has arisen. Moreover, since ISDS can only be initiated by investors, arbitrators are increasingly perceived to be investor-biased due to the economic incentives inherent to the arbitration system. This is exacerbated by the fact that arbitrators may also act as counsel, expert witness, or advisor to third party funders in concurrent investment disputes. This process sharply contrasts to judicial systems where the adjudicators are tenured and appointed in advance, independent of any specific dispute.

In addition to investment protection and investor-state dispute settlement, more recent treaties also include liberalisation elements, such as pre-establishment rights. Such rights, typically granted through national treatment clauses, may hinder states to ensure that investment contribute to sustainable development. Often, treaties are designed such that all sectors and measures are covered by liberalisation commitments unless specifically listed out. This approach breaks from the EU's tradition of liberalisation through a positive list approach. The listing exercise is complex, and not listing certain measures or sectors is highly consequential. A challenge for most states, the negative-list approach raises special concerns for developing states that do not necessarily have the capacity to conduct comprehensive studies and consultations. In comparison, positive listing is more predictable and easier to manage. Either approach, however, locks in investment policy decisions and may make it difficult to adapt policies in the future.

In a similar vein, investment treaties and chapters, inspired by the original NAFTA's investment chapter, prohibit the use of performance requirements. Performance requirements dictate a set of conditions investors must meet in order to establish or operate a business, or to obtain some advantage offered by the host state. It might include obligations linked to an investment's approval. Imposing certain responsibilities via performance requirements ensures an investment contributes to the host country's development. By prohibiting these types of requirements, developing countries are robbed of tools to ensure that incoming foreign investments are guided towards local and national priorities and that they advance environmentally and socially sustainable development. Instituting performance requirements may strengthen the industrial base and increase domestic value added. They can generate employment opportunities and exports and can improve export performance. They can promote linkage and skill/technology transfers between foreign and domestic firms, and balance trade. They can bolster regional development as well as various non-economic objectives like political independence and distribution of political power.

A MENU OF REFORMS

Investment frameworks must advance investment for sustainable development

Policy makers' focus on increased investment volumes must shift to a focus on quality investment – investment that has social and long-term economic benefits for the capital importing country, and that is respectful of the environment. Investment cooperation and facilitation between governments should accordingly be designed to facilitate quality investments that advance SDGs.

States must retain the ability to regulate incoming investment

Governments must retain the policy space needed to regulate incoming investment, including the possibility to restrict incoming capital flows. The EU should rethink its approach to pre-establishment and market access rules and the prohibition of performance requirements. Even if it is not always easy to properly design performance requirements, the response to such difficulties should not be to prohibit these development tools at the international level. Rather, efforts should be made to support developing countries in designing creative economic transformation policies.

Some large-scale acquisitions, including external, state orchestrated acquisition of EU high-tech companies can threaten a state's knowledge base and business competitiveness. Installing a common framework for investment screening can prevent loopholes, safeguard the countries' strategic interests, and level the playing field. Investments are crucial to any economy, including in Europe; nonetheless, countries, including the EU, should retain the ability to actively look after their geopolitical and economic interests to protect citizens and workers.

Trade and investment agreements must integrate investor accountability provisions

Investment treaties contain myriad guarantees and protections for investors but do little or nothing to hold investors accountable for their behaviour abroad. Investment chapters in EU trade agreements, or their sustainable development chapters should be redesigned to ensure that investors abide by domestic host state law, or where the law or its implementation is below international standards, with internationally recognised standards. This can be done by making compliance with these a conditionality to access ISDS. In addition, an accountability process should be put in place to ensure compliance. This could be designed to complement the OECD national contact point system, where applicable. Finally, investment chapters should support tort proceedings in home states for victims of transnational investment projects.

Trade agreements must strive to propagate transparent and responsible global value chains, where producers and workers earn fair value from their share in the production process and consumers are assured that products are produced in decent environmental and social conditions. Standards must harness global value chains, diffusing standards set at the highest level of the value chain down to the primary rungs. Transnational corporations bear great responsibility in this realm and must be held accountable to their workers and global consumers. They must respect and uphold internationally accepted core standards throughout the whole supply chain.

