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europe



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Trade and investment

A guide to the movements against free trade and investment agreements in Europe

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Preface

In winter 2018 there are many pressing political developments. So many, in fact, that many of us might not think of trade policy as one of the most important issues. There are many challenges that we as citizens of the EU must deal with in our daily lives and even more if we are politically engaged, not least the rise of the far right. *transform! europe* nevertheless offers up this brochure because we believe trade and investment policy continues to be of immense importance to our lives and political work. Many of our political goals are connected to the rules of international trade. Gender equality, environmentally sustainable production of goods and services, the ability of the citizens to decide on the rules governing their communities and a stronger role of the state in the economy are all deeply affected by the rules set out in international trade agreements.

In a recent statement, the trade ministers of Japan, the USA and the trade commissioner of the EU stated their intention to work together worldwide against state-owned enterprises, subsidies for industries and technological transfer. The EU undoubtedly poses big questions for the left, but the real problems lie in global value chains, governed by big international monopolies and supported by rising right-wing forces and the neoliberals who accommodate them. Our position is a completely different one: for us, trade is merely a means to a better society, not an end in itself. We have a long-term vision and we have concrete proposals for how to change international trade so that it serves people and communities, not the super rich. We are very grateful to Lucía Bárcena Menéndez (from the Spanish Campaign against Free Trade Agreements and an active member of *Ecologistas en Acción*) for elaborating this brochure for *transform! europe* and to Pablo Sánchez (European Federation of Public Service Unions) who contributed significantly and peer-reviewed it. The brochure offers many things: first we are guided through the jungle of so-called free trade agreements. We learn to understand the tricky political background behind these supposedly technical agreements and how they endanger our democracies. But we also read about victories of the people against these treaties.

The brochure could not have been written without the knowledge provided by the work of Deborah James (Director of International Programs at CEPR and *Our World Is Not for Sale*), Seattle to Brussels, the South Centre, Ethan Earle from the RLS Office New York, Manuel Pérez Rocha from IPS and Scott Sinclair, senior re-



search fellow with the CCPA. We are indebted to Ecologistas en Acción for their reports, articles and research and Bilaterals.org for the updated news. We are also grateful to Andreas Thomsen and Arndt Hopfmann from the Rosa Luxemburg Stiftung who made this publication possible. Our biggest thanks are to the millions of Europeans that have campaigned for the past years against TTIP, CETA or TiSA. They have picketed, marched and protested. To them we are thankful because this brochure would have been meaningless without them.

This work is a product of *transform! europe*. The findings, interpretations and conclusions expressed in this work do not necessarily reflect the views of the members of *transform! europe*.

Roland Kulke, *transform! europe*, Brussels

Purpose of the brochure

This brochure aims to be a tool to help the reader understand, in an easy manner, where we are today in the campaigns against CETA, TTIP, TISA, JEFTA, or, for that matter, any other FTA initiated over the last few years. It is a summary of some of the key debates around trade and investment regimes and offers some proposals on how to move forward. Hopefully, the reader will understand the urgency posed by this new neoliberal offensive and continued corporate globalisation.

Capitalism continues to expand its borders at an ever-quickening pace whilst lending special privileges to big corporations and foreign investors over and above the democratically elected institutions at local, regional and national level. A corporate legal system is being imposed across the globe, one tightly monitored by unelected supranational organizations such as the IMF, the World Bank, and the WTO.

In this context, there has been a significant upsurge in xenophobic, populist and far-right political formations. Trump, Le Pen, Salvini and Orban have developed a critical discourse toward the neoliberalism of the European Union or the global financial institutions but one that goes hand in hand with a xenophobic discourse that excludes large chunks of the population. In response, the left faces a double challenge: to call out and criticise the xenophobic and neo-fascist rhetoric of the far right whilst confronting globalised neoliberalism.

The ongoing rifts within the Trump administration and the 'trade war' between the US and China (or Iran) are evidence of this ever-changing scenario. This does not mean that the US administration has all of a sudden ditched neoliberal capitalism. Rather, it results from capitalism's own failings.

Meanwhile a great part of the population finds itself in an increasingly precarious situation and ever more excluded from the system. The Left needs to pay special attention to these movements and be ready to make progressive proposals to re-take political ground, beginning with the international trade and investment policies, followed up with an alternative industrial policy to provide a future for all.

We do hope the reader will find this brochure helpful and insightful and that it provides an incentive to continue working towards a fairer economic system.

Acronyms

FTA: A Free Trade Agreement is a wide-ranging taxes, tariff and trade treaty that often includes investment guarantees. Broadly done in the scope of WTO rules.

IIA: An International Investment Agreement is a type of treaty between countries that addresses issues relevant to cross-border investments, usually for the purpose of protection, promotion and liberalization of such investments. Most IIAs cover foreign direct investment (FDI).

GATT: General Agreement on Tariffs and Trade was a legal agreement between many countries, whose overall purpose was to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas. GATT was signed by 23 nations in Geneva on 30 October 1947, and took effect on 1 January 1948. It remained in effect until the signature by 123 nations in Marrakesh on 14 April 1994, of the Uruguay Round Agreements, which established the World Trade Organization (WTO) on 1 January 1995.

WTO: The World Trade Organization is an intergovernmental organization that regulates international trade. It is the largest international economic organization in the world.

NAFTA: The North American Free Trade Agreement is an agreement signed by Canada, Mexico, and the United States, creating a trilateral trade bloc in North America. The agreement came into force on January 1, 1994. It is set to be replaced at the end of this year by the United States–Mexico–Canada Agreement.

TPP: The Trans-Pacific Partnership is a defunct proposed trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States signed on 4 February 2016, which was not ratified as required and did not take effect. After the United States withdrew its signature, the agreement could not enter into force. The remaining nations negotiated a new trade agreement called Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which incorporates most of the provisions of the TPP and which enters into force on 30 December 2018.

TTIP: The Transatlantic Trade and Investment Partnership is a proposed trade agreement between the European Union and the United States, with the aim of promoting trade and multilateral economic growth. The TTIP is the largest bilateral trade initiative ever negotiated. Negotiations were halted by President Donald Trump, who then initiated a trade conflict with the EU. Trump and the EU declared a truce of sorts in July 2018, resuming talks that appeared similar to TTIP. These are ongoing.

CETA: The Comprehensive Economic and Trade Agreement is a free-trade agreement between Canada, the European Union and its member states. It has been provisionally applied, so the treaty has eliminated 98% of the tariffs between Canada and the EU.

JEFTA: Japan-EU Free Trade Agreement is a free-trade agreement between Japan the European Union and its member states. Its negotiations ended in December 2017. During the negotiations lost its investment chapter so only the European Parliament will vote its implementation, the vote is scheduled to happen before the end of 2018.

TiSA: The Trade in Services Agreement is a proposed international trade treaty between 23 Parties: Australia, Canada, Chile, Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, New Zealand, Norway, Switzerland, Taiwan, United States, European Union (28 countries), Colombia, Costa Rica, Mauritius, Mexico, Panama, Peru, Turkey, Pakistan and Paraguay. The agreement aims at liberalizing the worldwide trade of services such as banking, healthcare, and transport. Uruguay abandoned the negotiations after a democratic debate about its impact.

Regulatory cooperation: the harmonisation of rules so that non-tariff barriers are lifted. In its current form, this involves the creation of institutions such as a Regulatory Cooperation Council that decide on standards. It impedes on the ability of governments to decide on standards and the democratic process that these imply.

A most favoured nation clause (also called a most favoured customer clause or most favoured licensee clause) is a contract provision in which a seller (or licensor) agrees to give the buyer (or licensee) the best terms it makes available to any other buyer (or licensee). It is a governing rule of the WTO and forces any country within a multilateral trade and investment agreement to give the same treatment to any company of a party to the treaty.

1. Introducing Free Trade Agreements¹ (FTA) and International Investment Agreements (IIA)

The creation of the World Trade Organisation on 1 January 1995, built on the foundations of the General Agreement on Tariffs and Trade (GATT), caused the exponential growth of international trade and investment agreements. From 1989 until 2009 world trade (commercial services and merchandise exports) increased dramatically, an expansion that had begun in 1973². The current level of trade liberalisation is unprecedented in history. The export/GDP ratio in 2007 was substantially higher than in 1913. Furthermore, openness to trade increased from 1830 to 1870 (the first true period of globalisation) and again from the mid-1970s to 2007, while it broadly stagnated both in the decades during the so-called first globalisation (1870-1913) and during the so-called Golden Age after the Second World War. Needless to say, global trade collapsed during the Great Depression, back to the mid-19th century level³.

