



ActionAid International and WIDE+ response to the EU public consultation on a renewed trade policy for a stronger Europe, September 2020

1. Who we are, from which perspective do we respond to the public consultation?

ActionAid is an international non-governmental organisation, bringing together national organisations in 45 countries in Africa, Asia, Europe and the Americas. Our federation is working to achieve social justice and gender equality, and to eradicate poverty. We work closely with people living in poverty and exclusion, civil society organisations, social movements and supporters. Together, we deliver grassroots programmes, provide emergency relief and campaign for women's economic rights, tax justice, resilient agriculture and climate justice. Our head office is in Johannesburg, South Africa.

WIDE+ is a European network of feminist activists, scholars, and women's rights organisations that reaches out to 300 associations, through its national membership-based networks and organisations across Europe. It aims to promote women's rights by analyzing the systemic causes of inequality and advocating for transformative change. WIDE+ comes from a longstanding collaboration between feminists in the global South and feminist economists. In the last five years WIDE+ has been able to connect this global expertise with feminist activism in Europe.

2. Preliminary remarks on the [Consultation Note](#)

From all available research, case studies and citizens' mobilisation, Action Aid and WIDE+ conclude that EU's trade policy needs to be transformed in order to protect the rights of people and to stop harming the environment. Despite some adjustment in the last few years to try and better align its trade policy with universal principles, such as gender equality and human rights, the EU trade policy is still designed to benefit primarily companies' shareholders and MNCs.

We welcome the decision of the European Commission to embark on a reform of its trade policy, and to largely consult about this process. We hope that the views of civil society organisations will be heard, even if it means breaking away with the ideology and the ways of thinking that have been dominating among European decision-makers in the past.

ActionAid and WIDE+ welcomed the European Green Deal and the EU gender equality strategy, but regretted that they did not commit the EU to review its trade and investment policy. We believe it is needed for Europe to engage in the just and green transition announced by the Green Deal. The wording in the current consultation doesn't suggest an intention to engage in a radical shift.

Some elements in the Consultation Note suggest that “*a larger **role of the state** in the management of the economy*” is not a good thing, that “*industrial policies featuring massive state intervention*” are problematic, **protectionism** is a bad thing in all circumstances, **intellectual property rights** are a good thing per se, that **exporting** outside the EU should be an objective for all companies including the smallest and that [GDP] **growth** is a valid objective per se.

States have an obligation to drive our economies towards delivering social, environmental and economic benefits for all. This requires a role of states to shape macro-economic policies, notably through industrial policies. Even free trade is only possible through a strong role played by states as enforcers of rules to trade by.

Covid-19 showed us that in times of crisis, robust public intervention is needed to protect people’s living income, support the economy, and ensure universal access to healthcare. Private companies need a framework whereby to operate. And that framework has been immensely insufficient so far, from the lack of enforceable human rights due diligence obligation on companies, to the tolerance of massive tax avoidance by the richest individuals and corporations, from the authorisation of mega-mergers translating in overwhelming power of few private actors in many sectors of the economy to the lack of regulation of the financial sector.

Today, the world is not only facing a health crisis, it is facing a climate crisis and life-threatening biodiversity collapse. Less visible in the way it kills, but a much more serious existential threat for all species including humans, than the pandemic. We will not be able to slow down environmental destruction and climate change without very strong regulation. Therefore, the time has come not just for slight adjustments to trade and investment liberalisation, but for DG Trade to pursue a different mandate, different objectives, that fully respect European and partner countries governments’ deep regulatory space they need to redistribute wealth, respect human rights and protect our planet.

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

It is not primarily the international trade policy that can build resilience and Europe’s autonomy in essential sectors: It is a sound industrial policy, a sustainable food policy, a stringent regulation of investors to make sure they fund the just transition and not harmful activities, and labour policies that protect the rights of workers, and promote gender equality. The EU trade policy, though, should not hamper those efforts, which means that some of the sacrosanct principles on which the EU trade policy has been built so far need to be reviewed. In fact, the EU has already started this on a limited scale, with attempts to establish restrictions on foreign investments in strategic sectors, limiting the free movement of capitals to a certain extent, or the suppression of ISDS within the EU limiting the excessive power of corporates to sue governments in order to make profit override public interest.

