Non-paper from the Netherlands and France on trade, social economic effects and sustainable development

International trade rules and benefits are being challenged both outside the EU and within Member States. Moreover, new challenges for sustainable development, such as the fight against climate change, need mainstreaming in all EU external and internal public policies. These challenges still stand after COVID-19 pandemic. If we need to keep our markets open during and after the crisis, now more than ever is the time for the EU to step up cooperation and coordination to protect human life and lay the foundations for a strong economic recovery and a sustainable, balanced, and inclusive growth after this crisis.In that context, the Dutch and French Trade ministers are calling the EU to improve its approach in analyzing the socio-economic aspects of trade effects, and to increase its ambition regarding the nexus between trade and sustainable development in all its dimensions, consistent with the implementation of the European Green New Deal.

1. Stronger sustainability chapters

Trade policy instruments can provide additional leverage to the implementation of international environmental and labor standards. The EU has since 2006 aimed to leverage sustainable development and inclusive growth by including Trade and Sustainable Development (TSD) Chapters in trade agreements. Currently these chapters commit both parties to implement multilateral environmental agreements to which they are party and ratify and implement fundamental ILO-conventions. They provide an additional bilateral forum for dialogue and facilitate cooperation and the exchange of knowledge and best practices. Given the lack of progress in compliance with TSD commitments in some partner countries multiple years after trade agreements were concluded, the EU should raise the ambition and improve the implementation of TSD Chapters.

The EU should strive for more ambitious TSD chapters and ensure effective implementation thereof. The ambition of TSD chapters should be enhanced, for example by including commitments of parties to cooperate on climate policies such as carbon markets. Moreover, parties should reaffirm their commitment to implement the post-2020 framework of the Convention on Biological Diversity. Where international agreements are lacking, parties should bilaterally agree on sustainability standards in trade agreements while leaving sufficient space to develop international regimes and aiming for a high level of environmental or social protection. The EU should improve the effective implementation of TSD chapters, if necessary by supporting capacity building in the partner country. In the European Green Deal the European Commission announced that a Chief Trade Policy Enforcer, among his other functions, will ensure effective implementation of trade agreements including labor rights, environmental commitments and the role of civil society in implementing the agreements. This initiative is warmly welcomed by France and The Netherlands. We propose a more streamlined EU notification mechanism to respond to possible breaches of TSD-commitments. Such a mechanism would facilitate the Chief Trade Enforcer's work on TSD. Moreover, the EU could incentivize effective implementation by rewarding partner countries that live up to TSD commitments. Parties should introduce, where relevant, staged implementation of tariff reduction linked to the effective implementation of TSD provisions and clarify what conditions countries are expected to meet for these reductions, including the possibility of withdrawal of those specific tariff lines in the event of a breach of those provisions. This approach would allow to the EU to bear the fruits of its cooperative approach, while strengthening enforcement.

2. Social-economic aspects of trade agreements

The European Commission runs an economic impact assessment study at the opening of each trade agreement negotiation as well as around the time the deal is closed and about to be implemented. Those studies, highly necessary, need to be improved further to address stakeholders needs and societal concerns. Indeed, the studies only show data aggregated for the whole EU, without any information about the impact on EU regions. Although labour market effects are modelled, the quality of this modelling can further be improved through a recurrent and more detailed sector specific analysis of the impact on employment. The consistency with other EU policies can also usefully be addressed. Beside, such studies often come too early, in particular as negotiations can last over a lengthy period, or too late, once a political agreement is already announced, or even when the EU Council or national and/or European Parliaments have already reviewed the deal.

In spite of clear aggregated economic benefits, gains and losses from trade agreements can be unevenly distributed throughout sectors and regions. The data currently available are not sufficient to grasp this distribution, both on the process and timing as well as on the content. The Netherlands and France ask the European Commission to conduct *ex ante* and *ex post* impact assessments in a way to maximise their value for all stakeholders, including EU Member States with as many sectoral or regional level data as possible.