The Uruguay round from 1986 and 1994 was a major push to open up new markets and to change the rules in a world that saw countries accounting for half the world's population enter the global trade system. This had an impact on the rules of trade. In 1992, following the Maastricht agreement, the European Economic Community became a single market with important implications on trade for the European Union. Since 1992 the European Union has developed a whole range of economic agreements with most countries of the world. The agenda of most of those agreements has been not only to reduce tariffs but also to deploy a liberalisation agenda that mostly benefits corporate interests.

THE 1980S ARE BACK, NOT ONLY IN FASHION INDUSTRY BUT IN INTERNATIONAL POLITICS, TOO: "THE TRIAD"

In the 1970s and 1980s the triad was essentially the managing board of the export-oriented capitalist countries. The triad consisted of the USA, Japan and Western Europe. After the end of the big post-world-war growth cycle in the 1980s,

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- 1 We are using the commonly used term 'free trade', even though we are actually referring to 'deregulated trade'.
 - 2 M. Roberts. 2016. The Long Depression. Haymarket Books. Chapter 5.
 - 3 <https://voxeu.org/article/world-trade-historical-database>.

this group basically stopped being an actor of interest. But with a quiet “bang” this group re-emerged in 2017 at a WTO meeting in Buenos Aires and declared war on an unnamed enemy: China. In their papers since then, China is rarely, if ever, mentioned. On 26 September 2018 the triad again published a statement. The content of this document carves out three developments in current international trade which are highly toxic from their point of view. First, state owned enterprises, second, industrial subsidies and last, but not least: forced technological transfer. China is the obvious culprit here, but it will not only be China who suffers from the triad’s counter measures but the whole third world, because these economies cannot grow without subsidies, a strong state role in the economy and technological transfer, which is a code word for acquiring new technological knowhow. The First World will encounter its own problems when it realises that it needs to do more than just talk about creating a sustainable economy. We cannot manage any kind of ecological transformation of our economies without public enterprises and the end of the current intellectual property regime (which stands against transfer of knowledge) and massive subsidies for industries of all kinds. The triad, represented by the EU Commissioner for trade Cecilia Malmström and the Japanese and US-American trade minister, is playing a very dangerous game. Its approach runs totally contrary to the challenges humanity faces at the beginning of the 21st century.

In solving these challenges, it has not been helpful that, since the 2008 financial crisis, there has been a trend towards mega-regional trade agreements, which are between more than two countries and involve large portions of world trade or investment. Such deals include the Regional Comprehensive Economic Partnership (RCEP), the Trans-Pacific Partnership (TPP), the Trade in Services Agreement (TiSA) and the Transatlantic Trade and Investment Partnership (TTIP).

FREE TRADE AGREEMENTS (FTAS)

According to the World Trade Organization (WTO), there are two types of Free Trade Agreements (FTAs): bilateral and multilateral. Both are based on the assumption that free trade and the removal of regulations on investment will lead to economic growth, the reduction of poverty, increased living standards and employment opportunities.

There is ample evidence to show that, on the contrary, these kinds of agreements only allow transnational corporations (TNCs) more freedom to exploit workers and to shape the national and global economy to suit their interests. Although intuitively one can say that workers and society ought to benefit from the profits



made by multinational corporations—the so-called trickle-down effect—the fact is that in many cases the benefits of trade are ring-fenced by a tiny minority of the population that has access to the mass media and the political arena which they use to create an artificially positive image of global trade. According to UNCTAD there is no correlation between the number of investment agreements signed and an increase in GDP of the signature countries. So, there is a clearly a need to look into this subject in depth.

Bilateral agreements are—in the European case—usually agreements with neighbourhood countries to establish a system of regulatory cooperation in order to facilitate commercial exchanges. Typically, these agreements are signed between the Central Eastern Europe (CEE) or the EU with countries in the process of joining the European Union. CETA would also be of that type.

Multilateral agreements are agreements negotiated with WTO rules between three or more countries or customs unions (i.e. TiSA). Multilateral trade agreements reduce tariffs and make it easier for businesses to import and export between the signature countries. Since they are signed by many countries, they are harder to negotiate and therefore a level of political agreement is needed. Multilateral agreements make all signatories commit not to give better trade deals to one country than it does to another.⁴

INTERNATIONAL INVESTMENT AGREEMENT (IIA)

International Investment Agreements (IIAs) are agreements signed between states that establish the special rights for investors in each country. Sometimes these come as part of more comprehensive free trade and economic agreements, “economic partnerships” like CETA or TTIP, which also cover trade in goods and services. Sometimes they deal only with investment. The most widespread form

4 The Most Favoured Nation status confers the best trading terms a nation can get from a trading partner. It standardises trade regulations for all partners. Companies save legal costs as they follow the same rules for each country. Countries can negotiate trade deals with more than one country at a time. Trade agreements undergo a detailed approval process.

of international investment agreements are Bilateral Investment Treaties (BITs). This means an agreement between two countries. Many countries around the world have signed Bilateral Investment Agreements. Globally, there are 2,363 BITs signed and in force and 310 free trade and economic agreements with Investment Provisions.⁵ Of the existing BITs, approximately 1,810 have been signed with a EU member state or the EU itself.

International Taxation Agreements and Double Taxation Treaties (DTTs) are also considered as IIAs, as taxation commonly has an important impact on foreign investment. This is highly relevant for the future of global taxation policies and the current European debates about global taxation and country-by-country reporting (CbCR).

The UN Conference on Trade and Development (UNCTAD) describes bilateral investment agreements as “the most important protection of international foreign investment.” This system creates more rights and powers for foreign investors—particularly the transnational corporations, which dominate the global economy—to move between countries and exploit their natural and human resources. The stated purpose of the IIAs or BITs is to provide the certainty that investors of any of the signatory countries will be able to use WTO rules if there is a need for litigation under a system of International Investment Arbitration.

Investor-state dispute settlement (ISDS) is one of the existing mechanisms used to settle disputes between investors and states. ISDS is included in almost 90% of all BITs. Originally, the system of International Investment Arbitration was created on the demand of western countries that claimed to need a dispute settlement mechanism that would guarantee special treatment to their investments in foreign countries. Today, we have ample evidence that ISDS is, in practice, a corporate court that allows big businesses and investors to sue governments if they make new policies or changes in regulations that can hurt the former’s profits (both actual and potential future profits). For example, if a change in the law or a new piece of regulation designed to improve our health system, labour and social standards, or environmental protections could harm the bottom line of an investor, or even pose a threat to future profits, the investors or corporation can use ISDS to sue the government or, simply with the threat of using the mechanism, can provoke a “regulatory chill” effect that causes legislators to think twice before they approve or change a law or regulation.⁶

5 UNCTAD Investment Policy Hub, <http://investmentpolicyhub.unctad.org/IIA>.

6 To read more, please visit www.bilaterals.org.

The number of ISDS cases has increased significantly in the recent years. According to UNCTAD, in 2017, at least 65 new treaty-based ISDS cases were initiated, bringing the total number of known cases to 855.⁷ By the end of 2017, investors had won about 60 per cent of all cases that were decided on their merits, leading to billions of taxpayers' money used to pay for litigation and compensation. The increased number of ISDS cases worldwide has proved to be a very lucrative business for the arbitration industry. The average legal cost of a dispute is over eight million dollars and in some cases more than 30 million dollars⁸.

The good news is that the flaws of the system are starting to be highlighted by popular unrest and legal challenges in various countries. The number of countries revising their investment agreements is growing. Some countries have made major changes to their investment regimes: Italy, Ecuador, Venezuela, Bolivia, South Africa and Indonesia have terminated many deals. The European Court of Justice (ECJ) ruled that intra-EU bilateral investment treaties containing ISDS should be terminated, although the full consequences of that decision are still unclear. The ECJ ruling on ICS (the rebranded ISDS) in the CETA agreement states that it is compatible with EU Law. The EU-Australia and New Zealand deal might end without ISDS. And the recent renegotiation of the NAFTA agreement, named now UMSCA, between the USA, Mexico and Canada, does not include ISDS for Canada and USA and is included with Mexico in some parts of the treaty only. The investment regime is under pressure. It is being revised and the discussions are part of a wider agenda of reforming the global trade system (in UNCTAD, OECD). However, these discussions need to go further and question the premise of the system. Such an exercise should reach the conclusion that there is in fact no need for such a system. Attempts by the European Commission to rebrand ISDS and propose a new system, based on a few procedural changes, cannot trick us into thinking the system has been improved in any substantive way.⁹

7 <http://investmentpolicyhub.unctad.org/News/Hub/Home/1588>.