In a globalised world, improving EU’s resilience will require a sustainable global economy, and resilient trade partners. This requires the following main changes to EU trade policy

- 1) Stop promoting trade and investment measures and rules that limit the policy options of partner countries to adapt to their changing circumstances.
- 2) Review and restructure value chains to enable shorter and more diversified value chains, in Europe as in partner countries (see Question 2).

To respect partner countries’ “open strategic economy”, we need to make sure our trade and

investment agreements do not impose on partner countries the things we don't want to see at home, and allow them to improve **their** resilience and to build **their** model of "open strategic autonomy". We suggest the following actions:

a) The EU should allow partner countries to engage with investment screening

We fully agree that the EU FDI screening regulation should protect citizens' rights from risks linked to foreign investment – from capture of independent media to natural resources that need being protected (water, land, forests) or assets linked to national security and public order, or assets playing a role in delivering public services (airports, ports, land on the border, railway, etc). However, this needs to be reciprocal, i.e. the EU should allow partner countries to operate similar restrictions on European investors. This means breaking away from the principles of the national treatment and most-favoured nation treatment in certain sectors, pre and post-establishment. Development assistance could also contribute to building developing countries' capacity to analyse investment proposals and adopt the policy tools needed to ensure investments contribute to sustainable development.ⁱ

b) Review investor protection and intellectual property right in agriculture policies and beyond

Agriculture: The EU should ensure the rules included in its trade agreements regarding intellectual property rights on seeds, investors' protection in case of land deals, and restrictions on public procurement, don't make it more difficult or impossible for trading partners to respect and promote the rights of their small-scale farmers and food producers, and the Right to Food of their population. E.g. EU trade and investment agreement should not encourage further intellectual property rights on seeds, through the inclusion of the UPOV convention in trade agreements.

On the right to health: During the pandemic, patents on masks, test kits ingredients, medicines as well as industrial designs on ventilator valves have proven to be problematic. Many actors have expressed their concerns about TRIPS+ provisions on medicines.ⁱⁱ The EU should not encourage engagement of developing countries in TRIPS+ - which doesn't imply support for the existing TRIPS.

On investors' protection: Investment treaties and provisions on investors' protection should be cancelled, and the financial sector should be adequately regulated in the EU and at global level to avoid adverse impacts on human rights and the environment in host countries. Investment treaties or provisions, where they exist, should respect countries' regulatory space, exclude or restrict the scope of national treatment, fair and equitable treatment or most favoured nation principles, include binding obligations for investors and define much more precisely and narrowly the rights of investors.

c) Stop promoting privatization of public services through trade policy

The EU should stop with promoting an increase in opening up foreign markets of public services, such as energy, health care sectors, etc. Opening services to the global market does not *per se* render them more efficient and has proven to actually increase prices and reduce accessibility, especially for low income households. This is having a disproportionate adverse impact on women. Public procurement and privatisation policies should be tailor-made to each specific context and region, and based on democratic choices that can be reversed over time, in the respect of the law. This requires that public services be excluded from trade and investment agreements.

d) Trade agreements should be gender responsive and promote sustainable food systems

The EU should aim for gender responsive trade agreements and trade agreements that support the transition towards more sustainable agriculture and food systems. This means it should support – rather than harm - local short food supply chains *that retain value for farmers and farm workers in Europe and in developing countries.*

The EU subsidises European farmers and food producers, even if the modalities and conditions for those subsidies are constantly evolving and increasingly support farmers contributing to the protection of the environment. However, this makes it very difficult for farmers from developing countries to compete with European producers. The EU should make sure the export of European agri-food products does not harm local food producers by allowing developing countries to temporarily apply quantitative controls to respond to acute market crisis; by allowing them to strengthen the regulations on imports of sensitive products such as powder milk, and setting out classifications of products which can be labelled as local or 'originating products'; by allowing the establishment of minimal local content requirements for value added food products; and by setting up an observatory to monitor and signal potential and actual negative impacts of EU food exports on small scale food producers in partner countries, and vice-versa (i.e. the impact of partner countries' exports on farmers in the EU).ⁱⁱⁱ Last but not least, the EU should amend trade agreements to explicitly allow public procurements to include criteria giving preference to local food products, seasonal fresh products, short food supply chains and to smallscale farmers and indigenous and traditional peoples engaged in organic farming or agroecological practices. It should also allow the use of public procurements to specifically support women farmers.

