



MAKING **TRADE** SERVE THE **ECOLOGICAL AND SOCIAL TRANSITION**

**37 PROPOSALS FOR REFORMING THE
EUROPEAN TRADE POLICY**

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FONDATION
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POUR LA NATURE
ET L'HOMME



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pour les réformes
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FOREWORD

The status document and proposals presented in this report are the result of almost four years of collaborative work between the Veblen Institute and the Nicolas Hulot Foundation on trade issues. Far from being exhaustive, further progress on this topic is intended through regular discussions with a wide range of stakeholders (the European Commission, the French government, administrations, Members of Parliament, Members of the European Parliament, WTO members, economists, lawyers, agronomists, trade unions and employer representatives, and members of civil society).

The findings are relatively simple: not only do current trade rules contribute to the development of an unsustainable economic model, they also act as a brake on ecological and social transition by reducing States' room for manoeuvre in many areas.

However, trade policy reform remains a relatively unexplored subject and one that is very difficult to get on the political agenda because the issue is so poorly framed. **Within the European Union, free trade appears to be an irrefutable dogma.** It is one of the cornerstones of the common market that gave rise to the European Union. From this point of view, the trade policy is only an extension of this approach applied to the Union's external relations. This heritage contributes to trade being treated as an end in itself, regardless of its impact on society as a whole.

It is no coincidence that DG Internal Market and DG Competition are so powerful, States having wanted to retain, as support for their legitimacy, almost all their competences in relation to the production of public goods and social protection. But policies in these areas are now strongly affected by the discipline imposed by the rules governing the single market as well as trade relations with the rest of the world. Therefore, any alternative proposals to the policy pursued by the European Union that do not support further trade liberalisation are disqualified in the name of the fight against protectionism. The international context, featuring the trade war between the United States and China, tends to make discussions even more fruitless.

It remains a huge challenge to reform the existing rules and truly put trade policy at the service of ecological and social transition. It needs to be done as soon as possible, in response to the accelerating ecological and climate crisis.

However, it seems our efforts are not completely in vain. Recent developments reflect a slight shift in the debate in France.

- **First, France called for the termination of the TTIP negotiations** with the United States, the TAFTA proposal, in the summer of 2016, under pressure from the general public - although it did sign the CETA with Canada.
- **Second, between rounds of the presidential election, Emmanuel Macron promised to commission an health and environmental impact assessment of CETA.** In response to the publication of a critical report by government-appointed expert, in October 2017 the Government published an action plan for the implementation of CETA and trade policy reform.
- **Third, while the Ministry of Environment, now the Ministry of Ecological and Inclusive Transition (MTES), was not involved in trade negotiations, the Secretary of State, Brune Poirson, is now on the trade policy monitoring committee formed by French stakeholders, and the MTES has created a small team dedicated to these issues.**

- **Fourth, for the first time, France stood against the majority at the Council on trade issues and voted against the validation of two new US negotiating mandates, citing the United States' stated intention to leave the Paris Climate Agreement.** While the significance of this vote remains essentially symbolic at this stage, given that France has not found any Member States to join this fight, we hope that it marks a step towards a rewriting of France's trade doctrine.
- **Fifth, in her speech to the European Parliament in July 2019, the new President of the European Commission, Ursula Von der Leyen, announced that she wanted to set up a border carbon adjustment mechanism.**
- **Sixth, although the National Assembly voted in favour of adopting CETA on 23rd of July 2019, all the opposition parties joined forces to denounce this agreement and the text remains highly divisive to this day, even within the En Marche! majority (9 votes against and 52 abstentions).**
- **Seventh, during the August 2019 G7 Summit, France, Ireland and Luxembourg requested the suspension of the process to ratify the trade agreement concluded with the Mercosur countries in response to the environmental policy of Jair Bolsonaro's Brazilian Government.**

Since the trade agreements negotiated today are establishing the framework for economic exchanges for decades to come, this is no longer the time for a gradual 'greening' of individual chapters. **There is an urgent need to transform trade policy from top to bottom: from the way agreements are negotiated to their final implementation, including the choice of partners and the tools put in place.** Such a reform involves suspending the ratification of newly finalised agreements and immediately declaring a moratorium on the 20 or so ongoing negotiations, in order to start the process of completely redefining the trade policy. **This document aims to support the use of the trade policy as a lever for ecological and social transition through 37 concrete proposals.**

OVERVIEW

For some years, the negotiation of mega-regional trade agreements (TAFTA - Transatlantic Free Trade Agreement, TPP - Trans-Pacific Agreement and RCEP - agreement between China and its neighbours) and more recently the trade stand-off between the United States and China have taken centre stage when it comes to trade policy. These events distort the terms of the debate and cloud the real challenges of trade policy and its relationship to the multiple crises we face:

- **The ecological emergency**, manifesting itself through climate change and having an irreversible impact for ecosystems and humanity¹, an ever-increasing ecological footprint left by human activity through a drain on resources beyond the planet's physical limits and the collapse in biodiversity that has led to the sixth mass extinction.
- **The social emergency**, with 10% of the world's population below the extreme poverty line, 2.1 billion people in relative poverty compared to the society in which they live², and the growth of inequalities since 1980 in almost all countries (North America, China, India, Russia and even Europe, albeit to a more moderate extent)³.



“The immediate pressures are building around escalating tariffs and volatile financial flows but behind these threats to global stability is a wider failure, since 2008, to address the inequities and imbalances of our hyperglobalised world”.

Secretary-General of the United Nations Conference on Trade and Development⁴.]

These crises highlight the limits of our globalised economic system based on a model of GDP growth driven by consumerism and productivism.

However, **while there are increasing calls for a fundamental rethink of our production and consumption patterns, our trade patterns and the trade policy that governs them remain overlooked aspects of the ecological and social transition.** Yet trade rules play a structural role in the organisation of international economic activities and, unless the ecological dimension is incorporated, they encourage an unsustainable model and the development of highly polluting activities. In terms of climate change, greenhouse gas emissions from international transport are the tip of the iceberg. While the latter are beginning to be taken into account, the more general impact of trade structuring is still completely denied.