8 To read more, we suggest the publication by the CEO and TNI on "Profiting from Injustice: how law firms, arbitrators and financiers are fuelling an arbitration boom", <https://www.tni.org/files/download/profittingfrominjustice.pdf>.

9 The zombie ISDS, rebranded as ICS, rights for corporations to sue states refuses to die. Published by Corporate Europe Observatory (CEO), Association Internationale de Techniciens, Experts et Chercheurs (AITEC), AttacAustria, Campact, ClientEarth, Ecologistas en acción, Forum Umwelt & Entwicklung, Instytut Globalnej Odpowiedzialności (IGO), PowerShift, Seattle to Brussels Network (S2B), Traidcraft, Transnational Institute (TNI), Umanotera, Védegylet, Vrijdschrift, War on Want, 11.11.11., <https://corporateeurope.org/international-trade/2016/02/zombie-isds>.

HOW ISDS BECAME “THE MOST TOXIC ACRONYM IN EUROPE” (Cecilia Malmström)

In 2015 the European Commission presented the results of the public consultation on the need to maintain ISDS in the investment agreements in the EU-US trade deal, TTIP. Over 97% of the 150,000 respondents rejected the inclusion of this system that would only give more rights to private investors. Around the same time, over 3 million citizens also signed the self-managed European Citizen Initiative against TTIP and CETA.

Criticisms came from a broad range of sectors: professionals, business managers, civil society organizations, trade unions, environmental organisations and many judges and lawyers who publicly stood up against these attempts to privatise our justice systems. Many EU member states also raised concerns. The political toxicity of ISDS forced the European Commission to act. When, in 2015, the European Commission presented a revision of all its investment-agreement negotiations it also presented a re-branded proposal for ISDS, christened ICS (International Court System) and to be included in CETA and the EU-Vietnam agreement.

The Commission’s latest proposal suggests integrating established and future ISDS provisions into a so-called Multilateral Investment Court, which addresses some procedural questions but maintains the core of the flawed system and preserves unjustified privileges for multinational corporations.

However, European Court of Justice rulings on recent cases have given the EU a hard time for continuing to defend this flawed privatised justice system. The ECJ Opinion 2/15 on the EU-Singapore deal states that any agreement containing ISDS will have to be ratified by 38 national and regional parliaments. The ECJ ruling on the Achmea v. Slovak Republic case states that intra-EU bilateral investment treaties containing ISDS should be terminated. And we are still waiting for the ECJ Opinion 1/2017 to check whether ISDS in CETA is in accordance with EU law.

EXAMPLES OF ISDS CASES

Gabriel Resources Ltd. vs. Romania

The rich mineral resources in the Romanian soil have been exploited since before Roman times. The country's state-run gold mine closed in late 2006 in advance of Romania's accession to the EU. Gabriel Resources Ltd (a Canadian-listed company) tried to open a new mine in the early 2010. It met with huge popular opposition due to fears of the environmental and public health impact.

The Romanian national parliament eventually rejected the project in June 2014. Moreover, Roşia Montană, the contested commune in western Transylvania, has been classified as a historic site of national importance, by order of the Ministry of Culture issued in December 2015. Industrial activity is therefore prohibited in the area.

Thousands of Romanians stopped the illegal gold mine but the company is now using trade deals to sue the Romanian government for 4\$ billion in lost profits. Organised civil society is not invited to the court case and they are mobilising to make their voice heard.

Vatenfall vs. Germany

The Swedish energy company Vatenfall sued Germany twice under the Energy Charter Treaty for lost of profits stemming from the closure of two nuclear power plants following the programme of nuclear phase-out approved by the German parliament. The company is demanding 3.7 billion euros in compensation.

Véolia vs Egypt

In 2012, the multinational utility corporation launched a dispute against Egypt, demanding US\$110 million following changes to Egypt's labour laws which included an increase in the minimum wage. The case is still pending under the Egypt-France BIT.

Eureko vs. Poland

In 1999 the Polish Government published an invitation to buy 30% of the shares in the state-owned insurance company PZU. Eureko and Big Bank Gdanski S.A. were selected as the buyers. Eureko then planned to increase its share holdings using the initial public offering from 30% to 51%. The dispute

emerged following Poland's refusal to complete PZU's privatization—which would have allowed Eureko to obtain a majority stake in the company. The claimant contended that Poland backtracked on their earlier commitments. Poland argued that Eureko's claims were predicated on contractual claims under a share purchase agreement which made them inadmissible. The tribunal concluded that the Government breached Poland's obligations under the Netherlands-Poland BIT. The case was settled in 2005 for about €2 billion in favour of the investor.

Source: <https://isds.bilaterals.org/>

2. Why Free Trade Agreements and International Investment Agreements are not about trade

After a BIT or IIA is signed *super*-rights are given to the investors and big corporations in the signatory countries that allow transnational companies to secure their “rights” and protect their businesses with private mechanisms such as the Investment State Dispute Settlement (ISDS). This global corporate law means the utilisation of international jurisdiction to protect big corporations rather than people or the planet, which is actually a way to transfer the powers of the states, the essence of democracy, towards the big transnational capital¹⁰. This is done not only through using ISDS mechanisms but also through a whole set of mechanisms that lock governments into this global corporate law.

RATCHET AND STANDSTILL CLAUSE

These two provisions are part of what Stephen Gill calls the “New Constitutionalism”. The politicians who sign the trade agreements basically conspire against their own citizens, as they “bind” their own people by signing an FTA with a ratchet clause. In the words of the European Commission: “A ‘ratchet clause’ is a provision through which the Parties commit that, if they unilaterally decide in the future to further open up their respective markets in one specific sector, such opening would be ‘locked in’ – i.e. there can be no step backwards.”¹¹

The EU also is very frank about what a standstill clause means for the ability of a democracy to regulate its own economy after signing a FTA with a standstill clause: “A Standstill clause in a trade agreement means that the Parties have to list all the barriers as they are at the moment of taking commitments and afterwards cannot introduce any new barriers.”¹²

10 Hernández Zubizarreta, J. and Ramiro, P. 2018. La mercantilización de la Democracia.

11 European Commission. April 2016. Services and investment in EU trade deals – Using ‘positive’ and ‘negative’ lists.

12 European Commission. 26th September 2016. Trade in Service Agreement (TiSA), Factsheet.

“DEEP INTEGRATION” AND REGULATORY COOPERATION – LOBBYING AS OFFICIAL PART OF THE LEGISLATIVE PROCESS

The “free trade agreements of the 21st Century” are no longer about reducing customs duties but about aligning technical norms for production and distribution. In the best of all capitalist worlds, there would be only one norm-setting agency so that the headquarters of the global value chains could produce all over the world following the same rules. This would dramatically reduce costs as no adaption to national rules would be needed. Luckily for us, but unfortunately for transnational capital, national parliaments still have the prerogative to set rules and norms. To circumvent this national sovereignty the new generation of FTAs contain regulatory cooperation mechanisms. The idea is that “stakeholders”, a.k.a. the law firms working for the big multinational enterprises, propose new product norms and feed these into the legislative procedure. Regulatory cooperation is a typical example of what the term “deep integration” stands for. In the short term, regulatory cooperation attempts to lessen the divergence between varying national norms. Mutual recognition or equivalence of regulation would have an immediate impact and would therefore be welcomed by transnational capital. For citizens, workers and consumers, this would have some very negative implications as it would immediately lead to a race-to-the-bottom in the regulation of products. The country with the lowest environmental and labour law standards would always have a competitive advantage vis-à-vis its trading partners and would therefore be under strong pressure to weaken its own regulations as well.

DEREGULATORY AGENDA

Labour and environmental laws are being aggressively targeted in the negotiation and implementation of international trade and investment agreements. The rights of current and future governments to regulate these and other areas of social interest are being constrained by participation in such international investment agreements.

