
IHRB Submission to the European Commission

“A renewed trade policy for a stronger Europe”

September 2020

Introduction

The Institute for Human Rights and Business (IHRB) welcomes the opportunity to provide inputs to the ongoing European Commission (EC) review of European Union (EU) trade and investment policy. This submission focuses on three specific topics posed by the consultation concerning:

Question 8 - how trade policy can facilitate the transition to a greener, fairer and more responsible economy;

Question 9 - how trade policy can help to foster more responsible business conduct and;

Question 13 - other important topics the Trade Policy review should address.

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?

Increased international trade and investment have led to rapid economic growth and reduction of poverty in many parts of the world. However, economic growth strategies in many cases have not been underpinned by policies that ensure implementation of climate change and human rights related commitments, resulting in unstable social environments that have impeded international efforts to realise the UN Sustainable Development Goals (SDGs). For the beneficial impacts of trade to be achieved, and harmful impacts mitigated or eliminated, it is critical that trade is rules-based and focused on fostering social inclusion and commitment to sustainable development.

Existing EU law requires all policies to promote sustainable development, social justice, labour rights, environmental rights, and human rights. What is too often missing, however, is effective monitoring and implementation, including avoiding actions that might directly or indirectly promote a “race to the bottom” in terms of social and environmental standards. EU trade policies should continue implementing affirmative programmes with least developed countries, in particular preferential trade agreements, the “Generalised Scheme of Preferences” (GSP), and the ‘everything but arms’ programme. The EU GSP includes different layers and different levels of conditionality. Many observers argue, however, that the EU has not always applied the GSP scheme consistently and does so at its own discretion in order to pursue economic and foreign policy objectives. There also remains the question as to when more targeted sanctions (of the Magnitsky Act variety) might be more effective than penalising whole populations for the actions of their leaders. These inconsistencies need to be addressed as a matter of urgency.

Steps to foster greater social inclusion in the context of trade should begin with evidence-based interventions that address barriers currently limiting opportunities for specific groups within the EU and around the world to benefit from trade. For example, although EC economic impact assessment studies linked to new trade agreements are important, such assessments need to be broadened to include environmental and social impacts as well. Experts point out that such assessments in the context of trade agreements, in particular those specifically addressing human rights, are still at an early stage of development. However, these processes “have value as a way of drawing attention to issues that might otherwise go unnoticed or unappreciated (such as impacts on particularly vulnerable groups of people, or impacts that are discriminatory between men and women), and of raising awareness among policymakers about human rights issues more generally.”¹

With respect to linking trade policies to transitions to greener and more sustainable economies, IHRB supports proposals that call for the Paris Agreement and its legally binding obligations to be included “in comprehensive and future trade and political framework agreements, including those being currently negotiated, building on the European Commission’s commitment in the European Green Deal.”² Recent regional trade agreements like the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) offer a useful framework for future action as they include a number of provisions in support of climate action such as reducing to zero all tariffs on low-carbon products. There is more to be considered in this area, including the potential for so called green sanctions to raise the cost of financing carbon-intensive sectors worldwide.

In the context of the SDGs, there are a number of specific areas where the European Union could strengthen support for ongoing trade related initiatives that promote respect for the rights of excluded groups. For example, links between food security, climate change and economic development can be seen in the trade related targets of SDG 14 concerning the world’s oceans. The European Union, as the largest single market for fish and seafood imports, should consider what additional steps it could take to contribute to meeting SDG targets on providing greater access for small-scale fishers to marine resources and markets, which can foster decent work and sustainable livelihoods. Developing countries are working with United Nations agencies to support small scale fisheries on issues such as sustainable seafood trading, promoting value addition and facilitating market entry and access.³ The 2019 Third Oceans Forum on trade related aspects

1 Zerk, Jennifer, “Human Rights Impact Assessments of Trade Agreements”, Chatham House, 2019, <https://www.chathamhouse.org/sites/default/files/2019-02-18HumanRightsTradeAgreements.pdf>

2 Non-paper from the Netherlands and France on trade, social economic effects and sustainable development, 2020, <https://www.permanentrepresentations.nl/documents/publications/2020/05/08/non-paper-from-nl-and-fr-on-trade-social-economic-effects-and-sustainable-development>

3 UN inter-agency plan to protect oceans and seas, https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2130&Sitemap_x0020_Taxonomy=UNCTAD%20Home

of SDG 14 highlighted the multiple threats facing these communities and the need for policies to empower small-scale fishers and farmers to take a more active role in resource stewardship and management. Success will require increased international cooperation involving governments, private sector and civil society support to address challenges such as infrastructure upgrading, meeting international market requirements and organising farmers into larger groups to increase negotiation power.⁴

The issue of strengthening the EU carbon trading market under its emissions trading system (ETS) is also of critical importance as part of broader trade policy reform efforts, including proposals for a carbon border adjustment mechanism. Reform steps, such as expanding the ETS into more carbon intensive sectors including maritime transport are critical in achieving the goal of net zero emissions by 2050. As has emerged in exchanges between some EU member states and third countries such as Brazil, carbon can be increasingly regarded as a tradable commodity in its own right and not to penalize nations who externalise the true cost of their emissions is to confer upon them an unfair (and unsustainable) advantage. Similar arguments could be made on a separate issue, that of EU laws on data protection, and the data of EU citizens itself being a high-value commodity that other nations will try to bring into future trade negotiations.

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?

Efforts should continue to strengthen links between trade policy and the responsible business conduct (RBC) agenda. The EU should give greater attention to how trade policies can support ongoing work on RBC, including within the OECD, as well as at the United Nations involving steps by governments and business actors to implement the UN Guiding Principles on Business and Human Rights (UNGPs). EU supported initiatives to promote responsible business practices such as the Responsible Supply Chains in Asia Programme, implemented in cooperation with the OECD and the International Labour Organisation, are useful approaches that should be expanded and involve other regions.