“This whole argument that it [international trade] has an impact on the environment, I stand to be corrected, but I haven't seen one single credible study that proves it.”

Roberto Azevedo, WTO Director-General, in response to a question on the environmental impact of trade, at the World Economic Forum in Davos 2019⁵].

1. All studies agree that even if the commitments made by States in their national contributions under the Paris Agreement are met, they will nevertheless lead to an increase in global temperatures of more than 3°C by 2100, which will continue to increase thereafter. Nicolas Hulot Foundation for Nature and Mankind, “Thermomètre des engagements et des financements” (Thermometer of commitments and funding), 23/10/2015 and the 2018 United Nations report on the gap between emission reduction needs and prospects (known as the 2018 Emissions Gap Report), executive summary: https://wedocs.unep.org/bitstream/handle/20.500.11822/26879/EGR2018_ESFR.pdf?sequence=17.

2. World Bank, “Poverty and shared prosperity 2018. Piecing together the poverty puzzle”, 2018, <https://openknowledge.worldbank.org/bitstream/handle/10986/30418/9781464813306.pdf>

3. World Inequality Lab, “Report on World Inequalities 2018”, 2018

4. UNCTAD, “Trade and Development report 2018, Power, platforms and the free trade delusion”, 2018

5. Climate Home News, “WTO chief is in denial over climate impact of trade”, 30/01/2019

The current international trade policy is leading to a double impasse:

→ **International trade law has been placed above all other rules, establishing a de facto hierarchy in relation to other areas of regulation.**

To facilitate trade and promote investment, States have agreed to adopt binding international trade rules, defined in multilateral agreements within the WTO framework or in regional or bilateral agreements. The proliferation of trade agreements now covering increasingly broad areas is instrumental in consolidating and building up this legal edifice. At the same time, however, environmental, social and fiscal rules remain essentially defined at national level and States are reluctant to adopt ambitious and truly binding international rules in these areas. This is why actually complying with the Paris Climate Agreement and other multilateral environmental agreements and with the international standards of the International Labour Organization (ILO) and the United Nations remains a tall order. In addition, countries systematically seek to limit the impact of social and environmental standards on economic activity. As such, States, starting with the European Union, have deliberately refrained from making any form of commitment in the Paris Agreement that could have had a negative effect on trade.

→ **Trade has become an end in itself, which means that trade policy is conducted autonomously, often in contradiction with other public policies.**

The increasing number of trade and investment agreements, particularly under the impetus of the European Union, are instrumental in locking our societies into a socially and ecologically unsustainable economic model. And more seriously still, the rules to which States subscribe through the agreements limit their ability to act in order to drive the ecological and social transition we need.

As a result, trade policies over the past several decades have contributed to the aggravation of social and environmental crises. This situation, coupled with the lack of transparent democratic debate on the content of international trade rules, is fuelling mistrust and frustration among a growing portion of the population, reflected in a rise in the number of candidates on the ballot proposing to curb international trade through protectionist measures tinged with nationalism. As such, trade issues were largely addressed in the context of the election of Donald Trump or the referendum on Brexit; two events that should have served as an electroshock to the European Union. On the contrary, the European Commission is pursuing and accelerating its strategy of multiplying trade and investment agreements in all directions in a dangerous rush forward, without being able to prove their economic, ecological or social relevance. And despite a recent shift in the discourse of French and European decision-makers on the need for more inclusive and sustainable policies, the latest so-called 'new generation' agreements negotiated by the European Union are still based on the principle of the absolute supremacy of international trade over all other rules.

It is important to listen to the legitimate criticisms of citizens and experts concerning trade policy and its effects on society and the environment in order to develop appropriate responses.

Trade policy is, of course, part of a more complex set of rules. A company's relative competitiveness in the global economic race is associated with many factors, including, for example, currency parities, taxation, levels of regulation, the range of public policies it benefits from (quality of infrastructure, training and the health system, public subsidies, etc.) or helps to fund (by paying social insurance contributions in particular). Trade rules alone cannot create a level playing field at a high level of regulation ensuring a dignified standard of living for all citizens and the protection of our ecosystems. But they have a significant impact on the ability of States to regulate, and even more so now that trade negotiations are focusing on non-tariff barriers to trade, i.e. regulatory divergences. Since trade rules can hinder or strengthen social or environmental regulations at national level, it is vital to take a closer look at them.



“Resisting isolationism effectively requires recognizing that many of the rules adopted to promote ‘free trade’ have failed to move the system in a more inclusive, participatory and development-friendly direction”.

UNCTAD Annual Report 2018]

These responses cannot simply be based either on further liberalisation or a withdrawal behind national borders. They require the promotion of binding and ambitious international social, environmental and taxation rules and, consequently, a review of trade and investment law to end its supremacy over other rules⁶. This is essential for any real economic, energy, ecological, democratic and social transition.

It is with this in mind that the Veblen Institute and the Nicolas Hulot Foundation call for a rethinking of trade policy and encourage the European Union to engage in an open and innovative dialogue on this subject. In order to spend time on such a process, **it would appear necessary to place a moratorium on agreements under negotiation or ratification, including CETA, and to renegotiate agreements already in force, including the most recent ones such as JEFTA.**

Such a process would both meet citizens' expectations and restore consistency with the stated ambition to use trade agreements to protect and promote European norms and standards.

After analysing the social, environmental and democratic limitations of current trade policy, this note proposes concrete and pragmatic recommendations for making the European Union's trade policy a lever for accelerating ecological transition in a fair and democratic way.

A prerequisite for this is to rethink the way in which these agreements are negotiated by implementing rules for transparency and greater democratic control. It is then important to redefine the main principles that will guide future (re)negotiations: ensuring that social and environmental rules take precedence over commercial interests, restoring the States' room for manoeuvre to conduct this ecological transition, restoring the primacy of the general interest over investment protection rules and giving special treatment to agriculture, which is a sector unlike others.