Global capital does not like being told what to do by governments. Foreign investors want governments to give them and their investments no less favourable treatment than domestic investors and their investments.

Many transnational corporations, and the powerful governments with which they are aligned, have argued that national regulation with progressive policy objectives interferes with the rights of business and creates uncertainty for investors.



Through international agreements, such as bilateral investment agreements, they seek binding, enforceable rights (but no responsibilities), and an end to government regulation of investment.

EXPANDING INVESTORS' PRIVILEGES

By including broad definitions of terms like “investor” and “investment”, these agreements offer very strong protections to foreign investors. Today, there are around 3000 investment treaties and 90% of them include the ISDS system (see above chapter). The signing of mega-treaties such as CETA or TiSA would expand the investors’ privileges and the risk of facing more claims under ISDS. If the EU signs these new agreements, it will expand the system enormously and give a great number of corporations access to this privileged system. Instead of expanding the system we need binding rules for transnational companies to respect human rights and to keep them accountable for their activities worldwide.

3. Crisis within the World Trade Organization and reforms needed. Splits in the WTO: what do they mean?

Progressive actors were never the WTO's greatest proponents. But for the last few years these actors have found themselves in the strange situation of defending the WTO against unilateral actions. The WTO never played a progressive role and it is obvious that this institution has nothing to offer to solve the current global challenges.

The WTO, and with it the multilateral trading system, is in a deep crisis. The USA has opposed the appointment of new judges, which could lead, in 2019, to a breakdown of the organisation's dispute settlement system. The problems are not limited to the WTO's judicial branch. The legislative branch has also been blocked for years; there is no longer any "legislative process" and no negotiations are taking place. Who will benefit from a regulatory system without judges? Only the big powers will profit from this dog-eat-dog situation.

In recent times, the differences between major capitalist countries and within the institutions they dominate have become more pronounced. The WTO is probably the institution that best exemplifies this new tension that arose out of the 2008 financial and economic crisis and that has led to a changing political landscape. Formerly neoliberal parties and politicians are becoming weary of the promotion of FTAs like those in the 90s and 2000s. The most notorious example is the current debate about reforming the WTO. The European Union has been promoting reforms that will maintain the current balance of forces against US proposals aimed at putting America first, to paraphrase Donald Trump

The current head of the WTO, Azevedo, reminds us regularly that this is an organisation that was created to promote 'free trade', and that has seen the recent addition to its ranks of China and Russia. He has publicly called for national leaders to defend the 'multilateral trading system' against protectionist pressures. An artificial fracture is being created amongst the political elite to allow them to differentiate themselves from one and other: the democratic but pro-free trade Justin Trudeau, Emmanuel Macron or Angela Merkel against the protectionist but undemocratic Erdogan, Orban, Salvini, Bolsonaro or Trump. The globalists versus the nationalists as some of the liberal press likes to frame it.

This has to be denounced by forces on the left. The fact that the heads of organisations that represent the elite economic interests of the world's richest countries

criticise some of their pay masters does not mean that those institutions are any less aggressive in undermining workers' rights and the environment or in facilitating the continued corporate takeover.

Funnily enough, whilst defending the multilateral trade system, the pro-trade leaders will admit that the trade system is not perfect, but maintain that it represents the best effort of governments around the world, working together for 70 years to find ways to cooperate on trade issues. Despite the calls of Azevedo, the WTO not so long ago claimed that their system was spotless and that there was no possible alternative. The WTO needs fundamental and total reform of its principles and functioning, especially regarding the climate crisis.

Shortly after Cecilia Malmström warned of the risk of collapse of the WTO, the European Commission presented a paper on WTO reform. Japan and the US have presented another common proposal (despite the fact that Trump pulled out of TPP) and Canada has presented another. It is important to note that these four countries (or trading blocks, in the EU's case) represent the most developed and industrialised nations and have economic interests around the globe. We are not aware of any paper coming from Bolivia, Ecuador, Bhutan or Mali... This alone points to the future direction of the proposed reforms.

Whoever finances the future WTO (and OECD, IMF, etc.) will be the one who sets the direction of the organisation and the interests of that pay master will be at the heart of future policy. The conflicting discourse between some countries and their institutions can be seen both as a readjustment as well a sort of internal debate between different wings of the defenders of free trade and the neoliberal elite.

The fact that some countries are seen as 'becoming protectionist' should not be taken to mean that the same neoliberal agenda of privatisation public services, climate-change denial and attacks workers rights is not still their political priority. The willingness to modify the system stems more from the desire to export their unemployment and internal economic issues than from any move to seriously review the old paradigm. It is important to remind ourselves of this and not to become confused over this or that public statement.

4. What Free Trade and Investment Agreements are on the EU agenda?

The EU foresees the approval of nine new trade and investment agreements during this parliamentary term. Alongside these relatively complicated agreements, there is the issue of Brexit and a possible agreement with the United Kingdom. The European Union has more than one thousand agreements: FTAs, Economic Partnership Agreements or other types with the vast majority of members of the WTO.

The main agreements the EU would like to see concluded in the next months are: **CETA:** The EU-Canada agreement (Comprehensive Economic Trade Agreement) was provisionally applied on 21 September 2017. This means that most parts of the treaty are already in force. However, there remain uncertainties surrounding the treaty with Canada, due to the on-going ratification process. Most of the member states have not yet agreed on the ratification and the European Court of Justice still has to rule on the compatibility of the ISDS provisions with European Law.

JEFTA: (Japan-EU Free Trade Agreement) The European Commission and the Prime Minister of Japan signed the treaty in December 2017. After this, the Commission proposed that the agreement is an exclusive EU competence, meaning that no ratification by Member State parliaments would be required. In July 2018, the European council decided to sign the treaty and it is now waiting to be voted on in the European Parliament (December 2018). JEFTA would give unprecedented powers to big corporations both in Japan and Europe. JEFTA includes a chapter on regulatory cooperation, which opens the door for transnational corporations to influence national regulations. The EU removed ISDS from JEFTA and instead it proposed a separate agreement focused on investment only, which is very much the same as having ISDS. The treaty also adopts the “negative list” approach to liberalisation of services: any service that is not explicitly excluded from the agreement is considered a market open to liberalisation.

EU-Mexico: The European Union and Mexico reached a “political agreement” in April 2018 to “modernise” the trade agreement signed 20 years ago, still in force. The objective of such an agreement was to accompany the negotiation of TTIP and CETA. With the current unknown status of the TTIP process, it is unclear how the agreement with Mexico will pan out.

EU-Mercosur Treaty: Brazil, Argentina, Paraguay and Uruguay make up Mercosur (Venezuela is currently a suspended member) which together make up the most



attractive parts of South America for the EU. The agreement is very advanced although sticking points remain, not least the relations with the current president of Brazil. The negotiations are in the 36th round and it is still without “decisive progress”¹³ on the main disagreements relating to maritime transport, import and export of cars, meat and agro fuels.

TiSA: Trade In Services Agreement. This is perhaps the most complicated of all the previous agreements. Luckily for us, the negotiations are currently on hold. TiSA is an agreement between 23 Parties (22 countries plus the EU). WikiLeaks released in 2014 a classified draft of the proposal’s financial services annex.¹⁴ The agreement covers about 70% of the global services economy in areas such as banking, healthcare and transport. Services are a key economic area that comprises 75% of American economic output; in EU states, almost 75% of employment and gross domestic product.

EU-UK, the post-Brexit FTA: Many of the challenges posed by the contemporary capitalist trading system converge in the Brexit process. On the one side the potential interruption of global value chains may lead to economic crisis which will inevitably hit workers, their families and the affected regions. On the other hand, you can argue that the political goals of the Labour party under Corbyn might be more easily achieved outside the rules of the EU; a stronger state working for re-industrialisation of the English “Hinterland” and the idea of re-nationalising strategic economic sectors. The labyrinthine process of the United Kingdom leaving the European Union will likely lead to a commercial agreement along the lines of CETA. The trade battle waged by the United States through tariffs on aluminium and steel may lead to the signing of a treaty that will either deepen the neoliberal vision of multilateralism and leave on paper the promises of job relocation that Brexit supporters made, or based on the promises of a rethinking of the Anglo-Saxon country’s trade policy carried out by Labour leader Jeremy Corbyn. The Brexit negotiations show that both the free trade of the EU and Trump’s misunderstood protectionism pursue a common goal of marketization.

