CBS INTERNATIONAL BUSINESS SCHOOL

A New Paradigm for the EU's Global Trade Strategy

Ethical World Trade and Economy for the Common Good

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EEB European Environmental Bureau

WEAll

WORLD FAIR TRADE ORGANIZATION

WORKING PAPER

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The **European Environmental Bureau (EEB)** is the largest network of environmental citizens' organisations in Europe. It currently consists of over 185 member organisations in 41 countries. At the EEB, we advocate for a future where people and nature thrive together in the European Union and beyond: https://eeb.org/

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Table of Contents

Executive Summary

This Working Paper explores the potential of a complete reorientation of the EU's external trade policy. It is based on a new paradigm for international trade – ethical world trade – that would replace the current paradigm of "free trade," on which the EU's external trade strategy and policy builds, although in recent years enriched by elements of sustainability and a move towards economic geopoliticization. The proposed paradigm shift overcomes the bipolar dichotomy "free trade" vs. "protectionism," including the new developments in recent times, proposing a reasonable way in between: ethical trade. Whereas free trade stands for trade as an end, protectionism stands for the aspiration to reduce international trade.

Ethical trade considers trade as a means at the service of the actual goals: sustainable economic development, human and labour rights, food sovereignty, climate and biodiversity protection, tax justice and fair distribution, cultural diversity, gender justice, and peaceful international cooperation.

In a larger picture, these overarching goals are likewise considered the goals of the "economy" in general. Accordingly, "ethical trade" is considered as the international dimension of an "Economy for the Common Good" (Felber, 2019a).

According to the new paradigm, a new constitutional mandate for the EU's trade policy is proposed, a new policy strategy, and a more democratic and participatory process for the policy field. It is proposed that the current system of multi-, pluri-, and bilateral free trade agreements – World Trade Organization (WTO), Free Trade Agreements (FTAs), International Investment Treaties (IITs), and Bilateral Investment Treaties (BITs) – be replaced by a single multilateral ethical trade zone within the United Nations: the United Nations Ethical Trade Zone (UNETZ). Countries that engage more for peace, human rights, climate stability, biodiversity protection, tax justice, food sovereignty, and cultural diversity should trade more freely with each other than with countries that engage less or not at all for these goals. Likewise, companies that engage more with the values and goals of the international community should access the ethical trading zone more freely than companies that engage with less ambition. Poorer countries should enjoy the same opportunities to support their infant industries – which developed countries took advantage of in their history – and no country should meet restrictions in making their sovereign domestic policy choices. The overarching umbrella, under which all countries are as open and protected as they want to be (true "free trade"), is the commitment to even trade balances; only poor countries should be allowed a certain surplus until closing the gap with richer countries.

Generally, ethical trade is an element of a globally sustainable, just, fair, and democratic economy. The definition of "economy" is adjusted, and the common good is proposed as the overarching goal of economic activities. For the measurement of a national economy's success, a Common Good Product (CGP) is proposed. Trade shall contribute to the improvement of the CGP rather than to the growth of GDP.

As for the environment and planetary ecosystems, their conservation and protection are considered a goal, whereas trade – like all economic activities – is regarded as a means to higher ends. Consequently, trade policy is designed at all levels (and by any means) in such a way that trade cannot harm the environment or degrade living ecosystems or extinguish species. Nature and life enjoy an intrinsic value and legal protection against depletion, destruction, and degradation. Nature is considered a value in and of itself and a common good of all human generations in the past, present, and future.

Structure of the Working Paper

Chapter 1 sets the stage for the paper, with a short introduction that depicts recent developments in the EU's external trade policy as well as the bigger global picture of the current trade system in crisis.

Chapter 2 delivers "a short critique of free trade," departing from the apparent "consensus" in economic science about the advantages of free trade. We start from Ricardo's theory of comparative advantage and summarize the development of trade theory until the present. Interestingly, the WTO still builds its rationale for "open trade" on Ricardo. Subsequently, a short history of free trade is retraced, peaking in a political economy of the international division of labour. The growth paradigm is addressed as well as the misleading dichotomy of "free trade" and "protectionism." Out of this linguistic deconstruction emerges the question: "What is actually the goal of trade?" This section ends with considerations on lobbying, regulatory capture, "post-democracy," and "econocracy."

Chapter 3 offers a brief analysis of the EU's external trade policy, focussing on the legal foundations on which the current trade strategy and policy rely. It points out a striking contradiction between the precise trade policy mandate in the Treaty of the Functioning of the EU (TFEU) and the principles and objectives of the EU's external action in the Treaty on European Union (TEU). Consequently, a gap is revealed between the current practical trade policy of the EU and the values and aspirations laid down in its primary law. A list of examples for these inconsistencies is provided. To better understand this gap, the current process of how decisions are made in the field of trade policy is analysed.

Chapter 4 presents the broader vision and goals for a sustainable, fair, democratic, and peaceful – ethical – economy and global trade order. It undertakes a quick race through the landscape of alternative approaches to "economy" in science, politics, and real-life practice. Departing from the currently predominant neoclassical paradigm in economics, it offers a more realistic definition of the "economy," of its goals and, consequently, a consistent method of economic success measurement on all levels. A democratically defined Common Good Product is proposed to replace GDP, a Common Good Balance Sheet to complement the financial balance sheet, and a Common Good Assessment to complement the financial risk assessment of investments and finance activities. The so-defined goal of all economic activities also becomes the goal of trade. Accordingly, a trade agreement's success and legitimation are measured against the goals of the economy as a whole.

Chapter 5 is the core of this paper. It entails the political design of a new global trade order, based on the paradigm of ethical world trade. A United Nations-based Ethical Trade Zone (UNETZ) with democratically legitimated objectives, rules, and courts would replace the current free trade regime under the lead of the WTO and seconded by thousands of bilateral and plurilateral free trade agreements (FTAs) and international investment agreements (IIAs). UNETZ is complemented by a set of new global institutions that would develop global governance further: an International Clearing Union for monetary cooperation, a Global Merger Control to prevent power concentration, and a Global Tax Authority for fiscal cooperation and tax justice. They all aim at making globalization work better for the people and the planet.

Chapter 6 describes a reform of the current state of democracy towards a "sovereign democracy." The Working Paper comes to the conclusion that a big part of the current shortcomings of the EU's trade policy is due to a lack of democratic transparency and stakeholder and citizen participation in the process. In addition to the new paradigm of "ethical world trade," "sovereign democracy" as a new paradigm for our democracy proposes to redesign the process of decision-making on all levels according to basic principles of democracy: division of power, transparency, participation, sovereignty. Examples of first attempts to involve the citizens in decisions on trade policy, such as citizens' assemblies or direct voting based on "systemic consensus," indicate what could change in a deeper and more participatory democracy: how the people would make a difference.

The final **Chapter 7** summarizes all main ideas developed and proposals made in the Working Paper and condenses them into a set of policy recommendations with sub-recommendations.

Annex 1 includes a concrete questionnaire for a "democratic trade convention" or citizens' assembly on international trade.

Annex 2 contains current extra-EU and global trade statistics.

List of Charts, Tables, and Boxes

Charts

Tables

Boxes

List of Abbreviations

ACCTS	Agreement on Climate Change, Trade, and Sustainability
ACI	Anti-Coercion Instrument
ACP	African, Caribbean and Pacific (Countries)
BEPS	Framework on Base Erosion and Profit Shifting (OECD/G20)
BIT	Bilateral Investment Treaty
BMWK	German Federal Ministry for Economic Affairs and Climate Action
CAI	Comprehensive Agreement on Investment (EU-China)
CBAM	Carbon Border Adjustment Mechanism
CBD	Convention on Biological Diversity
CBDR	Common but Differentiated Responsibilities
CCP	Common Commercial Policy
CETA	Comprehensive Economic and Trade Agreement (EU-Canada)
CFR	Charter of Fundamental Rights of the European Union
CGI	Common Good Index
CGP	Common Good Product
CJEU	Court of Justice of the European Union
CSDDD	Corporate Sustainability Due Diligence Directive
CSO	Civil Society Organisation
CSRD	Corporate Sustainability Reporting Directive
DAG	Domestic Advisory Group
DDA	Doha Development Agenda
DG	Directorate-General
DRIP	Development-friendly Rules for Intellectual Property
DSGE	Dynamic Stochastic General Equilibrium (Model)
DSU	Dispute Settlement Understanding (of the WTO)
EBA	Everything but Arms
EC	European Commission
ECG	Economy for the Common Good
ECI	European Citizens' Initiative

ECJ	European Court of Justice
ECT	Energy Charter Treaty
EFRAG	European Financial Reporting Advisory Group
EP	European Parliament
ESRAG	European Sustainability Reporting Advisory Group
ESRS	European Sustainability Reporting Standards
ETZ	Ethical Trade Zone
EU	European Union
EU ETS	Emission Trading System of the European Union
EV	Electric vehicle
EV-ratio	Emissions-to-value-added-ratio
FDI	Foreign Direct Investment
FEBEA	European Federation of Ethical and Alternative Banks and Financiers
FERCs	Forest and Ecosystem-Risk Commodities
FFSR	Fossil Fuel Subsidy Reform
FRCs	Forest Risk Commodities
FTA	Free Trade Agreement
GAPS	General Agreement on Public Services
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GFC	Great Financial Crisis
GHG	Greenhouse Gas Emissions
GMO	Genetically modified organisms
GSP+	Generalised Scheme of Preferences Plus
HDC	Higher Development Countries
HNWI	High Net Worth Individuals
IA	Impact Assessment
ICC	International Criminal Court (Den Haag)
ICCC	International Court for Corporate Crime
ICJ	International Court of Justice (Den Haag)

ICS	Investment Court System
ICSID	International Centre for Settlement of Investment Disputes
ICU	International Clearing Union
IEEP	Institute for European Environmental Policy
IERS	International Ethical Reporting Standards
IFF	Illicit Financial Flows
IFRS	International Financial Reporting Standards
IIA	International Investment Agreement
IISD	International Institute for Sustainable Development
IIT	International Investment Treaty
ILO	International Labour Organization
INTA	International Trade Committee
IPR	Intellectual Property Rights
ISDS	Investor-State Dispute Settlement
ISEE	International Society for Ecological Economics
ISIPE	International Student Initiative for Pluralist Economics
ISRS	International Sustainability Reporting Standard
ITO	International Trade Organization
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ITUC	International Trade Union Confederation
JSI	Joint Statement Initiative
LDC	Least Developed Country
LDC	Lower Development Countries (only in section 5.2.5.)
MAI	Multilateral Agreement on Investment
MDC	Middle Development Countries
MEA	Multilateral Environmental Agreement
MERCOSUR	Mercado Común del Sur (Common Market of the South)
MFAT	Ministry of Foreign Affairs and Trade of New Zealand
MFN	Most Favoured Nation
MIC	Multilateral Investment Court
MIT	Multilateral Investment Treaty

MPIA	Multi-Party Interim Appeal Arrangement
NAFTA	North American Free Trade Agreement
NDC	Now-developed country
NFRD	Non-financial Reporting Directive
NT	National Treatment
OEIGWG	Open-ended intergovernmental working group (on transnational corporations and other business enterprises with respect to human rights)
OWINFS	Our World is not for Sale (Network)
PRIO	Peace Research Institute Oslo
PSI	Public Services International
RTA	Regional Trade Agreement
SDPI	Sustainable Development Performance Indicator (project of UNRISD)
S&DT	Special and Differential Treatment
SECO	State Secretariat for Economic Affairs of Switzerland
SIA	Sustainability Impact Assessment
SIDS	Small Island Developing States
SIPRI	Stockholm International Peace Research Institute
SITC	Standard International Trade Classification
SPS	Sanitary and Phytosanitary Measures
TAPAS	There are plenty of alternatives
TEU	Treaty of the European Union
TFEU	Treaty of the Functioning of the European Union
TINA	There is no alternative
TIP	Treaty with Investment Provisions
TiSA	Trade in Services Agreement
TNC	Transnational Corporation
TPR	Trade Policy Review
TPRM	Trade Policy Review Mechanism (WTO)
TRIPS	Agreement on Trade-Related Intellectual Property Rights
TSD	Trade and Sustainable Development
TTIP	Transatlantic Trade and Investment Partnership (USA-EU)
UBA	Umweltbundesamt (German Environment Agency)