Convinced of the need to move from free trade to fair trade, the objective of this approach is to demonstrate that between the selfish protectionism advocated by the extreme right and the blind free trade currently defended by the European Commission there is an alternative path to social progress for everyone.

6. The Havana Charter of March 1948 specifically aimed to establish an international trade organisation in conjunction with the United Nations Economic and Social Council, with a mandate to promote employment and development. It is only because of the United States' refusal to sign the Charter that international trade has become totally autonomous from other areas of international politics (particularly social and environmental).

5 KEY PROPOSALS

- **Make international trade a lever for climate diplomacy, tax cooperation and human rights protection: trade sanctions should be applicable against countries that commit severe environmental and human rights violations** and do not engage in the battle against tax avoidance. Conversely, bilateral agreements should **promote trade in virtuous products with countries that are firmly engaged** in the implementation of international commitments.
- **Include in all future bilateral trade agreements clauses suspending trade benefits in the event of non-compliance with international climate, social and fiscal commitments, to be assessed on the basis of clearly defined criteria; open negotiations to amend the agreements already in force accordingly.** In concrete terms, if a trading partner decides to leave the Paris Agreement, the EU must be able to suspend its entire trade agreement with it. And if the trading partner deviates from its downward trajectory of greenhouse gas emissions, the suspension could be partial until it returns to the right trajectory. In addition, the EU must be able to take measures to ensure that the facilitation of trade and investment is not subverted to avoid binding climate regulations.
- **Implement an agricultural exception and recognise that agricultural goods are commodities unlike any other. And deny European market access to agricultural products that are produced using practices banned in the EU**, for example meat fed on animal meal or cereals treated with pesticides prohibited in Europe.
- **Implement a carbon tax at borders or any tool with the same effect** in order to raise the level of ambition of the instruments used in the EU to combat climate change while ensuring a level playing field for European producers and limiting the risks of carbon leakage. **Imported GHG emissions must be reduced and their monitoring must become a key indicator in the conduct of trade policy.**
- **Remove arbitration tribunals** that allow multinationals to attack States who adopt legislation damaging to their interests and **establish binding rules on respect for human rights**, particularly in the context of the UN treaty on business and human rights that is currently being negotiated.



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CHANGING TRADE RULES: **THE RESPONSIBILITY OF THE EUROPEAN UNION**

A NECESSARY BUT DIFFICULT OVERHAUL OF INTERNATIONAL INSTITUTIONS

To meet the global challenges we face, international institutions must be rebuilt to reverse the current hierarchy of norms and foster multilateral cooperation.

Here are some ways to achieve this:

- **Reposition the WTO within the system of UN institutions and redefine its mandate to use trade regulation to achieve sustainable development goals.**
- **Provide the ILO with the power to impose sanctions**
- **Establish a world environmental organisation with sanctioning powers to develop and monitor the implementation of multilateral environmental agreements.**
- **In the field of taxation, international rules should be defined through a truly multilateral framework, not simply by an organisation that brings together only the richest countries, such as the OECD.**
- **Develop a binding treaty on multinational corporations and human rights that imposes new obligations on corporations to respect human rights and prevent risks and facilitate access to justice for victims. This is the purpose of the ongoing work within the United Nations Human Rights Council, in which the EU is reluctant to actively participate ⁷.**

This is not exactly the direction in which the international community is heading. Current debates on WTO reform focus on the threat of the Trump administration's blocking of the dispute settlement body until the end of 2019 and on the specific problems posed by the Chinese economy. As such, current international trade tensions are masking all the other difficulties that have led to the more general paralysis of the WTO over the years.

The current proposals being made by France and the European Union for WTO reform fall far short responding to the structural imbalances created by current trade rules and to the environmental and social emergencies we are facing ⁸. For example, they do not at any point address the agricultural issues that have led to the failure of the Doha Round for more than ten years.

Even if the European Union were to propose an ambitious reform agenda towards international trade rules that support ecological and social transition, there would be many difficulties involved in its implementation.

This is why, without waiting for the arrival of such international reforms, international trade reform must start now through the overhaul of European market access rules and the bilateral agreements currently being negotiated by the EU with its trading partners.

In the short and medium term, therefore, it is not by turning our backs on the negotiations but rather by rewriting trade rules in the service of higher political objectives, such as ecological transition and the fight against poverty and inequality, that trade can be regulated and international social, environmental and fiscal standards can be made operational.

7. CCFD-Terre Solidaire, "Une stratégie de diversion. L'union européenne dans les négociations pour un traité onusien sur les entreprises transnationales et les droits humains" (A diversion strategy. The European Union in the negotiations for a UN treaty on transnational corporations and human rights), October 2018.

8. Non-paper from the European Commission published in September 2018, http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf

AN URGENT REFORM OF EUROPEAN TRADE POLICY

The European Union is the natural actor to begin this transition: it has both the ambition and the means. Failure to take action would also expose it to the risk of implosion.

INCLUDING SUSTAINABLE DEVELOPMENT IN TRADE POLICY: FROM RHETORIC TO ACTION

The European Commission consistently shows a willingness to **“use trade agreements and trade preference programmes to promote such fundamental issues as sustainable development, human rights, fair trade and the fight against corruption”**⁹.

It has become a central element of its rhetoric to justify both the expansion of the scope of trade agreements and their multiplication. **As of September 2019, there are no less than 20 ongoing negotiations with more than 60 countries**¹⁰.

The European Commission constantly assures us that:

- *“Any change to the level of protection can only be upward. The right to regulate will always be protected.”*
- *“CETA will uphold Europe’s high standards in areas like food safety, workers’ rights and the environment”,*
- *“Recent free trade agreements (FTAs) negotiated by the EU systematically include provisions on trade and sustainable development. The aim is notably to maximise the leverage of increased trade and investment on issues like decent work, environmental protection, or the fight against poverty and climate change, in order to achieve effective and sustainable policy change”.*
- *“In CETA, both sides agree that more trade and investment should not be at the expense of environmental protection and labour rights. On the contrary, the EU and Canada are committed to ensuring that CETA helps ensure that economic growth, social development, and environmental protection go hand in hand”*¹¹.