On top of those nine agreements, the European Union has a wide range of agreements with all countries in what is called the European Neighbourhood policy (the countries that neighbour the Member States of the European Union).

13 Politico Morning Trade, 22/11/2018, or <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20181120-1430-COMMITTEE-INTA>.

14 <https://wikileaks.org/tisa-financial/analysis.html>.

EU-Ukraine The Ukraine–European Union Association Agreement establishes a political and economic association between the EU and its eastern neighbour. The agreement entered into force on September 1, 2017, and previously parts had been provisionally applied. The Dutch government was forced to organise a non-binding referendum, which rejected the agreement. Given the current conflict between EU and Russia the agreement is highly geopolitical, and it is done on the back of an IMF stabilisation plan for Ukraine that has pushed the privatisation of public services and marketisation of health. Both parties (EU and Ukraine) are committed to co-operating on economic policy, legislation, and regulation across a broad range of areas, including equal rights for workers, steps towards visa-free movement of people, the exchange of information and staff in the area of justice, the modernisation of Ukraine’s energy infrastructure, and access to the European Investment Bank. In reality, the European Union is imposing a whole range of measures comparable to those of the Troika in Greece. The agreement furthermore establishes a Deep and Comprehensive Free Trade Area between the parties, some in Ukraine see this as a first step towards joining the European Union. The agreement further commits to promoting a gradual convergence towards the EU’s Common Security and Defence Policy and European Defence Agency policies suspended since 2008.

STABILISATION AND ASSOCIATION AGREEMENT

With the Ukrainian Agreement, the EU is finishing its trade buffer zone that will create a ‘regulatory’ zone between the EU Member States and candidate countries¹⁵ on the one side and the rest of the world on the other. That zone will have a special intermediate status and it will be important for issues such as the management of migration.

The two areas in which the EU is developing a so-called strategy of stabilisation by trade are:

The first is the **Union for the Mediterranean** (UfM) an intergovernmental organization of 43 member-states from Europe and the Mediterranean Basin: the 28 EU member states and 15 Mediterranean partner countries from North Africa, Western Asia and Southern Europe. It was founded on 13 July 2008 at the Paris Summit for the Mediterranean, with the aim of reinforcing the Euro-Mediterranean Partnership (Euromed) that was set up in 1995 as the Barcelona Process, but

15 Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey are candidate countries.



which, due to German pressure, never really gained political influence. Its general secretariat is located in Barcelona, Spain. The UfM aims to promote stability and integration across the Mediterranean region. The UfM was created as a forum for discussing regional strategic issues and developing (in the future) a Mediterranean free trade zone with the objective of ensuring stability in the region. The 'Arab spring' and the collapse of several regimes put to an abrupt end the chances of any stable trade block. Although the infrastructure of UfM still exists, the EU is currently pushing individual agreements with those countries with investment opportunities.

The **Eastern Partnership** is a sort of the Northern Dimension of the Union for the Mediterranean by providing an institutionalised forum for discussing visa agreements, free trade deals, and strategic partnership agreements with the EU's eastern neighbours, while avoiding the controversial topic of accession to the European Union. Its geographical scope consists of Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. Unlike the Union for the Mediterranean, the Eastern Partnership does not have its own secretariat, but is controlled directly by the European Commission. It is a sort of second division in which the winner has a chance to play in the main league if the EU decides to do so.

Since its inception 25 years ago in Maastricht, European Union has been a firm defender of Free Trade Agreements. Since the collapse of the so-called really-existing socialist states, the EU has promoted agreements with all its neighbours with the perspective of integrating them as much as possible into the common market, either as associate countries or units in some way economically dependant of the Union. Their external policy has been inexorably linked to trade policy. This is because it is one of the few tools that the European Commission can use without asking for the permission of Member States.

AND NOW FOR SOMETHING COMPLETELY DIFFERENT: TRADE AND THE DIGITAL REVOLUTION

Digital Data is "the new oil" of the post-fordist, capitalist world economy. The more data can be gathered, the more useful it becomes. Only with huge quantities of data, can "big data" surveillance, forecasting and artificial intelligence run properly. This, for example, is a huge problem for Germany. The market is just too small for the necessary data volumes. Therefore, Germany is pressing heavily for a common digital market from which its own economy—as the central axis of the EU's value chains—would profit most. Inside the EU, German industry is in need of absorbing the peripheral "raw-data". Imagine on what level the "gamble for data"

is being played. "Harvesting" data is not a problem, consumers are producing it all the time and carelessly handing it over to the firms. The only problem are states, borders and regulation. There are no natural, physical boundaries – only political ones. Only national sovereignty stands between the big international data processing firms and the vast ocean of data. No wonder the GAFAMs have started a huge offensive in recent years attempting to block any further regulation of the data market. GAFAM is an acronym for Google, Amazon, Facebook, Apple and Microsoft. This list is of course not comprehensive, but it marks the (current!) big new monopolies in the coming age of data-capitalism. All of them are American, all are supported by the immense power of the American state machinery and military. What are they aiming at? GAFAMs try to achieve international trade agreements which pledge to stop any future regulation of data transfer and processing and which abandon the right to privacy. As politics must learn to regulate a market which is just developing it is the perfect time for these big international monopolies to stop any regulation of their market. If they succeed with this strategy, any attempts made by third-world countries to develop their economy would be doomed as they would have no access to the most powerful future commodity: data.

5. Impacts of the current International Trade System

DOES TRADE ACHIEVE POVERTY ALLEVIATION?

One of the main arguments used by the defenders of FTAs and IIAs is that they are a route out of poverty. Trade always creates new opportunities and development and therefore reduces poverty, or so the free-traders claim. Christine Lagarde, for instance, argued in the *Financial Times* of 11 October 2018¹⁶ that trade has lifted millions out of poverty. But has it?

Economic growth before and after the financial and economic crisis had the sole side effect of making the rich richer. Lets look at a few illustrative examples on how trade and investment agreements have been used:

ARGENTINA

At the end of 2001, Argentina defaulted on \$132 billion of loans. Gross domestic product dropped by 28 percent, 57.5 % of Argentines were living in poverty, and the unemployment rate skyrocketed to above 20 percent. This was the direct consequence of a period of opening up of the economy.

Unable to pay its creditors, Argentina restructured its debt in two rounds of negotiations. The package discounted the bonds by two-thirds but provided a mechanism for more payments when the country's economy recovered, which it did. A vast majority of the bondholders — 93 percent — accepted the deal. Among the small minority who refused the deal were investors who had bought many of their bonds at a huge discount, well after the country defaulted and even after the first round of restructuring. These investors are now commonly called vulture funds. The United Nations' responsible lending and borrowing principles¹⁷ state that "lenders should be willing to engage in good faith discussions with the debtor and other creditors to find a mutually satisfactory solution".

During the Menem Government in the early 90s, which was a period of liberalisation of the country, Argentina accumulated US\$22 billion in deficit from 1992 to 1999; the current account deficit, which included growing foreign debt interest

16 <https://www.ft.com/content/a83bef10-cd19-11e8-b276-b9069bde0956>.

17 https://unctad.org/en/PublicationsLibrary/gdsddf2012misc1_en.pdf.

payments and deficits in trade in services, reached a record of US\$14 billion in 1998 alone¹⁸.

The country relied on sizeable foreign-investment inflows to balance the current account and, when these did not suffice, the Central Bank was again forced to resort to borrowing to protect the peso's value against such pressure (mostly by floating bonds, then the most sought-after in the developing world). So opening up the Argentinian economy did not bring the expected poverty alleviation. On the contrary the impact on the population of the opening up was a huge increase in unemployment and poverty.

SOFT DRINKS IN MALI, SENEGAL, GABON...

Castel, a French multinational, is the third biggest wine company in the world with 571 million bottles and the second biggest soft drinks producer in Africa. In 1990 the French company bought the state monopoly BGI (Brasserie Glacières Internationales) in Benin, Algeria, Morocco, Madagascar and RDC. As the company successfully developed—thanks to the policies of trade liberalisation—it laid off thousands of workers. After that, it bought the regional sugar industry and imposed in the Central Africa trade zone (CEMAC) a sugar monopoly protected by an external tariff that made imports almost impossible, and this according to an WTO report¹⁹. Now this company has the capacity to 'twist' the arms of national governments and the local market is totally dependant of the decisions of its Paris headquarters. The French company extracts millions of euros in profits each year from Africa into Europe thanks to the policy of the IMF and by blocking competitive trade through their policy of financing local politicians into government²⁰.

