

GREEN TRANSFORMATION OF EU TRADE POLICY

The EU's trade policy is under enormous pressure to change, and it must change. We are, indeed, facing immense challenges: trade should be contributing to the global efforts against climate change, notably the implementation of the Paris Agreement, but it so far has fallen short, even though there is increasing talk about greening trade; sustainability criteria should be guiding trade, but we can so far see too little progress thereof; the benefits of trade agreements are not distributed fairly between trading partners; the global economy is experiencing massive structural changes; the relative weight of the EU in international trade is shrinking; the world is shifting towards increasing geopolitical tensions, not just between the two superpowers USA and China; globalization is changing its trajectory; trade multilateralism is at a low ebb; the WTO faces gridlock; trade policies have aggravated inequalities within countries; CO2 emissions from global freight transport are set to increase fourfold between 2010 and 2050; 30 percent of global species threats are due to international trade policies; lastly, the Covid-19 pandemic and the Russian invasion of the Ukraine in February 2022 have exposed the vulnerability of complex global value chains as well as the limitations of the existing intellectual property model. Moreover, the European Union is struggling to conclude and ratify trade deals, as citizens are more involved and concerned about the defence of protective standards long fought for, about human rights and sustainability. Without any doubt, these challenges must lead to a multidimensional paradigm shift of EU trade policy that tackles the great environmental, social, democratic and economic challenges. Therefore, the overarching goal of a Green trade policy is to do whatever possible to ensure that trade achieves the maximum human well-being with a clear gender perspective, for the minimum use of energy and resources, and not at the expense of other species.

We criticise:

The European Commission has fallen short of equipping its free trade agreements (FTAs) with the necessary policy tools to adequately address the socio-economic and sustainability aspects of trade effects; neither has it sufficiently aligned trade policy to its Green Deal. Instead, it holds on to "dinosaur" deals such as the EU-Mercosur agreement and, based on the Trade Policy Review Communication of 2021, falls short in delivering on much needed changes to foster upwards convergence of living standards while respecting the biophysical limits of the Planet in line with the Sustainable Development Goals. The EU-Mercosur agreement in its current form is not acceptable for us Civil Society Organization's (CSOs) have so far not been involved sufficiently in most trade negotiations and thus, engagement at different stages of FTA implementation must be upgraded. Also, its recent trade policy review and current strategy of circumventing several EU member states' backlashes against its FTAs with more autonomous trade measures is not sufficient to induce the paradigm shift needed. Member states' concerns linked to trade agreements will only grow if the Commission seeks to circumvent much needed democratic debate on the fundamental issues at stake.

We advocate:

As Greens we believe in a global trading system that is based on equity rather than one that creates

winners and losers. Of course, the climate crisis is central to our politics, and this has major implications for trade policy. Trade is not just there for us to export our goods but also for us to work with trade partners to build mutual, high standards for global citizens and the environment we share. Now more than ever is the time for European Greens to fundamentally re-shape the EU's trade policy towards more sustainable development, better protection of human rights and fairer competition rules, a stable multilateral environment – with the ultimate goal of integrating trade into the overall common good and achieve the Sustainable Development Goals (SDG). This new strategy needs a better mix of tools to coherently combine the different levels of action – bilateral and regional trade agreements, autonomous measures, sector-specific policy EU initiatives, multilateral agreements and global trade cooperation. We need to join forces and step-up coordination and cooperation across the European Green Party network. In particular, we need to address and shape – from the earliest moment possible – paradigm shifts in the following three dimensions of the EU's trade model: green and fair trade; multilateral trade and trade and technology.

GREEN AND FAIR TRADE

For a future oriented trade policy, green and fair trade needs to be stepped up on two layers. First by improving provisions in bilateral trade and investment agreements to make sure they contribute consistently to protect the climate and human rights and second by stepping up autonomous trade measures in order to re-regulate trade in a sustainable manner.

