

WO=MEN Dutch Gender Platform response to the EU public consultation on a renewed trade policy for a stronger Europe, November 2020

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

WO=MEN Dutch Gender Platform strives for equal power relations between women, men and gender non-conforming persons in the Netherlands and worldwide. Around 50 organisations and 125 professionals are member of WO=MEN: development and peace organisations, women's and gender rights organisations, diaspora organisations, trade unions, police, journalists, knowledge institutes, academics, military personnel, entrepreneurs, students and opinion-makers.

WO=MEN monitors policy, shares knowledge, joins forces and connects and mobilises people. We work on social transformation to achieve equal power relations between women and men, girls and boys, regardless of sexual orientation and gender identity. In order to achieve worldwide gender equality and respect for women's rights we fight against entrenched role patterns, racism and exclusion. Together with our partners and members we demand continuous attention for the impact of gender equality on conflict, climate and the environment. We also fight against the shrinking space available for gender equality and women's rights activists. We are convinced that we can achieve the best results by working together and sharing knowledge.

Consequently, we focus on three objectives:

1. Sustainable social, political and financial support for gender equality and women's rights;
2. Women, men and gender non-conforming persons have equal influence and entitlement to natural resources (land, water, forests), manufacturing chains, (international) companies and climate agreements;
3. Equal participation in peace processes and the prevention of new conflicts of women, men and gender non-conforming persons in (post) conflict situations.

See our Theory of Change 2018-2022 and our multi-annual plan on our website: <https://wo-men.nl/bestanden/ToC%20WOMEN%202017%202021%20Final.pdf>

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

In order for trade policy to contribute to EU's resilience it should be much more coherent with EU's policies in other sectors, which are the ones essential for this objective: a sound industrial policy, a sustainable food policy, a stringent regulation of investors to make sure they fund the just transition and instead of harmful activities, labour policies that protect the rights of workers,

ratifying and implementing all ILO conventions, the protection of democratic processes and of course ensuring an effective gender equality policy.

From our ongoing monitoring of EU trade policy on its gendered impacts, we conclude that the EU has a long road ahead to make sure its policy is contributing to gender equality and the protection of women's rights. **EU's current gender equality measures in trade policy are too limited in its focus on promoting certain groups of women into global trade.** This will create ineffective impacts and can even be harmful to its objective. **Mainstreaming a gender perspective through trade policy based on a 'do-no-harm principle' is the way forward.**

Covid-19 showed us that in times of crisis, robust public intervention is the backbone of our economy. Governments protect people's living income, support the economy, and ensure universal access to healthcare. The pandemic once more underlined that privatization and liberalisation that have been key drivers in EU's trade policy have its limits and are only effective if they are considered as one set of tools next to others.

Moreover, markets flourish through strong and stable regulation, as this is eroding in the current global political climate. Private companies need a framework whereby to operate and cannot replace the governments in fulfilling their public role in ensuring common goods and services. In trade policy, strong regulatory frameworks have been immensely insufficient so far in protecting common goods such as human rights and the environment. This gaps manifest themselves from the lack of enforceable 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. From all available research, case studies and citizens' mobilisation, WOMEN concludes that EU's trade policy needs to stop promoting the interest of big companies above the rights of people and contributions of SMEs.

One key policy area in which we urgently need a reversal of priorities of protecting human rights and the environment instead of the interest of big companies and investors, is around Investment treaties and mechanism. **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.

The EU should also stop with promoting an increase in opening up foreign markets of public services, such as energy and health care sectors. 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.

Through free trade and investment agreements and treaties (bilateral, plurilateral or multilateral) the EU has pushed for an ongoing liberalisation of markets and trade, granting free movement to capital, unlimited growth and power to multinational corporations and heavy dependency on global value chains. This occurs more often than not, at the expense of small and medium size businesses, local and domestic industries and the regulatory capacity of the state, everywhere in the world but especially so in developing countries, to the detriment of the environment, human rights and gender equality.

This pandemic has revealed the precarity of global value chains with shortages around the world in what are now very essential goods such as PPEs and testing materials, but also serious problems in food systems. It has also shown that governments do not regard "free trade" a priority in itself, as countries introduced trade barriers and began hoarding of many goods and supplies immediately when the pandemic started, thus underlining that trade is a tool for sustainable development and context-specific, instead of being a one-size fits all solution.