“Investment treaties contain myriad guarantees and protections for investors but do little or nothing to hold investors accountable for their behaviour abroad.”

In this light, binding corporate social responsibility standards should form an integral part of trade agreements. Rather than placing the full burden of compliance on developing countries' governments, efforts should concentrate on transferring responsibility to the transnational companies operating and profiting from global value chains. Legally binding rules must oblige multinational corporations to perform due diligence on their global value or supply chains. These rules should also include effective mechanisms for victims of corporate abuse to access remedies and should be embedded in:

a. National legislation as part of National Action Plans in the framework of the U.N. Guiding Principles on Business and Human Rights, an approach adopted in France;

b. A legally binding international treaty on Transnational Corporations and Human Rights;

Investor-state dispute settlement (ISDS) needs to be reformed

Countries around the globe are recognising the deep and systemic flaws of ISDS. The EU has now moved away from investor-state arbitration (which builds on a system of party appointed arbitrators) to a system in which the adjudicators are determined in advance through a fixed roster system. The EU is also promoting the creation of a multilateral investment court, a proposal which will now be brought to the United Nations Commission on International Trade Law (UNCITRAL), Working Group III. The EU should continue to play a leadership role reforming and rethinking ISDS.

The EU-led initiatives are important steps to "fix" procedural flaws in ISDS to ensure transparency, independence, and predictability. Procedural fixes alone, however, will not lead to a progressive international investment framework. A more holistic approach must be envisaged which includes not only a reformulation of traditional investment protection standards but also a rethinking of the balance of the rights and obligations of investors, states, and non-parties. On a procedural level the EU should consider the role of domestic courts and the use of requirements to exhaust local remedies. Moreover, the EU - if ISDS is not ruled out as contrary to EU law - should develop a mechanism for filtering access to ISDS through state-to-state processes. The protection of rights and interests of non-parties in case a decision or settlement may impact on these should also be incorporated.

The stock of old-style investment protection treaties needs to be terminated

In addition to reshaping future investment treaties and chapters in trade agreements to foster sustainable development, providing for a balanced set of rights and obligations for all the stakeholders involved in investment processes, and holding investors accountable, as described above, the EU and its member states must work together in terminating and redesigning the over 1000 outdated investment protection treaties of EU member states.

CAPITAL FLOWS

An urgent political challenge is rebalancing and redistributing gains from trade, while continuing to encourage trade. While there is widespread agreement that trade and trade opening have net positive effects on growth and jobs, evidence increasingly shows that capital account liberalisation and unfettered capital flows may have no or negative effects on growth, jobs, and income distribution. Furthermore, rather than support open trade, excessive capital account liberalisation without corresponding regulation may actually undermine it. Even the most staunch supporters of open trade recognise the need to regulate excessive capital flows, particularly short term and potentially reversible. Many economists concerned with maximizing national growth and employment are fearful of macro-economic instability external capital flows and ensuing currency crises may create.

> “*The financial crisis of 2007-2008 exemplifies negative effects of liberalised capital accounts on global trade.*”

Lessons learned from financial crises bolster the economic rationale for regulating capital flows. The financial crisis of 2007-2008 exemplifies negative effects of liberalised capital accounts on global trade- nearly 10 years after the crisis' onset, trade growth in 2017 remained below pre-crisis levels. These negative impacts on trade echoed those caused by the financial crash and the resulting Depression in the 1930s.

In fact, capital flow regulations were borne from the devastating effects of the Great Depression. The view that unfettered capital flows had such negative effects shifted policy opinion, and capital account regulations became widespread features of economic policy. This was embodied in the 1944 Bretton Woods Agreement, which established the IMF and World Bank, and in the work of key economists who drove the Agreement (Keynes and White): international capital movements should not be allowed to disrupt states' policy autonomy to adopt the monetary policy stance consistent with their domestic priorities and to achieve full employment.