Bilateral trade and investment Agreements:

Climate and Sustainability:

The EU needs to address the flaws of trade agreement such as the EU-Mercosur deal by raising the ambition of trade and sustainability (TSD) chapters ensuring effective implementation thereof and making sure that sustainability is streamlined across all relevant chapters entailing concrete implications. The updated standards of the European Green Deal, the Gender Action Plan III and the EU action plan on human rights and democracy must be key pillars of the TSD chapters. Further strengthening the EU action plan with regards to human rights in international trade including FTA is important. The recently concluded EU-New Zealand FTA is a step in this direction. It may imply that for not yet concluded agreements, the Commission presents the feasibility of adjusting the chapters provisionally agreed to comply with the abovementioned criteria and if it concludes that it is not possible under the existing mandate, the Commission should propose to the Council and to the Parliament a new mandate. If trade partners don't live up to their promises agreed in TSD chapters in their trade deals with the EU in a certain time frame, all trade partners should be able to remove tariff preferences. Simultaneously, the trade partners should reward each other when sticking to the agreements in TSD chapters by linking the effective implementation of TSD provisions to a staged implementation of tariff reduction. In case of blatant violations of essential elements of the FTAs (human rights, Paris agreement, etc.), the EU should proactively look for other incentives or consider the suspension of the deal. Possible sanctions may also concern the ban of imports and exports of certain goods and products, especially those directly related to the violation of human rights or environmental objectives and not only the end of preferential tariffs.

In general, sustainability goals shall be structurally included in all chapters of international trade agreements and not be limited to TSD chapters only; for instance, in chapters related to agriculture, sanitary and phytosanitary measures, raw materials, government procurement, institutional

provisions or rules of origin. It is essential that social and environmental impact assessments, including on biodiversity, gender and human rights and animal welfare, are conducted and published at the start of negotiations so as to provide to the negotiating parties and the European Parliament projections and highlight recommendations to ensure that trade agreements will not have adverse effects. Impact assessments need to be conducted by independent and competent entities with sufficient resources. After consultation of the European Parliament and the relevant stakeholders, this will allow negotiators to determine pre-ratification commitments and identify issues that require special monitoring through ad hoc implementation roadmaps. The methodology used should be published along with the assessment itself as well as a detailed proposal of specific measures to mitigate the identified risks inherent to the trade agreements.

Trade must be strongly aligned with environmental and climate protection. The Paris Agreement and its legally binding obligations must become an essential element in comprehensive trade and political framework agreements, including those being currently negotiated and already concluded agreements. In light of the potential negative consequences for the effective compliance with the UNFCCC regime, the EU should introduce a hierarchy clause that would make explicit that the trade or investment agreement shall be subject to the obligations under the UNFCCC regime, including the Paris agreement. This approach should also be applied to ensure compliance with other multilateral environmental agreements, including but not limited to the UNEA Global Treaty to Combat Plastics Pollution and the UN Conventions on Biological Diversity and CITES based on a fully-fledged and independent monitoring mechanisms. Moreover, the EU should include concrete steps for emission reduction in trade agreements, such as introducing a carbon price, as was done at the EU-UK TCA.

The EU should improve its regulatory system on animal trade on the basis of the UN guiding principles on Sustainable Development in order to enhance animal welfare standards in trade agreements and to prevent the spread of zoonoses.

In order to safeguard the environment, as well as human, animal and plant health, the EU must fully anchor the precautionary principle in the Sanitary and Phytosanitary (SPS) chapters of FTAs. For public services the EU must adopt a positive listing approach and exclude 'ratchet clauses.' Measures based on international norms or else mirror measures on agriculture, phytosanitary products, animal welfare and the use of antibiotic should be included in trade agreements in a WTO-compatible way.

In particular, the EU should support the WTO negotiations on the reduction or, as appropriate, elimination of tariff and non-tariff barriers on environmental goods and services.

Human and Social Rights:

EU trade policy must be based on fully respecting human rights not only in discourse but also in practice, and therefore ratifying and implementing the International Labour Organisation's (ILO) core labor standards should be considered as a minimal requirement for any trade agreement. Commitment to ratification and implementation of the 8 fundamental ILO Conventions must be a condition before signing the agreement. There is an urgent need to move towards a trade policy that is gender-sensitive.