But these stated commitments are far from being met, as shown for instance in the health and environmental impact assessment of CETA¹² commissioned by the French government in October 2017, which deplored the lack of consideration of climate change and called for additional measures to be introduced in order to avoid distortions regarding sanitary standards. To date, the social and environmental clauses introduced into trade agreements are limited to recalling the international commitments made by States and they are in any case non-binding. Beyond the strengthening of these chapters, it is the entire content of trade agreements that should be reviewed in depth to better take these aspects into account.

It is imperative that reality catches up with the official discourse of the European Commission, and that it does so now. Otherwise, European citizens could lose all confidence in the European institutions to which they have agreed to transfer a large portion of their national powers.

9. European Commission (2015), “Trade for all”

10. http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf

11. European Commission, “Trade for all”, 2015; Non paper of the Commission services, “Feedback and way forward on improving the implementation and enforcement of Trade

12. Katheline Schubert and al., « Report to the Prime Minister. The impact of the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada on the environment, climate and health », 17/09/2019

THE EU HAS THE MEANS TO INITIATE THIS CHANGE

Foreign trade policy is one of the major competences transferred by Member States to the EU¹³. This means that the European Commission conducts the negotiations of trade agreements between EU Member States and third countries. Since the implementation of the Lisbon Treaty, the EU has also been responsible for investment protection¹⁴.

Due to its ability to act on behalf of all Member States, **the European Union is the world's leading trade power ahead of the USA and China with the largest volume of exports (almost EUR 2,800 billion/year) and imports (almost EUR 2,600 billion/year). It is also the leading provider and beneficiary of foreign direct investment in the world**¹⁵.

The 500 million consumers with high purchasing power in the European market represent a major opportunity for investors and companies worldwide. **It is therefore incumbent on the EU not to be complicit in human rights or environmental violations committed by third countries or multinational companies by preventing the goods concerned from accessing the European market.** With this leading role in international trade, the EU is in a position to influence world trade rules. Its predominant position also gives the European Union significant power to set standards, and European trade policy therefore constitutes a benchmark in international trade relations.



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13. Article 3 of the TFEU

14. In its opinion on the EU-Singapore agreement (Opinion 2/15 of the Court, 16 May 2017, <http://curia.europa.eu/juris/document/document.jsf?text=ocid=190727>), the ECJ nevertheless considered that this transfer of competences included limits in terms of ISDS and indirect investments.

15. DG Trade, "Statistical guide", June 2018, http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151348.pdf

INACTION REPRESENTS A MAJOR RISK FOR THE EU

If the EU fails to seize this unique opportunity to revisit its trade policy and initiate changes to international trade rules to make them fairer, it runs the risk of a loss of legitimacy and, ultimately, of implosion.

In recent years, the EU has started negotiating trade and investment agreements with several global economic powers and G7 members, including Canada and the United States of America. Because of their more symmetrical and balanced nature, these trade negotiations have successfully revealed the unfairness of certain conditions previously imposed on developing countries.

The content of these 'new generation' agreements - i.e. they are no longer aimed solely at reducing customs duties but also non-tariff barriers such as production standards as well as health, social and environmental standards - has also appeared to contradict the objectives of other European public policies and to contain innovations that threaten democracy. **Not only do these agreements fail to provide satisfactory responses to the environmental and social issues that the EU claims to want to address, they actually aggravate these issues.**

These two transatlantic negotiations, conducted with key countries to update international social and environmental rules and their implementation, are far from the exemplary standards that international trade leaders should set. It is no coincidence, therefore, that they have generated unprecedented reaction from multiple stakeholders across society (civil society organisations - NGOs, trade unions, consumer associations, farmers, SMEs, judges, lawyers and economists, etc.). The final adoption of CETA remains highly contested in many countries, particularly in France, where its approval by the National Assembly in July 2019 provoked lively public debates.

The debate on the future of the EU cannot ignore such issues. By proposing to put trade policy at the heart of the European project, without any change to its content, the European Commission seems not to understand the risk at which it is putting the EU and its citizens.

At the same time, the British people's decision to leave the European Union in June 2016 has plunged the EU into the arduous exercise of completely redefining its relations with a future ex-member country. The triggering of Article 50 of the Treaty on European Union by the United Kingdom requires the negotiation of much more than just a trade agreement, with a multitude of issues needing to be addressed. In March 2018, the European Commission, through its President Jean-Claude Juncker, asked member countries to communicate their expectations in this area. For its part, the United Kingdom set the tone by threatening the EU with a more aggressive tax policy in order to compensate for its loss of attractiveness following departure from the single market. The arrival of Boris Johnson as Prime Minister on 24th of that July 2019 may suggest that negotiations could be long and difficult. **In any case, all the various recommendations made in this report ought to help shape the format and content of negotiations on the future framework of relations between the EU and the UK.**

Finally, the new trade strategy developed by the Trump administration to renegotiate a number of previous agreements and to favour bilateral agreements over regional or multilateral ones poses new challenges for all of the United States' trading partners. How can we avoid this trade war and continue to enjoy the benefits of the current openness while redefining trade rules to put trade back at the service of society?

These responses cannot simply be based either on further liberalisation or on withdrawal behind national borders. They require the promotion of binding and ambitious international social, environmental and tax rules and, consequently, a review of trade and investment law. **The entire philosophy and architecture of trade agreements must be reviewed so that they become genuine trade regulation agreements and no longer simply trade liberalisation agreements.** This process must lead to a reduction in the volume of trade: first, because some goods should no longer be consumed (fossil fuels, diesel/petrol cars, etc.) - and other goods should be consumed in completely different ways; and second, because some intra-group trade constituting tax, social and environmental optimisation strategies by multinational companies will have been discouraged.

To meet these challenges, the European Union must create the conditions for a thorough and open debate on its trade policy, by declaring a moratorium on ongoing negotiations in order to conduct a comprehensive assessment of existing agreements and to convene, on this basis, conferences on trade and investment policy to define the outlines of a new fair and sustainable trade policy.