Another urgent area that came under scrutiny during the pandemic are the current TRIPS that is in place and additional agreements with Intellectual Property Rights. **The EU should halt the promotion of new rights and reduce the protection rights in terms of current Intellectual Property Rights.** The current TRIPS agreements has created perverse effects in which companies, especially pharmaceutical companies, are claiming patents to gain huge profits for products that are hardly innovative, but the result of making handy use of the patent system with slight improvements. There are many shortcomings in the current TRIPS agreements. The interests of private companies have also contributed to develop an adequate response to COVID19ⁱ, such as the lobby of big pharma to reject additional investments in vaccine research in 2017, or withholding data or collaboration into developing vaccines. COVID-19 has highlighting the need for collective public responses to health crises and the harmful role companies can play if they are granted to much privileges. The Doha declaration which ensures basic medication and development of generics to poor countries and people should be extended.

The EU should also 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.

COVID19 has exposed social inequalities in medical treatment and vulnerability to food security, trade rules have to take this into account and make sure that everybody get access to vaccines, that access is not blocked or restricted by patents and inequalities are not deepened and reiterated again and again

Today, the world is not only facing a health crisis, it is facing climate disasters. And it is expected that without strong intervention we will face a global much more sever climate crisis and life-threatening biodiversity collapse. Less visible in the way it kills at the moment, 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' deeper regulatory space they need to redistribute wealth, respect human rights and protect our planet.

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.ⁱ
- 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.ⁱⁱⁱ 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**. This includes of course women human rights defenders, who are subject to the same risks as any human rights defender, but as women, are also targeted for or exposed to gender-specific threats and gender-specific violence.^{iv} 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 digital companies.
- 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.

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

Women's rights associations have been voicing their criticism of the WTO since the Seattle protests in 1999. Since then little has been changed within the WTO, other than that it has become obvious that the WTO does not fit with the current globalized world, given its inability to come to new agreements and difficulties in its operation. The failure to address concerns of developing countries, while pushing agendas that strengthen the position of already industrialised countries, has undermined the credibility of the WTO and will continue to do so. The e-commerce negotiations are a case in point: it will consolidate the position that certain countries and companies have and allow them to extract data and profits from others without any productive investment, employment creation or solid guarantee for just taxation or data sovereignty.

A reform in the approach to the WTO is needed:

- The WTO must **fulfil the long standing demands of developing countries, instead of making this realisation dependent on concessions with regard to new issues**, that are not in their interest.
- The WTO should **enhance democracy, participation and transparency**. The EU should promote the inclusion of civil society, trade unions, private entities in negotiations

happening at the WTO in formal negotiations and reflections and strengthen the role of the European Parliament in monitoring and its decision making in negotiations.

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?

The main question should be what the FTAs can do more and better for people, especially the majority of people in the global South, to assist them to progress economically in a manner consistent with the SDGs. FTAs must better ensure that trade contributes more to sustainable development by respecting the environment as well as all human rights. This means that trade negotiations should be broad-based democratic processes that involve all groups in societies in a transparent, gender-responsive and meaningful manner.

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 stop encouraging African countries and others in the ACP region to operationalize the continental free trade area. We understand it will be very profitable for European companies to operate in a single continental market, but the EU shouldn't ignore the risks posed by trade liberalization in a space in which labour, fiscal and social regulation is immensely diverse and sometimes weak. A continental free trade area, if not designed to promote and protect local food systems, small scale food producers and territorial markets, will devastate them. We want to remark that the Economic Partnership Agreements are based on a very aggressive promotion of liberalisation that go beyond many other signed agreements and are completely out of step with the developmental phases of many African Countries. At the risk of losing necessary income through export of certain sectors, **the EU is more likely to kick away the ladder for countries to develop towards full industrialisation and development.**

The EU should also acknowledge that its negotiations around the Economic Partnership Agreements that were aimed to support and create 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. Therefore we propose that the EU should stop further promoting the ratification of EPAs.

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 this field, there can be no fair competition among countries.

Question 6: How can trade policy support the European renewed industrial policy?