It is undeniable that in historical terms trade has had some positive impacts for humanity, like migration. But this is not what is being argued. The issue is that so-called free trade is highly regulated in favour of the most powerful nations and within them only in favour of the elite that rules those countries. It would be good if we start calling it by what it is: trade benefiting those that have the most wealth. The above examples are just a few selective examples of how trade is bended and twisted to favour big multinationals and the countries where they have their headquarters.

18 <https://www.nytimes.com/2016/04/01/opinion/how-hedge-funds-held-argentina-for-ransom.html>.

19 https://www.wto.org/french/tratop_f/tpr_f/tp385_crc_f.htm.

20 <https://www.monde-diplomatique.fr/2018/10/BLAMANGIN/59159>.

INTERNATIONAL TRADE DEEPENS THE ECOLOGICAL CRISIS

On 1 January 1994, the North American Free Trade Agreement (NAFTA) entered into force between Canada, the USA and Mexico. This treaty incorporated for the first time a chapter with recommendations on sustainable development. Following this, the WTO and the European Union added recommendations to the need for sustainable development in all trade and investment agreements. More than 20 years later, and in a planet with more commercial flows than ever before, sustainable development has not arrived and everything indicates that things are moving in the opposite direction. Yet, the European Commission has proposed a renewed strategy for the current wave of trade and investment agreements that have been embodied in a “Sustainable Development Chapter” as another element of legitimisation of their unsustainable trade politics. The content of these chapters, which are to be included in all future FTAs, is characterised by the purely declarative and voluntary nature of its recommendations, along the lines of corporate social responsibility mechanisms. They lack coercive dispositions and binding mechanisms.

The new generation of trade and investment agreements present added dangers since one of their main objectives is to weaken or eliminate regulation of all kinds, which in many cases are the only barriers that protect nature from the devastation of global capitalism which needs to consume more and more resources and territory.

International trade inevitably implies greater environmental degradation by the obvious need to build more infrastructure and for products to travel more kilometres which, in turn, produces more greenhouse gas emissions and more energy consumption. On the basis of this alone, it is clear that international trade is unsustainable and the only possibility to add “sustainable clauses” is by limiting international trade greatly.

The increase in the volume of global trade intensifies the pressure on natural resources, producing greater destruction of habitats and overexploitation of the species. According to recent data, at least 1/3 of the threats to biodiversity worldwide are linked to production destined for international trade and about 11% of the extraction of groundwater is used to irrigate crops for export²¹. It also brings with it a greater use of fossil fuels, inherent in the increase of the amount of goods

21 Moran, Daniel; Kanemoto, Keiichiro. 2016. Environ. Res. Lett.11094017. Available from: <http://iopscience.iop.org/article/10.1088/1748-9326/11/9/094017/pdf>.

transported over long distances, which means more emissions of greenhouse gases with the consequent devastating effect on the climate.

The increase in long distance transport has also a strong effect on the ecological crisis. In 2001, 5.3 of the 22 gigatons of CO₂ that were dumped into the atmosphere came from international trade²². Although there are no updated figures that segregate the increase in CO₂ emissions from the transport of goods that are related to international trade activities, we know that the international air and maritime sector represents 4-8% of global emissions and that the quota could reach almost 40 percent in 2050 if the course is not changed²³.

The European Union must adopt measures aimed at reducing the impacts of commercial globalisation by promoting the relocation of production processes and the changing the model of production and consumption. Measures are needed that ultimately reduce the ecological footprint and ecological debt of the European Union and contribute to alleviating the global ecological crisis. The EU would argue that JEFTA will be the first trade agreement to take account of the Paris Agreement—although there are no binding obligations in this regard—and we fail to see how an agreement that will increase economic exchanges of goods between countries more than 9000km away is going to help to reduce CO₂ emissions.

CORPORATE POWER: LOSS OF DEMOCRACY, SOVEREIGNTY, INTERNATIONAL MONOPOLIES

We have repeatedly shown examples on how trade and investment agreements allow transnational companies to secure their “rights” and protect their businesses with secretive mechanisms such as the Investment State Dispute Settlement (ISDS). This global corporate law uses international jurisdiction to protect big corporations rather than people or the planet and is actually trading away democracy by transferring the powers of the states towards transnational capital.

Most of the agreements are negotiated amongst experts that have no mandate to validate the decision they are making. Experience has shown that most European countries have lost the ability to follow the level of negotiations (as explained before the EU is negotiating 9 major agreements and monitoring hundreds) and

22 Peters G.P. et al. 2012. A synthesis of carbon in international trade. Biogeosciences. Available from: <https://www.biogeosciences.net/9/3247/2012/bg-9-3247-2012.pdf>.

23 Transport and Environment. April 2016. Globiom: the basis for Bio-fuel policy post-2020. Available from: <https://www.transportenvironment.org/publications/globiom-basis-biofuel-policy-post-2020>.



they tend to focus on 1 or 2 key national issues leaving the rest to the European Commission and national lobbyists.

Key decisions are made ignoring the population that is then confronted with a choice of accepting or rejecting the agreement, with very little information and few impartial studies on the risks and benefits. The case of CETA and the Wallonia region is quite telling. The Walloon parliament spent hundreds of hours of debate inviting defenders and critics of the agreement between the EU and Canada and while the entire text was understood and went through scrutiny even moderate Cristian-democrats had difficulties with the agreement. The Belgian federal structure needs all the regions to ratify such a cession of sovereignty. Not signing such an agreement would cause any nation state to loose international prestige. So, in order to convince the Walloon Parliament to allow the provisional application, the EU ceded them an interpretative (non-binding) clause attached to the final CETA text. The case of Wallonia is a good example of what those types of agreements imply for sub-national and local entities. Regions or bigger cities can be staunchly opposed to such agreements with most of the population opposed and yet a central government or even the European Union can decide otherwise. The way the European population has been 'bullied into' this agreement is another reflection not of the level of support for trade but of the contempt of big business and many politicians for big chunks of the population.

THE JOB CREATION DOGMA, UNIONS AND WORK

The issue of jobs and trade is a key element that needs to be debated in depth. The entire discussion between DG Trade (the trade arm of the European Commission) and several trade unions that opposed TTIP was around that very argument. Trade negotiations are based on WTO modelling and all economic calculations of the benefits of joining a trade zone or signing an agreement are based on 'economic models', that is to say future projections. So, the models being used for the assumption 'trade-created jobs' merit discussion. The TTIP agreement was, at one point, about the supposed creation of millions of jobs and later on (once several studies put those models into question) the prediction was lowered to 50,000 net jobs per year.²⁴ So not a very sizeable impact on jobs to mitigate the huge dangers of liberalisation.

24 The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability, http://ase.tufts.edu/gdae/policy_research/TTIP_simulations.html.

While not denying that trade can create jobs, it is important to highlight that it also destroys jobs. The real issue is which type of jobs trade agreements are creating and what kind of jobs are destroyed.

Looking at this in detail can help identify why some unions are more pro-trade and why some others are opposed and why some countries have less difficulty with trade agreements than others.

As an example: if a trade agreement liberalises “road transport” and “municipal private transportation” it will open the way for a consolidation of Uber as an alternative to taxis. Uber is highly unregulated (and hardly pays any taxes in the place where the economic activity is done) while taxis are usually highly regulated and are a huge income for the local or regional authorities issuing permits. These are the kind of *societal* choices that FTAs force us to make. So the questions for workers and unions are: do these FTAs take International Labour Organisation provisions into account? Do they have labour or trade-union clauses? Is there a mechanism to prevent the abuse of badly paid jobs? The answer to the three questions is in the negative. This should be a key element in the discussion about the future of work and FTAs.