In the mid-1970s, however, capital account openness became the new orthodoxy. Developed countries liberalised capital accounts, mounting pressure on emerging and developing countries to liberalise their capital accounts. International institutions like the IMF, World Bank and OECD encouraged or pressured these countries to liberalise. But those countries that liberalised their capital accounts sooner and more quickly became more prone to currency and financial crises. A large number of middle-income countries, especially in Latin America, opened their capital accounts in the late 1970s, for example. In the 1980s, these same countries had a major debt crisis. Liberalising capital accounts also helped trigger the East Asian crisis.

> **“*There is an empirical negative relationship between capital account openness and income inequality.*”**

Moreover, there is an empirical negative relationship between capital account openness and income inequality. New opportunities accrue disproportionately to the rich, and adverse effects of volatility and crises disproportionately impact the poor, worsening income distribution. The mix of capital flows is critical: short-term debt flows may increase the chances of sudden stops and financial crises, harming growth while also raising inequality. Increasing capital mobility weakens the bargaining position of labour and may constrain governments' redistributive policies.

Advocates of financial liberalisation continued to believe that by overcoming the negative effects of 'financial repression', capital market liberalisation would increase economic efficiency, reduce risk, and strengthen macroeconomic discipline. They forgot or ignored lessons of the 1920s and 1930s.

The 2007 U.S. subprime mortgage crisis and the subsequent Eurozone debt crisis provoked a major collapse of global finance. Output, investment and employment fell sharply in developed economies. Growth of world trade slowed down. Peripheral European countries suffered particularly severely, indicating problems were not restricted to emerging economies. Instead, the deeper behavioural patterns of international capital markets revealed that unrestricted capital flows could destabilise growth for developed economies too, with important negative political effects, including the rise of far-right nationalism.

The pro-cyclical nature of capital flows and the volatility associated with open capital accounts lead to more macroeconomic volatility. The uncertainties associated with volatile financing may reduce investment and long-term economic growth, as well as employment. Recently, empirical research from academia and key international institutions, like IMF, published critiques of open capital markets. They find no link between capital account liberalisation and faster economic growth. Results show liberalisation increases real macroeconomic instability in developing and developed countries. Equally strong evidence shows that countries that relied less on capital flows for growth have grown more.

Critics point out that capital account liberalisation results in severe financial crises with high development costs. The entire burden of managing capital flows has fallen on countries receiving inflows. These are mostly developing economies, particularly sensitive to disturbances in developed countries' finances due to their relatively small share in global finance.

Capital flow management as a core macro-prudential regulation

Lessons learned from the 2007-09 US generated financial crises led to a turnaround in thinking on benefits of financial and capital account liberalisation. Managing capital flows is seen now as part of 'macro-prudential' regulations: this is particularly the case for emerging and developing countries subject to strong boom–bust cycles in external financing, with highly negative effects on growth, investment and employment.

Renewed support for this surfaced at the 2011 G-20 summit, but the IMF paved the path for capital account regulations. The IMF adopted an 'institutional view' on capital account liberalisation and management in 2012, that recognises costs of capital account liberalisation and benefits of capital account management or regulation. The IMF recommends countries use capital flow management measures with other policies: counter-cyclical monetary and fiscal policies, active foreign exchange reserve management, and macro-prudential domestic financial regulations. However, it emphasises that capital flows management should be used only after other macroeconomic policy management instruments have been adopted.

A somewhat more ambitious policy framework should recognise that capital account regulations (CARs) should be used on a permanent basis as an integral component of a counter-cyclical macroeconomic policy package. These should be modified according to developments in global and local capital markets.

Many emerging economies are deploying prudential capital regulations to manage capital flows. Developed countries should complement these measures with actions that discourage excessive capital outflows from their economies. This would encourage capital to go to productive use in their economies; it would also help avoid possible future crises within emerging economies recipient of capital flows. Indeed, one important aim of regulating cross-border capital flows in both recipient and source countries is reducing systemic risk that builds in both states. IMF research has shown the benefits of regulation of capital flows in both source and recipient countries, arguing that it is best to coordinate both source and recipient countries to make capital flows more cost effective.