A sustainable European industrial policy must be based on a trade policy that not only offers opportunities to multinational companies (MNCs), but also benefits ordinary people, especially women. It must ensure that the imported goods we consume are made by employees who are not exploited, receive fair wages, work in a safe environment and are employed by companies that respect global codes of conduct. This also means that trade agreements do not enforce liberalization and privatization, clearly exempt the public sector and do not limit governments' right to regulate.

The EU cannot separate interests of companies from labour rights, human rights and environmental conventions and prioritize the rights of business as it is doing now in its trade policy. For example, it should not enforce investor protection with specific legal mechanisms, while not enforcing ILO core labour standards. The EU should take steps to address this imbalance.

Public procurement must remain an industrial policy tool, ensuring compliance with collective agreements. National, regional and local governments must be able to link social and environmental criteria to their public procurement to ensure that public money supports sustainable regional economic development. Therefore, public procurement should not be opened by default to foreign competition.

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. 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.**

And the EU should broaden its concept of MSMEs and include explicitly women and men in the informal sector. 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.^v Women are in particular overrepresented in these sectors, thus the promotion of female entrepreneurship should include and prioritize informal service providers, traders and producers.

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.^{vi}

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 years 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. 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 call for women's rights and gender equality to be fully incorporated into trade policy with following recommendations^{vii}:

- **Gender equality and women's rights must become an integral subject of trade policy and be included in all aspects of that policy.** All mechanisms in policy must be analyzed for their effects on the position of women as citizens, consumers, workers, landowners and food producers. In trade policy, human rights and explicitly women's rights, labor rights, the environment and climate must take precedence over the rights of investors and the expansion of the free market. In addition, trade agreements should not prevent governments from imposing requirements on foreign service providers to keep health care, education, drinking water and electricity supplies and public transport accessible and affordable.
- **Give women and women's rights organizations their rightful place at the table in negotiations and in the implementation of agreements.** And make it clear to women's rights organizations as an important stakeholder in trade and investment negotiations what is on the table, so that they can make informed recommendations.
- **Regularly and systematically provide gender impact assessments for each agreement. Effects vary by country and region.** Customization is always necessary. Precise and systematic research, including qualitative research, must map the gender effects. This should not only be done in the negotiation phase - once a trade agreement has entered into force, its effects on women should be examined from time to time.
- **Make companies truly accountable when they violate women's rights and make companies' obligations binding.** The EU has a duty to support the UN negotiations for a

Binding Treaty on Business and Human Rights - a binding international treaty in the field of business and human rights, including women's rights. Other binding mechanisms for International Corporate Social Responsibility must also be considered, so that a well-considered mix of binding mechanisms and voluntary agreements is created.

We would like to elaborate on some of these recommendations.

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, 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 regards, 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. The EIGE or FRA would be ideal candidates to coordinate SIA's.

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

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 Responsibilities, 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.

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. Ultimately, the EU should support decent working conditions and a living income for all workers across the global supply chains by adopting a robust due diligence legislation and by ensuring that all products placed on the EU market are free from deforestation, other environmental damages and risks and human rights violations.

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

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.

The EU should recognise the socio-economic redistributive impacts of trade policy. The EU can build on its example of the EU-Chile gender chapter^{viii}. 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 the lack of enforceability and lack of focus on systematically assessing and addressing gendered inequalities from an intersectional perspective sustained by trade policy significantly weakens the impact of the envisioned agreement on gender equality. Just 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 outline on gender equality.

The gender chapter shows the biased approach the EU has taken towards the impacts of trade on people's lives. Previous trade strategies published by the commission make the argument that trade is beneficial to all people, without proving this assumption. Similarly 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 a 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.

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 can digital trade rules benefit EU businesses, including SMEs? 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 (e.g. block chain, artificial intelligence, big data flows)? Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?