Thus, before starting negotiations on trade agreements, country-specific and sector-specific gender assessments should be carried out. The toolkit developed by the UNCTAD to perform gender-aware

ex ante evaluations of trade policies could serve as an example. FTAs should incentivise the ratification and implementation of gender-related ILO conventions.

The full potential of human rights clauses in FTAs has not been utilised so far, the EU should therefore strengthen the enforcement thereof. There must be a concrete perspective for those clauses to be used in order to ensure credible leverage. The recently established Single Entry Point (SEP) should also cover cases of human rights violations and address those in the framework of FTAs, including through appropriate sanctions.

The EU's FTAs have not traditionally addressed inclusivity issues pertaining to specific groups such as Indigenous people. For instance, the EU-Mercosur deal does not yet represent the concerns raised by Indigenous groups on the ground. However, protection of indigenous peoples' and community rights to land and water has been deemed one of the most efficient ways of protecting forests and biodiversity and ensuring carbon sequestration. TSD chapters of FTAs should therefore include the UN free, prior and informed consent to empower indigenous people.

Participation of Civil Society Organization, European Parliament and National Parliaments:

Trade policy must be elaborated and executed in a participatory way, giving voice to all interested groups. All stages of a bilateral trade relation should be accompanied by publicly available assessments. For instance, CSOs should be invited to comment the draft sustainability impact assessments to make the final version as robust and credible as possible and to identify key concerns and suggest recommendations for pre-ratification commitments, whose achievements will be an important preliminary condition to ratify the trade deal.

Measure to improve the democratic oversight of the European Parliament should be taken such as including a vote on the mandate before trade negotiations start. The European Parliament must have access to the negotiating text at all stages of negotiation on equal footing with the Council. Since trade agreements have far-reaching implications for regulatory matters, the European Parliament shall have an active role in the regulatory committees of trade agreements in order to ensure parliamentary oversight and transparency. National Parliaments must play an active role in the ratification of mixed FTAs and must get more involved in the formulation of mandates for new trade agreements and demand for updates of the negotiation process by their governments and respective ministers. An exchange of views between the European Parliament and National Parliaments should be provided prior to the vote of the mandate.

Trade and Investment:

In the remit of investment policy, it is investment protection and dispute settlement that have the biggest mismatch with the EU's overarching policy goals. It is essential that we stop investments in fossil fuels and other harmful activities. Investment policy should focus on incentivising sustainable investments, not on giving special rights to foreign investors. This requires a fundamental change of model for EU bilateral investment treaties as has been proposed by the European Parliament in a report on the Future of EU international investment policy in June 2022. This should be done by effectively preserving the right to regulate of the contracting parties and moreover, we have to abolish the Investor State Dispute Settlement (ISDS) system and sunset clauses and replace it with a multilateral investment court system that should meet the highest requirements of independent

justice and professional judges.

Autonomous trade measures:

The EU should take the lead by adopting good legislation on mandatory due diligence, such as it has already done in specific areas of certain conflict minerals and timber.