Question 2: What initiatives should the EU take to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?

The long-awaited EU due diligence regulation, the forest-risk commodity regulation as well as the corporate governance legislation will be key to clarify companies' responsibilities in terms of risk assessment and mitigation and ensure a level playing field among them. In this context we ask for binding regulations in those fields as evaluations of voluntary corporate responsibility initiatives show that they had a very limited impact. All regulations should be formulated from a gender-sensitive, intersectional perspective.

- a) **Corporate governance:** Involving local communities and workers' representatives in the board of companies should contribute to more sustainably anchor them in the places where they operate, thereby solidifying supply chains. Specific efforts must be made to include women workers' representatives. The EU external policy should also much more firmly and explicitly support the thriving of inclusive business models.
- b) **Due diligence regulation:** To incentivise stable supply chains ("solidify"), the due diligence regulation should encourage buyers to invest in their suppliers' compliance with human rights and environmental standards, especially if they are located outside of the EU. This notably means for buyers to bear their fair share of the costs of monitoring and compliance, rather than putting downward pressure on the bottom of the chain, leaving to the suppliers to bear the costs of compliance. Such regulation should also stress the importance of maintaining long term sourcing relationships with suppliers, as a way to effectively support them to improve compliance as a collaborative effort, adopting a beyond compliance approach which focuses on investment in suppliers.^{iv}

- c) **Regulate supply chains to minimise the risk of deforestation**, and human rights violations associated with commodity imports to the EU. This principled approach would require all companies (whether European or not) to demonstrate that goods they put on the EU market are neither tainted with deforestation, nor human rights abuses. Adopting such a regulation is also an important way to support traditional and indigenous peoples who play a key role as guardians of land and forest. Such regulation should include mandatory due diligence and stringent monitoring mechanisms, associated with appropriate funding and cooperation with exporting countries in order to help them produce in a sustainable way.
- d) The EU should step up its efforts for the adoption of a **UN binding treaty on Transnational Companies and Human rights**, and ensure it covers gender specific issues including i) Gender impact assessments of business activities, ii) Gender-sensitive justice with reparation mechanisms, and iii) Respect, protection and generation of an enabling environment for women human rights defenders. While awaiting a binding treaty, ensure a gender-responsive implementation of the UN Guiding Principles on Business and Human Rights, as outlined by the UN .^v The EU must ensure effective access to remedy by promoting universal jurisdiction, extraterritoriality of international human rights law and the recognition of corporations as single entities.
- e) The EU should also **more effectively protect human rights defenders that are critical of foreign investments in their region, such as mining projects and others**. It should not be acceptable that economic projects are continued with investments from EU member states when human rights defenders are being murdered without an independent investigation. Over the past years there have been hundreds courageous women and men attacked and murdered for defending human rights, without clarity on their killers, often suspecting political and/or economic motives to quell their criticism of investments and projects or politics. Investors' regulation should reflect the imperative to protect human rights defenders.
- f) In terms of **access to raw materials**, the removal of export taxes and facilitation of market access for investments in natural resources of partner countries translated in significant resources exploitation from developing countries. The EU should limit its footprint on global natural resources and move away from **an extractivist approach, changing the direction of travel towards fair trade, including fair pricing, a circular economy/recycling and scaling up efforts for the conservation of natural resources**.
- g) The EU should also assess market concentration globally and work towards fighting monopolistic or oligopolistic situations, especially regarding companies making use of digital data extractivism
- h) **Compensation for unfair competition in agriculture:** The EU should explore setting up trade measures to compensate for unfair competition of EU agricultural exports which received CAP subsidies or a different classification of EU agricultural subsidies under the WTO amber and green boxes, in order to support MSMEs and diversified local food systems in partner countries.
- i) **Modernize the preferential schemes:** This recommendation applies to EU's position in the WTO and in its own policies. The EU should ensure its preference schemes (such as Everything But Arms (for LDCs), GSP and GSP+) are based on modern, objective developmental metrics rather than outdated country income classifications, so that preferences are directed to where they could have the greatest impact and take into

consideration the country compliance to protect human rights and decent work standards. These updated metrics should be used to expand unilateral preference schemes, ensuring they are regularly reviewed to guard against preference erosion or other negative impacts on workers and consumers, including women, in any of the trading partner countries. The EU should also consider improving the product coverage of preference schemes to maximise the benefits for developing countries, with particular attention paid to opportunities to enhance benefits for small-scale women farmers and producers.