UNCED	United Nations Conference on Environment and Development
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNETZ	United Nations Ethical Trade Zone
UNFCCC	United Nations Framework Convention on Climate Change
UNRISD	United Nations Research Institute for Social Development
UNSTZ	United Nations Solidary Trade Zone
UPOV	Union for the Protection of New Varieties of Plants
WCHR	World Court of Human Rights
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Foreword

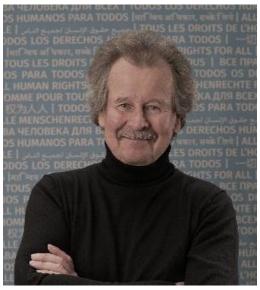
The United Nations and the European Union were established in response to two world wars originating in Europe, the Great Depression, the rise of fascism and the barbarity of the Holocaust. The European Communities were created in the 1950s in order to prevent another war in Europe by means of economic integration. After the end of the Cold War, this then went on to become a political union with common values such as human dignity, freedom, equality, democracy, the rule of law and human rights. The United Nations, founded in 1945, is based on three pillars of a new world order: peace, development and human rights, whereby the Universal Declaration of Human Rights in 1948 left no doubt that human rights did not only mean civil and political rights and fundamental freedoms, but also economic, social and cultural rights. Although within the framework of its development, which was originally above all driven by economic development via GDP growth and industrialization, after the Cold War the conviction soon prevailed that only sustainable development in harmony with nature could ensure the survival of the planet. The goals of sustainable development, ranging from the eradication of poverty and hunger to equal access to education and health for all people, the reduction of economic inequality to the protection of the environment are described in detail in the 2030 Agenda. These 17 sustainable development goals which, after lengthy negotiations, were unanimously adopted by the United Nations General Assembly in 2015 form the political consensus of the international community with regard to peaceful coexistence, social justice and mindful economic activity in the 21st century. These sustainable development goals are essentially in line with human rights, which are binding under international law, and which since World War II have been codified in a great number of universal and regional human rights treaties.

However, the reality of the 21st century looks completely different, with aspirations and reality becoming increasingly divergent. We are confronted with daily horror stories about brutal wars, organized crime, terrorism, environmental and climate catastrophes, the loss of biodiversity, growing economic inequality, hunger and poverty, populism, radicalization, the dangers of artificial intelligence and a trend towards authoritarian, fascist and increasingly repressive regimes. We know what needs to be done in order to protect the lives of humans, other living beings and future generations on this planet, however we are doing exactly the opposite to this. We know that we need to replace fossil fuels with renewable energies as quickly as possible in order to avoid further climate catastrophes, however the big oil and gas companies are investing billions in the exploration of new oil and gas deposits, spurred on by gigantic profits as a result of the sharp rise in oil and gas prices due to the Russian war of aggression against Ukraine. We know that we need to protect the remaining rainforests in order to prevent global ecosystems from collapsing, however global agricultural and timber companies continue to unrelentingly clear the Amazon and other rainforests. We know that wars destroy countless human lives as well as the environment, however we continue with the build-up of weapons thereby generating gigantic profits for the global arms industry. We know that growing economic inequality is undermining the social cohesion of our societies and the basic democratic consensus, but we watch as the number of multi-billionaires continues to increase and the gap between rich and poor continues to widen. We know that we need to drastically change our lifestyle if we want to survive in harmony with nature, however we continue to enjoy a consumer society in which advertising by the food, pharmaceutical, textile, car and leisure industries promotes unnecessary needs. We know that the global financial, trade and economic system, which is based on neoliberal theories, is leading us into a dead end and is in urgent need of fundamental reform, but politicians are more likely to be guided by the lobbyists of transnational corporations rather than the fulfillment of what should be their most fundamental task of positioning the global economic system at the service of sustainable development goals. We know that only by collectively strengthening the United Nations and multilateral cooperation can we tackle the major challenges of the 21st century, however we are undermining the authority of the United Nations, thereby making it increasingly dependent on "voluntary" investors and preferring to "solve" problems at national and bilateral level.

In view of this, the Working Paper by Christian Felber, Brigitta Herrmann and Juergen Knirsch is here at the right time. Drawing on the authors' previous research and in particular Christian Felber's work on the Economy for the Common Good, this proposal postulates the creation of an ethical world trade order (United Nations Ethical Trade Zone = UNETZ) as a replacement for the current free trade regime which has developed under the guidance of the World Trade Organization (WTO) and on the basis of countless bilateral and multilateral free trade and investment agreements. While the current free trade regime has established itself alongside and parallel to the United Nations and is not bound to its goals, the Working Paper proposes an ethical world trade order within the United Nations and one which is based on its values and goals. Trade should no longer be regarded as an end in itself, but as a means of achieving the primary targets of the global community such as peace, human rights, environmental protection and sustainable development. The current WTO governance instruments should be replaced by new global institutions such as an international clearing union for co-operation in monetary and trade policy, global merger control in order to prevent the concentration of power or a global tax authority. Instead of the current system of arbitration courts for settling investment disputes, transnational corporations and states should, by means of a world court of human rights and other international courts, be forced to comply with the ethical world trade order.

The Working Paper sees the EU as the driving force behind the creation of an ethical world trade order. It would first have to bring its own trade policy into line with its own goals and values and could thereby become a role model for other countries in the Global South and North. Countries and companies more committed to peace, human rights, climate stability, the protection of biodiversity and social cohesion should be granted freer access to the ethical trade area, conversely with violations of these values and goals leading to economic consequences. As the EU has already played a certain pioneering role in ensuring commitment by other states and transnational corporations to international environmental and human rights standards, it is only logical that the EU, with its economic power and values-based foreign and trade policy, should play a leading and inspiring role in the gradual establishment of an ethical world trade area.

Even if some of the authors' proposals may still appear utopian today, their Working Paper nevertheless represents important, contemporary and optimistic food for thought towards a joint solution for the major challenges of the 21st century.



Manfred Nowak

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1. Introduction

1.1. The current crisis of multilateralism: Has the moment come to reset the global trade order?

As the multitude of current crises progresses, turning into a "polycrisis" (Janzwood & Homer-Dixon, 2022, p. 2; Mark et. al., 2023), the future of mankind is at stake. The way humans practice the economy globally has exterminated an estimated 10 percent (Exposito-Alonso et al., 2022) of the assumed 8.1 million plant and animal species (without insects) since the beginning of industrialization in the mid-nineteenth century (Purvis, 2019); this translates into five thousand lost species per year. Today, six of the nine defined Planetary Boundaries are crossed (Richardson et al., 2023), and six ecological "risk tipping points" have been identified (UNU-EHS, 2023), of which climate change is just one. "A risk tipping point is the moment at which a given socioecological system is no longer able to buffer risks and provide its expected functions, after which the risk of catastrophic impacts to these systems increases substantially" (UNU-EHS, 2023, p. 4). Additionally, inequality is hitting record after record – forecasts expect the first trillionaire by 2034 (Oxfam, 2024, p. 20). While hundreds of millions of people keep starving and are in extreme poverty, military expenditure rose by 6.8 percent in 2023 (SIPRI, 2024). On top of or as part of this, democracy is in many parts of the world in constant decline since the Great Financial Crisis in 2008 (V-Dem Institute, 2023).

It becomes ever clearer: with the current production model and trade regime, the polycrisis cannot be resolved. Neither the UN's Sustainable Development Goals nor the objectives of the EU's Green Deal can be achieved. This is why this Working Paper proposes a complete redesign of the international trade order aligned with the international community's goals and based on an economy oriented towards the global common good.

1.2. Anniversaries without applause

The current multilateral economic and trade order is in a deep crisis. In spring 2024, the World Trade Organization (WTO) celebrated the thirtieth anniversary of the "Marrakesh Agreement Establishing the World Trade Organization," which led to the establishment of the WTO on 1 April 1995 (WTO, 2024a). The Marrakesh Agreement and its annexes provided the successor of the General Agreement on Tariffs and Trade (GATT) with a partly new set of rules and a new and enforceable dispute settlement mechanism (WTO, 2024b).

Two further anniversaries indicate that the supposedly strong new institution was a controversial one from the outset. The turn of the month from November to December 2024 marks the twenty-fifth anniversary of the "Battle of Seattle." The resistance of developing countries against a planned new millennium round and the various activities by trade unions, farmers, student groups, nongovernmental organisations (NGOs), media activists, and others that accompanied the Third WTO Ministerial Conference in Seattle in 1999 contributed to its inconclusive end: "The street protest by civil society and the US-EU differences may have played a part, but the main factor that torpedoed the Seattle talks was the non-transparent and undemocratic nature of the WTO system, which many developing countries could no longer tolerate. The WTO Ministerial imploded from within" (Khor, 1999, p. 111).

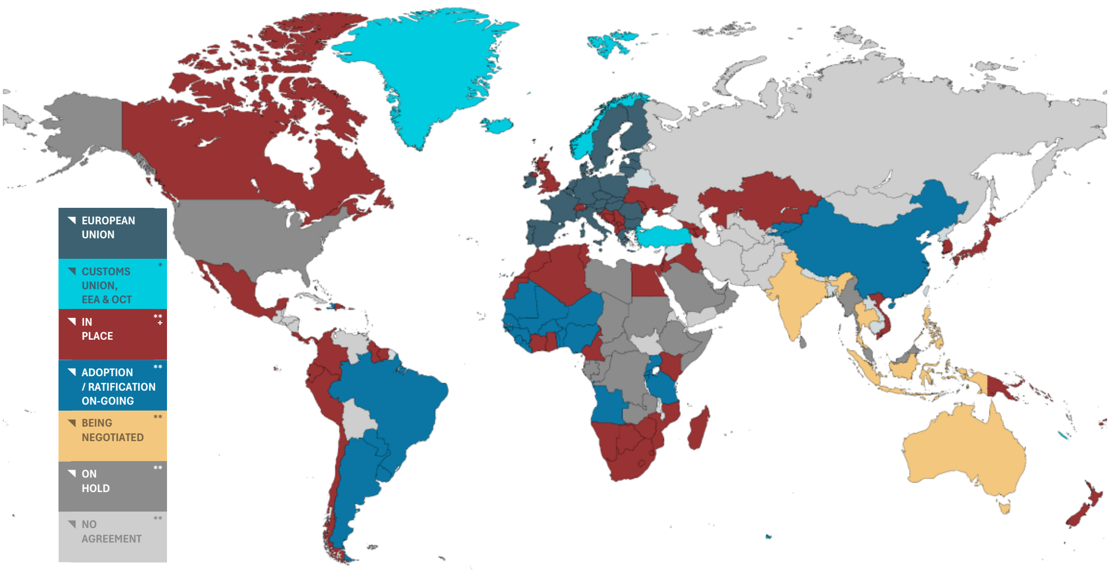
The beginning of 2025 marks the twentieth anniversary of an originally planned end date of the first new trade round concluded under the WTO. The Development Round, res. Doha Development Agenda (DDA), agreed at the Fourth WTO Ministerial Conference in Doha in 2001 was originally due to be completed by 1 January 2005 (WTO, 2024c). As the name Development Round suggests, the round was intended to serve the interests of developing countries, promote their economic development, and eradicate poverty in these countries (Stiglitz & Charlton, 2005, p. 3). But these promises were not kept; a possible failure of the round was already evident at the Fifth WTO Ministerial Conference in Cancún, Mexico, which was canceled prematurely and ended without a final declaration on 14 September 2003 (Khor, 2003, p. 149). For a professor of economics at Columbia Law School, Jagdish Bhagwati (2012), the Doha Round "failed in November 2011, after ten years of talks." Despite some decisions taken at recent WTO ministerial conferences, it is unclear whether the trade round can ever be concluded in line with its original mandate.

