

TRADE POLICY REVIEW - MEP BRICMONT INPUT

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European Trade policy should contribute to a just and green transition. This implies, amongst others, responsible conduct and supply chains as a means to achieve this transition. This is why we will focus **our contribution to the Trade Policy Review on questions 8 (contribution of trade policy to a just and green transition) and 9 (responsible business conduct and supply chains)** as they are crosscutting and underpin the other questions.¹

A- Achieving an ethical, fair and sustainable trade will have an impact on the other questions raised under the trade policy review and is possible by implementing the following proposals and by reviewing current trade and investment agreements and adjusting ongoing negotiations.

1/ Making trade policy compliant with the TFEU

It is worth recalling from the onset Article 207 of the TFEU which stipulates that “*The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action*”. Principles and objectives outlined in Article 21 of the TEU:

“The Union's action on the international scene shall be guided by the principles [of] democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. (...) [Besides that] the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to [notably] foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;(g) assist populations, countries and regions confronting natural or man-made disasters (...)”.

This reminder puts in perspective the EU trade policy considering that it does not only serve economic and commercial interests of companies.

2/ Making trade compliant with the European Green Deal and the respect of Human rights

¹ **Question 8:** How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

Question 9: How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

The [European Green Deal](#) is one of the backbones of the action of the Commission. President Von der Leyen confirmed that *“all EU actions and policies will have to contribute to the European Green Deal objectives. (...) [In particular] the EU should use its expertise in “green” regulation to encourage partners to design similar rules that are as ambitious as the EU’s rules, thus facilitating trade and enhancing environment protection and climate mitigation in these countries”*. And rightly so because up to 33% of global CO2 emissions, 30% of global greenhouse gas (GHG) emissions, 68% of global raw material extractions and 30% of global biodiversity loss are embodied in international trade (source: [Power Shift, 2020](#)).

All existing measures on carbon leakage should be replaced by policies and instruments that internalise all costs linked to GHG emissions. In this regard, the proposal to set up a WTO-compatible carbon border adjustment mechanism and the fact that this should be an alternative to, not complement, existing measures should be presented forthwith by the Commission and adopted by the Council and the Parliament. An EU methodology based on robust benchmark (Best Available Technology for instance) and designed such as to avoid the unanimity rule in the Council should be echoed at the international level with major economic partners and the biggest polluters and could focus on key products (cement, steel...) before envisioning an extension of the scope of the mechanism.

The European Parliament adopted in January 2020 a [motion](#) *“highlight[ing] the fact that trade, the EU’s policies in this area and human rights can and should reinforce one another, and that the business community has an important role to play in offering positive incentives for promoting human rights, democracy and corporate responsibility; urges the Commission and the EEAS to make effective use of human rights clauses in international agreements, not only via political dialogue, regular progress assessments and recourse to consultation procedures upon request, but also by creating an effective mechanism for monitoring serious human rights violations which might occur through business activities; calls for human rights clauses to be duly enforced and monitored accordingly, including through measurable benchmarks, with the involvement of Parliament, civil society and the relevant international organisations; calls for the establishment of an effective and independent complaints mechanism for groups of citizens and stakeholders who are affected by human rights violations; stresses that the EU and its Member States must prevent any kind of corporate human rights abuses and the negative impact of business activities”* (paragraph 18).

3/ Reducing the impact of trade on climate change

Climate change does represent a systemic risk for global stability. We need to change our economic model by phasing out fossil fuels which will not only help cutting our GHG emissions but also improve European sovereignty and our trade balance since extra-EU imports of petroleum and related materials amount to about 300 billion per annum. Yet, despite commitments taken at the G20 in 2009 to stop subsidising fossil fuels - a pledge reiterated at the G7 in 2016, agreeing to a 2025 deadline, no EU government has made genuine headways. Furthermore, the EU and the Member States are stuck in the Energy Charter Treaty with about 25 non-European countries, a Treaty which protects fossil investments (cf. supra). with a potential of GHG emissions tantamounting to [3 to 5 times the EU carbon budget](#).