Questions 3 & 4: N/A

Question 5: With which partners and regions should the EU prioritise its engagement? In particular, How can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefits?

The EU should adopt a more careful approach when supporting African countries to operationalise the continental free trade area, and when promoting the idea of "a comprehensive continent-to-continent free trade area". The EU is well placed to be aware of the risks posed by trade liberalisation and market integration when labour, fiscal and social regulation is immensely diverse and weak in some countries. A continent to continent free trade area may be very profitable for European companies to operate in a single continental market, but it goes with risks that should be taken into account.

The EU should therefore prioritise its support to ensure processes around the continental free trade areas are inclusive, i.e. involve those who will be impacted.^{vi} Financial support to African CSOs active in that field should be prioritised. In addition, the EU should support efforts to make sure that trade liberalisation at continental level does not increase inequality, as in most if not all African countries, GDP growth in recent years has been accompanied by a deepening gap between the rich and the poor.

For example, a continental free trade area, if not designed to promote and protect local food systems, smallscale food producers and territorial markets, will devastate them. A continental free trade area, if not designed to protect public services aimed at realising the rights to health, education, water and sanitation, will translate in growing inequalities in an already shockingly unequal continent. It would not be wise to build a continental free market overlooking the social, human and geo-political impacts. Before building a big market, we need to support partner countries in strengthening the respect for labour rights, universal social protection and progressive and gender-sensitive taxation policies, as without a minimum harmonised approach in these fields, there can be no fair competition among countries.

The EU should also acknowledge that its negotiations around the Economic Partnership Agreements that were aimed at supporting and creating more regional integration have failed and in fact threaten such trading collaboration. The result has been that individual countries in Africa have signed on to EPAs, creating additional problems for those that have not signed an EPA but are closely trading with a country that has. We therefore propose that the EU should stop further promoting the ratification of EPAs.

Question 6: N/A

Question 7: What more can be done to help SMEs benefit from the opportunities of international trade and investment? Needs and challenges?

While it is crucial for the EU to support SMEs in Europe, the EU also has a responsibility not to harm SMEs in partner countries, especially in Least Developed Countries. As in Europe, SMEs are central to the economies of developing countries, and this is even more the case of micro-enterprises. However, the first place for MSMEs to grow is their immediate domestic markets and developing countries' MSMEs can't compete on regional or international markets with companies from early-industrialised countries. Therefore, EU trade agreements should respect developing countries' regulatory space to support their MSMEs, including through public procurements.

Raising IPR standards has prevented SMEs in developing countries from accessing technology by making it costly. The control of technology by lead firms ended up keeping developing countries' SMEs to remain at the lower end of global value chains, supplying cheap goods and getting a very low share of the profit. The WTO Doha development agenda also includes a number of issues of relevance to MSMEs in developing countries. Special attention should be paid to binding technology transfer. New rules being discussed on e-commerce and investment facilitation should not crowd out MSMEs from their domestic markets (see also answers to question 10 and 11).

The EU trade policy should not only better respond to MSMEs needs, but also look at the specific needs and challenges faced by inclusive business models, which are a promising model for the future. These are businesses driven by a social and environmental mission, incorporated into the constitution and by-laws, and it influences the governance structure of the company so that business decisions and practices uphold the mission.^{vii}

As part of EU's commitments to the Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017, the commission has focused a lot of its limited gender equality policy on female entrepreneurship, such as with the study 'Female Participation in EU Exporting Activities: Jobs and Wages'.^{viii} We are very concerned about this narrow approach to assessing the gendered impacts of trade.

As steering committee members of the Gender Trade Coalition, we want to stress some of the key messages of the Coalition that respond to this narrow focus of the declaration, which we see reflected in EU's approach to gender. If the EU is "genuinely interested in advancing women's human rights through just trade arrangements, [it] would allow for pro-poor public stockholding of food, allow any domestic regulations a state deems necessary to advance women's human rights and the public interest, ensure that states can fully utilise intellectual property flexibilities to provide access to medicines, seeds, technologies that advance women's human rights and refrain from entering into any bi-lateral or multi-lateral agreements that further restrict the capacity to use domestic regulations in the interests of the public in any way they deem necessary" (from the first collective letter assessing the WTO Declaration, which is endorsed by over 160 associations and networks). The Coalition brings together regional associations working on trade and development with women's right networks from the South and from other regions.