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PROPOSALS
TO PUT
INTERNATIONAL
TRADE AT THE
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PREREQUISITE: ENSURE TRANSPARENCY AND DEMOCRATIC CONTROL OF TRADE POLICY

1. Launch the complete redefinition of trade policy

→ Organise European and national trade policy conferences to reiterate the goals of trade policy. All existing agreements and those under development should be evaluated and revised in the light of the new goals defined through this process.

2. Ensure the transparency of trade policy

→ Make the negotiation process transparent, from the selection of trading partners to the creation of the negotiating mandate and the conclusion of the negotiations, with online access to the negotiating mandate and to the consolidated or ongoing texts. This transparency policy must be one of the preconditions for trading partners wishing to open negotiations with the EU.

3. Strengthen democratic scrutiny by European and national parliamentarians

→ Give European parliamentarians a role in the formal approval of negotiating mandates, with the option to propose amendments. During negotiations, they must be able to amend the proposals made by the European Commission so that their recommendations can be incorporated effectively. In terms of the final draft agreement, members of European parliament must have the option to ratify it, to propose amendments so that the parties can resume negotiations, or to ask for the agreement to be definitively abandoned. A maximum time limit could be set to ensure that the process is actually completed.

→ Provide national parliamentarians with detailed information on the agenda of Council meetings on trade matters and discuss the positions to be taken by their government. For mixed agreements covering subjects of shared competences, such as the investment component, national parliamentarians must be able to intervene in the negotiations in the same way as European parliamentarians.

→ End the practice of the provisional application of mixed agreements to enable a calm and informed debate on foreign trade agreements prior to their implementation, with adjustments possible within a specified time frame.

→ Provide for the expiry of negotiating mandates beyond a certain deadline so that Member States are forced to update them if discussions are resumed after a period of interruption. As such, the completion of an agreement with the MERCOSUR countries twenty years after the launch of negotiations on the basis of a mandate dating from the mid-1990s should therefore no longer be possible.

4. End trade experts' monopoly on trade policy

→ Include specialists in climate, social, fiscal, financial and other matters on negotiating teams.

→ Fully involve other Commission DGs and relevant national ministries in negotiations on trade rules.

5. Provide for the reversibility of international trade agreements with clear and precise review and termination clauses. And put an end to the use of sunset clauses that allow the effects of certain provisions to be extended several years after the potential termination of an agreement.

6. Ensure that balanced and open participation mechanisms are in place to open up trade negotiations to civil society experts and to prevent the negotiation process from being appropriated by private interests

- Organise public consultations on the negotiating mandate, on key proposals and on the final draft agreement.
- Ensure a balanced participation of different stakeholders, from the preparation of the mandate to the ratification process. All stakeholders should have equal opportunities to make proposals to policymakers before, during and after the negotiation of a trade and investment agreement. Governments and the Commission must ensure this balance in their interactions with stakeholders, both quantitatively and qualitatively. This involves seeking contributions from under-represented representative and general interest groups (or even supporting their activity) and limiting interactions with over-represented private sector lobby groups.
- Publish requests and proposals from all stakeholders, including the private sector, as well as the list of meetings and events organised between stakeholders and representatives of the European Commission. The Commission should refrain from bilaterally seeking contributions from interest groups that refuse these minimum transparency rules.
- Establish rules to avoid conflicts of interest for negotiators (before and after their mandate).
- Open up negotiations to civil society, as per the UNFCCC format, for example, with a specific observer status.
- Introduce an optional citizens' initiative referendum procedure on the validation of the agreement, with the option to make additional proposals.
- Establish a monitoring mechanism with civil society participation and a recourse mechanism for local communities, civil society organisations, local elected officials, consumers, farmers or businesses to alert them to possible breaches by States or investors from the other party.

MAKE TRADE LAW SUBJECT TO INTERNATIONAL SOCIAL, ENVIRONMENTAL AND TAX RULES

7. Promote compliance with international standards (ILO, human rights and international environmental conventions) for all products marketed in the European Union

- Improve social and environmental traceability throughout the value chain by introducing a system of 'product standards', imposing mandatory labelling on origin and production conditions for all products marketed in the EU¹⁶.
- Redefine the concept of like products in order to make non-incorporated processes or production methods (PPM) (i.e. invisible on the final product) grounds for discrimination and usable in establishing the differential treatment of products¹⁷. Invoke existing general exception clauses to justify unilateral requirements concerning PPMs (cf. Article XX of the GATT, in particular the "protection of public morals") - a concept that must be considered to include the need to protect the ILO's fundamental labour rights - and the "conservation of exhaustible natural resources")

16. Arnaud Zacharie, "Mondialiser les normes sociales et environnementales" (Globalising social and environmental standards), *Revue Projet*, No. 353, July 2016

17. Contribution from the CSR Platform for the National Priority Action Plan for CSR Development, "La RSE à l'international : promouvoir des règles du jeu équitables" (International CSR: Promoting a level playing field", 09/2016, p.99

- Systematically implement border adjustment mechanisms either through economic instruments (taxes, subsidies, or tradable emissions permits or quotas) or through regulatory instruments (standards, certification, quotas, etc.).
- Contribute to global funds supporting initiatives to promote compliance with social and environmental standards, available in particular to developing countries with the proceeds of taxes levied on imported products.

8. In the field of climate change policy, develop a border carbon adjustment mechanism

- Start with a few products that emit high levels of GHG emissions and are subject to strong international competition, such as aluminium or cement. The first objective is to experiment with this type of system, with a view to ultimately implementing it across all sectors. An initial step might involve exempting products from countries that have also set up a carbon price system from any border carbon tax, in order to encourage all our trading partners to set up a carbon tax.
- In parallel, work to develop a system for assessing the carbon content of products based, for example, on the 'best available technology'.
- Make the conclusion of new trade agreements subject to the implementation of a carbon price system, whether in the form of a quota market or a tax.

9. Build a coalition of countries ready to implement ambitious measures to achieve carbon neutrality by 2050 in order to meet the objectives set by the Paris Agreement and impose higher customs barriers on countries that are not members of this 'climate club'¹⁸

- The participation of developing countries in such a club should of course be subject to appropriate rules.