The failure of the DDA means that the WTO cannot fulfil one of its three main functions, namely the further development of existing agreements and the negotiation of new agreements in trade rounds (Grozoubinski, 2024, pp. 135–142; Polaski, 2022, p. 41). Additionally, there have been major problems in performing the second important function, which is resolving trade disputes between WTO members. The two-instance dispute settlement mechanism, once described as the centerpiece of the WTO, can no longer resolve disputes since 2019. The United States refused to give their consent to the appointment of new members to the Appellate Body until it finally became inoperable (Hoekman & Mavroidis, 2020). Only the third function, which consists of monitoring national trade policies and measures – the Trade Policy Review Mechanism (TPRM) – continues to operate. However, an analysis of the first twenty years of experience with the mechanism reveals clear weaknesses in the system (Karlas & Parizek, 2019). The European Commission describes the TPRM as "ineffective" (2021b, p. 5) and demands that "the system of monitoring needs to be improved to ensure transparency or prevent trade barriers" (p. 11).

1.3. Crises upon crises

The crisis of the WTO and multilateralism can also be seen in the rise of bilateral agreements. WTO members have been negotiating and adopting reciprocal free trade agreements (FTAs) or regional trade agreements (RTAs) for years (WTO, 2024d and 2024e). Already at the Tenth WTO Ministerial Conference in 2015, a warning was issued: "We reaffirm the need to ensure that Regional Trade Agreements (RTAs) remain complementary to, not a substitute for, the multilateral trading system" (WTO, 2015). Although all RTAs are based on WTO principles and agreements, the question arises as to why all WTO members now have at least one RTA and are negotiating new ones, thereby weakening the multilateral system. Mirroring this double strategy, the Directorate-General for Trade of the EU Commission (2024a) performs a balancing act of promoting new bilateral agreements (specific objective 2: "Opening markets and creating opportunities for EU companies by implementing existing agreements, assertively pursuing our values and interests, enforcing our rights, and negotiating new deals when the conditions are right") and propagating support for WTO reform (specific objective 1: "pursuing the reform and strengthening of the World Trade Organization"). The EU has not been particularly successful with either aspect so far.
In response to the WTO's deadlocked dispute settlement system, the EU and fifteen other WTO members, including China but not the US, decided to introduce an interim solution on 27 March 2020 until the Appellate Body would be reinstated. The second aim was to allow for the testing of alternatives to arbitration in practice, which can feed into WTO discussions on dispute settlement reform. On 30 April 2020, the Multi-Party Interim Appeal Arrangement (MPIA) entered into force, based on Article 25 of the WTO Dispute Settlement Understanding (DSU), which provides for "expeditious arbitration as an alternative means of dispute settlement" by mutual agreement of the parties. The signatories must also agree to the arbitration award, which makes the appeal procedure binding for them. In July 2020, the MPIA began its work with the confirmation of a pool of ten permanent arbitrators. However, four years into its existence, the MPIA has only decided one case in 2022. Experts consider this case between Colombia and the EU to be a dispute of comparatively low complexity, therefore saying little about whether the procedural innovations applied in this case will also be effective in more legally complex and politically sensitive complaints. As of April 2024, out of a total of 166 WTO members, 53 (including the EU and its 27 member states) belong to the MPIA (Grieger, 2024a, pp. 7–8).

Although the EU Commission can present an impressive list and world map (see below) of its trade agreements at first glance (EU Commission, 2024a and 2024b), a closer look shows that many of the negotiations – some of which have been going on for years or even decades – have not yet been finalized. For example, "on hold" includes not only the failed TTIP agreement with the USA, but also some of the "post-colonial challenge" (Orbie, 2021a, p. 598) of the Economic Partnership Agreements (EPAs) between the European Union and the African, Caribbean and Pacific (ACP) countries. The negotiations for an association agreement with the four founding members of the Common Market of the South (Mercosur) – Argentina, Brazil, Paraguay, and Uruguay – which have been ongoing for more than twenty-five years, as well as the negotiations with China for a Comprehensive Agreement on Investment (CAI) are listed under "adaptation/ratification on-going," although it is uncertain whether and when these agreements can be signed. Many of the geopolitically important planned agreements with countries from the East Asia-Pacific region, such as Australia, India, Indonesia, and the Philippines, are still listed under "being negotiated." Added to this is the fact that the three agreements already concluded with investor protection agreements with Canada, Singapore, and Vietnam have not yet been ratified by ten to eleven EU member states. The three are therefore only provisionally in force and could theoretically still fail if they are not ratified by all member states. The reasons for the non-conclusion of each planned agreement are diverse and varied, and the failure can often not be explained monocausally. The reasons include resistance and delaying techniques on the part of trading partners – especially in the case of individual EPAs, which seem to serve mainly the EU's commercial interests in Africa, while contravening the EU's stated concern with the promotion of development in the ACP regions and globally (Katjavivi, 2017). Other reasons are the change of governments and the associated change of political direction for the negotiations and the resistance of civil society organisations (CSOs), especially in the cases of the EU-US Transatlantic Trade and Investment Partnership (TTIP), the EU-Canada Comprehensive Economic and Trade Agreement (CETA) (Wróbel, 2018), and EU-Mercosur (Stop EU-Mercosur Coalition, 2024). In the case of EU-Mercosur, the EU Parliament (EP) supported the critical view of the CSOs. The EP stated in its resolution of 7 October 2020 on the implementation of the common commercial policy that "the EU-Mercosur agreement cannot be ratified as it stands." In its resolution of 16 February 2023 on an EU strategy to boost industrial competitiveness, trade, and quality jobs, the EP stressed that it would only support the outstanding EU-Mercosur agreement provided that preratification commitments on the protection of the climate and forests and other concerns are satisfactory (Grieger, 2024b, p. 2).



* European Economic Area (EEA) / Overseas Countries and Territories (OCT).
** Free Trade Agreement (FTA), Deep and Comprehensive Free Trade Agreement (DCFTA), Investment Agreement, Enhanced Partnership and Cooperation Agreement (EPCA), Partnership and Co-operation Agreement with preferential element (PCA).
\+ The updated agreements with Tunisia, and Eastern and Southern Africa are currently being updated; the updated agreement with Chile is under ratification. The DCFTA with Georgia does not apply in South Ossetia and Abkhazia.

Chart 1: State of play of EU trade agreements with third countries (European Commission, 2024b)

The rise of Joint Statement Initiatives (JSIs), proposed for the first time in 2017, is a further indication of the erosion of core WTO principles. JSIs can, in absence of any well-agreed definition, "be broadly defined as an attempt by a group of Members who start negotiations about a certain issue area without referring to the consensus decision-making that prevails in the WTO" (Angeles, Roy, and Yarina, 2020, p. 4). An instructive example is electronic commerce. E-commerce is "the production, distribution, marketing, sale or delivery of goods and services by electronic means" (WTO, 2024f). Since 1998, there have been attempts to establish multilateral WTO rules for it. The status quo of 1998 has not changed since then – the goal is still the extension of the moratorium not to apply tariffs on electronic transmissions (WTO, 2024g). As the multilateral path has not led to any results, some WTO members have been trying to take a plurilateral approach via a JSI on e-commerce (WTO, 2024h and 2024i). The strategy of using JSIs "directly challenges the World Trade Organization's (WTO) core tenets of multilateralism, Member-driven consensus decision-making, and special and differential treatment, and sidelines the WTO's role to mandate negotiations and its established bodies" (Kelsey, 2022, p. 2). Whereas JSIs weaken the WTO from within, RTAs do it from the outside.

1.4. The Vulnerability of Supply Chains

Beginning in March 2020, countries responded to the rapid global spread of the coronavirus with drastic measures with the goal to protect their own populations and stabilize their economies, often disregarding numerous WTO rules and a globally equitable entitlement and use of available resources. Borders and harbours were closed, production facilities were shut down, and well-established supply chains were disrupted. Demand for goods and services changed, and the question suddenly arose as to who could produce and supply the immense quantities of products that were suddenly demanded to cope with the pandemic. The downsides of lean production and the outsourcing of production to other countries became clear (Dommann, 2023, pp. 12–13). The vulnerability of supply chains and their potential impact on global food supply has also been highlighted by the wars and military conflicts of recent years, particularly Russia's war against Ukraine (WTO, 2022) and the continuous attacks in the Red Sea leading to a decrease of daily transit through the Suez Canal by 70 percent during June 2023 to June 2024 (Directorate-General for Trade of the European Commission, 2024a, p. 55). However, war and military conflicts not only play a role on the factual level of influencing world trade, but also regarding the justification of measures and the associated norms (see box 1).

Trade and war in the 21st century

"Trade wars and economic warfare run through history, sometimes as single threads, sometimes braided into a cord. They have been a feature of history since ancient times" (Oermann & Wolff, 2022, p. 35). In times in which global security shows a persistent deterioration (Smith, 2024, p. 3) and in which the Peace Research Institute Oslo (PRIO) data records for 2023 "the highest number of state-based conflicts since 1946" (Rustad, 2024, p. 7), sanctions are also used as a reaction to some of these conflicts. On the other hand, the vocabulary of sanction, trade war, and economic warfare is widely used to describe pure trade conflicts. In their history of trade wars, the business ethicist Nils Ole Oermann and the lawyer Hans-Jürgen Wolff point out that there are no generally accepted definitions for the three terms and that there are overlaps between them.

The WTO itself likes to refer to its peace-making background, which is characterised by the experiences of the Second World War. In the study The History and Future of the World Trade Organization, commissioned by the WTO, Craig Van Grasstek (2013, p. 43) – now at Harvard's Kennedy School – uses the image of the phoenix rising from the ashes: "The modern trade system emerged from the ruins of the Second World War, and was principally the creation of the United Kingdom and the United States." Or as the former President of the Institute for Agriculture and Trade Policy, Mark Ritchie (1999, p. 3), puts it:

“It’s quite ironic: the WTO is an institution that is part of a long history of post-Second World War institutions that were created in an attempt to prevent another world war.”

Sanctions were to take the place of war in the post-1945 world order. In his book The History of Economic Sanctions as a Tool of War, Nicholas Mulder, assistant professor of modern European history at Cornell University, concludes: “Today, economic sanctions are generally regarded as an alternative to war. But for most people in the interwar period, the economic weapon was the very essence of total war. Many sanctionists regretfully noted the devastating effects of pressure on civilians but nonetheless wholly accepted them” (Mulder, 2022, p. 4).

Just how devastating the unintended effects of sanctions on the civilian population can be was shown by the example of the economic sanctions imposed on Iraq from 1990 to 2003 by the United Nations Security Council in UN Resolution 661 of 6 August 1990. These sanctions prohibited all imports and exports with Iraq, with the slightest exceptions for medicines. According to Joy Gordon, professor of social ethics at Loyola University Chicago, they “may well lay claim to being the worst humanitarian catastrophe ever imposed in the name of global governance” (Gordon, 2020).