The fight against climate change, as shown by numerous studies, including [the one published by the European Foundation for the Improvement of Living and Working Conditions](#) on the implications of the Paris Climate Agreement, shows positive outcomes in terms of job creation and economic activity. It is also worth mentioning the risks of inaction in terms of financial stability as flagged by the [European Systemic Risk Board](#) : *“To reduce emissions, economies must reduce their carbon intensity; given current technology, this implies a decisive shift away from fossil-fuel energy and related physical capital”. “In a benign scenario, the transition to a low-carbon economy occurs gradually: adjustment costs are manageable, and the repricing of carbon assets probably does not entail systemic risk.[...] In an adverse scenario, the transition to a low-carbon economy occurs late and abruptly [...]. The costs of the transition will be correspondingly higher.”*

Merely stating that the Paris Agreement should become *“an essential element for all future comprehensive trade agreements”* is not sufficient because of the loose process underpinning the implementation of the Agreement (voluntary, self-determined, no uniform template, targets by 2030 without intermediary objectives). FTAs should protect the right of states to differentiate products and services with reference to their embodied carbon or GHG emissions and regulate trade accordingly. The reform of the WTO should offer an opportunity to push forward the possibility to distinguish products according to their process and production methods (PPMs) also when these do not alter the final products because it fulfils a *“legitimate objective”* in the sense of WTO TBT Agreement (Article 2.2) and to aim at a modus operandi to calculate the carbon content of goods or services traded internationally. The Commission should seek from partner countries the support for such developments in appropriate fora.

Developing countries should be compensated in case of adverse impacts of such a measure and taking into account the *“common but differentiated responsibility”* principle. In terms of technology transfer, FTAs should include a declaration that the climate emergency is deemed to fall within the definition of ‘circumstances of extreme urgency’ (TRIPS Art. 31(b)), and thus warrants compulsory licencing in order to overcome IPR barriers to the transfer of climate-related technology.

4/ Reducing the impact of trade on biodiversity loss and ban wildlife trade

It is important not to conflate climate change with biodiversity loss which are two distinct but mutually reinforcing phenomena. According to the recently adopted [Biodiversity Strategy for 2030](#), *“the Commission will better assess the impact of trade agreements on biodiversity, with follow-up action to strengthen the biodiversity provisions of existing and new agreements if relevant”*. And indeed, it is relevant because the biodiversity clauses in FTA have remained mostly ineffective as testified by the alarm-ringing [IPBES report](#) which explained that *“the number of local varieties and breeds of domesticated plants and animals and their wild relatives has been reduced sharply as a result of land use change, knowledge loss, market preferences and large-scale trade”*. The recent spread of the pandemic shed light on reports that have piled up showing that the loss of biodiversity enables zoonotic diseases like covid19 to flourish and disseminate. The causality was already well known a decade ago (see [here](#) for instance).

The Commission should investigate how trade policy contributes to such phenomena and to present proposals to address this problem, notably by following up on the study on “Methodologies and Indicators to Assess the Impact of Trade Liberalisation on Biodiversity” produced at the request of the Commission itself. The Commission should use regulatory cooperation and dialogues foreseen in FTAs to promote EU stringent SPS standards and animal welfare in order to minimize the risks of future epidemics and pandemics. In the meantime, trade in such animals and from unsafe countries should be prohibited in the EU.

There is a link to be made between animal farming and animal health on the one side and environmental damage on the other. It is also a matter of protection of public morals in accordance with the World Organisation for Animal Health (OIE): *“the use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable”*. Therefore, we see grounds for taking action and animal welfare should be taken more seriously when negotiating FTAs.

According to a [2016 Eurobarometer](#), 94% of EU citizens believe it is important to protect the welfare of farmed animals. 82% of Europeans believe the welfare of farmed animals should be better protected than it is now. 89% of EU citizens agree the ‘EU should do more to promote a greater awareness of animal welfare internationally’.