10. Apply trade sanctions against partners who commit serious human rights and environmental violations

- Prioritise imported products that contribute to these violations (agricultural products driving deforestation, fossil fuels, etc.)
- Invoke the existing general exception clauses in Article XX of the GATT¹⁹ and make proposals to strengthen them if they prove insufficient to justify such trade retaliation measures.

11. Review the content of existing trade agreements on the basis of economic, social, environmental, fiscal and human rights impact assessments

- Environmental assessment should not only take into account the climate impact of agreements, but also the impact on the use of a number of resources (materials, water, etc.) and on biodiversity²⁰.

12. Establish preconditions for the opening of any new trade negotiations

- Establish criteria for selecting trading partners to ensure effective compliance with international commitments on human rights, climate change and tax evasion.

18. Lionel Fontagné & Jean Fourré, "La politique commerciale au service de la politique climatique" (Trade policy serving climate policy), La lettre du CEPII, No. 373, 2017

19. Olivier De Schutter, "Trade in Services of Sustainable Development. Linking Trade to Labour Right and Environmental Standard", Edition 1st, 2015

20. CGDD (2018), op.cit., proposal 7

→ The minimum set of requirements should be: the ratification of international standards, (at least the eight fundamental ILO conventions, the “Decent Work Agenda”, the Paris Climate Agreement, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), the Convention on the Conservation of Migratory Species of Wild Animals, the International Plant Protection Convention (IPPC), and the International Covenant on Economic, Social and Cultural Rights) and the adoption of the OECD’s BEPS Action Plan to combat the erosion of tax bases.

→ No new trade agreements should be negotiated with countries that do not comply with these international standards.

13. Conduct an independent assessment, involving consultation of the parties involved, of the impact of the proposed agreement before the negotiation process (before the negotiating mandate is defined) and at the end of the negotiations.

→ This assessment cannot be limited to economic growth but must also assess the impact on human rights, the environment, financial stability and taxation. In particular, it must examine whether the agreements are compatible with a climate trajectory of 1.5°C, taking into account imported emissions, the ecological footprint and the impact on biodiversity.

14. Include the primacy of international environmental, social and human rights law in trade agreements

→ Recognise, in the preamble to the agreements, the precedence of all international agreements on the environment, human and social rights, and taxation.

→ Include an exception clause for all public policies of general interest, for example policies to combat climate change or to combat tax evasion. This clause could stipulate that the provisions of the treaty do not apply to these policies unless they provide a higher level of protection.

→ Include experts from the ILO, the UNFCCC and the Human Rights Council Advisory Committee as observers for the settlement of disputes between States in order to give a binding opinion directly in accordance with international commitments.

15. Provide for the complete or partial suspension of bilateral trade agreements in the event of a party’s reversal of its international social, environmental or fiscal commitments

→ Include clauses for the complete suspension of the agreement in the event of a serious breach of international commitments (for example, in the fight against climate change, should they leave the Paris Agreement, should there be no increase in the national contribution, or should greenhouse gas emissions rise).

→ Make the chapters on sustainable development, labour and the environment binding by submitting them to the inter-State dispute settlement mechanism, without having to demonstrate the existence of any trade prejudice.

→ Establish safeguard mechanisms to permit tariff and non-tariff barriers to be raised in the event of non-compliance with commitments to implement and reinforce the standards defined in the agreement. For example, these mechanisms could be activated in the event of a national contribution that is not compatible with the 1.5° trajectory, failure to comply with the national contribution, or failure to pay the pledged international climate financing.

16. Introduce provisions in trade agreements to promote social convergence

- Introduce rules to promote the payment of a decent wage, adapted to the level of development of the various countries in order to promote upward convergence²¹. Some proposals are based on a percentage of the median salary²² or the definition of a living wage²³.
- Guarantee foreign workers the highest possible level of remuneration and social protection between the country of origin and the host country.

17. Incorporate joint commitments on tax justice into trade agreements

- Establish minimum corporate tax rates to promote tax harmonisation.
- Make it mandatory to be transparent about the real owners of companies and trusts.
- Require the publication of a country-by-country public report by multinational companies, based on the model of European transparency rules for banks.
- Jointly commit to work on the reform of international tax rules in a multilateral framework and to promote a new system of unitary taxation.

18. Declare specific and ambitious commitments to ensure the effective implementation of the Paris Agreement against Climate Change

- Mutually commit to follow and implement a quantitative national roadmap that is more ambitious than the one prepared under the Paris Agreement, taking into account international transport and imported emissions and in line with the 1.5° climate change limitation trajectory.
- Include a clause authorising compensatory measures at borders to avoid 'carbon leakage'.
- Link the agenda of tariff dismantling and market access commitments to the implementation of this roadmap.
- Maintain (and if possible increase) tariffs on products that are particularly harmful to the climate (palm oil, fossil resources, etc.) and potentially provide for a gradual reduction based on the achievement of sustainability objectives.

19. Provide specific rules for the energy sector

In bilateral agreements:

- Introduce a chapter dedicated to energy, developing specific market access rules that allow differential treatment according to the environmental characteristics of the energy resources (renewable energies vs. fossil fuels).
- Prohibit or discourage the exploitation, trade and consumption of non-conventional fossil fuels by taxing products based on their carbon intensity.

21. In the renegotiation of NAFTA between Mexico, the United States and Canada (USMCA), a new rule was introduced for the automotive sector, requiring that 40-45% of content (variable rate depending on whether products are finished goods or parts) originates from production sites at which wages are higher than \$16 per hour (five times more than the average wage in this sector in Mexico). However, this clause may have only a limited impact since vehicles exported by Mexico already contain nearly 40% of components of Canadian or American origin. In addition, the tariff penalties for non-compliance (2.5% on cars) remain very low. Sam Gindin, "NAFTA renewed. Now what?"; Canadian Dimension, Volume 52, Issue 3: Fall 2018

22. Jared Bernstein and Lori Wallach, "The new rules of the road: a progressive Approach to Globalization", 2016 and Arindrajit Dube, "Proposal 13: Designing Thoughtful Minimum Wage Policy at the State and Local Levels", The Hamilton Project, University of Massachusetts, June 2014

23. See for example the work of the "Asian Floor Wage Alliance" and the Collectif Ethique sur l'étiquette

→ Discriminate fossil fuels in order to make renewable energies more competitive (prohibition of subsidies, export/import controls, tax tools, etc.).