Both recipient and source countries of capital flows should prudently manage capital accounts and regulate capital flows. To reach this end, both developing and emerging economies should:

a. Refrain from taking on new commitments in regimes incompatible with the ability to deploy capital account regulations (CARs).

b. Amend existing treaties, where there are incompatibilities between them, and the IMF institutional view on CARs.

c. Design new rules for future treaties that allow for adequate balance of payments and prudential carve out exceptions. Ideally this should also involve modifying relevant provisions of the General Agreement on Trade in Services (GATS) on financial services, where appropriate.

An aggiornamento of the WTO's views, and those in FTAs and BITs

Where capital flows stand to undermine national policy objectives and/or increase the risk of financial instability, neither the WTO or FTAs nor BITs should contain provisions that limit an individual country's ability to freely manage its capital account and regulate capital flows. If there are policy commitments to capital account liberalisation, appropriate and sufficient safeguards must be in place to allow countries to implement CARs for prudential or Balance of Payments reasons, ideally on a permanent basis.

Reinstating a state's right to implement CARs is necessary to rebuild policy space provided under the IMF Articles of Agreement and the IMF's institutional (2012) position. Many trade and investment treaties eroded this policy space, prohibiting CARs or lacking the appropriate safeguards on capital account management. Some formal commitments on financial service liberalisation within the WTO and OECD and even more in bilateral or regional agreements may fall into this category. The IMF itself noted that freedom countries hold to adopt CARs under its Articles of Agreement is often at odds with other international commitments that restrict the ability to regulate cross-border finance.

There are concerns about the limitations of WTO safeguards. Requiring measures be "temporary" may not give countries enough time to meet their goals. Moreover, there are worries the procedures to use these safeguards are too cumbersome (especially for smaller poor countries), and there is uncertainty as to whether both inflows and outflows can be included.

> *"Neither the WTO or FTAs nor BITs should contain provisions that limit an individual country's ability to freely manage its capital account and regulate capital flows."*

Of particular concern are the numerous regional and bilateral FTAs and BITs. These agreements go deeper than the WTO GATS restrictions and intrude more on developing countries' policy space to use CARs. FTAs and BITs state that all forms of capital must flow 'freely and without delay' among trade and investment partners. Whereas the GATS only covers capital transfers related to trade in financial services, FTAs and BITs often cover all transfers between parties. In addition, transfers are often broadly defined as any investment, including stocks, bonds, currencies, derivatives, direct investment, and beyond

Astonishingly, many FTAs and BITs do not have a balance of payments safeguard and/or a prudential carve out which exist under WTO. This is a serious concern amongst developing countries. There is also a very serious concern about the use of "investor-state dispute resolution" in cases pertaining to CARs in FTAs and BITs. WTO disputes on CARs are settled "state-to-state" and nation-states can negotiate on behalf of the well-being of countries and stability of their financial systems. However, that cost-benefit analysis is perverted under investor-state disputes, as applied in many FTAs and BITs, where private firms and investors may directly file claims against governments that regulate capital, profiting from private tribunal awards.

The European Union, together with the IMF, must lead the way on Capital Account Restrictions

Recent developments in the European Union relating to international investment policy offered possibility of flexibility on EU BITs and FTAs with other countries, due to a decision of the European Court of Justice (ECJ) regarding free transfer of capital clauses: the ECJ concluded these clauses contradicted EU law and need to be re-negotiated. This was based on the fact the EU Treaty, while demanding free transfer of capital, allows the possibility to regulate and restrict free transfer of capital if the economic situation requires. Many treaties negotiated by EU member states with developing states require free transfer of capital, and do not provide for any capital account flexibilities. ECJ has now found this approach illegal- it ordered member states to re-negotiate their BITs and bring them into compliance with EU law.