Regarding the two military conflicts currently at the center of media and political attention – Russia’s war against Ukraine and the post-7 October 2023 situation in Israel, in the Palestinian Territories, and in the neighbouring states – two decisions by arbitration bodies and international courts should be mentioned: the first reference to the national security exception enshrined in Article XXI b) iii) of the GATT used in a WTO trade dispute concerned a dispute between Ukraine and Russia that began in 2016. The dispute centered on the so-called “national security exception” of GATT article XXI, which allows WTO members to suspend their WTO obligations for national security purposes. Specifically, the dispute concerned the challenge of Russian bans and restrictions on transit traffic by road and rail from Ukraine through Russia to Kazakhstan and the Kyrgyz Republic, as well as the alleged de facto extension of these bans and restrictions to Ukrainian transit traffic to Mongolia, Tajikistan, Turkmenistan, and Uzbekistan. On 5 April 2019, a WTO dispute settlement panel issued a “landmark ruling” (Reinsch & Caporal, 2019) in the dispute, giving Russia the right to take trade-restrictive measures to protect its national security (WTO, 2019a-c). “Russia claimed it had adopted those measures in response to escalating events in Ukraine after political turmoil there in 2014” (Reinsch & Caporal, 2019) – the year in which Russia occupied and annexed Crimea in violation of international law.

In recent years, the Court of Justice of the European Union (CJEU) has also dealt with cases involving issues related to trade in occupied territories, such as the Western Sahara-related cases between 2016 and 2024 (CJEU 2024a). In the Psagot case (C-363/18 - Organisation juive européenne and Vignoble Psagot), the CJEU was asked whether under EU law “foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from an Israeli settlement within that territory, the indication of that provenance” (CJEU, 2019). In its judgment of 12 November 2019, however, the CJEU for the first time provided a statement on the illegality of occupations. For the International Law academics Eva Kassoti and Stefano Saluzzo,

“the Psagot judgment offers a fresh counterbalance to a string of case-law pertaining to trade with occupied territories marked by a characteristic reluctance to pronounce on the international legal status of the territories in question. In Psagot, the CJEU departed from its previous overcautious approach and made abundantly clear that the Palestinian territories in question are occupied by Israel and that Israel’s settlement policy violates international humanitarian law ... In principle, the Court’s findings seem to apply to all products originating from occupied territories” (Kassoti & Saluzzo, 2019, p. 761).

The line drawn in the Psagot case was confirmed in another ruling on the issue of the identification and labelling of melons and tomatoes from Western Sahara in October 2024 (CJEU, 2024b).

In view of the fact that, firstly, the military conflicts and sanctions mentioned (as well as others not mentioned here) are still ongoing and that, secondly, other institutions (such as the UN Security Council, international courts, and the CJEU) are involved in addition to the WTO, it is still too early to make a definitive judgement on the role of the WTO as a peace-making institution. But the authors of this Working Paper raise the question of whether it wouldn't be better that all decisions on international security were taken by a further democratized UN (without veto powers) and used by the future trade system, ideally integrated into the UN system as well, as we will propose in chapter 5.

Box 1: Trade and war in the 21st century

1.5. China shock

Since China joined the WTO at the Fourth WTO Ministerial Conference in 2001, with its self-classification as a developing country, the country's influence on trade and investment has increased immensely. The rapid rise of production, imports, and exports attracted investors, manufacturers, and exporters from many other countries. The phenomenon was labelled a "China shock," as many US companies closed their facilities in the US and relocated to China. In addition to the US, the EU, Japan, and other WTO members also began to lobby for changes to WTO rules to restrict the Chinese model of state capitalism, or to use anti-dumping rules to act against Chinese subsidies (Polaski, 2022, pp. 38–40).

In May and July 2024, the United States the European Union announced they would impose extra tariffs on Chinese electric vehicles (EVs). The EU blamed Chinese subsidies, whereas the United States pointed at overcapacity (Guajardo, 2024). Canada followed the two examples in August 2024 by announcing its intention "to implement a 100 per cent surtax on all Chinese-made EVs, effective October 1, 2024. This includes electric and certain hybrid passenger automobiles, trucks, buses, and delivery vans" (Government of Canada, 2024). The announced punitive tariffs and corresponding countermeasures by China triggered WTO disputes in the case of the EU and Canada and, in October, also in the case of Turkey (WTO, 2024j).

However, attempts to "decouple" from China, or at least greatly reduce import dependency, are taking different paths: while the United States has made significant progress in this regard since 2018, the European Union and China have maintained or increased their interdependence on almost all types of imported goods. The divergent developments increase the risk of future clashes between EU and US national security policies (Lovely & Yan, 2024). According to data from the US Bureau of Economic Analysis, the total 2023 US-China goods trade fell by 17 percent over 2022: "U.S. exports fell by 5.1% and U.S. imports fell by 20.4% due to China's slowdown and supply chain shifts out of China" (Sutter, 2024, p. 1). A similar, albeit less pronounced, trend can be seen in trade in services, in which imports and exports are declining. According to Sutter, "China in 2023 accounted for 4.6% ($46.7 billion) of U.S. services exports and 2.7% ($20.1 billion) of U.S. services imports" (p. 1). While the US has a significant trade deficit with China in goods, the reverse is true for trade in services, where the US has a trade surplus.

1.6. The time of the WTO is over

For Sandra Polaski, from the Global Economic Governance Initiative, Boston University, the WTO is "an institution emblematic of a moment in time" (Polaski, 2022, pp. 34–36). It stands for a specific political constellation that no longer exists today. The developments described above open prospects for a new multilateralism that abandons the paradigm of "free trade" and that is no longer institutionally orchestrated by the WTO. The new structure should also finally be integrated into the United Nations system, which neither the WTO is nor its predecessor GATT was. A report of the Preparatory Committee for the WTO, adopted on 31 January 1995, which saw no grounds for formal institutional links between the WTO and the United Nations, concluded that the WTO should not seek the status of a specialized agency of the United Nations, thus rejecting a formal invitation from the UN Secretary-General (Benedek, 1998, p. 24).

1.7. Proposals for a new multilateralism

The time for reconsidering this invitation has come. Maria João Rodrigues, a former professor of European economic policies at universities in Brussels and Lisbon with a long track record in different European institutions, sees "a clear gap between the global challenges in front of us and the current global governance system" (Rodrigues, 2024, p. 1). She makes a case for "A New Global Deal between countries and between generations." Out of four scenarios, she advocates for the last one: a "renewed international cooperation with an updated multilateral system for the 21st century" (p. 4). Addressing the role of the EU, she states: "The EU and UN need one another if they are to fulfill their own promises now more than ever" (p. 4). She calls for "a New Global Deal for a new development model" by promoting fair trade, fair global taxation, debt relief and global financing" (Rodrigues, 2024, pp. 7–9).

Polaski (2022, pp. 42–44) discusses three options for the future of the world trade system and the WTO:

1) **Continuing to muddle through as before**: The WTO could continue its business as usual without mastering the challenges described above and without implementing serious reforms. The WTO continues to provide the basic trade rules for most bilateral trade relations, and WTO members will be reluctant to move away from this fixed point of reference. In a global economy shaken by the pandemic and new wars, with shortened supply chains and geopolitical challenges, "a bird in the hand is better than a pigeon on the roof."

2) **Further destabilization of the WTO and its global trade system**: The WTO could be shaken by the growing strategic rivalry between the US and China in a way that undermines even the current sub-optimal balance and further destabilizes the WTO. The Biden administration has urged allies to take joint action against China's state-directed economic practices, including through plurilateral agreements that could amount to a de facto division into economic blocks, even if within the WTO framework.

3) **An update of the trade system**: Countries with different economic models and systems are given more flexibility to trade with each other without sacrificing the other legitimate interests of their citizens and states. This third possible path is perhaps the least likely for the WTO given the current geopolitical situation, but it is probably the best for the future stability of the global economy.

By proposing a United Nations Ethical Trade Zone (UNETZ), this Working Paper aims to provide a proposal for discussion on how the trading system could be updated and integrated into the system of the United Nations. It would be up to the EU to take the initiative here, especially as this would fit perfectly with the values and objectives anchored in its treaties. To do so, however, it would have to give priority to these values over free trade, competitiveness (Council of the European Union, 2000; European Commission, 2024c), and growth and align Article 206 of the Treaty of the Functioning of the EU with its values (Art. 3 TEU) and the principles and objectives of its external action (Art. 21 TEU).

2. Science, Politics, and Practice: A Short Critique of Free Trade

2.1. The free trade "consensus" in economics

Most economists seem to agree on free trade. "Economists argue all the time," notes Paul Samuelson, holder of the Sveriges Riksbank Prize in Economic Sciences; "only on free trade do they all seem to be united" (Rieke, 2004). With four million copies sold of Economics, Samuelson has been the most successful textbook author in his discipline of all time (Frost, 2009). His fellow award-winner Paul Krugman (1987, p. 131) wrote: "If there were an Economist's Creed, it would certainly contain the affirmations, 'I understand the principle of Comparative Advantage' and 'I advocate Free Trade.'" But what is meant by free trade, and how have trade theories developed?

2.1.1. Real foreign trade theory

First, it was Adam Smith (1723–1790) who made a case for absolute advantage: a country can only participate successfully in international trade if it is best at producing a good or service, then countries exchange what they each can produce best. Smith made his point comparing a country with a craftsman: "It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. The taylor does not attempt to make his own shoes, but buys them of the shoemaker (…) What is prudence in the conduct of every private family, can scarce be folly in that of a great kingdom" (Smith, 1976, pp. 456–57).

David Ricardo (1772–1823) transcended Smith's theory. According to his theory of comparative advantage, it is not necessary for a country to be best at producing any product: for each country it is sufficient to do what it can do relatively best (least bad compared to others), and all countries would win. And even all individuals in all countries would win. His famous example was with Great Britain and Portugal: even if his mother country was less efficient in producing both cloth and wine, and Portugal was more efficient (in terms of working hours; it was about labour productivity) in both products, both could specialize on one product and trade to the benefit of both. With a mathematical equation he proved that both could benefit from trade if Portugal specialized in what it was able to do best – producing wine – whereas Great Britain specialized in what it was less bad at: producing cloth (Ricardo, 1911, pp. 77–93). The "side effect" in this case was the suggestion that the less industrially developed country – Portugal – should "give away" its textile industry in order to focus on agriculture.

Ricardo's theory is based on a series of simplifying assumptions:

- There are only two nations that are producing only two goods.
- The only factor of production is labour.
- Workers stay in their country of origin, and consequently there is a given number of workers in each country.
- All workers are equally skilled, and they are able to produce both goods, and all the workers are employed.
- There is no technological progress, and the technology is the same for all firms in one country. It can be different in the other country, but there as well it is the same for all firms.
- Costs are proportional to the working time. He does not include the fact that producing at larger volumes normally reduces the costs (economies of scale).

- There is perfect competition in all markets.
- Product quality is always the same in both countries.
- The price of each product is equal to its marginal cost of production.
- Trade between nations flows without any barriers. No transportation costs exist.
- Firms decide aiming at maximizing profits; consumers decide aiming at maximizing consumption.
- Trade is balanced since exports pay for imports. Ricardo does not include flows of money in his model (Ricardo, 1817, pp. 114–122; Carbaugh, 2010, pp. 34–35).