ARE THE OPPORTUNITIES FOR EVERYONE THE SAME? BRIEF ANALYSIS FROM A FEMINIST PERSPECTIVE

Beyond the abolition of tariffs, the free trade and investment treaties pursue the elimination of non-tariff barriers, that is, of all factors that impede the free movement of goods. These can be labour rights, food security or advances in relation to gender equality. These agreements favour privatisation and commodification of public services like health or education. FTAs must be understood within the context of the patriarchal capitalist system, since this system is based on accumulation by dispossession, which includes the, commonly invisible, work around care. Commodified labour and capitalist production owes its existence to work done from inside private homes, mainly by women. Without this workforce, capitalism’s continued existence would be impossible. Firstly, this domestic work is what sustains human life and, therefore, it is imperative for the reproduction of the workforce. Secondly, the fact that it is mainly carried out free of charge means salaries do not have to include the cost of this labour. Capitalist companies are incapable of paying the costs of reproduction of the labour force. Lastly, by confining this issue to the domestic sphere, it removes responsibility for care from men, states and companies.

Between 2006 and 2008 the International Network on Gender and Trade in Latin America (Red Internacional de Género y Comercio, Capítulo Latinoamericano)

commissioned a study to analyse the types of jobs that international trade was promoting for men and women of Argentina, Brazil, Colombia, Chile, Mexico and Uruguay. The study concluded that there was no direct relation between FTAs and women's incorporation in the labour market. This was principally because the types of jobs created were highly concentrated in specific branches of the economy that are usually male dominated, while the wider liberalisation of national economies affected mostly women in the workforce with high or moderate education levels.²⁵

The interests of corporate power and profit are made possible and sustained thanks to a process of exploitation and accumulation by dispossession of natural resources, and the unpaid labour of care, principally done by women. This process should not be seen as a simple effect of the application of these treaties, but as an intrinsic part of the system. The design of these treaties is predicated upon the exploitation of precarious or unpaid care work, without which the capitalist system surrounding the FTAs would not exist.

25 Espino, A. 2009. América Latina: Equidad de género, Comercio Internacional y Desarrollo. Available from http://www.presupuestoygenero.net/images/biblioteca/espino_equidad_genero.pdf.

6. Examples of actions and responses from civil society

Social movements and communities in resistance face the challenge of confronting this violent and authoritarian model and of creating alternative models that involve those who find themselves at the margins of the political and economic model.

Twenty-five years ago, with the collapse of Soviet bloc and a surge of social-democratic governments across Europe, there were hopes that the post-war model of social partnership would reappear. In the end, what we got was the era of globalisation and, as a result, the political annihilation of social democracy, especially of the “third way” variety that came about at the end of the 1980s.

In section II we have highlighted what the economic elite and the financial institutions have said about the current state of free trade. But what are the positions of those that are fighting for trade justice?

POLITICAL PARTIES

This is not intended to be a list of the positions of all the parties of the left (social democrat, green or radical left) but an analysis of the position of actors and key stakeholders within those parties as a means to understand what alternatives are out there.

Since the beginning of the campaigns against TTIP and CETA, members of the GUE/NGL and the European Greens have supported the struggles in different ways. The groups have produced a number of texts, reports and organised seminars to discuss the topic. The GUE/NGL even produced a very early report on the impacts of JEFTA, being one of the first to introduce the subject.²⁶ There is no doubt that these groups have been very supportive at European and also national levels.

During the vote on CETA, all MEPs from these groups voted against the treaty with significant amendments to the text. At national level the response has been similar.

The neoliberal trade agenda is clearly not dead yet but it is challenged by the migration crisis and by the rise of xenophobic right-wing parties. It is in these moments that Left parties need to lead the trade agenda even more and propose

²⁶ For further information, see <https://twitter.com/TTIPBeware>.

alternatives. The collaboration with civil society organizations must continue and keep confronting globalised neoliberalism.

For example, Mélenchon in France presented as one of his ten political priorities during the presidential elections withdrawing from TTIP and CETA. His party has made the same demand in the upcoming elections. The difference is that this position calls for rejection and then non-compliance with the agreements once ratified. Other forces like Unidos Podemos (PODEMOS and Izquierda Unida) oppose TTIP and CETA but they also propose the creation of a network of governments that would oppose the current view within the WTO as an intermediate step towards reform or refoundation.²⁷

The social democrats are far behind in the discussions: the majority do not challenge the current economic system and for them FTAs create jobs. Their role, as they see it, is to pursue some sort of progressive FTA. The social democrats have presented the Sustainable Development Chapter as a new approach to FTAs. This, however, changes a bit depending on the national context. The most notable case of opposition by a social-democratic party is the Wallonia PS (in Belgium). After over 100 hours of parliamentary scrutiny the Regional government decided not to allow ratification of CETA unless an interpretative clause were included. Paul Magnette, the socialist President of the region, was on the verge of rejecting the treaty due to a lack of scrutiny. During the TiSA negotiations, a similar scenario series of events took place in Uruguay: after a proper study of the impact of the agreement on the economy the government (a left leaning broad coalition called Frente Amplio) decided to withdraw from TiSA.

It is crucial that left forces engage in an open, frank and constructive debate about their approach to trade. Within progressive forces (socialists, radical left and greens), we can find plenty of opposition but there isn't yet a comprehensive alternative agenda.

CIVIL SOCIETY, SOCIAL MOVEMENTS, NGOS

Civil society organizations have taken up the issue and have been key to the development of national and trans-European mobilisations to oppose CETA or TTIP and TiSA. In many countries, hundreds of members of such organisations were able to mobilise to the point of creating platforms to oppose the agreements and launch a self-managed European Citizen Initiative (ECI) that collected over three

²⁷ <https://lasonrisadeunpais.es/wp-content/uploads/2016/06/Podemos-Programa-Electoral-Elecciones-Generales-26J.pdf>, page 86.

million signatures. Some of the major mobilisations took place between 2015 and 2017. Germany witnessed mass demonstrations with up to 250,000 people in October 2015. Many other European cities joined the mass protests around TTIP and CETA. European bureaucrats were undoubtedly surprised to see such rage around an issue that would normally not garner too much attention. Without these popular movements, TTIP would have passed with no scrutiny, CETA would have had a much smoother ratification process and we would not be waiting for the ECJ to rule on the legality of the treaty. The campaigns and platforms against the FTAs, or for trade justice, are still leading some major actions to stop ratification of CETA (Italy, Germany) or to stop the vote on JEFTA (France, Germany, Spain).

Unfortunately some of the bigger environmental NGO's have been absent from the Europe-wide struggle against the current round of FTAs.

TRADE UNIONS

For the trade unions, trade has been an internal headache for many years. The division within the trade union movement internationally reflects underlying political differences. In the last few decades, trade unions internationally have undergone a process of unification, but this has been done without serious discussion on some key issues such as trade. As a result, we find the same divisions that we identify within political parties.

A few years ago, the position of the European Trade Union Confederation was as follows: "Trade can create jobs. European nations are trading nations (...) Europe can compete with the best, given a level playing field. We oppose the protectionist sentiments promoted by both extremes of the political spectrum, particularly in the current electoral period. They are economically counter-productive and verge on xenophobia. We also reject a free trade ideology that takes no account of our collective preferences, summed up in the European Social Model²⁸" This did not take into account that the 'level playing field' means privatisation, liberalisation and a catastrophe for public services. No wonder that at the forefront of the struggle against CETA, TTIP, TiSA or JEFTA, we find the ETUCE (European teachers organisation), EPSU (the European Federation of Public Service Unions) or the ETF (European Transport Workers' Federation). Together with some national trade unions, they have been putting pressure on the Confederation at European level to

28 Speech given by Bernadette Ségol, General Secretary of the European Trade Union Confederation (ETUC) Committee on International Trade – EU Trade Policy
<https://www.etuc.org/en/speech/committee-international-trade-eu-trade-policy>.



be more confrontational. It is interesting to note that the European Commission created a group of experts to see if their proposals on trade were well received amongst trade unions and none of the above mentioned ones was retained. The European Federation of Metal and Chemical Workers (IndustriALL) however was invited.