> **"*To date, none of the treaties found inconsistent with the ECJ ruling have been renegotiated or terminated.*"**

This could be a most welcome development for developing states. Unfortunately, EU member states - rather than providing and suggesting language that would allow for flexibilities for host states in general - are attempting to circumvent this ruling by inserting a phrase requiring the transfer of capital and payments to be free, «while respecting EU legislation». It is important to emphasise this might allow only EU member states to restrict transfers in crisis times; partner countries would not be afforded this safeguard. Developing countries must insist flexibilities are guaranteed for both partners. To date, none of the treaties found inconsistent with the ECJ ruling have been renegotiated or terminated. Therefore, the above analysis would be relevant for both new BITs or FTAs with the EU, or any potential renegotiations in future.

The EU has recently taken an encouraging turn in complying with the ECJ ruling. Latest BIT and FTA treaties negotiated between EU and Canada, Singapore, and Vietnam include a prudential carve out for restricting capital flow transfers when the stability of the financial system is in question, and temporary safeguards for capital movements and payments. Unfortunately, the latter are temporary (180 days, renewable for another 180 days for Canada, 180 days for Singapore, and one year for Vietnam), precluding use of CARs on a more permanent manner.

The IMF's institutional view could help guide future trade treaties, and the IMF could serve as a forum for such discussions. Provisions on ability of countries to freely manage their capital accounts should be revised to make them consistent with the IMF's institutional view and the provisions under its Articles of Agreement. IMF provisions reflect historical evidence, as well as rigorous academic empirical analysis on costs of capital account liberalisation and the benefits of CARs. Also, the IMF is the main international institution dealing with issues such as capital flows.

GOVERNING THE DIGITAL REVOLUTION

DIGITALISATION

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Digital services and data are driving a new era in trade.

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Technological innovation is deeply interwoven in globalisation. Fuelling cultural and economic exchanges, tech advancements spawned a global community, one now running on 3G and 4G infrastructure and reaching the most remote regions. Few economic or cultural realms lie outside the reaches of technological innovation and some, like employment, grapple to reconcile old and new structures of social organisation.

Automation, in particular, has reshaped employment. It diminishes demand for workers in some sectors while creating new opportunities in others at the same time. Manufacturers' costs reflect this shift: human resources expenses are decreasing rapidly, swapped by investments for requisite, advanced technologies. The competitive advantage of low-wage labour diminishes under these conditions- this means that many jobs that left Europe may return. However, new workforce demands will come from knowledge-intensive sectors rather than labour-intensive sectors.

The social impact of this recent wave of technology change has a gender dimension, too. Equal access to the internet injects a new dimension of flexibility women need to increasingly participate in economic activities.

This shake up leaves us in a moment of reckoning. Europe, for example, may be poised to benefit from low-wage jobs returning, but the economy's shape and make up are now skewed toward high-tech, knowledge intensive sectors. How can we level the playing field, ensure gainful employment for all members of society, and foster an environment where technological change and digitisation bolster sustained trade relationships around the globe? Specific policies regarding digital trade, data flows, intellectual property rights, and net neutrality must embody and uphold democratic principles and a resounding commitment to achieving the Sustainable Development Goals. In the European arena, in particular, this means revising policy on data provisions, data localisation, education and research and development, national tax systems, the digital single market, and a reconsideration of investment screening mechanisms.

Digital trade

Digital services and data are driving a new era in trade. Once defined by manufactured goods and multinational corporations, digital marketplaces now foster business across borders. They provide businesses with new, virtually global markets and communities. Digital platforms empower small- and medium-sized businesses to reclaim their role in global value chains, in effect creating "micro-multinationals." Manufacturing industries, too, depend on data transfers. Here, the EU holds an advantage, offering more technically advanced products. Approximately 12% of global consumer goods trade is now conducted via international e-commerce.

> *Digital trade could also increase domestic inequalities.*

This shift has far-reaching implications. On the positive side of the ledger, it helps SMEs compete internationally. On the negative side of the ledger, varying access to connectivity is widening the gap between the global north and south. Despite an increasing number of countries utilising digital flows, they remain concentrated among technological leaders. According to some studies, it is estimated that some countries stand to grow 50% by increasing their global data flows.