The proposed EU Directive on corporate sustainability due diligence needs to introduce requirements for all companies, including medium enterprises, financial institutions and credit export agencies, operating in the EU to take steps to prevent and address human rights and environmental harm at each step of their value chains. The legislation should also promote adequate access to justice by giving victims user-friendly possibility to bring companies to court in Europe when harm that could have been prevented by adequate due diligence processes occurs. Directors' duties are an effective tool to ensure companies' compliance and should be enhanced compared to the Commission's proposal. All the loopholes and gaps in the Commission's proposal should be changed in a way that raises its ambition to the level of the European Parliament's report from March 2021 on due diligence. The EU Commission's proposal for binding EU-wide rules for deforestation-free supply chains must be improved in order to end the EU's complicity in the global destruction of nature and violation of human rights. The list of commodities should be more inclusive for products such as rubber and maize; ecosystems like savannahs, wetlands and peatlands should be added from the beginning and human rights should be better integrated, particularly through instruments protecting customary tenure rights and the right to Free, Prior and Informed Consent (FPIC). Time has come to ban products of modern slavery and child labour from entering the European market. Shirts, shoes, or cars made by enslaved Uyghurs, Turkmen, or forced workers and children from anywhere should not be sold in our shops anymore. We therefore support the proposed new EU instrument that enacts this import ban, but we want to make this an instrument with teeth, by strengthening its legal base and making cooperation among the national competent authorities compulsory. Also, we want to make sure that the affected workers' situation is remedied as soon as forced labour is proven and the affected or potentially affected workers' views are taken into account at all stages. The EU also needs to develop tools that aim to eliminate child labour taking into account the socio-economic level of the countries concerned and mixing a trade and development approach. This means that accompanying measures must be developed to support a stakeholders (workers, trade unions, civil society, SME's, smallholder farmers, human rights defenders and local communities) in order to build their capacity to address the root causes of forced and child labor. In the event of non-compliance with the ilo convention, measures to suspend the agreement (end of the preferential tariff) or ban on the trade of certain products could be anticipated in the agreements. A carbon border adjustment mechanism (CBAM) will serve to address risks of carbon leakage resulting from the Unions climate ambition. In addition to addressing climate-policy effectiveness and compatibility with WTO legislation, account must also be taken of the impact on European trading partners, and, in particular, poor developing countries. Measures based on international norms or if those don't exist WTO-compatible mirror measures would help more healthy and environmentally friendly production methods to the benefit of everyone, Europeans and citizens of our trade partners alike. Complementary to that, the EU should devote existing tools and resources in view of bringing technical and financial assistance to poorer countries.

TRADE AND MULTILATERALISM

Trade policy is about shaping globalisation. The EU should therefore, as a principle and because it is enshrined in the Treaty, act to make progress on the multilateral front.

The EU must as a priority engage with international partners in order to restore the WTO, including its Appellate Body. There is a need for fundamental changes in decision making processes and the organisational structure of the WTO; its rules must be modernised and brought up to date with a green and just transition and improve international coherence and implementation on human and labour rights. The agreement on the “Geneva Package” at the WTO Ministerial Conference in June 2022 on a waiver of certain requirements concerning compulsory licensing for COVID-19 vaccines, food safety and agriculture, and WTO reform, as proposed by the EU, the US and other global partners, is an important first step in this direction. Fresh impetus on the reform of the WTO should also include issues raised by countries from the Global South. The EU should also actively seek to widen the scope of the trilateral forum with Japan and the US on WTO matters by also including other like-minded countries in this discussion.

Greening the WTO must be a key feature of its modernisation. In this context, the EU should table initiatives in the framework of the EU Commission’s WTO trade and climate initiative early on. Preparation work towards a Health and Trade Treaty should be ramped up in view of achieving a conclusion to the benefit of all citizens, especially in poorer countries.

The EU should also take action to follow up on the three Ministerial Statements issued in December 2021 on trade and environmental sustainability, on plastics pollution and transition towards environmentally sustainable plastics trade, on fossil fuel subsidies. The EU should use its FTA to involve more countries in their implementation and achievement.

The EU must end protection of fossil fuels investment, especially in the Energy Charter Treaty. As Greens we have supported the idea of a modernization of the Energy Charter Treaty in order to align it with the goals of the European Climate Law and the UNFCCC Paris Agreement. However, the outcome of the negotiation on the modernisation announced in June 2022 falls short of what is needed to protect the energy transition and reduce our dependencies of fossil fuels. As of November 2022, there is no majority in the Council nor in the European Parliament for the modernisation. We welcome the decision of eight Member States (Germany, France, Spain, the Netherlands, Luxembourg, Slovenia, Poland and Italy) to exit the treaty and that of the European Parliament to call for the exit. The EU and other Member States should follow, withdraw from the treaty and agree with each other to neutralise the 20 years survival clause via an inter se agreement. Such a system keep the door open for exploitations, and belongs in the past. Therefore, the EU and its Member States must work towards a coordinated exit of the ECT and the conclusion of a separate agreement to neutralise the sunset clause.