In the United States a similar split can be found with the AFL-CIO being relatively complacent compared to the Teamsters (who split from the AFL-CIO in 2005). In the richest (and most export-based) countries in Europe—the Nordic countries and the Netherlands—trade unions have been split over the FTAs with usually blue-collar and private-services unions being broadly favourable or, at best, neutral, and public-sector unions being more hostile. LO Sweden, the country's largest confederation, stated in 2016 that a free trade agreement with the United States is important if we are to create a greater number of competitive jobs in Sweden. Neither the Government nor the Swedish Trade Union Confederation subscribes to the view that the negotiations on the Transatlantic Trade and Investment Partnership between the EU and the US have failed or should be abandoned.²⁹

TTIP AND CETA FREE ZONES

During the CETA and TTIP campaign, over 2000 cities, local councils and regions declared themselves CETA and TTIP free. Local authorities in the **UK, Belgium, the Netherlands, France, Spain, Italy, Austria, Ireland, Greece, Portugal, Germany and Bulgaria** passed motions declaring themselves as TTIP/ CETA/ TiSA-free zones or expressing their concern with these treaties. While being mostly declarative, this action showed that there was a mass campaign happening on the ground and that local politicians not linked to key economic interests were the most likely to be having second thoughts about the benefits of capitalist globalisation. In 2016, Barcelona city council created a European network of cities to lobby national government and the European Institutions, so far the network has organised two Europe-wide events³⁰.

The European Union has created countless regulations that protect large companies and infringe on the rights of workers and consumers. A key concern for local authorities in relation to the FTAs is their ability to regulate (which is already limited). Public procurement in local administrations account for around 20% of GDP

29 The Swedish Trade Union Confederation – TTIP for growth and jobs,
http://www.lo.se/english/news/sweden_needs_ttip_for_jobs.

30 <https://www.ttip-free-zones.eu/node/35>.

in Europe. This makes public procurement a very attractive business for investors and transnational corporations. These policies are established and regulated by public administrations and thus can also be an important tool for promoting social justice. For example, in 2015, the city of Madrid made two major changes in its public procurement clauses. As a result, the bidding process now favours businesses with social principles, fair trade and special preferences for organizations that promote labour-market integration of vulnerable sections of the population. It seems logical that an international economic system that prioritises private interests above all else will not be very enthusiastic about such changes. With the signing of IIAs or BITs, these policies could be challenged by an ISDS court alleging “discrimination” or violating the “Fair and equitable treatment” clause included in the agreement.

This would create major obstacles to progressive municipal policies that challenge neoliberalism by, for example, limiting AirBnB to protect affordable housing, or by promoting the public provision of renewable energy.

7. What alternatives do we propose?

Today we have a few examples of international, regional and national laws that aim to regulate the activities of transnational companies to end corporate abuses. Although some are quite recent, and some more relevant than others, it is worth taking a brief look at these examples to continue working towards binding rules in global trade that promote social justice.³¹

USA: TRANSPARENCY IN SUPPLY CHAINS ACT (2000)

This is a transparency law with a very specific obligation on any business operating in the State of California with over 100,000 million USD/year of revenue to inform on all the activities it has in its supply chain. Although focused specifically on transparency, the law obliges companies to elaborate reports and audits on all suppliers to the company. Additionally, the company is obliged to send the reports to the General Attorney and if there are any suspicious activities, he or she can initiate an investigation against the company.

UNITED KINGDOM: MODERN SLAVERY ACT (2015)

The law aims to end all forms of slavery, forced labour and human trafficking. This law includes a clause called Tisc (Transparency in supply chain) and, similarly to the Californian law, it obliges companies operating in the UK to report on their activities and those of any other company in their supply chain in any part of the world. However, this law has its flaws: for example the fact that UK-based companies are not subject to the law. It is nonetheless worth mentioning as the UK is a world centre for the neoliberal economic system.

FRANCE: LOI SUR LE DEVOIR DE VIGILANCE (2017)

The French national assembly approved the “French Corporate Duty of Vigilance Law”. The law establishes a mechanism that allows for the investigation and identification of possible risks in order to prevent human rights violations by big companies. Companies are obliged to adopt a “vigilance plan” where they clearly state the steps they will take in order to avoid human rights violations. This plan has to include not only the activities of French companies but all those subsidiaries or other companies that are part of the supply chain or with which they have any

³¹ For more information on the different sets of examples, visit the website: www.CETIM.org.

commercial agreement. The law includes the possibility of sanctions where suspicious activities are identified.

THE UN BINDING TREATY

In June 2014, the United Nations Human Rights Council (UNHRC) adopted the resolution 26/9 on the elaboration of an internationally legally binding instrument on transnational corporations (TNCs) and other business enterprises with respect to human rights. To move this negotiation process forward, an intergovernmental Working Group (IGWG) was created. Since then, civil society organisations and, importantly, the Global Campaign to Dismantle Corporate Impunity have been making input into this process by presenting concrete proposals on what the treaty should look like.³² The proposals state that the final treaty:

- 1) must focus on TNCs
- 2) must affirm the obligation of TNCs to respect all human rights
- 3) must affirm the obligation of states to protect against human rights violations committed by TNCs and must codify their extraterritorial obligations in this regard
- 4) must reaffirm the hierarchical superiority of human rights norms over trade and investment treaties and develop specific state obligations in this regard
- 5) must establish the civil and criminal responsibility of TNCs and their executives, as well as the shared liability of TNCs for the activities of their subsidiaries, suppliers, licensees and subcontractors
- 6) must include provisions on the obligations of international and regional financial and economic institutions
- 7) must establish enforcement mechanisms at the international level to enforce the treaty and monitor its implementation
- 8) must be protected from corporate capture

In 2017 a complete treaty text was drafted and presented and on 20 July 2018 the Presidency of the OEIGWG published the Zero Draft of the UN Binding Treaty that was discussed on the 4th Session of OEIGWG 15-20 October 2018. The negotiations will continue next year.

32 <https://www.stopcorporateimpunity.org/>

ALTERNATIVES TO THE CURRENT FREE TRADE AGREEMENTS. WE ARGUE THAT ALL TRADE AGREEMENTS SHALL

1. End secret negotiations. As international law supersedes national law, these agreements have a strong impact on our constitutions and therefore need to be treated in a comparable way to changes to national constitutions.
2. Abolish all investor state dispute settlement (ISDS) mechanisms. Instead, we argue for the opening up of the trade agreements to broader societal interests. As such, we need litigation rights for civil society.
3. Allow “**smart protectionism**” to safeguard and create jobs. These policies have to be accompanied by mechanisms which ensure that the income generated by trade benefits the public good and are not appropriated by the industrialists.
4. Include “**climate tests**” to ensure that agreements support the Paris agreement and do not hinder its implementation.
5. Lower the barriers to the **spread of green technology** instead of increasing intellectual property rights.
6. Discourage **high-emission trade** by limiting aviation and shipping emissions. Taxes should be imposed on high-emissions trade to support increased climate protection and climate-friendly job growth.
7. Foremost, support the Paris climate agreement: therefore all trade agreements should include **enforceable commitments to implement national ecological policies** supporting the international climate according.
8. Acknowledge the goals of the “**Binding Treaty on business and human rights**” (UN process) to stop corporate impunity and dismantle corporate power.
9. Discourage trade in climate-polluting **fossil fuels**.
10. Include a broad “**carve-out**” for **public-interest policies**, including economic development, climate policies and active labour-market policies, so that whenever the state acts in these policies fields, the terms of the treaty would not apply.
11. Allow the creation of local and regional **decentralised sustainable energy production**.
12. Explicitly allow **currency depreciation** and even outright currency manipulation by emerging economies as this policy has always been one of the most important means for national economic development policies.

Conclusions

For the thousands of activists that have been involved at European, national, regional and local level the issue of trade is becoming increasingly complicated. As we have explained, European Union trade policy is an ever-expanding field with a number of trade negotiations on the table. However, we must keep confronting globalised neoliberalism in the streets but also continue to put forward valid alternative arguments.

We are in a struggle for economic and political hegemony and it is incumbent on us to design a system that adapts to the planet's ecological capacity, minimises social and economic inequalities and achieves a political system that controls markets and big corporations and that places life and people at the centre of decision making.

There is a need to work on alternatives and to continue expanding national laws that regulate transnational capital and expand the movements that have been created to identify any possible legal loophole that makes the life of privateers and profiteers (those that defend the FTAs) more difficult.

It is important to broaden these partnerships and start opening up the debate amongst those who agree that the current system does not work for working people, does not work for the self-employed, the unemployed, small farmers, etc., in order to build progressive alternatives to the current set up. The text provides some ideas but is by no means exhaustive. We need to continue working on a common narrative that distinguishes us from the populist right-wing and their opportunistic solutions based on a narrow-minded nationalist vision of the world. We hope this small contribution will help to develop a better understanding and help to bring those forces together that seek to develop an alternative trade vision for Europe.

This text should be read as a working document to be discussed and expanded upon.





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