Digital trade could also increase domestic inequalities. Evolving technology and data landscapes have created a wild-west of regulations and legal frameworks, challenging protections for companies and consumers alike. Many existing trade rules do not capture this new reality. Meanwhile, governments around the world are drawing up barriers that hinder market access or create unfair advantages for domestic companies. Taxation is one of the biggest flaws of the European system. Moreover, the phenomena ignite concern over a balanced compromise between the need for European companies to retain their competitiveness and the need to protect citizens' right to privacy.

Data flows and e-commerce

Collecting, processing and transferring data is now a process central to service providers' and manufacturing companies' businesses. Consequently, the ability to transfer data internationally is a prerequisite for trading internationally. While electronic transmissions are not subject to duties thanks to a WTO moratorium -- one that was challenged at the 2017 ministerial meeting in Buenos Aires- other barriers, such as data localisation measures, are quickly emerging. Small and medium enterprises are most widely encumbered by data flows.

Trade agreements can offer a powerful tool for preventing these distortions. As they regulate cross border data flows and install an international legal framework, they must remain in full compliance with EU norms. Trade agreements can serve as instruments to increase the coverage of EU standards beyond of Europe.

Any new EU initiative on e-commerce should, among other things, consider developing countries' concerns in this context, such as lacking infrastructure to access energy, the internet, and information technologies but also infrastructure for transportation and postal systems. The EU should focus on addressing the digital divide and building the capacity of developing countries to properly benefit from e-commerce. At the same time, the EU should address online fraud and IP infringements in line with applicable WTO rules.

Net neutrality

The US Federal Communication Commission recently overturned so-called net neutrality rules passed during the Obama administration to protect consumers against actions of their Internet service providers, blocking and controlling content. With the US falling behind, the EU should take a leading and progressive role to protect consumers on this issue that has at its heart questions of democracy and equality. In an interconnected world, a varying access to the internet will amplify inequalities, affect international competition and infringe consumers' rights. The EU should stand firmly against any attempts to attack this principle, both domestically and internationally.

The EU as a standard-setter: data provisions in trade agreements

The EU is overtaking the US as the standard setter in international trade. Nevertheless, Europe is failing to keep pace on data regulation, and there is a huge vacuum in this field. Balancing European citizens' right to privacy and European businesses' access to international trade must be a priority.

This demands a clear European strategy. The EU holds the critical mass and the necessary leverage to lead the debate and set global standards based on both offensive and defensive interests. The EU strategy should be based on at least two pillars. First, it must ensure European companies the competitive advantage to compete in third markets. Second, it must provide a global playing field for business while safeguarding consumers and their privacy. Privacy is one of the core values of the EU.

Between super protectionist players and ultra-liberal powers, the EU should offer a balanced third way. A first step in this direction is to move away from trade agreements devoid of language on data flows. These agreements place the EU farther away from the debates that set the rules of tomorrow. As a global standard setter, the EU should project its values to the global scale and try to set golden standards such as the EU's General Data Protection Regulation ("GDPR") through the inclusion of data provision in its trade agreements.

The EU must also bridge the differences between member states and adopt a clear stance in order to influence the global debate. National governments and competing powers are each formulating different approaches to digital trade. Inaction comes with consequences: where the EU does not harmonise policy, competing partners hold the upper hand in setting digital trade policies.

Data localisation

The EU should promote the withdrawal of unjustified data localisation requirements, while acknowledging that they may be needed in certain circumstances. Excessive data localisation measures can harm all sectors of the economy and both private and public-sector organisations. Requirements to build local data storage infrastructure can prevent innovative SMEs from development, scaling up, accessing more innovative and cheaper data services, and exporting their goods. However, data localisation standards have been the subject to general, prudential and security exceptions, which EU frequently includes in FTAs. The EU must defend these exceptions, especially in relation to public health, public order and consumer protection.

> "***Balancing European citizens' right to privacy and European businesses' access to international trade must be a priority.***"

Education and R&D

The European economy is knowledge-based. Our competitiveness relies on our capacity to develop top-notch technologies and the availability of high skilled workers. Education, research and development are cornerstones of a knowledge-based economy, and heavy investments in these sectors are imperative to boost Europe's competitiveness. In parallel, Europe must adapt its social structures to reflect the shift from labour-intensive economies to knowledge-intensive economies, emphasising skills and technological infrastructure that attract firms no longer bound by comparatively low wages. Strengthening EU social funds, deploying them, and re-training disrupted workers should be a top priority. Doing so would increase the EU's competitiveness and employment rates.