The EU has undertaken needed steps to regulate data ownership in its market, with the General Data Protection Regulation. Such regulations next to other forms of regulation should also be negotiated at global level where possible, but should not enforce deregulation across states. We are concerned however that current negotiations at the WTO are too much focused on protecting interest of companies and not on protecting the rights of consumers, workers and other MSMEs

and will in effect lead to states buying into a scenario where the monopolies of tech companies remain unaccountable to people and states. The following needs to be implemented by the EU:

- a) **Protect ownership of personal data**, including the right to privacy, the possibility to retrieve extracted personal data from companies and personal information to be erased in their data-storage. This includes developing regulation around involuntary collection of private data such as cameras registering people in public streets.
- b) **Promote national and regional regulation for data-storage, management and collection.** Currently there are barriers to access data in case of legal inquiries (cyberbullying, etc.) or related to public interest, such as around elections where digital tools are used (see the example of the Kenyan election in 2017). Companies do not need to provide transparency of how their platforms are being used, such as shown by the example of Facebook and its policy on political advertising.
- c) **Digital Algorithms should be accessible for public scrutiny under all circumstances.** Algorithms have proven to include biases, including gender biases, such as offer less paid jobs to women based on the qualification of being a women. Information about biases in algorithms is scattered, since companies do not need to provide transparency on the algorithms they use. This means that relevant biases for economic development remain invisible.
- d) **“Service providers” on digital platforms should be better protected; they should have equal rights compared to workers under the ILO Decent Work Conventions.** The same goes for suppliers to a single digital platform that acts as its client. This kind of service or goods provision cannot be considered equal to MSMEs. Trade agreements should not hamper the development of national or regional regulation around such providers.
- e) **The EU should also promote regulation of the use of surveillance technology at work;** this technologies have been used by some companies to micro-monitor people, as to the level of monitoring their physical movements, which is invading people’s privacy. The same can be said of surveillance technology that is developed by certain states.
- f) **The digital market needs to be regulated internationally in order to give MSMEs and new upcoming digital companies a fair play to enter global markets and to counter the concentration of power into a few companies.** This includes limitations to fees digital platforms can ask from sellers of goods and services in order to give them access to the digital platform. And regulation to limit the forming of huge companies controlling large parts of its market.
- g) **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.

Question 12: In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?

The premises of this question should be turned around to address the tension in trade relations with countries in the global south, where in fact the EU is viewed as a trading partner that is promoting coercive, distortive and unfair trading practices.

The new generation trade agreements that the EU is promoting seem to be agreements that are solely focused on EU's trading relations with an additional sustainable trade chapter to incorporate other issues. Older agreements that the EU has established and that have been or are being renegotiated, are much more broad-based and often include articles on collaborations in the political, cultural, scientific, social, etc. domains. A review done by WIDE+ in 2017^{ix} found that actually 50 % of the agreements that were in place by 2017 include human rights in its preamble and as one of its guiding principles (article 1 or 2). The study also found that five recently signed but not ratified agreements did not include human rights as a guiding principle; three of them (with East African Countries, Singapore and Vietnam) do not include any reference to human rights, not even in their preamble. There is one other agreement without a human rights framework reference in its text or preamble and that is one of the oldest agreements signed in 1977 with Syria. The agreement with Canada includes a reference to human rights in the preamble, but doesn't include a reference to these rights, poverty reduction, or sustainability as guiding principles anywhere in the text.

We have also found that the inclusion of human rights, as is the experience with including gender equality objectives in trade agreements, does not lead in itself to an enhanced implementation of human rights frameworks. The protection of human rights including gender equality need accountable monitoring mechanisms spelled out in the agreements to have significant relevance. But it is a step backwards that current trade agreements are more and more separated from other policy domains, and are more often not grounded in key human rights and environmental conventions. It is indicative of how much EU trade policy is disconnected from other policy domains and key values of the EU treaties such as human rights and gender equality.

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

ⁱ <https://www.theguardian.com/world/2020/may/25/exclusive-big-pharma-rejected-eu-plan-to-fast-track-vaccines-in-2017> and see: <https://www.theguardian.com/commentisfree/2020/apr/02/coronavirus-vaccine-big-pharma-data>

ⁱⁱ <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.

iii “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

iv <https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx>

v https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_711798.pdf

vi <https://concordeurope.org/resource/rebuilding-better-with-sustainable-and-inclusive-business-models/>

vii https://www.wo-men.nl/bestanden/Nieuws/2019-Vrouwen_in_Internationale_handel_een_koopje.pdf

viii https://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156962.pdf

ix https://wideplus.org/wp-content/uploads/2017/06/eu_trade_gender_policy_wide_final.pdf