Nowadays there is a differentiation between real foreign trade theory and monetary foreign trade theory. The real foreign trade theory still has the Ricardo model as its basis, but this very simple model has been further developed. Ricardo himself already started in his book of 1817 to modify the assumptions by talking about several products countries are producing (p. 122) and a world being composed of more than two countries (p. 125). He also mentions a "disadvantage of distance" (p. 126), which hints at transport costs that might modify trade advantages (Krugman, Melitz & Obstfeld, 2023, pp. 70–71). This model has been further developed by other economists. The Swedish economists **Heckscher and Ohlin** extended the one-factor model to a model based on two factors of production: labour and capital. But most of the other assumptions remained unchanged (Heckscher, 1919; Krugman et al., 2023, pp. 113–114). If two factors of production exist, and if, in the production process of one of the goods, labour is more intensively used, and in the production process of the other good, capital is more intensively used, and if countries have different factor endowments, then each country will have a comparative advantage in producing the good intensively using the factor of production they have a relative abundance in (Heckscher, 1919; Krugman et al., 2023, pp. 114–125). Based on this model, on the country level, both countries would be better off if they opened up for international trade and if they specialized in producing (mainly) the one good they have a comparative advantage in. The effects of trade on individuals and firms, on the other hand, are mixed. The firms producing the good for which the country has a comparative advantage, because it has the factor of production in abundance that is necessary for producing it, will be able to increase their profits. The consumers will benefit from lower prices. But the firms that produce the other good, now have to reduce production and will lose, and if the other good is the labour-intensive one, then many workers will lose too (Krugman et al., 2023, pp. 123–126). Heckscher mentioned this already in his article of 1919 (pp. 1–32), which was published in Swedish and therefore not received by a larger readership until it was translated into English in 1949. **Stolper and Samuelson** clearly stated in an article in English in 1941 that the owners of the relative abundant factor will win with international trade, and the owners of the relative scarce factor will lose (Stolper & Samuelson, 1941, p. 66). This is called the Stolper-Samuelson Theorem or Effect (Krugman et al., 2023, p. 122).

Stolper and Samuelson concluded in their article of 1941 that trade nevertheless is always beneficial for both countries, because the advantages for one factor of production are larger than the disadvantages for the other, and it is always possible to support the suffering factor by a subsidy or another distributive measure (p. 73). This means that in the absence of distributive measures there will be clear winners and losers in international trade. The effects for all individuals in the countries will only be positive if there are welfare systems in both countries that ensure those who lose will be compensated for the losses (Krugman et al., 2023, pp. 113–126).

Samuelson and Jones further extended the Ricardian model by analysing the existence of three factors of production: labour, and two types of land (Samuelson, 1971), or labour and two types of capital (Jones, 1971, as cited in Jones, 1996, p. 114). Land (or capital) specific for the production of the first good and land (or capital) specific for the production of the second good. Samuelson assumed there are two countries producing two goods (e.g., food and clothing). There is land specific for the production of food and land specific for the production of clothing. If countries have different endowments concerning the different types of land, then allowing international trade will lead to specialization on the good that uses the land they have in relative abundance. Then larger volumes of both goods can be produced and exchanged, and consumers could benefit from lower prices. The effects on the wages might be different. The wages in one country could be higher than in the other. The solution in the model is that in the absence of costs of migration, workers will migrate until the wage rates are equalized. Since land is not mobile, but labour is, the only possibility of equalizing wage rates is by migrating (Samuelson, 1971, pp. 368–377). In reality, however, there are costs of migration, and additionally there are many reasons why workers might not want to migrate (e.g., ties to families and friends, and differences in cultures, languages, and climate). Additionally, most countries don't allow unrestricted immigration because of economic reasons, and therefore most of the negatively affected workers cannot migrate.

The models and model variations based on Ricardo assume prices being the same for each unit produced and perfect competition. In reality, however, with increasing production, the costs per unit mostly decrease, which is called economies of scale. If the costs per unit decrease, it will no longer be possible for firms to sell the products at marginal costs, because then they could not cover their fixed costs. That is why economies of scale lead to imperfect competition (Dixit & Stiglitz, 1977, pp. 297–308). Economies of scale occurring on the industry level are called external economies of scale. They were already explained by **Alfred Marshall** in 1892 (Marshall, 1922, pp. 151–155).

Internal economies of scale arise if the costs per unit produced decrease on the level of individual firms, which in reality is the case for most products and services. They lead to oligopolies or monopolies because firms producing at a larger scale have an advantage over smaller firms, and smaller firms producing the same goods will be forced out of the market (Krugman et al., 2023, p. 196). Then there will be imperfect competition. In such a situation firms try to differentiate their products, sometimes simply by branding, because then they can set prices. In the case of internal economies of scale, it makes sense for countries to focus on the production of a limited number of goods, which will then be produced on a large scale and traded with similar countries doing the same. Often it is intra-industry trade, meaning, for example, certain models of cars are exported and other models are imported. In consequence, in all countries involved a larger variety of goods can be consumed and prices can be lower (Krugman et al., 2023, pp. 205–211). While consumers presumably benefit from a larger variety in products, the effects on the firms are mixed. The firms producing at lowest costs will survive and be able to expand; the firms producing at higher costs will shrink or even exit the market (Krugman et al., 2023, p. 217). Additionally, there might be effects on the wages. Krugman analysed that firms will export the goods for which they have a larger home market; consequently, firms in smaller countries are either forced out of the market or at least need to lower the wages (Krugman, 1980, p. 958).

Since international trade has positive and negative effects on the different groups or actors, governments try to influence the outcome by help of trade policies. The main instruments of trade policies are tariffs, and restrictions of the import volumes. When comparing the effects on the welfare of a country, economists often just measure the effects on consumers, producers, and government in terms of income they gain or lose. When consumer surplus, producer surplus, and government revenue are added up, the net welfare effect is nearly always negative (Krugman et al., 2023, pp. 242–268) unless there are market failures or social benefits associated with trade restrictions (pp. 280–284). In the case of the environment and climate, it is evident that there is market failure, because competition between firms does not lead to adequate environmental and climate protection (Mankiw & Taylor, 2023, pp. 218–239).

Empirical evidence

Bernhofen and Brown found evidence for a substantial increase in GDP in the case of Japan's opening up for international trade at the end of the 1850s and specializing according to the theory of comparative advantage on the production of silk and tea, which were precious goods at that time (Bernhofen & Brown, 2005, pp. 208–222). As we will show in chapters 2.2.1. and 2.6., most countries that are now industrialized theoretically had a comparative advantage in the production of agricultural products in the nineteenth century, but instead of specializing accordingly, they preferred to protect their infant industries in order to develop them.

Deardorff proved the Heckscher-Ohlin theory mathematically, in case of specified assumptions (Deardorff, 1982, pp. 683–693).

Jäkel and Smolka found out in the year 2011 that the attitudes of individuals in different countries towards trade were in accordance with the Stolper-Samuelson Theorem, which predicts winners and losers from specialization on the abundant factor of production a country has. People with a higher education in industrialized countries, and thus assumed to be in the group of the abundant factor, were much more in favour of free trade than people with a lower education. In developing countries it was the opposite. People with a higher education belonging to the scarce factor were more opposed to free trade (Jäkel & Smolka, 2011, pp. 1–29). Fernandez and Rodrik found out in their theoretical analysis that, in case it is unclear if people will belong to the winners or the losers of a trade reform, it is rational for them to reject the reform (Fernandez & Rodrik, 1991, pp. 1146–1155).

Box 2: Empirical evidence of Real Foreign Trade Theory

2.1.2. Monetary foreign trade theory

In monetary foreign trade theory, the effects of money flows are included. Since decisions of central banks on the money supply affect inflation in a country, this also affects the present and the expected future exchange rates, which in turn lead to appreciation or depreciation of a currency. These effects are often increased or sometimes even induced by speculation on financial markets. They have a substantial effect on the trade balance. When a currency is depreciated, it is more expensive for the country to import goods and services and easier to export. But if the country has to import necessities and is not able to export products of equal value, the trade deficit will increase. On the other hand, if the currency in another country is appreciating, it is more likely that it will either turn to or have a trade surplus. Countries having a trade deficit are borrowing money from other countries. If they continuously have trade deficits, it is very costly for them. Trade imbalances also lead to political tensions (Krugman et al., 2023, pp. 350–768).

For these reasons – repeated trade imbalances, strong fluctuations in exchange rates – **John Maynard Keynes** made a visionary proposal during World War II, at the Bretton Woods conference, to assure stable exchange rates and balanced trade (Keynes, 1943). He suggested an International Clearing Union (ICU) at which every participating country would have an account – in bancor. International trade would be effectuated in this global complementary currency. Exchange rates would be fixed on the basis of a basket of basic consumption goods and its price in each country. The goal was balanced trade. If a country deviated from equilibrium, Keynes proposed an escalation of sanctions to bring it back to balance. Instead of an automatic adjustment mechanism, this was a regulatory adjustment mechanism; instead of relying on an invisible hand, this would be a visible solution. Keynes' proposal was not accepted at the Bretton Woods conference. In the face of the Great Financial Crisis (GFC), the governor of the People's Bank of China, Zhou Xiaochuan, made a plea for Keynes' proposal (2009, p. 2). Also, a team around Joseph Stiglitz, in a report to the UN General Assembly, described Keynes' plan as "an idea whose time has come" (United Nations, 2009, p. 110). The authors of this Working Paper support the idea of revisiting Keynes' proposal.

2.2. Trade theories beyond free trade

2.2.1. Trade theories beyond free trade in economic science

The German economist Friedrich List (1789–1846) developed the theory of "educational duty," which was inspired by the "infant industry theory" of Alexander Hamilton, the first US secretary of treasury from 1789 to 1795. List described how England, in its own history, first grew rich with the help of a policy of tariff protection and then threw away the "ladder" with which it had climbed over the wall of poverty: "It is a vulgar rule of prudence for him who has reached the pinnacle of power to cast down the ladder by which he mounted, that others may not follow" (List, 1856, p. 476). Subsequently, he accuses the English science of hypocrisy: "To complete the mockery, it has been taught by many professors of political economy that nations can only arrive at wealth and power by universal free trade" (p. 499). List designed the German Customs Union with protective tariffs up to 60 percent – and celebrated their success. "Germany in the space of ten years has advanced a century in prosperity and industry [...]. How so? [...] The protection of the tariff of the Customs Union, extended to manufactured products in general use, has accomplished this wonderful change" (p. 499). Nevertheless, it would be wrong to call List a protectionist. He just considered protective tariffs a better development strategy than free trade. "International trade [...] is one of the most powerful leverages of civilization" (p. 62). In the longer term, he shared the dream of Immanuel Kant: "The universal union and the absolute freedom of international trade, at present merely a cosmopolitan idea that may take centuries to realize [...] all nations would achieve their purposes to a much higher degree if they were bound together by the law, perpetual peace and free trade" (pp. 53 and 61).

Cambridge economist **Ha-Joon Chang** from South Korea has shown in his studies of economic history that each and every one of today's free trade advocates were engaged protectors in their own history. With his book Kicking Away the Ladder (2003a), he picks up the metaphor of **Friedrich List**. Chang advocates for allowing every country to use the ladder – which means that they can apply ITT policies (industrial, trade, and technology policies), such as infant industry protection, in the same way as rich countries did in their history: "In terms of policies, the 'bad policies' that most NDCs [now developed countries] used so effectively when they themselves were developing should at least be allowed, if not actively encouraged, by the developed countries" (p. 114). In an article, he writes: "If the WTO continues to fail to offer poor countries fair development prospects, it cannot be completely ruled out that many of them will leave the organisation [...] Such a development would mean the end of free trade in its present form – which, given the balance sheet of the last 200 years, might not be so much to regret" (Chang, 2003b, p. 13).

Dani Rodrik is professor of international economics and economic policy at Harvard University. His "trilemma of globalization" says that a country cannot achieve three objectives at the same time: "We cannot simultaneously pursue [global] democracy, national self-determination, and economic globalization" (Rodrik, 2011, p. 204). In the present combination of free trade with a lack of global democracy, there are too many losers: free trade has become the imposed system. Its desired outcome – and the one desired by those who study it – is supposed to be global democracy. But as things stand today, this is an illusion: "Real federalism on a global scale is at best a century away" according to Rodrik (2011, p. 204). Therefore, we have no choice but to make the best of a "slim" version of globalization: "The only remaining option sacrifices hyperglobalization" (p. 204). In case of doubt, democracy should be valued more highly than the principle of non-discriminatory trade.