Wherever possible, the EU needs to join forces on greening trade with the United States and other like-minded countries on the one hand and build on a common climate protection agenda with China on the other hand. It must find common ground with both partners on taxing carbon. Introducing a EU carbon border adjustments mechanism (CBAM) on imported goods to prevent foreign firms from taking market share from domestic producers subject to carbon fees and more stringent environmental regulations is an important first step. But it will only be successful if it is integrated in an international climate alliance, which is open to all like-minded partners; including

financial compensation for developing countries and least developed countries.

Another level of multilateral trade is the participation of regional trade agreements, which have become more popular with RCEP, CPTPP and IPEF. Thus, the EU shall revive negotiations of a region-to-region trade agreement with ASEAN and promote increased multifaceted cooperation in key areas. Political commitment towards high and truly enforceable standards for climate and environmental responsibility, the ratification of ILO-core conventions and the protection of human rights must serve as an ex-ante condition before the kick-off of a negotiation process. Besides that, the EU must support regional integration instead of creating one-sided dependencies through its EPAs by supporting the development towards a pan-African FTA putting to the fore issues related to food security, economic diversification and up scaling, the improvement of the situation of the most vulnerable, notably women, indigenous people and displaced people.

At the heart of the EU's regional and global engagement must be the Global Gateway Initiative. The initiative needs to priorities the green transition and should serve as a powerful tool to achieve the SDGs, as well as digital, health, the fight against discrimination and poverty, access to basic services, international standardization and security issues. The establishment of a Global Gateway Business Advisory Council should be a practical next step. The Global Gateway initiative needs an effective governance structure, an inclusive Team Europe approach, and the timely identification of lighthouse projects.

TRADE AND TECHNOLOGY

The link between trade and technology needs to be urgently addressed in EU trade agreements and its trade instruments.

Technology Transfer

Transfer of climate friendly technologies and essential health technologies from the global north to the global south must be supported in a manner that fosters the development of local economies and local resilience. The EU must also engage in a rebalancing of the global system of Intellectual Property Rights (IPR) in order to foster the legal transfer of climate-friendly technology. For instance, this should include the promotion of a declaration on "IPR and Climate Change" at the WTO, encouraging technology transfer and the use of compulsory licensing of key climate technologies. The WTO should also encourage technology transfer and the use of compulsory licensing of key technologies in the field of health. The TRIPS Agreement should be amended to allow WTO members to exclude key climate technologies from patent protection with a view to fighting a pandemic. Besides, the possibility to distinguish products according to their process and production methods needs to be pushed forward.

Digital Trade, Standardisation and Data Protection:

Specific policies regarding digital trade, intellectual property rights, data protection and net neutrality must embody and uphold democratic principles and a strong commitment to achieving sustainable development goals. This implies revising policies on data provisions, data localisation, research and development, national tax systems and the digital single market.

Standardisation must play an essential role in the EU's foreign trade policy. The EU should seek to engage in strategic coordination with like-minded partners; invest in standardization knowledge; incentivise international standards in connectivity initiatives. Transparency and fundamental values

as benchmarks for standards are key.

The EU's rules on the General Data Protection Regulation (GDPR) must become a global standard for personal data protection and a requirement for international data transfers. The EU and its trade partners must therefore ensure a high level of protection of personal data and include the EU's provisions for personal data protection in their trade agreements.

Trade and Technology Council:

The Trade and Technology Council (TTC) that the EU has launched with the United States shall not be TTIP 2.0 and shall not have regulatory power. Instead, the TTC could be a useful forum to tackle trade irritants with the US, for instance the U.S. 232 investigations into EU industrial products, which allows the U.S. to protect its producers for national security reasons. The TTC serves as a forum to develop joint answers to challenges posed by countries like China to the global rules-based order. The TTC can provide useful tools to address non-market, trade-distortive policies, and practices, such as joint export controls to avoid the militarisation of authoritarian regimes through the backdoor; a joint taskforce on standardisation; but it can also be a platform to discuss common approaches to reform the WTO or to foster the green transformation of the economy. We are supporting the implementation of the Trade and Technology Council between the EU and India.