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?

Insufficiently regulated trade and investment liberalisation has favoured over the last thirty year the emergence of global value chains that are built on the use of a cheap and unorganised labour workforce in the Global South. Trade agreements have allowed greater mobility of international investment, allowing companies to move to countries offering lower labour costs, including when faced with worker demands for higher wages or improved conditions. While trade and investment liberalisation has helped to create many jobs in the Global South in export sectors such as garments, textiles, shoes and agriculture, these jobs are low skilled and low paid, characterised by poor working conditions and limited rights to unionise. UNCTAD has been showing that lead firms, usually based in wealthy countries including many EU member states, retain most of the value and wealth created in supply chains. Developing countries are stuck at the bottom of the value chain and often compete against each other for investment by keeping wages low and relaxing labour regulation. Women from developing countries are among the most vulnerable to exploitation in global supply chains, though trade liberalisation also contributed to the rise in precarious work in Europe.

Large TNCs face serious challenges ensuring they detect, prevent and respond to rights abuses throughout their complex web-like supply chains, in line with UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines. In addition, the pressure on companies to provide a return to shareholders and the fact that competitiveness can be based on workers' exploitation hamper efforts towards sustainable and human rights compliant practices. **We therefore articulate the following recommendations:**

1. Allowing policy space for developing countries to regulate FDIs (Foreign Direct Investments)

Developing countries must have the regulatory space to get the maximum out of FDI to ensure they contribute to a green economy and generate more and better jobs, including decent and dignified jobs for women. Developing countries must be able to impose a range of market access provisions and performance requirements on the investor, such as local content obligations which increase linkages with domestic production enhancing local jobs. However, bilateral investment treaties and investment chapters of free trade agreements prohibit such policies: They should therefore be reformed.

2. Allowing capital control by developing countries

UNCTAD suggests that developing countries should make greater use of capital controls to protect from volatile capital flows and to insulate domestic conditions from externally generated destabilizing pressures. Such insulating measures, including capital controls, will need to be country specific, determined by the nature and degree of a country's financial openness and by the institutional set-up of its financial system.^{ix} Even the IMF now acknowledges that capital controls form a legitimate part of the policy toolkit, stating that, in addition to their potential benefits, capital flows carry risks, and that full liberalization is not always an appropriate goal.

However, UCTAD warns that "policymakers' ability to use capital controls requires keeping capital-account management out of the purview of regional and bilateral trade and investment agreements, or at least establishing safeguards in such agreements that allow countries the right to regulate capital flows without conflicting with their contractual commitments." The EU should engage in reforming such provisions in its existing trade and investment treaties with developing countries and make sure no such provisions are included in treaties currently being negotiated or in future treaties.

3. Cancel, or at least drastically limit investors' protection mechanisms

The ISDS mechanisms give exclusive rights to companies to sue governments in private courts if for example they believe that their profits are at risk from government regulation. Current investment agreements are not conducive to sustainable development, more and better jobs and poverty eradication in developing countries. The EU should stop negotiating, signing, and or ratifying any new agreements that include ISDS and should terminate existing agreements with ISDS mechanisms and current variants, , such as the EU's proposed Multilateral Investment Court. It should ensure that 'survival clauses' do not allow cases to be brought subsequently. Any new mechanism should be fully transparent and based around a dispute prevention policy, domestic dispute settlement and the exhaustion of local remedies, and/or state-to-state arbitration – noting this may require the strengthening of the domestic legal system.^x Provisions on compound interest should be reviewed so that interest can't be accruing while local remedies are being exhausted.

In addition, the EU should champion a complete moratorium on all ISDS claims on any issue against any government while it is fighting COVID-19 crises, when capacity needs to be focussed on the pandemic response; the EU should also find ways to ensure that no public money is spent paying corporations for ISDS awards during the pandemic. Governments have, and are required, to take all appropriate actions to save lives and fight global emergencies, even when the result is a loss of profits or business opportunities, including by foreign investors. Any damages awarded in ISDS cases should respect the dire financial situation facing governments following the COVID-19 emergency.^{xi}

4. Significantly improve impact assessments of trade and investment treaties

The Sustainability Impact Assessments carried out in parallel with major bilateral and plurilateral trade negotiations are an important tool to enable a evidence-based trade policy. However, there are significant shortcomings to the current scope and process.