In addition to these examples, there are more scientific theories beyond free trade. We provide an overview of some of them in the following table:

Author	Proposal/idea
Prebisch-Singer thesis (1949)	Deterioration of terms of trade of primary products
Feminist Economics (Mies & Werlhof, 1998; Mies, 2001; Eisler, 2007)	Care economy
Joseph E. Stiglitz & Bruce C. Greenwald (2014)	Creating A Learning Society: A New Approach to Growth, Development, and Social Progress
Olivier de Schutter (2015)	Trade in Service of Sustainable Development
Christian Felber (2019b)	Ethical World Trade
Abhijit Banerjee and Esther Duflo (2019)	Good Economics for Hard Times

Table 1: Alternative trade theories in science

2.2.2. Trade models from civil society authors

Also, civil society movements have developed and advocated trade models that prioritize social, democratic, and ecological goals over free trade. The Norwegian winner of the Right Livelihood Award **Helena Norberg-Hodge** founded the initiative Local Futures. Her philosophy is: "Localization is about bringing the economy back to a human scale. It is the process of building economic structures that allow the goods and services a community needs to be produced locally and regionally whenever possible. This can strengthen community cohesion and lead to greater human health and material well-being, all while reducing pollution and degradation of the natural world." But: "Localization isn't about ending all trade. Communities can still export surpluses once local needs are met, and they can still import goods that can't be produced locally" (Local Futures, 2024). Similarly, the two economists Richard Douthwaite and Hans Diefenbacher published a "Handbook on Localisation" (1998) in which they look for "a middle way between the extremes of almost complete autarky and almost complete external dependence" (p. 22). According to them, "the goal is not to return to autarky by abolishing foreign trade. The goal is to minimise a region's dependence on trade relations. One should not be forced to engage in foreign trade in order to survive" (Douthwaite & Diefenbacher, 1998, p. 60). In their vision, a sustainable and regional economy "will not be dominated by large companies, will not need to be oriented towards international competitiveness and will not want to achieve accelerated growth" (Douthwaite & Diefenbacher, 1998, p. 82).

Fairtrade Germany and Austria commissioned a study on "Pathways to Just, Equitable and Sustainable Trade and Investment Regimes" (Ferrando et al., 2021) that chooses a "systemic and intersectional approach" (p. 202). The authors from four continents suggest ten principles to be utilized by Fair Trade movements, amongst which figure a bottom-up and producers-based vision of just, sustainable, and equitable trade and investment; the conviction that there's no one-size-fits-all approach to these practical and political issues; and that history, gender, and language matter. They advocate for "less international trade, not only for high-carbon goods but for any kind of good and service" and a "move towards de-growth and the abandonment of the obsession for the Gross Domestic Product" (p. 8). Fair Trade should operate "like a sort of International Community Supported Agriculture Scheme where every year the members guarantee an income to the farmers that is based on needs, rights and cost of production" (p. 145). This move would lead to "relocalisation and socialisation of production of goods" as well as "diversification" (p. 147). Furthermore, the authors reject the idea to just give a larger segment of the global market to women, and to "question the idea of a larger pie," calling for ex ante and ex post intersectional assessments of trade and investment policies on gender and the most marginalized (p. 12).

A compilation of proposals to redesign the global trade order has been developed by the **Our World Is Not For Sale** network **(OWINFS)**, with two hundred member organizations from civil society from fifty countries. In a paper published in September 2021, they call for a "new vision for multilateralism" with "a new system of global multilateral rules" to assure "people-centered shared prosperity and sustainable development" (OWINFS, 2021). Considering the WTO's failure with regard to these goals, the centerpiece of the envisioned order by OWINFS should be a "fundamentally new institution" (p. 4) that, amongst others, provides strong Special and Differential Treatment (S&DT) rules for all developing countries, allows for local content requirements, and ensures access to affordable medicines. Furthermore, biopiracy should be prevented and genetic resources only used after prior consent of indigenous communities and on the base of fair and equitable benefit sharing "at least as strong as agreed in the CBD [Convention on Biological Diversity] or the ITPGRFA [International Treaty on Plant Genetic Resources for Food and Agriculture]" (p. 10). Public services should be removed from the WTO rulebook altogether. The NGOs call for global anti-trust policies, stricter corporate accountability, and the "immediate adoption of a Binding Treaty on Transnational Corporations and Human Rights" (p. 5). In return, human, labour, economic, and social rights should be strengthened. "Trade is not the goal per se" (p. 7).

There are more examples, some of which are the following:

Author/network	**Proposal/idea**
Global Ecovillage Network	Permaculture, circular economy, local resilience
George Monbiot (2003), Handel Anders! (2021)	UN Organization for Fair Trade
The Alternative Trade Mandate Alliance (2014)	Alternative Trade Mandate

Table 2: Alternative trade theories of NGOs and free thinkers

2.3. The "single most powerful insight into economics": WTO's ideology today

Whereas quite a lot has changed in scientific trade theory since Ricardo, the WTO builds its rationale to this day exclusively on him, praising his theory as "the single most powerful insight into economics" (WTO, 2024k). The WTO website only explains the advantages of free trade. There is no mention at all of any criticism of Ricardo's theory or any later or alternative theory. This is surprising, as many of the unrealistic assumptions that Ricardo made have been addressed by later scholars, as we have laid out in the previous chapter.

The example with which the WTO tries to explain "comparative advantage" and its "case for open trade" is telling for the neoclassical paradigm of economics and its merely financial meaning of "efficiency":

The principle of comparative advantage

"[…] says, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country does not have to be best at anything to gain from trade. That is comparative advantage.

The theory dates back to classical economist David Ricardo. It is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage" (WTO, 2024k).

Box 3: Comparative advantage explained by the WTO today

The authors of this Working Paper question the idea that a country that is better at baking bread than another country – neighbour country or thousands of miles away – should close all of its bakeries. And it makes just as little sense that the other country should close down its only industrial production and try to finance the imports of cars with the exports of bread. Imagine these countries were the USA and China. The authors think that the WTO's example is qualified for illustrating the flaws of the one-sided efficiency concept beneath the free trade paradigm. There are many good reasons why a country should keep numerous and diverse bakeries open, no matter if they are "better" or "worse" at making bread (measured exclusively in financial terms) than others. The focus on financial "efficiency" widely disregards not only the value of a country's political sovereignty and related democratic preferences but also a wide spectrum of social goals and factors of well-being: from societal cohesion to trust, from meaning to dignity, from health to happiness, from inclusion to just distribution, from fundamental rights to political peace. And there is a last reason that alone would justify a different trade system: the protection and conservation of the ecological foundations of life. Today, the goal can no longer be to produce and export as much as possible, since there is no longer an "empty world" but a "full world" (v. Weizsäcker & Wijkman, 2017). The ecological limits of the planet Earth have to be taken seriously if humanity wants to survive. A stable climate, growing biodiversity, clean air, clean rivers and oceans, fertile soils, and resilient ecosystems have to be the base of a meaningful and future-fit trade order.

The WTO's "free trade" paradigm

- goal: increase and expand international trade
- all trade barriers shall be eliminated
- no new trade restrictions shall be introduced
- national treatment: foreign companies must be treated at least as favourable as local companies
- most favoured nation: all nations must be treated as the most favoured one
- strong intellectual property protection
- human rights, labour rights, climate protection, cultural diversity, tax justice, and other social, democratic, and ecological goals are not enforceable

Box 4: The WTO's free trade paradigm

The authors conclude that the free trade paradigm, propagated by the WTO and implemented in its rule system, has come to its end. This analysis is shared by the title of a recent book of Gabriel Felbermayr and Martin Braml: Free trade is over (Felbermayr & Braml, 2024). This is a strong motive for searching for a new paradigm for trade that is neither protectionism nor economic geopolitics. We propose in this Working Paper "ethical world trade" as the new paradigm.

2.4. A short history of free trade: From Bretton Woods to the present

The current trade order follows a path dependency: in the late phase of World War II, representatives from forty-four nations gathered in the mountain resort Bretton Woods in New Hampshire, USA, in order to jointly design a new global architecture for trade and financial relations in June 1944 (US Department of State, 2001–2009). The most emblematic outcome of this United Nations Monetary and Financial conference was the "Bretton Woods twins" – World Bank and the International Monetary Fund. Less known is that the twins were originally designed as triplets, but the third creation, the International Trade Organization (ITO) proposed in 1944 together with the other two institutions, was stillborn when the US Congress denied ratification in 1950 (WTO, 2024l). The reason is that this body would have had the status of a UN organization, with the ability to enforce labour rights (Art. 7), to stabilize balances of payments (Art. 4), and to regulate the prices of raw materials (Arts. 55–66) (Interim Commission for the International Trade Organization, 1948). But these competences met with huge opposition from the economic lobbies, which managed to create a sufficiently strong resistance within the US Congress (Monbiot, 2003, p. 236; Stiglitz, 2006, p. 105). The section on free trade was simply lifted from the ITO's "Havana Charter" and used to carpenter the General Agreement on Tariffs and Trade (GATT), so that, instead of an ethical trade organization, what came into being in 1947 was the GATT as a simple free trade agreement.

Parallel to the GATT negotiation rounds, a second attempt to manufacture an international trade body within the UN system was made: in 1962, the Conference on Problems of Developing Countries, held in Cairo, gathered thirty-six countries from Asia, Africa, and Latin America. The Cairo Declaration called for an international conference on "all vital questions relating to international trade, primary commodity trade and economic relations between developing and developed countries" within the framework of the United Nations. This call led to the establishment of the United Nations Conference on Trade and Development (UNCTAD) in 1964. Nevertheless, the decision to set up UNCTAD did not come about easily or smoothly. Western powers that had rejected the ITO proposal and had the strongest objections to the creation of any new United Nations body in the field of trade and development, gave in only as a last resort with a compromise arrangement between a non-existent ITO on the one hand and an already established GATT on the other (UNCTAD, 1985, p. 10). UNCTAD came into existence, but with no regulatory power. Today, it is mainly known for its various reports like "Key Statistics and Trends in Trade Policy" or the "World Investment Report" and, more recently, for monitoring investor-to-state disputes (ISDS cases) (UNCTAD, 2024b).

On the other hand, the GATT was developed and enlarged in eight rounds. The last round, the Uruguay round, ended with the signing of the Marrakesh Agreement, establishing the World Trade Organization on 15 April 1994.

Interestingly, the WTO is not part of the UN family – for similar reasons for which the triplet ITO was stillborn in 1950. Firstly, the placement of the WTO outside the UN system allows for trade law to be developed without necessary consideration of international law in human rights, labour rights, environment protection, or culture. Secondly, these core topics of international law are framed as "non-trade concerns" in (free) trade agreements (WTO, 2024m), for which they don't have to be considered seriously. Thirdly, in case of conflict, trade law can overrule (e.g., environmental law as the latter is not consequently linked to it, whereas trade law can be enforced by the WTO tribunal and its rulings). At the same time, there is no International Court for the Protection of the Environment that could be called and used to enforce international environmental law. This is why even binding international law is considered "soft" law as long as it is not enforceable. "Hard" international law is enforceable. From that perspective, trade can be regarded as a goal in itself, as it can be enforced by international trade courts.

A quick question to think about – if the citizens of any country could decide between these two options:

A) Should global trade rules be forged outside the UN system without legally binding relation to human rights, labour rights, environmental protection, and protection of cultural diversity?

B) Or should they be forged within the UN system in coherence with existing international law on human rights, labour rights, climate protections, biodiversity protection, protection of cultural diversity, and so on?