“The EU should ensure that new trade rules do not obstruct tax collection.”

Integration of national tax systems

Fiscal competition between member states and tax avoidance foil European integration. An effective tax system is Europe’s best means for ensuring big data companies cannot take advantage of flaws and dodge taxes. The fiscal capacity of the Eurozone and the integration of national systems should be a priority in the EU. The EU should ensure that new trade rules do not obstruct tax collection.

A competitive domestic environment: the Digital Single Market

The EU should focus on providing the infrastructure necessary to foster business competitiveness and, at the same time, to allow citizens a fast, affordable and neutral connection to the internet. This is achieved by reducing all unnecessary burdens for both businesses and consumers while, at the same time, guaranteeing their rights. Concluding the Single Digital Market to remove barriers and ensure access, should be among the EU’s priorities.

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights (IPRs) are not fundamental rights like freedom of speech or the right to work. They are rights conveyed by governments to individuals or groups for the pursuit of certain social objectives such as the promotion of inventions and technological improvements. Patents and copyrights confer market exclusivity and monopoly rents for a period of time to permit inventors to reap a profit in exchange for making the new or improved product available to consumers.

Industrial countries and multinational corporations (MNCs) account for the vast majority of patents worldwide (more than 90-95%). Most developing countries are net importers and users of technology generated by foreign inventions. This means that IPRs involve net costs to consumers in developing countries; and the more stringent the IPR protection the more it will deter imitation and adaptation of foreign inventions to domestic needs. There is also the danger that MNCs will take out patents based on traditional knowledge and genetic or plant material commonly available in developing countries.

The TRIPS agreement recognises some of these problems and tries to mitigate them by permitting least developed countries more flexibility in implementing the agreement. It implores developed countries to promote technology transfers. The latter has been a dead letter with developed countries solely producing annual submissions to the TRIPS Council that engage in another 'beauty contest' attributing vast amounts of assistance they already give to developing countries under other programs. At the same time developed countries have tried to limit developing country flexibility by insisting on introducing WTO-plus commitments in preferential trade agreements.

> ***"Industrial countries and MNCs account for the vast majority of patents worldwide (more than 90-95%)."***

An agenda on IPRs should include:

a. Concrete developed country actions to transfer technology such as purchasing patents and transferring to low income developing countries and LDCs; or tax incentives to MNCs providing such transfers or technology adaptation;

b. Require that patent applicants disclose the country of origin of genetic resources and traditional knowledge used in the invention and that they provide evidence of prior informed consent and fair equitable benefit sharing with the developing country;

c. Developed countries foregoing efforts to introduce WTO-plus commitments in preferential trade agreements with developing countries.

DESIGNING A NEW EUROPEAN TRANSFORMATION FUND (ETF)

Most EU citizens are not concerned about trade as such but about the changes and consequences that trade agreement can yield. Trade must create added value for national economies and better opportunities for citizens, and should be complemented by universal education and social policies and strong relaunch of the EU industry.

In the early years of European integration, trade agreements rarely elicited lively public debates. At the time the European common market was protected by external tariffs, which also generated revenue to finance common policies such as the Common Agricultural Policy and the Structural Funds. While expansion of membership and opening its markets on average benefitted European economies, some vulnerable groups and territories were left behind as they lost out to external competition: they were hurt by the loss of what they regarded as the EU's identity as a polity that protected its citizens from the effects of global economic change.

> "Most EU citizens are not concerned about trade as such but about the changes and consequences that trade agreement can yield."

The progressive reduction of these tariffs and the dismantling of non-tariff barriers have deeply altered this spirit. One reason for the discontent generated by new trade agreements is that the "victims" of global economic change in Europe are left alone.