We call for a participatory human rights impact assessment of trade deals with a gender lens. Such impact assessments should help adapting the provisions of the agreement to mitigate negative impact and harness positive impact; they should also be used to identify how to make a better use of aid, including EU Aid for Trade, to encourage partner countries governments to improve compliance with international and national labour and environmental standards. While the EU has improved its systematic inclusion of a gender lens with the EU-Chile impact assessment as an example, there are huge gaps in data that can be collected, especially in terms of assessing impacts on women and men in the informal sectors. 90 per cent of employment is provided in the informal sector in low-income countries, 67 per cent of employment is informal in emerging (upper-middle and lower-middle) countries and 18 per cent in developed (high income) countries (following the definition of World Bank of low, middle and high-income countries).^{xii} If the EU doesn't assess trade impacts on the informal sectors, its SIAs will provide very biased outcomes.

SIAs should also improve in terms of measuring human rights impacts and environmental impacts. In this regard, the EU should adopt a 'do no harm approach', exploring and assessing in particular negative impacts, threats and risks.

The EU should take steps to ensure that the outcomes are independent from preferences of EU trade officials. This can be done if the EU would set up an independent monitoring body to carry out sustainable impact assessments that attracts an interdisciplinary team of consultants with academic expertise for each assessment; the current system in which the team carrying out the assessment is dependent on public procurement creates a process in which the client can exert more influence on the outcomes, as a result from contractors trying to satisfy the client.

We want to stress the importance to creating systematic analysis and data on the impacts of EU trade policy from an intersectional 'do-no-harm' perspective outside Europe and in Europe. The commission first and only study into the impacts of trade policy on women entrepreneurs in Europe, only provides answers to how many jobs are created for women in export sectors.^{xiii} It doesn't provide any answers as to how many jobs are lost as a results of increased international competition, and if the jobs created are enabling a decent livelihood for women and if they are increasing paid and unpaid work burdens on women and thus reduce the quality of life. It thus doesn't estimate a net increase or decrease of jobs impacted by trade policy. And it doesn't provide analysis or calculations of impacts on number of jobs lost and gained when different scenarios of trade measures are compared. In this context the EU does not know if its chosen strategy is the most optimum one to create jobs.

The EU should ensure effective and gender-sensitive assessment of human rights and environmental impacts of trade agreements, both before and after a deal has been implemented (ex-ante and ex-post), with sufficient time built into the process to allow for a deal to be amended. And the EU should strengthen the monitoring and enforcement mechanism of the TSD chapters by ensuring civil society from Europe and partner countries can play a meaningful and effective role in raising instances of human rights violations and environmental destruction.

5. Exclude public services from trade and investment agreements

We believe that the EU should exclude public services, such as water, health and education, from European trade and investment negotiations, as demanded by the European Parliament and civil society organisations. We should limit the inclusion of other related services by operating a positive list system, whereby countries specify which services they wish to liberalise, with the option of reversing decisions in the future.

Gender Responsive public services are at the core of the social contract, and the pandemic shows the unique role they play or should play to ensure equal access to healthcare, education, water or sanitation – the latter being indispensable to contain any epidemic. Countries may choose to rely on private companies to deliver public services, but this choice needs to be made democratically, and with an adequate legal framework to ensure universal access prevails over profit making. We therefore don't believe trade and investment agreements should constrain or freeze countries' choices on such a vital issue.

6. Enhance the promotion of the implementation of human and labour rights standards and the protection of the environment

The trade policy can be one of the many avenues to promote the ratification and the respect of international standards in the field of human and labour rights and environmental protection. In that regard, we regret the use of the words "European values" in the concept note. Human rights are universal standards, and not European values. Saying such a thing is only discrediting the international human rights framework, and giving weight to governments abusing human rights and opportunistically pretending they represent western values. Whether you are a Pakistani, a Belgian or an Irishwoman, you wouldn't like being tortured, arbitrarily killed, exploited or left without access to education or healthcare: human rights are fundamentally universal.

In particular, we believe the EU should continue and step up efforts to use existing Free Trade Agreements (cf their Domestic Advisory Groups in particular) to address women's rights. This includes the ratification, in case this is not done of Convention No. 189 on Domestic Workers and No. 156 on Workers with Family Responsibilities¹³, Convention No 190 on violence and harassment in the world of work, and other core ILO conventions. The DAGs should also include women's rights associations.