How would they decide? It would be interesting to learn which option the citizens of any country would choose if they had a direct choice. Their governments opted for alternative A.

Box 5: Thought experiment on the question if citizens in a country preferred a trade order outside or within the United Nations

The driving forces behind free trade, whose main target is to open up and access markets across the globe, including the Global South, have achieved a lot: an international organization whose "main function is to ensure that trade flows as smoothly, predictably and freely as possible" (WTO, 2024n).

If this is the main function – and not the enforcement of human rights, labour standards, public goods and services, democratic standards, or environmental protection – the undermining and erosion of the latter could turn into the collateral damage of free trade.

Undoubtedly, the effect of trade liberalization was more trade, not only in absolute terms, but also as a share of global gross domestic product (GDP). Ever more goods and services are produced and sold abroad.

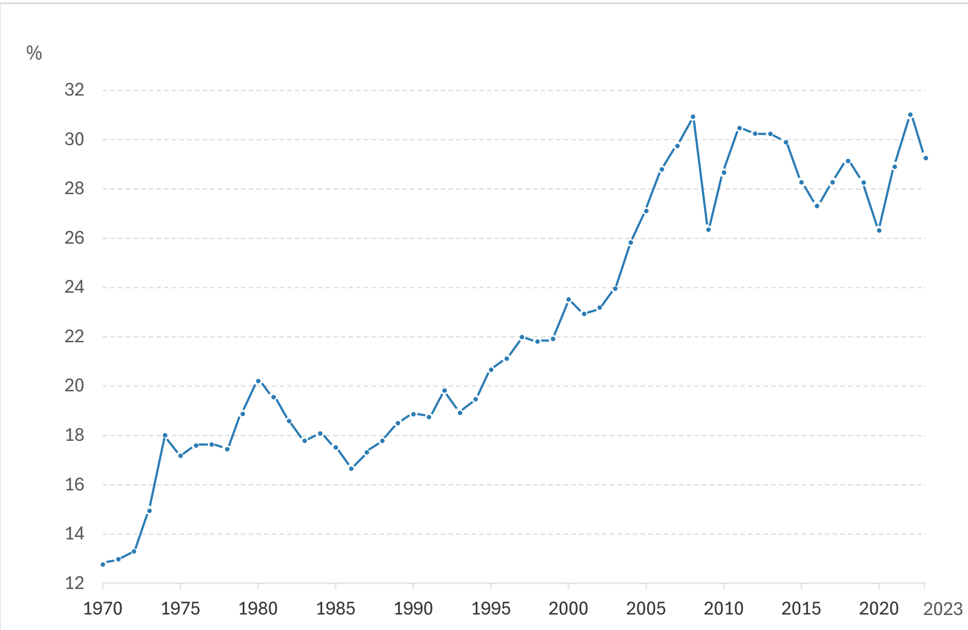


Chart 2: Global exports of goods and services (world trade) as percentage of global GDP 1970–2023 (World Bank, 2024a)

2.5. "Beyond WTO": Bilateral free trade and investment protection agreements

Nevertheless, there are some trade policy issues in which progress slowed down or got stuck in stalemate, or where free trade forces head for "WTO-plus standards," for example in government procurement, investment protection, the protection of intellectual property rights ("TRIPS plus"), or stronger fetters on the regulatory freedom of countries trying to accede to the WTO. To achieve "more" than in the multilateral forum of the WTO, especially the powerful Western trade nations have been heading for additional bilateral and plurilateral (regional) trade and investment agreements "on top," where they push the free trade agenda even further and deeper.

According to the Database on Regional Trade Agreements (RTA), there are currently 369 notified RTAs in force worldwide (WTO, 2024o). In addition to this, UNCTAD (2024a) lists 3,297 International Investments Agreements (IIAs), of which 2,835 are bilateral investment treaties (BITs) and 462 treaties with investment provisions (TIPs). Germany is the world champion in the BITs field: the country has concluded around 140 such agreements, of which 113 are currently in force, 21 have expired, and 6 have been signed but have not yet entered into force (BMWK, 2024). EU Member States have concluded about 1,400 multilateral investment treaties (MITs) and bilateral investment treaties (BITs) with third countries, next to some 190 MITs and BITs inter se, or intra-EU investment agreements (Quirico, 2021).

Type of agreement	Acronym	Number
Regional Trade Agreements	RTAs	369
International Investment Agreements	IIAs	3,297
Bilateral Investment Treaties	BITs	2,835 (negotiated) 2,222 (in force)
Treaties with Investment provisions	TIPs	462 (negotiated) 388 (in force)
Investors' lawsuits against states	ISDS claims	1,332 958 (concluded) 354 (pending)

Table 3: Overview of plurilateral and bilateral trade and investment agreements (UNCTAD, 2024a and 2024b; WTO, 2024o)

TIPs or Treaties with Investment Provisions aim at protecting Foreign Direct Investments (FDI), which show a sharp increase since 1995, the year of entrance into force of the WTO, due to liberalization of trade and capital flows. Whereas in the period between 1970 and 1995 FDI oscillated between 0.5 and 1 percent of GDP globally, they peaked in 2000 and 2007 with 4.5 to 5.5 percent of global GDP (World Bank, 2024a). Depending on the ideological perspective, FDI is considered to be the main driver for development or a form of neo-colonialism (Chime and Enor, 2016).

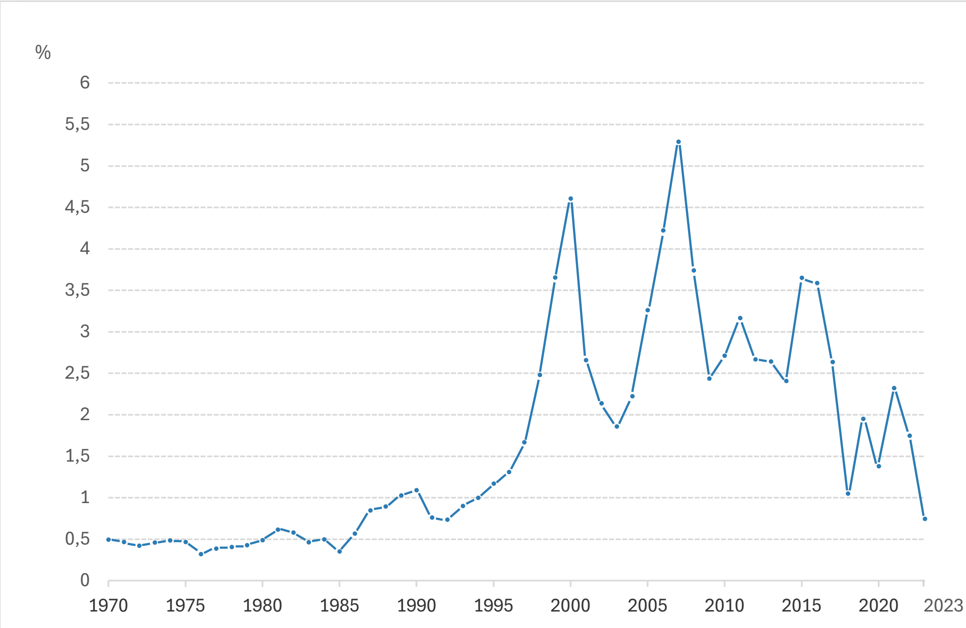


Chart 3: FDI net inflows as percentage of global GDP 1970–2022 (World Bank, 2024b)

According to UNCTAD (2024a), 95 percent (or 2,457 of 2,592) of International Investment Agreements (IIAs) include the right of transnational corporations to start lawsuits against states via a mechanism called "ISDS" (investor-to-state dispute settlement). Companies make ever more use of these legal rights on the global level. Whereas a total of 56 suits were filed worldwide between 1987 and 2000, the figure between 2010 and 2015 was six times higher: 335 complaints. As of the end of 2023, there are 1,332 known treaty-based ISDS cases, of which 958 were concluded while 354 were pending (UNCTAD, 2024b).

Eighty-five percent of all complaints originate in industrial countries, and three-quarters of the legal actions are taken against developing countries (UNCTAD, 2014, p. 125). Of all concluded cases, 37 percent were won by states and 29 percent by corporations; 20 percent had ended in a settlement – which means that, in almost 50 percent of cases, the corporations at least partially won. As of June 2021, the average amount sought by investors in each ISDS claim was USD 1.16 billion, and the average award granted by the court and paid by the claimed state was USD 437.5 million (Hodgson, Kryvoi & Hrcka, 2021, p. 28). Overall, investors have attempted to claim USD 857 billion from states through ISDS, of which USD 114 billion have been awarded to investors. In the most favourable outcomes, they received compensation amounting to billions of dollars. Here is an overview of the fifteen highest awards paid out to private investors (Global ISDS Tracker, 2024):

Case	**Award paid out in USD** **(not including costs for the tribunal)**
Hulley Enterprises vs. Russia	40.0 bn
ConocoPhillips vs. Venezuela	8.4 bn
Veteran Petroleum vs. Russia	8.2 bn
Repsol vs. Argentina	5.0 bn

Eureko vs. Poland	4.4 bn
Tethyan Copper vs. Pakistan	4.1 bn
Yukos Capital vs. Russia	2.6 bn
Unión Fenosa vs. Egypt	2.0 bn
Yukos Universal vs. Russia	1.8 bn
Occidental vs. Ecuador (II)	1.8 bn
Vattenfall vs. Germany (II)	1.7 bn
Agroinsumos Ibero-Americanos and others vs. Venezuela	1.6 bn
Mobil and others vs. Venezuela	1.6 bn
Abaclat and others vs. Argentina	1.3 bn
Cairn vs. India	1.2 bn

Table 4: Highest awards paid out to investors in ISDS lawsuits (Global ISDS Tracker, 2024)

A study in Canada has shown that, by 2010, 40 percent of the litigations were directed against laws (van Harten, 2015). Cases have challenged public policy measures on health, environment, and threatened indigenous peoples' rights, land, labour, and human rights. Several governments have been facing enormous payouts to corporations, also during the pandemic, losing resources that could have been used for nutrition programmes, medicine, and other policy measures.

Other research conducted by Public Citizen of the disputes at the WTO tribunal (state-to-state disputes) found that 80 lawsuits of a total of 244 from the beginning of the WTO in 1995 to 2019 were directed against public interest policies. Of these 80 cases, the claimants won 91.3 percent (Public Citizen, 2019).

Here is a list of examples with diverse countries involved in lawsuits won by the state (4), by the investor (3), or settled by diversion (1); two cases were still pending when this Working Paper was finished. The examples were chosen according to the statistical outcome of the lawsuits, but also along the timeline from 1997 to the present and covering a diverse sample of involved countries and industries.

Case	**Who sued whom?**	**Case description**	**Outcome/current state**
1	Ethyl vs. Canada (1997)	The US fuel producer took legal action under NAFTA against a Canadian statute banning imports of the gasoline additive MMT for use in unleaded gasoline. MMT was already banned in the US at that time.	The case was settled in June 1998 for USD 13 million paid to Ethyl (after claiming 251 million). The settlement also required Canada to lift the ban and post advertising saying MMT was safe (ISDS Platform, 2024a).