Regarding the content, even though trade policy is an EU competence, Member States need, for their public debate, national and sectoral information which are not available in the current impact studies carried out by the Commission. Indeed, such assessment should help Member States regarding the impact of the agreement and to identify the sectors that are impacted the most by increased trade openness. Those data are needed for each trade agreement but a cumulative impact assessment such as the European Commission is planning on would be important to become a real steering tool for the EU and its Member States.

Concerning the process and the timing, the European Commission should try to set up a procedure to take on board EU Member States sensitivity points on each agreement in the design of such impact assessment, especially on sustainable development issues (Sustainable Impact Assessment – SIA). To be as useful as possible, those SIA need to be available before the conclusion of the negotiations and then be updated once the outcomes of the negotiation gets clearer.

3. Responsible Business Conduct

European cooperation on responsible business conduct (RBC) is necessary to ensure a coherent and harmonized policy and to achieve the greatest impact while establishing a level playing field for the EU internal market. Together France and The Netherlands therefore stress the importance of the development of an EU framework on RBC: an EU RBC Action Plan. An EU RBC Action Plan should be the overarching strategy of ways in which the EU fosters fair trade and responsible production and management of supply chains. The Plan should consist of a smart mix of measures: mandatory[i] and voluntary[ii]. An Action Plan could include the scaling up of existing national sectoral measures, create peer-learning structures for Member-States' National Action Plans, combine the efforts on sustainable trade promotion, provide guidelines (notably based on the work done at OECD on RBC including sector specific guides) on its expectations from companies within its jurisdiction and include the role of the EU as a market actor, for example with regards to EU public procurement. This work should also include the revision of the non-financial reporting directive and the discussions on EU-level legislation on due diligence, based on the Commission study on due diligence requirements through supply chains. The Commission is asked to develop this Action Plan before 2022 in cooperation with the Council – where responsible Council preparatory bodies should be tasked with RBC – and in conjunction with the private sector and civil society.

4. Paris Agreement as essential element of EU agreements

The Paris Agreement and its legally binding obligations should be an essential element 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. This means that the parties should be party to the Paris Agreement and live up to the legally binding commitments, notably the obligation to submit Nationally Determined Contributions (NDCs) every five years representing a progression beyond the Party's then current NDC and reflecting its highest possible ambition (in accordance with Art 4.3 Paris Agreement). The Paris Agreement should be added to the two existing essential elements, namely the respect for human rights and the fight against the proliferation of weapons of mass destruction. In case an existing EU trade agreement is modernised and renegotiated, the Paris Agreement and its legally binding obligations should become a part of the essential elements.

5. Carbon Border Adjustment Mechanism

Carbon leakage, that is the increase in greenhouse gas emissions in countries with less stringent climate policies linked to a shift of EU production, undermines the global reduction efforts and the efficiency of emission reduction measures towards the EU objective of carbon neutrality in 2050.

To effectively limit carbon leakage, the Netherlands and France look forward to the proposal of the European Commission on the different possibilities of a carbon border adjustment mechanism (CBAM). A CBAM could strengthen the effectiveness of the European Union's climate policy and reduce the EU carbon footprint, hence contributing to the global climate objectives, if designed properly. If a CBAM is implemented, it should take into account existing instruments, such as the ETS. France and the Netherlands/we stress that the CBAM needs to be designed to comply with WTO rules and should be implemented with a step-by-step approach.

6. WTO

France and the Netherlands believe the WTO has a special role to play in addressing major global challenges in terms of sustainable development, including the fight against climate change and the preservation of biodiversity. In that respect, and in accordance with the objective of sustainable development stated in the Marrakech agreement, WTO should offer an enabling space to apply sustainability disciplines.

In that respect, France and the Netherlands welcome the organization of a dedicated event and declaration to trade and climate change at the next WTO ministerial conference.

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[i] An example of a EU mandatory measure includes the EU "Conflict Minerals Regulation" (Regulation EU 2017/821).

[ii] Examples of the different measures can be found in the Commission Staff Working Document: Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress. Available at: https://ec.europa.eu/transparency/regdoc/rep/10102/2019/EN/SWD-2019-143-F1-EN-MAIN-PART-1.PDF