However, whether or not they are enforceable, TSD chapters do not address the adverse impacts of the agreement itself on human rights and the environment (for example, certain provisions in trade and investment agreements harm farmers' seed and land rights, drive the expansion of monoculture harming forest-dependent peoples and the objectives of the European Green Deal, or protect IP rights benefiting large pharmaceutical firms oligopolies). It is therefore not a sufficient response to the many challenges related to the adverse impacts of trade and investment policies. The EU should integrate environmental and social objectives in a comprehensive and holistic manner across all trade agreement provisions, beyond TSD chapters, and ensure that there are no provisions in the agreement that go against the objectives and standards enshrined in the TSD chapter.

7. Gender and other Equality measures in trade agreements should be improved

The EU's approach to including gender issues has been predominantly to "integrate women into trading systems" as it is assumed trade will automatically benefit women. However, the huge amount of research and case studies show the negative and harmful impacts of trade policy on women's rights and gender equality objectives. It also shows that women are not an homogeneous groups and that trade can for example benefit women entrepreneurs that are part of middle-class or elites, but enable negative and harmful impacts on poorer women.

The EU can build on its example of the EU-Chile gender chapter.^{xiv} What is positive about this model is that for the first time the EU included in its trade negotiations a comprehensive monitoring mechanism for women's empowerment and gender equality that includes other stakeholders. It also includes all the relevant gender conventions into the chapter and among its objectives it aims to address the gender pay gap, which is an important objective in terms of promoting equality.

However, as with environmental and social objectives, the EU should integrate gender objective in a comprehensive and holistic manner across all trade agreement provisions, beyond a gender chapter or the inclusion of gender in a TSD chapter, and ensure that there are no provisions in the agreement that go against the objectives and standards outlined on gender equality.

This requires in terms of trade agreements that the EU engages more proactively in a political dialogue with a country if environmental and human rights conventions and core labour standards, such as freedom of association, are not being met. We think for the long-term future the EU should only have trade agreements in place with countries that have ratified and enforced core ILO conventions and environmental and human rights treaties including CEDAW (Convention on the Elimination of Discrimination Against Women). Current efforts from the EU in this direction are too limited and weak to achieve this goal on the longer term, as commercial interests to access raw materials and agriculture commodities are prioritized in trade agreements.

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?

It is fundamental, to build a fairer and more stable world, to make sure our trade and investment policy does not incentivise inequalities within Europe, nor in partner countries where such inequalities are sometimes abyssal. We heard in the past that inequality is a concern, but that the trade policy can't do anything about it. Such dismissive arguments are not acceptable anymore: Inequalities are not an accident of fate, they are the result of policies that are gender-blind and benefit disproportionately some players.

Investors and companies involved in human rights violations shouldn't benefit from trade preferences or investment provisions:

- a) Adopt a **mandatory gender-responsive human rights due diligence regulatory framework** at EU level, backed with adequate monitoring and enforcement mechanisms (see above). Investors and companies should only benefit from the advantages from trade and investment agreements if they comply with their obligation to carry human rights due diligence in line with their obligations under the UN Guiding Principles on Business and Human Rights and the future EU due diligence regulation.
- b) **The same holds true for companies that wouldn't abide by the future regulation of supply chains to minimise the risk of deforestation** and human rights violations associated with commodity imports to the EU (see above).
- c) Only companies not based in **tax heavens and complying with public country-by-country reporting requirement (CbCR)**, i.e publicly reporting basic fiscal information and data for each country where they have operations, should benefit from the provisions in investment treaties and chapters and benefit from state support, including export credit agencies' support. Investment agreements should only be concluded with countries applying an effective corporate tax rate of 25%, in order to stop base erosion and profit shifting. EU proposals regarding e-commerce in the WTO should duly take account of the imperative for fair digital taxation.

Question 10: How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (block chains, artificial intelligence, big data flows)?

The EU should also assess market concentration globally and work towards fighting monopolistic or oligopolistic situations, especially regarding companies making use of digital data extractivism.