IHRB supports the call for an EU RBC Action Plan, in which trade could be more directly linked to responsible management of supply chains through a “smart mix” of measures, both mandatory and voluntary. Such a plan should set out expectations concerning EU public procurement and ongoing efforts with respect to development of EU-level legislation on corporate due diligence through supply chains. This becomes all the more important in the COVID-19 environment, in which states have restricted exports of key medical goods and related products and as calls for reshoring of critical supply chains continue. As companies work to redesign supply chains and least-developed countries remove barriers to trade and investment to create jobs and ensure growth, there is a real danger that a “race to the bottom” may accelerate. While the potential for economic growth to reduce poverty is undeniable, it should not be at the cost of a green and sustainable future. The EU has a critical role to play in advancing the RBC, not only at home, but also in countries struggling to achieve sustainable development objectives who have benefited least from global trade to date. As a recent article on this subject puts it, “Reconstructing global markets in a post-pandemic world cannot rely on old formulas, but instead will demand a reimagining of markets themselves.”⁵

An additional area where more action is required concerns trade finance and how policies in this

⁴ Advancing Sustainable Development Goal 14: Sustainable fish and seafood value chains, trade and climate, Background Note for Third Oceans forum on trade related aspects of SDG 14, 2019

⁵ McNamara, K.R./Newman, A., “The Big Reveal: COVID-19 and Globalization’s Great Transformations, International Organization 74, Supplement 2020.

area can be fully aligned with existing international standards, including the OECD Guidelines and the UNGPs. At present, much trade-related finance (such as export credit or from private banks) is aligned with IFC Performance Standards, which do not fully align with the OECD/UNGPs standards that relate to business more generally. It should be noted that even a number of wider private-sector finance initiatives, such as the Equator Principles, UNEP FI or the Thun Group, have all needed to move beyond the 2011 IFC standards upon which most trade-related finance is still based. Similarly, Export Credits Guarantee Departments should set standards which would exclude companies shown to rank poorly on human rights performance indicators such as the Corporate Human Rights Benchmark.⁶

It should also be noted that the expansion of digital trade presents opportunities to strengthen responsible business. For example, some blockchain platforms are developing methods which make access to trade finance conditional on greater levels of transparency and visibility of supply chains. Advocates for such platforms also suggest that the costs of trade facilitation will be significantly reduced by digitalisation, which will also contribute to increased transparency due to improved access to trade data. That said, privacy related concerns are crucial. Access to mass amounts of data about people raises risks to human rights and any gathering of data must be limited and specific to a purpose, time-bound, with access control to ensure that only those who need to know can access it, and such data should be destroyed after the purpose for which it was gathered has been served. The EU should require compliance with the GDPR as a pre-requisite.

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

The EC Consultation Note briefly references the importance of promoting decent work as an ongoing priority for the EU. There is scope for much greater action to this area in the context of trade, in particular as part of responses to the ongoing COVID-19 emergency and its impacts on specific groups, including women and young people as discussed further below.

In addition, the consultation note briefly mentions dispute settlement “tools” and “mechanisms” but offers no specific details nor references concerning the current investor-state dispute settlement mechanism (ISDS) and its connections to trade. It would be helpful to clarify EU positions regarding ongoing ISDS reform efforts as well as proposed steps to address problems with the current mechanism, which is seen by many experts as giving disproportionate influence to corporations in trade negotiations and related investor-state dispute settlement processes.

With respect to decent work and support for particular groups, although evidence suggests that gender equality is becoming a more common aspect of new trade agreements, and the European Parliament in 2018 passed a resolution to include gender considerations in future EU agreements, the challenge now is to ensure effective implementation. There are emerging good practice examples from recent agreements that should be studied and incorporated in EU policy. Canada has been a leader in this respect as have African nations in the new African Continental Free Trade Agreement. As a recent article points out, however, such agreements rarely include specific provisions concerning how gender related commitments should be financed or enforced.⁷

⁶ www.corporatebenchmark.org

⁷ Bahri, Amrita, “Women at the frontline of COVID-19: Can Gender Mainstreaming in Free Trade Agreements Help?”, *Journal of International Economic Law*, September 2020.

The EU’s ongoing support for Aid for Trade projects on issues relating to labour and environmental protection are noteworthy but more should be done to increase focus on women’s empowerment. This should include support for effective follow up of the 2017 World Trade Organization (WTO) Ministerial Conference Joint Declaration on Trade and Women’s Economic Empowerment.⁸ The Declaration affirms the intention by member States to make trade and development policies more gender-responsive, including by sharing experiences relating to policies and programs to encourage women’s participation in national and international economies; discussing good practice on conducting gender-based analysis of trade policies and; collecting experiences of using gender- disaggregated data, indicators, monitoring and evaluation methodologies, and the analysis of gender-focused statistics related to trade.

Finally, EU trade policy and trade related support should be designed and implemented in ways that can strengthen opportunities for young people, including through greater trade capacity support. For example, the International Trade Centre (ITC)⁹ works with young entrepreneurs in developing countries facing multiple barriers including unequal power dynamics based on age, gender and ethnicity; lack of access to assets and finance; low education and skill levels; and administrative and regulatory frameworks that do not support young people. The EU should increase support for projects by the ITC as well as other organisations targeting young people, in particular from developing countries, who are seeking to raise their standards of living through trade opportunities at home and abroad.

8 https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

9 <https://www.intracen.org/youth/why-youth-and-trade>