The EU does not impose any of its AW standards on imported goods, except standards related to slaughter. Presented as an extension to the Technical Barrier to Trade Agreement, mandatory methods of production labelling should be extended and put into legislation. It already exists for eggs and fish.

5/ Positively contributing to the SDG’s

The Council adopted [conclusions](#) in April 2019 recalling *“the positive contribution of open and rules-based trade to achieving the SDGs, both in bilateral agreements with third countries and in multilateral settings, including through setting out sustainability objectives in trade policy instruments, and their effective implementation, with a view to achieving appropriate level playing-field conditions”*.

Therefore, to make the EU and global value chains more resilient, SDGs and supportive international agreements such as the Paris Agreements, the Convention on Biological Diversity, the International Covenant on Civil and Political rights have to be put at the heart of the EU trade policy. FTAs and IPAs should explicitly reckon that multilateral environmental agreements (MEAs) will prevail over trade provisions in the event of inconsistency and the launch of negotiations should be conditioned on Parties’ ratification of a set of significant MEAs. It would alleviate concerns among populations that this policy serves the interests of big business but pursue an objective of general interest.

6/ Gendermainstreaming trade policy

The gender issue is certainly one that is missing the most in the Trade Policy Review. Yet, as Commissioner-designate, Phil Hogan answered INTA committee *“to instruct [his] services to consider gender impact when preparing policy initiatives”*. The latest report on the

“Implementation of the common commercial policy” cruelly lacks gender-disaggregated data on the impacts of FTAs and this dimension isn’t covered in ongoing negotiations.

Under Article 10 of the TFEU and under SDG 5, the Commission and Member States have the obligation to combat gender-based discrimination and seek to empower all women and girls. This horizontal objective applies to trade policy as well. In its [conclusions](#) on “Gender-Equal Economies in the EU: The Way Forward”, the Council confirmed this by urging the Commission and the Member States to “pursue gender equality, with a high level of ambition, as a policy priority in all EU external relations”.

In this regard, the Commission could be inspired by the toolkit developed by the UNCTAD to perform gender-aware ex ante evaluations of trade policies. Such impact assessments should consider consequences of the EU trade policy on the unremunerated domestic activities of women.

Beside the usual fundamental ILO conventions, the EU should urge its economic partners to ratify and implement Conventions 189 on domestic workers, 156 on workers with family responsibilities and 190 on violence and harassment. The Member States should swiftly take the lead in the ratification process.

The Commission should make sure that the composition of DAGs is gender-balanced and that a Trade and Gender committee is established to point at shortcomings and as is the case in the Canada-Israel FTA, the dispute settlement mechanism (if maintained) applies to gender issues.

7/ Going beyond TSD chapters by making sustainability a transversal objective

Trade and sustainable development chapters that are binding but not enforceable are not sufficient since these provisions should not be cornered in a dedicated section of the FTAs but should be transversal to all Chapters. Engaging ambitiously a just and green transition and promoting it actively through trade policy would provide EU business a prime mover advantage.

Beyond the ongoing work aiming at setting up a Multilateral Investment Court, investor protection mechanisms should be reframed to guarantee that stakeholders or States can trigger a dispute settlement when companies do not behave properly. In this respect, the announced due diligence legislation should be prolonged in trade and investment agreements to make sure that local authorities, possibly benefiting from EU technical assistance, report about negative externalities and misconduct by European companies. Effective access to remedies should be foreseen in these agreements.

The FTAs and IPAs should explicitly be drafted such as to discourage Parties to initiate WTO disputes to challenge other Parties’ adoption or implementation of FTA-consistent climate response measures.

The [taxonomy regulation](#) should be at the heart of investor protection in the sense that only investments qualifying as “sustainable” according to EU criteria would be eligible to such a protection.