While trade policy is an exclusive EU competence, the policies capable of addressing the potential negative consequences of global trade (industrial policy, skill and education programmes, fiscal measures, social security schemes…) remain national competences. The reflection paper of the European Commission "Harnessing Globalisation" still supports this position: though timidly acknowledging that the benefits of trade are not always fairly distributed and supporting the idea that the EU should do more in this respect, the paper states that the policies needed to address these challenges are mainly the responsibility of the member states.

The creation of the European Globalisation Adjustment Fund (EGF) ten years ago addressed this asymmetry. Aware of the negative consequences of global economic changes (of which trade is both an element and a symbol) and the political reactions they induce, European leaders agreed to set up this new instrument to support victims of industrial transformation as they develop new skills and transition to new work.

While the intention is laudable, the EGF remains much too modest in size given current needs, and it is too limited in scope. The initial amount of €500 million was supposed to be expanded; instead, it was reduced, and available funds for the 2014-2020 period were capped at €150 million. The EGF can only be activated when and where more than 500 jobs are lost, and in these instances, the EU is limited to a certain array of interventions.

"The current EGF must be thoroughly redesigned and strengthened, and it must not be limited only to ex-post compensations."

The EU must recover the trust of its citizens. If the EU wants to have an exclusive competence on trade, it should start taking up its responsibility on the potential effects already before signing a new trade deal. A new progressive EU approach to trade requires a priori and a fortiori actions.

A sound and transparent impact assessment

Before concluding a new trade agreement, the European Commission should support independent analysis of the proposed agreement's effect. This analysis would not be expressed in very general terms, as is usually the case, but would examine as accurately as possible the consequences and changes on different economic sectors (i.e. agriculture, the automotive industry, IT services) and on European regions (e.g. at the NUTS level). The diagnosis would be submitted to public debates both in the European Parliament and in national parliaments before signing the treaty.

A new and more ambitious European Transformation Fund (ETF), encompassing preventative and reactive measures

The current EGF must be thoroughly redesigned and strengthened, and it must not be limited only to ex-post compensations. A new European Transformation Fund (ETF) must rely on a much larger budget. This budget should not come from a redistribution of existing budgets, but should instead be sourced with entirely additional financial means, such as (but not limited to) a tax on international financial transactions and a Carbon Tax. On one hand, these instruments can reduce unfair competition from third party states; on the other hand, the revenue generated can support developing countries and support European regions and professions directly exposed to global economic changes.

a. Preventative measures: The EU should restore an ambitious industrial policy, one based on permanent, prospective analysis of economic and technological changes, including the effects of trade. Partnerships between the EU and the most vulnerable regions would envisage the necessary strategic investments to prevent negative consequences of trade and investment treaties, and they would define the programmes requiring EU co-financing. This demands better integration of and financing for the existing Cohesion Fund and Social Fund. These programmes should be decentralised at the NUTS level (Classification of Territorial Units for Statistics level)- this has proved much more efficient than country-based policies- and should be constructed as a real partnership between the EU and the regions affected by its policies.

b. Reactive measures: The existing EGF mechanisms should be enlarged and made more flexible. They should be accessible in cases of major economic traumas (such as the closure or delocalisation of a major company); they should also be accessible in regions suffering from gradual and cumulative economic decay. Reactive funds should not only support the workers individually in their efforts to acquire new skills and find a new job, but they should also, in coordination with the member states, help develop wider education and training policies.

The EU social economy is an essential pillar of the European Social Model and it has proven to play an important role in empowering people to overcome the hardships caused by globalisation and economic crises. We must ensure that the sectors included in the social economy – such as social services, care services and education services– are not negatively affected by Europe's future trade and investment policy and that they are excluded from international negotiations.

In preparation to this policy paper, the authors have met and exchanged views with a large number of leading academics, trade experts and officials, NGOs representatives and progressive policy makers around the world.

Amongst these were:

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Guy Ryder, *Director General, International Labour Organisation (ILO)*

Michael Moeller, *Under-Secretary-General of the United Nations, current Director-General of the United Nations Office at Geneva (UNOG)*

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H.E. Syed Tauqir Shah, *Ambassador, Permanent Representative of Pakistan to the WTO*

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