The Commission should complement the planned EIGE research report on gender equality prospects in labour markets digitally transformed by artificial intelligence and platform work, linked to the review of the BPfA indicators on Women and Economy, with a research report on how measures and regulation through trade policy would impact gender equality and women's rights globally. The EIGE report is aimed to feed into the high-level political discussions of the Council members during the Slovenian presidency and it will be very important that these discussion reflect on all policy domains of the EU.

Questions 11 & 12: N/A

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

Enhance democracy, participation and transparency. The EU should promote the inclusion of civil society, trade unions, private entities in negotiations happening at the WTO and strengthen the role of the European Parliament in monitoring and its decision making in negotiations.

Trade negotiations should promote and include the participation of people that are hugely impacted by trade policies but that are marginalized, exploited or made invisible in the current trading system, including the empowerment of women in informal economies, indigenous communities and trade union representatives. Companies are granted privileged access into trade negotiations that are closed for other groups of society. The EU should ensure in trade negotiations with partner countries timely, transparent and public consultation meetings and processes in the EU and in partner countries.

The EU should also consider the capacities not only of national governments but also **regional and local governments** to enforce regulations in partner countries, thus to strengthen these capacities where they are insufficient, as well as promote the role of civil society to play their monitoring, research and awareness raising role on trade and investment policies.

ⁱ https://twm.my/title2/briefing_papers/No102.pdf and https://twm.my/title2/briefing_papers/investment_facilitation_series/Scope%20of%20IFF%20TWNIF%20Jul%202020%20Mohamadieh.pdf.

ⁱⁱ Eg Press Release, 5 July 2004,

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/35C240E546171AC1C1256EC800308A37?opendocument> and http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12_en.pdf (which says that ‘Developed countries should not encourage developing countries and LDCs to enter into TRIPS-plus FTAs’ and developing countries and LDCs should not agree to TRIPS-plus); WHA56.27, May 2003, http://www.who.int/gb/ebwha/pdf_files/WHA56/ea56r27.pdf;

http://www.theglobalfund.org/en/mediacenter/pressreleases/2011-05-26_Global_Fund_strategy_aims_to_help_shape_market_and_ensure_sustainability_of_AIDS_treatment/; ‘Access to Medicines at Risk Across the Globe’, Briefing Note, MSF Campaign for Access to Essential Medicines, May 2004, www.accessmed-msf.org/documents/ftabriefingenglish.pdf.

ⁱⁱⁱ https://concordeurope.org/wp-content/uploads/2018/11/CONCORD_Recommendations_CAP_PCSD_Nov2018.pdf

^{iv} <https://fairtrade-advocacy.org/wp-content/uploads/2020/06/UoG-HRDD-Full-Report-60pp-FINAL-SECURED.pdf>; See also Paras 22 & 23 of the Bangladesh Accord which may provide a very interesting precedent in that regard on which to build strong legally binding provisions.

^v “Gender dimensions of the Guiding Principles on Business and Human Rights” by the Working Group on the issue of human rights and transnational corporations and other business enterprises

^{vi} [https://www.cadtm.org/The-African-Continental-Free-Trade-Area-What-Kind-of-Pan-Africanism](https://www.cadtm.org/The-African-Continental-Free-Trade-Area-What-Kind-of-Pan-Africanism;); <http://www.industrial-union.org/report-the-african-continental-free-trade-area-will-it-promote-fair-trade-economic-development-and>; <https://www.bilaterals.org/?afcta-threatening-intra-ecowas>; <http://twnafrica.org/wp/2017/?p=1965>

^{vii} <https://concordeurope.org/resource/rebuilding-better-with-sustainable-and-inclusive-business-models/>

^{viii} https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158372.pdf

^{ix} UNCTAD, Trade and Development Report, 2019,

<https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2195>

^x https://www.actionaid.org.uk/sites/default/files/publications/from_rhetoric_to_rights_towards_gender_just_trade_actionaid_policy_briefing.pdf; See also the alternatives proposed by the Trade Justice Movement and Traidcraft: <https://www.tjm.org.uk/documents/briefings/Stepping-away-from-ISDS.pdf>

^{xi} <http://s2bnetwork.org/sign-the-pen-letter-to-governments-on-isds-and-covid-19/> and <http://ccsi.columbia.edu/2020/05/05/isds-moratorium-during-covid-19/> endorsed by ActionAid

^{xii} https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_711798.pdf

^{xiii} https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158372.pdf

^{xiv} https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156962.pdf