At WTO level:

→ Amend the WTO Agreement on Subsidies and Countervailing Measures to allow state support for renewable energy and prohibit fossil fuel subsidies²⁴.

20. Reduce the impacts of international freight transport

→ Develop specific joint rules on the transport of goods with binding clauses on environmental standards, particularly regarding the quality of fuels used and the speed of ships.

→ Introduce a tax on international air and maritime transport (impose a carbon tax for both sectors or a tax on bunker fuels for the maritime sector).

21. Take measures to protect biodiversity

→ Strengthen and integrate provisions on the yellow and red card scheme against illegal fishing and on the voluntary partnership agreements under the FLEGT Timber Regulation.

→ Extend these tools to other sensitive products, preventing European market access to products that do not comply with a minimum level of rules.

22. Adopt binding European and international rules on multinational companies' duty of vigilance

→ Adopt a European directive on the duty of vigilance in order to implement the United Nations Guiding Principles on Business and Human Rights.

→ Jointly engage with our trading partners to develop a binding international treaty on business and human rights in the working group established by the United Nations Human Rights Council.

23. Introduce new climate obligations for European investors abroad:

→ Publish information on GHG emissions relating to activities financed through foreign direct investment in third countries.

→ Pay a tax on FDI revenues relating to activities in the fossil energy sector²⁵.

24. Better manage the redistributive effects of trade agreements and compensate the losers

→ Rewrite the mandate of the European Globalisation Adjustment Fund and reinforce the course of action open to it to compensate the losers of trade agreements much more effectively.

→ Establish mechanisms to correct excessive trade imbalances within the EU and possibly beyond²⁶.

24. Foundation for European Progressive Studies, global progressive forum, PES, SOLIDAR, European Trade Union Confederation, "For the many, not the few. Towards a progressive model for international trade and investment", December 2018

25. Transport and Environment and Trade Justice Movement (2017)

26. James K. Galbraith, Stuart Holland and Yanis Varoufakis, Modeste proposition pour résoudre la crise de la zone euro (A Modest Proposal for Resolving the Eurozone Crisis, Les petits matins, 2014

PRESERVE THE CAPACITY OF STATES TO REGULATE

25. Prohibit the most intrusive negotiation methods

- Do not use 'status quo' clauses or those with a 'ratchet' effect.
- Return to positive list negotiation for services.

26. Protect public services effectively

- Define public services as activities subject to a special regulatory regime or specific obligations imposed on services or service providers by a national or local authority in the general interest. This set of rules may include - but is not limited to - universal service access obligations, limitation of the number of providers of a service, fixed price ranges for a service, establishment of quotas, economic tests, preserving user safety and ensuring their fair treatment²⁷.
- Explicitly exclude from any agreement the public services thus defined and the measures regulating or financing them via an *ad hoc* clause.
- Maintain the effective capacity of local and state authorities to regain control over the management of services (remunicipalisation, renationalisation or other hybrid forms of management with user participation).

27. Give local authorities and States more room for manoeuvre in terms of public procurement and allow a form of 'buy sustainable act'

- Prohibit any commitment that prevents the revision of the European Public Procurement Directive and the inclusion of additional criteria for the selection of bids (fiscal responsibility, short supply chains, location criteria, recycling, etc.). This should enable the European Union to develop a buy sustainable act (a sustainable form of buy European act or small business act) in order to use public procurement to encourage national and local companies to transform their production models to make them more energy efficient and sustainable while promoting local employment and thus improving the social acceptability of the ecological transition.

28. No longer refrain from regulating by amending market access rules and performance requirements in trade agreements

- Refuse to define horizontal rules applicable to all sectors and provide for specific industry chapters (energy, agriculture, culture, finance, etc.).
- Authorise rules that impose elements of local content (employment, supply, etc.) in return for investments to promote territorial development.
- Maintain the ability to prohibit or limit certain activities, depending on their societal impact.
- Commit to redeploying public support systems to reduce harmful activities and promote other areas of activity that are conducive to ecological transition²⁸.

27. Markus Krajewski, "Model clauses for the exclusion of public services from trade and investment agreements - Chamber of Labour Vienna & European Federation of Public Service Unions (EPSU)", 02/2016, p.9

28. CNCDH, "Let us not sacrifice human rights for the benefit of commercial interests", Opinion on international trade and financial agreements and human rights, 2016

29. Put regulatory cooperation at the service not of trade but of ecological and social transition

- Regulatory cooperation must be used to ensure respect for human rights and improve the protection of citizens and the planet. Dialogue mechanisms on existing and future rules and standards should make it possible to systematically seek upward convergence of social and environmental protection. Trade facilitation is one of the possible outcomes of this process of international harmonisation of standards, but it should not be used as a compass or an end in itself. If the adoption of stricter common rules has the effect of limiting trade, this must be possible.
- Favour frameworks for international regulatory cooperation and encourage ambitious collective expression within these forums.
- Ensure a balance in stakeholder representation in these forums to ensure that civil society concerns are taken into account and apply strict rules on the transparency of contributions and interactions with private interest groups.

30. Ensure compliance with the precautionary principle

- As a preamble to agreements, introduce provisions explicitly ensuring the legally binding status of the European precautionary principle²⁹.

31. Enable governments to effectively control capital flows

- A clause in trade agreements must allow control that is proactive (i.e. that can be exercised before a crisis even occurs) and unlimited in time. It would replace the current provisions, which only contain a temporary and reactive clause and are therefore unable to guarantee the stability of the financial system.