Trade defence instruments:

Trade defence is a big chunk of the EU's trade toolbox. Where EU industries are harmed because of unfair trade practices, such as dumped and subsidies imports or economic coercion from third countries, the EU's trade defence instruments need to provide an effective response. We therefore support the following EU trade instruments, among others: investment screening mechanism, which must be further strengthened and applied in all 27 EU member states and in particular where investments cover basic public services and areas related to potential access to personal data and it should be expanded to include the targeted, predictable review of outbound investment to third countries of concern anti-dumping rules and a new foreign subsidies instrument to tackle unfair competition; the international procurement instrument (IPI), which aims to ensure reciprocity in global procurement markets and will allow the EU to push third countries to open their public procurement markets by threatening to close Europe's own market in retaliation; and the anti coercion instrument (ACI) to have a legal, trade-based instrument to impose retaliatory trade sanctions on economic rivals to defend the internal market when the EU or one or more of the EU's member states is under economic coercion from third countries, such as China's trade embargo on Lithuania over its authorisation of Taiwan's request to set up a "Taiwanese" representative office in the country. The ACI can become an effective trade-based tool to defend the European solidary community and the internal market which should not be hampered by a national veto of a single government.

Supply chain resilience:

The Covid-19 pandemic and the impact of Russia's aggression against Ukraine on the global economy have exposed the vulnerability of complex global value chains and the need for a resilient economy based on a circular economy where possible. The EU must address its supply chain ruptures by putting in place a resilience stress test for its industrial sector to identify raw materials within the recently announced European Critical Raw Materials Act, industrial goods, medical products, and food commodities which are facing a high risk of supply disruption with cascade

effects on the EU's economy and foster predictability and trade diversification. On the way towards more resilience, the EU must build reliable supply chains with like-minded partner countries (friend-shoring), in particular with regard to critical infrastructure, e.g. medical equipment and semi-conductors. The EU's upgrade of the High-Level Economic Dialogue with Taiwan is a step in the right direction. Pursuing closer alliances with ASEAN, African or EU-neighbouring countries, including Switzerland, would be necessary next steps.

The concept of trade subsidiarity can play an important role in sectors like agricultural production where we want to make sure that local and regional potential can play its full role and in no case should trade be allowed to disrupt or undermine environmentally valuable local or regional productive environments.

The role of the circular economy is crucial in this context, as Europe must make better use of the materials, such as rare earth minerals, already existing in its economy. By strengthening the re-use of already extracted and imported materials, Europe can make a significant contribution to reducing the environmental, social, and distributional impacts of its trade. Circular economy and the production and recycling of secondary raw materials within the EU should also be strengthened in order to support resilient supply chains and reduce EU dependence.

Furthermore, mechanisms could be developed to limit countries and powerful industries with superior access, from controlling a disproportionate share of the global strategic resources, such as rare earth minerals, needed for global green transition. For example, powerful and highly influential car industries in Europe and the USA are currently in the process of converting the massive private car fleet into an electric fleet, with the intention to control and dominate the supply chains of these critical materials. Without the development of limiting mechanisms, there is a real danger that the car industry will purchase the majority of those critical and rare metals that are needed to develop the basic energy and IT-infrastructure of countries suffering most for climate change, while wealthy western car owners enjoy their greenwashed cars, thus replicating the neo-colonial exclusion of the most affected peoples.

Closed material loops and shorter supply chains would lead to less dependency on raw material imports and less waste export and thus contribute to the EU's supply chain resilience. It is therefore crucial that we ensure that trade and investment agreements do not contradict circular economy policies. We must provide carve-outs in trade agreements for relevant EU legislation on circular economy from the notion of trade barrier, as well as stronger and adequate legal environmental safeguards. In addition, increased recycling can reduce the EU's reliance on imports of raw materials. In summary, Trade agreements cannot be concluded at any cost. We uphold the spirit of the resolution adopted at the 35th EGP Council in Riga (2022) on the conclusions of the Conference on the Future of Europe.