8/ Applying the precautionary principle

The following core principle enshrined in EU primary or secondary laws should be borne in mind when conducting trade policy and negotiating FTAs / IPAs : the precautionary principle; the principle that preventive action should be taken to avoid negative externalities and when they happen nevertheless, to tackle them; the principle that environmental damage should as a priority be rectified at source; the principle that the polluter should pay; the non discrimination principle; the right to drinkable water, to food security, to medicine; transparency and openness of decision-making; the principle of free prior and informed consent in relation to land tenure and use, as well as strict compliance with all internationally recognised human rights obligations; *the goal of zero tolerance of child labour in FTAs.*

The non-respect of one principle should lead to the suspension of the agreement or a modulation of trade taxes (modifying) because a level playing field would not be ensured anymore.

9/ Implementing systematic sustainable impact assessments

Sustainable impact assessments should be carried out prior to the conclusion of the agreements. These assessments should be made by independent organizations and relevant stakeholders should be able to comment and provide inputs to make them comprehensive.

Ex post sustainability impact assessments should be carried out by the Commission, discussed by the related domestic advisory board and national and European Parliaments, highlighting divergences with ex ante impact assessments and accompanied by corrective measures in case initial expectations and goals are not met either by the EU or by the partner(s).

The EU Trade Chief Officer should be in charge of verifying that all provisions, including those related to social, Human rights and environmental aspects are respected because the non-respect of these would ensure unfair competitive advantages to countries discarding them. The EU TCO should also be attentive that technical and dialogue committees don't take decisions leading to a lowering of EU standards.

B - Framing rightly the concept of “open strategic autonomy” which will lead to improving the EU’s resilience (question 1)²

In line with what has been detailed above open strategic autonomy would consist in :

1/ Phasing out fossil fuels

² Question 1: How can trade policy help to improve the EU’s resilience and build a model of open strategic autonomy?

As to the new concept of open strategic autonomy, the phasing out of fossil fuel with a rise of renewable in the energy mix coupled with a decreasing demand (through notably energy efficiency) would be necessary. [See above].

2/ Getting rid of the ECT

The Trade Policy Review is taking place at the same time as the negotiations to modernise the Energy Charter Treaty are taking place. Because it ensures the protection of FDI in fossil assets, the ECT is a major hurdle for the European Green Deal and the achievement of the Paris Agreement. Estimates show that the equivalent of one-third of the *global* carbon budget would be protected, by 2050, by the ECT if fossil fuels are not phased-out. Therefore, if extra-EU signatories are reluctant to overhaul it in that way, Member States and the EU should withdraw altogether. The sunset clause protecting investments for an extra 20 years would apply nevertheless. Yet, Member States should strike an agreement whereby they would commit to abstain to sue each other. It would solve about 70% of potential disputes. As to extra-EU countries, the approach would be twofold : when an FTA already exists, the Commission should use dialogue committees (and in the spirit of TSD chapters notably) to refrain from switching on the investment protection provided by the ECT. When there is no FTA, an agreement preventing the use of the ECT should be set as prenegotiation condition. The CTEO should also be attentive to how our trade partners behave with respect to the ECT and be ready to consider retaliation measures.

3/ Reshoring some economic and crucial activities

Pandemics and climate change threaten to disrupt global value chains and are a major source of vulnerability beyond the concerned companies for national and global economies. These phenomena will increase in magnitude. Therefore, the Commission should launch a white book exploring the feasibility and ways to relocate economic activities in the EU in conformity with the European Green Deal and WTO rules. Some obvious candidates are the following sectors.

- Drugs production

Considering that about 80 % of active molecules used in drugs are produced in China and India and that medical equipment are outsourced to countries like Malaysia (gloves) where working conditions are poor with respect to ILO standards, it would be necessary to relocate such activities.