REFORMING THE INVESTOR PROTECTION AND ARBITRATION REGIME

32. Do not extend these special laws in new agreements

- Refrain from creating new rights for investors not previously covered by refusing to include the ISDS (investor-state dispute settlement), ICS (investment court system) or MIC (multilateral investment court) mechanisms in treaties under negotiation.
- Use if necessary alternative tools available to international investors for insuring themselves against the risks associated with trade with third countries whose legal systems are unreliable³⁰.

33. Reduce the scope of existing investor rights by launching a procedure to review existing agreements and simply remove clauses that provide for the option to use an ISDS mechanism

- This review should cover all investment agreements concluded by France (107, of which 96 are in force³¹) and by the European Union, in particular the Energy Charter Treaty.

29. foodwatch, "For a new European Union policy. foodwatch requests for free trade agreements under negotiation. February 2018

30. J. Bernstein and L. Wallach (2016) op.cit., p.1

31. Seybah Dagoma, "Report on the settlement of investor-state disputes in international agreements", National Assembly, February 2016,

→ Take as an example the treaty currently being prepared within the European Union to put an end to ISDS mechanisms between EU Member States³².

If these clauses are not removed, their scope should be significantly reduced by introducing at least the following reforms³³ :

→ Provide basic protection only for investments that contribute to the general interest (to be defined using clear criteria related to the objective of ecological and social transition), through the negotiation of ad hoc clauses in contracts between investors and States relating to specific investments.

→ Restrict investor rights:

- Define the notion of investment more restrictively, excluding portfolio investments and prohibiting investors involved in human rights or environmental violations from accessing arbitration ('Clean Hands doctrine').

- Review standards of protection, retaining only protection against overt discrimination, denial of justice and uncompensated direct expropriation and removing standards interpreted extensively by the arbitral tribunals such as fair and equitable treatment and protection against indirect expropriation.

- Limit the compensation payable to the amount of investments made.

→ This protection should be provided through national courts. The investor must also exhaust domestic means of recourse, as in India's new model bilateral investment treaty³⁴ before referring either to a Public International Court or to the inter-State dispute settlement mechanism.

→ Effectively preserve the right of States to regulate (establish a mechanism for filtering complaints based on exception clauses for prudential, health, social, environmental or fiscal measures).

→ Ensure the transparency of procedures.

→ Prohibit funding by third parties that pre-finance investor-led proceedings and are remunerated as a percentage of compensation paid by governments.

34. Incorporate human rights obligations for investors that take precedence over investment protection agreements

→ Introduce a clause guaranteeing the primacy of international human rights law over investment agreements³⁵.

→ Define obligations for investors relating to human rights, the ILO fundamental conventions and recognised environmental standards, as well as the duty of vigilance.

→ Create a mechanism of recourse for communities, workers, associations, SMEs, farmers, trade unions, etc.

→ Add an exception on human rights compliance and promotion in investment agreements.

32. [http://84.39.218.201/MANDAT18/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc12570e50034eb54/5cd620a9a65afda7c1258368003cdba8/\\$FILE/Treaty_Achmea_ANG.pdf](http://84.39.218.201/MANDAT18/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc12570e50034eb54/5cd620a9a65afda7c1258368003cdba8/$FILE/Treaty_Achmea_ANG.pdf)

33. Sierra Club, "A New, Climate-Friendly Approach To Trade", discussion paper, 2016

34. In December 2015, the Indian government approved a reform of its investment model, according to which foreign investors must have exhausted domestic legal remedies before they can initiate an international ISDS-type arbitration.

35. Institut Veblen and FNH, "Instrument international juridiquement contraignant pour régler dans le cadre du droit international des droits humains, les activités des sociétés transnationales" (International legally-binding instrument to regulate the activities of transnational corporations under international human rights law). Contribution to Articles 13.6 and 13.7 of the draft treaty, 28 February 2019.

SPECIAL TREATMENT FOR AGRICULTURE

35. Require compliance with European rules for imported products

- Introduce mirror measures in European regulations to avoid distortions caused by trade agreements and refuse the import of agricultural products produced using practices and/or substances that are banned in the EU.
- For example, the EU should provide for a ban on the use of animal meal for imported meat and publish the delegated acts provided for to ensure that the new Regulation (EU) 2019/6 on veterinary medicinal products bans the use of antibiotics as growth promoters in imported products.
- The EU must also ban the import of food products made with pesticides that are banned in the EU. As such, the ban on compounds such as glyphosate must apply both to food produced in the EU and imports from outside the EU.

36. Promote an agricultural exception

- Make an exception for agriculture, just as there is for the cultural industry, on the basis of a charter that would define the right of a State to implement the public policies it deems necessary to guarantee food security in its country. This would allow a State to be able to pay farmers in a way that allows them access to a decent income but also to take all necessary measures to guarantee a certain price level, including the possibility of increasing customs tariffs.
- At the very least and without delay, remove agriculture from all agreement negotiations under discussion, particularly those countries that have issues exporting to the EU such as Australia, New Zealand, Mercosur, Indonesia and Malaysia.
- France and the EU must ensure that the WTO reform includes the removal of agriculture from WTO rules.
- Provide an exception for intellectual property rules concerning agricultural seed.
- Authorise the use of public stocks to combat food price volatility in order to better regulate prices and adapt to the increasing risks associated with climate change.
- Reform public procurement rules in trade agreements to enable the incorporation of product locality criteria, particularly in relation to mass catering.

37. Ensure that our European policies do not undermine food sovereignty in Global South countries

- Ensure that the 2020 CAP no longer subsidises exports, including indirectly (per-hectare subsidies, etc.). All food subsidised by the CAP must be taxed at the level of their subsidy when they leave the EU. This should make it possible to amend the CAP in order to provide more funding for food shortages and, in particular, for the production of vegetable proteins.
- Monitor investments by pension funds and public and private companies to combat land grabbing.
- No longer impose or propose Economic Partnership Agreements (EPAs) on the so-called Least Developed Countries (LDCs) advocating so-called 'free trade' with the effect of abruptly placing farming communities still working by hand in competition with our highly mechanised and robotised farms and causing rural exodus and migration. And respect the regional integration processes being conducted by these countries.



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