- The agrofood sector

Another obvious candidate for relocation is the agrofood sector, consequently to the [Farm to Fork Strategy](#): *“with a view to enhance resilience of regional and local food systems, the Commission in order to create shorter supply chains will support reducing dependence on long-haul transportation (about 1.3 billion tonnes of primary agricultural, forestry and fishery products were transported on roads in 2017)”*. Doing so, the requirement foreseen in FTAs that Parties should ensure the protection of plant varieties in accordance with the International Convention for the Protection of New Varieties of Plants should be questioned. Parties should rather be urged to sign and implement the International Treaty on Plant

Genetic Resources for Food and Agriculture (ITPGRFA), which safeguards the rights of farmers to maintain genetic resources for purposes of food security and climate change adaptation. The TRIPS Agreement accords WTO members flexibility in this respect by permitting the exclusion of plant varieties from patent protection provided that these are protected by an alternative 'effective sui generis system', which could ensure farmers' rights are protected.

- **The steel industry**

Steelmaking is often thought of as an old manufacturing sector since with textiles, it drove the Industrial Revolution. Yet, steel is a strategic input for the greening of the building or automotive sectors and for new energy infrastructures, all sectors emitting the largest chunk of GHG emissions. Over [75% of the steel](#) in use today did not exist 20 years ago.

By relocating this activity in Europe where plants are by and large the most energy efficient in the world, transport-related emissions would diminish. It requires to put in place a WTO-compliant carbon border adjustment mechanism to ensure a level-playing field.

4/ Implementing the strategy on circular economy

Implementing [measures related to circular economy](#) will undeniably improve our resilience. Putting in place this masterplan is a crucial component of our industrial policy and helps to reduce our environmental footprint while curbing inequality by providing local jobs not earmarked for high skilled people, notably in the non-profit sectors. As envisaged in a recent [action plan](#), trade policy should actively flesh out the external dimension of circular economy initiatives through regulatory cooperation and dialogue. Concretely, in our relations with partners countries, the EU should advance a global circular economy by proposing a Global Circular Economy Alliance ; reach a global agreement on plastics by building on the European Plastics Strategy; initiate discussions on an international agreement on the management of natural resources; build a stronger partnership with Africa to maximise the benefits of the green transition and the circular economy (while finding solutions to address exports of (hazardous) waste); ensure that Free Trade Agreements reflect the enhanced objectives of the circular economy.

To support the unfolding of circular economy but also to empower local communities and to allow nascent industries to grow in developing countries, the prohibition of local content requirement should be questioned. Presented as an exception to TRIMS in FTAs, it could foresee a minimum share of local workers to be hired, an obligation to contract a minimum amount of goods and services from firms owned and managed by citizens of the host countries, an obligation that, in the presence of indigenous communities, both their employment and their products and services shall be given preference. Such a provision should be time-bound and permitted to allow for the rapid deployment of technologies to overcome societal challenges in order to avoid that discrimination in favour of domestic industry does not become a permanent market discrimination and is not illegitimate with respect to an objective of SDG-related political necessity.

C - Improving relations with third countries

1/ Facilitating technology transfers to overcome societal challenges

While Covid19 vaccines will be put on the markets in the short to medium term, the Commission should strive to make newly discovered vaccines, effective medicines and patented medical devices available at reasonable costs throughout the world, whether through compulsory licenses or other alternatives to monopoly pricing under traditional intellectual property protections.

As a general rule, FTAs should avoid provisions that limit Parties from promoting technology transfer through offsets, LCRs or other performance requirements in their public procurement and investment policies.

Pursuant to the European Parliament resolution of 28 November 2019 on the [climate and environment emergency](#), trade and investment agreements should include a declaration to the effect that the climate emergency is deemed to fall within the definition of 'circumstances of extreme urgency' (TRIPS Art. 31(b)), and thus warrants compulsory licencing in order to overcome IPR barriers to the transfer of climate-related technology.

2/ Ensuring fair and ethical raw material supply

Europe is highly dependent on the rest of the world for raw materials and for most of them, we have to rely on very few suppliers. Since 2011, the Commission has drawn an inventory of so-called "critical raw materials" considering the high supply-risk and a high economic importance for European industries and value chains. While 14 raw materials were initially labelled as "critical" in 2011, the Commission has increased their number to 27 during the last periodic update.

Human rights violations are often witnessed in areas of raw materials extraction. The Conflict Minerals Regulation is a good step forward but should be complemented by additional provisions in FTAs. In order to give teeth to the sustainability claim of raw materials extraction, the interests of all stakeholders affected by trade and investment in such activities should be reflected in the language of the provisions, in particular the interests of local communities, indigenous peoples, the environment, and labour. Given the significant concerns over the extensive use of water by the extractive industry, it would be important to recognise the interests of others such as small-scale farmers and local communities in having access to drinkable water in areas where mining takes place. The principle of free, prior and informed consent in relation to land tenure and use (FPIC) featured in UN texts (ILO Convention, Convention on Biological Diversity...) is key here and should be strictly obeyed.

Stringent provisions should outline the conduct of independent, comprehensive impact assessments covering social, environmental and human rights dimensions and reflecting state-of-the-art practice (such as that provided under the Initiative for Responsible Mining Assurance Standards for Responsible Mining) and following best practices as identified by the

International Association for Impact Assessment). On the basis of the impact assessment, public authority can make specific recommendations and request for additional commitments to the undertakings concerned in order to improve their social and environmental performance without fearing a dispute settlement to be triggered. Decommissioning and waste disposal should be addressed as well.

Access to justice for violations of environmental, social, and human rights obligations in the context of raw materials extraction for citizens, communities, unions, and civil society is essential to guarantee the sustainability way of extracting resources.

3/ Supporting the financing of services of general interest

Trade taxes are in some countries, especially resource-rich developing countries, important sources of revenues. In Sub Saharan African countries, they can amount up to a quarter of the public budget. Hence, liberalization aiming at lowering tariffs adversely impacts the ability of some countries to finance services of general interest. In conformity with WTO rules, developing countries should be allowed to levy export taxes on commodities to cushion the impacts of the multiple crises and to prepare the recovery.

Also, while between 1980 and 2018, sub-Saharan Africa received nearly \$2 trillion in foreign direct investment (FDI) and official development assistance (ODA), it emitted over \$1 trillion in illicit financial flows. We witness a notable increase in the 2000s in correspondence to increases in trade from Africa. European authorities should provide technical assistance and incentives to their developing countries counterparts to fight illicit financial flows which hinder the achievements of SDGs. Agreements should also address in a more adequate fashion this threat for the public finances.

D- Uncovered topics (question 13)³ : Ensuring legitimacy by fostering social concerns and ownership and engaging with stakeholders

Regarding Question 13 on topics that are not covered by the Trade Policy Review, the Commission likes to underline the importance of the EU trade policy by pushing forward the figure that « *35 million European jobs depend on exports and 16 million European jobs depend on foreign investment. In other words, one out of seven jobs today depends on exports – two thirds more than in 2000.* » Yet, this is only one side of the coin because there are no estimates of the downside of the opening of markets. For instance, nobody knows how many jobs were destroyed because of intensified competition pressure from extra-EU countries. To maintain their competitiveness and minimize fixed costs, companies active on the international markets and those engaged in their supply chains had to make jobs more flexible which meant more precarious for the workers and their families. It also happens on a daily basis that SMEs cannot cope up and have to shut down. Even though a Global Adjustment Fund was created to offset some negative consequences of our openness, it is little known and used and cannot encapsulate all negative fallbacks.

³ Question 13: What other important topics not covered by the questions above should the Trade Policy Review address?

Trade policy should take into account the decent work agenda and prevent a downward race to lower wages, bad employment conditions, social dumping and exploitation because such phenomena will undermine our European social model and fuel populism. The conduct of trade policy should not constrain the implementation of the European pillar of social rights.

To guarantee the legitimacy of trade policy and agreements, all relevant stakeholders should be involved in the negotiations of FTA's. Their comments, including on sustainable impact assessments, should be taken into account and responded in good faith by the Commission. They should also have a say in the assessment of how compliant our economic partners are with respect to their commitments and on how European companies active abroad are operating according to the due diligence principles and future EU legislative framework.