2	Bechtel (Mauritius) vs. India (2003)	The Dabhol project, a gas-powered electricity plant run by Enron, Bechtel, and General Electric, was mired in controversy from its inception, with allegations of corruption surrounding the contract arrangements between the investors and local Indian authorities, as well as public opposition due to human rights violations. In 2000, the local government of Maharashtra cancelled its payments that were deemed overpriced.	Nine international arbitration lawsuits were launched against India by different companies that had invested in the project, including the Mauritius subsidiary of US-based Bechtel (invoking India-Mauritius BIT), which claimed USD 1.2 billion in compensation. In July 2015, the case was settled by UNCITRAL for USD 160 million in compensation in favour of Bechtel (ISDS Platform, 2024a).
3	Occidental Petroleum & Occidental Exploration and Production Company (OEPC) vs. Ecuador (2006)	Ecuador ended an oil concession after the corporation had resold the exploration licence to a Chinese investor without government consent.	Ecuador had to pay USD 1.77 billion in compensation to Occidental Petroleum & OEPC in 2012, plus interest (UNCTAD, 2024c). In a revision of the ruling in 2015, the award was reduced to USD 1 billion (Valencia, 2015).
4	Piero Foresti and others vs. South Africa (2007)	The Italian Piero Foresti and other mining companies took action against a) the Mineral and Petroleum Resources Development Act of 2002, which extinguished claimants' mineral rights and b) the Mining Charter of 2004 with Black Economic Empowerment (BEE) goals, such as 30 percent HDSA (historically disadvantaged South Africans) shareholding (International Bar Association, 2021).	The investors claimed 375 million in compensation. In 2010 they asked for discontinuation, to which South Africa disagreed. The Court dismissed the claim and ordered the claimants to pay USD 0.4 million to the respondent for procedural fees and costs (Jus Mundi, 2024).
5	Veolia vs. Egypt (2012)	Egypt responded to inflation by raising the minimum wage in the waste industry to USD 99 a month. Veolia sued for alleged breach of contract.	Veolia's claim of EUR 174 million was rejected; Egypt won the case. The detailed reasons for the decision remain secret (ISDS Platform, 2024b).
6	Vattenfall vs. Germany (2012)	Swedish energy corporation complains of Germany's nuclear exit.	Vattenfall demanded EUR4.7 billion in lost profits. The company filed a parallel lawsuit before the German Federal Constitutional Court. Both cases are concluded

			(BMWK, 2021). In a settlement with the German government, Vattenfall got a total of EUR 1.4 billion in compensation (Rath, 2021; ICSID, 2021).
7	Lone Pine vs. Canada (2013)	The US oil and gas corporation took legal action against the Quebec government moratorium on fracking, including beneath the St. Lawrence River.	Lone Pine had claimed USD 110 million for compensation. The case was decided in favour of the state (UNCTAD, 2024d).
8	Gabriel Resources vs. Romania (2015)	The residents of Roşia Montană in Romania stopped Europe's largest open-pit gold mine, challenging the permits of the Romanian authorities before courts.	The mining company originally demanded USD 3.3 billion (UNCTAD, 2024e) and finally claimed USD 6.7 billion, including interest (Panaitescu, 2024). The Romanian government, which had a 20 percent stake in the project, officially withdrew its support for the mine in 2014 after months of country-wide street protests against it. On 8 March 2024 the case was settled in favour of the Romanian state (CIEL, 2024; ICSID, 2024a).
9	Eni and other vs. Nigeria (2020)	Claims arising out of the government's alleged refusal to convert the claimants' oil prospecting licence into an oil mining licence on the grounds that the licence purchase by the claimants in 2011 was the product of corruption.	The sum the investors claim is not public. The lawsuit is pending (UNCTAD, 2024f).
10	Azienda Elettrica Ticinese (AET) vs. Germany (2023)	The Swiss energy company AET has taken Germany to court over the German coal phase-out. AET holds a 15 percent stake in the Trianel hard coal-fired power plant in Lünen, North Rhine-Westphalia, which is due to be decommissioned in 2032 (PowerShift, 2023).	Details of the claim are not yet publicly known. However, an ICSID tribunal was established for the case in March 2024 and had its first session in April 2024 (ICSID, 2024b).

Table 5: Selection of ten investor-to-state lawsuits

In response to the massive criticism, the EU is engaging in a reform of the current international investment arbitration system in intergovernmental talks at the United Nations Commission on International Trade Law (UNCITRAL). The objective is the establishment of a multilateral investment court (MIC) that will address some of the concerns with the current ISDS system. For instance, it will be composed of a first instance and an appellate tribunal, and the staff will consist of full-time adjudicators (European Commission, 2021j). Nevertheless, a potential future MIC does not challenge the problematic ISDS system, but rather strengthens and prolongs it.

2.6. North–South relations: Political economy of international division of labour

Although there might be strong support for the free trade paradigm in the scientific community, on a political level, it is first and foremost an ideology. This can be observed from diverse perspectives.

First, the declared aim of the WTO is not implemented in all the agreements, but only in those areas in which it fits with the political and economic interests of the now developed countries. The Agreement on Agriculture, on the other hand, allows the EU and the USA to continue with protectionism, whereas developing countries are not allowed to introduce measures that would protect their farmers from unfair competition (Herrmann, 2020). The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is even based on mercantilism, an economic theory that was developed during colonial times justifying the exploitation of the colonies by the colonizers. Mercantilists thought that in trade between two countries only one could win, the other would lose. That is why countries tried to make sure they won (Oser & Blanchfield, 1975).

Second, in recent times, "protectionist measures are on the rise" (World Bank, 2023). According to Chuin Wei Yap (2023), program director for international trade research at the Hinrich Foundation, "protectionism has become the hallmark of trade policy worldwide," addressing mainly the G20. G20 countries account for two-thirds of the world's population, their members are among the nineteen largest economies in the world, and they account for 85 percent of global gross domestic product and 75 percent of trade. In the period from December 2011 to November 2022, trade restrictions within the group were more than three times as high as liberalization measures, according to the G20 Trade Policy Factbook from Global Trade Alert (2022). The Thirtieth WTO Trade Monitoring Report on G20 trade measures "shows that between mid-May and mid-October 2023, G20 economies introduced more trade-restrictive than trade-facilitating measures on goods, although the value of traded merchandise covered by facilitating measures continued to exceed that covered by restrictions" (WTO, 2023).

Third, this is no new phenomenon in the longer perspective. According to the Swiss economic historian Paul Bairoch (1993, p. 35), all of today's trade powers were consequent protectionists in their own history. In the USA, possibly the world's most fervent advocate for free trade, average import duties were as high as 20–55 percent all through the nineteenth century, 55.3 percent in 1931–33, and still 28.3 percent in 1944–46. Bairoch (p. 30) writes: "The US, far from being a liberal country as many think, can be characterized as the mother country and bastion of modern protectionism." Yet, the US did not invent modern protectionism, they learned it from their colonizer, Great Britain, which used it already a century earlier and can therefore be considered the "grandmother country of industrial protectionism" (Felber, 2019b, p. 61). For the colonial master countries, Bairoch (p. 16) sums up: "The truth is, historically, free trade is the exception and protectionism is the rule."

But there was an exception to the rule: in the colonies, free trade was imposed by the master countries for two reasons: a) to secure free access to raw materials and b) to prevent the emergence of a colonized country's own – competitive – industry. Bairoch (p. 42) found that, from 1815 to 1960, "the Third World was an ocean of liberalism without any island of protectionism." As a consequence of the imposed openness, Bairoch (p. 53–54) observes "deindustrialization" in the colonies: "There is no doubt that the Third World's compulsory economic liberalism in the nineteenth century is a major element in explaining the delay in its industrialization." Goldsmith (2002, p. 43) goes so far as to conclude: "Factually, it was the goal of the colonial master countries to destroy the domestic economy." To create and maintain technological and economic dependency.

Also after the end of colonialism, a key characteristic of "unequal exchange" between industrialized countries in the Global North and agrarian countries in the South is the deterioration of the terms of trade: prices of raw materials exported by the South tended to sink relatively to the prices of industrial goods imported from the North. This phenomenon led to the "Prebisch-Singer hypothesis," named after two economists who discovered it simultaneously in 1949, the German Anglo-Saxon Hans Singer and the Argentine Raúl Prebisch.

The Malaysian economist Martin Khor reports that "the terms of trade of non-fuel commodities vis-à-vis manufactures fell from 147 [to 100] in 1980 to 100 [to 100] in 1985 to 80 [to 100] in 1990 and 71 [to 100] in 1992" and concludes: "The income loss from falling terms of trade probably constitutes the largest single mechanism by which real economic resources are transferred from South to North […] The colonial pattern of trade, in which colonies exported raw materials and colonial master countries specialized in producing industrial products, has continued in the main to the present" (Khor, 2000, pp. 10–11).

According to UNCTAD, the share of world exports and imports has fallen sharply in the Least Developed Countries (LDCs) since the Uruguay Round (Wallach & Sforza, 1999, p. 132). The Trade and Development Report 1999 reads:

> "Developing countries have been striving hard, often at considerable cost, to integrate more closely into the world economy. But protectionism in the developed countries has prevented them from fully exploiting their existing or potential competitive advantage. The Report estimates, for example, that in low-technology industries alone, developing countries are missing out on an additional USD 700 billion in annual export earnings, as a result of trade barriers. This represents at least four times the average annual private foreign capital inflows in the 1990s (including foreign direct investment (FDI))" (UNCTAD, 1999).

In addition to protectionism in their own markets, developed countries have often used global institutions such as the WTO to exert considerable pressure on developing countries to get market access commitments and policy deregulation in favour of corporations from the Global North. This power imbalance is still reflected in the current WTO negotiations and discussions, in WTO accessions negotiations (to become a WTO Member), and in North–South FTAs, through agriculture and Intellectual Property Rights (IPRs) to the so-called new issues of e-commerce, investment facilitation, services liberalization, regulation disciplines, and government procurement. The latter are enforced through Joint Statements Initiatives (JSI) (Kelsey, 2022).

Another "booster" of neo-colonial structures in North–South relations were the "structural adjustment programmes" imposed by the International Monetary Fund and the World Bank for highly indebted countries after the debt crisis in the 1980s. These programmes were described by Thomas Friedman with the metaphor of a "Golden Straitjacket":

> "To fit into the Golden Straitjacket a country must either adopt, or be seen moving toward, the following golden rules: making the private sector the primary engine of its economic growth, maintaining a low rate of inflation and price stability, shrinking of the size of its state bureaucracy, maintaining as close to a balanced budget as possible, if not a surplus, eliminating and lowering tariffs on imported goods, removing restrictions on foreign investment, privatizing state-owned industries and utilities […] Unfortunately, this Golden Straitjacket is pretty much 'one size fits all' […] it is not always pretty or gentle or comfortable. But it's here and it's the only model on track this historical season […] On the economic front, the Golden Straitjacket usually fosters more growth and higher average incomes – through more trade, foreign investment, privatization" (Friedman, 2000, pp. 105–106).

Against these promises, the "straitjacket" weakened many economies. Martin Khor (2000, pp. 12–13) writes: "For developing countries (excluding China) the average trade deficit in the 1990s was higher than in the

1970s by 3 percentage points of GDP while the average growth rate was lower by 2 percentage points […] Many developing countries are now actively complaining that trade liberalization has produced negative results for their economies or has marginalized them."

By 2022, thirty-five non-OECD countries had a current account surplus, whereas eighty-five had a deficit, forty-seven of which were larger than 5 percent of their GDP (World Bank, 2024c). A current account deficit does not necessarily reflect low competitiveness of a country; it can have several causes (Ghosh & Ramakrishnan, 2020). Nevertheless, especially in the case of low-income countries, theory and evidence fit together and support the hypothesis that the Global North tends to be the winner in a "free" global trade order. The renowned economist Joseph Stiglitz (2006, p. 85) puts it this way: "The world trade order and the world financial order give the industrialised countries a distinct advantage." Vandana Shiva, founder of the Research Foundation for Science, Technology and Ecology, uses different words: "Free trade is, in reality, forced trade" (Shiva, 2006, p.77).

For Aileen Kwa, a Geneva-based trade analyst with Focus on the Global South and later the South Centre, neo-liberal trade liberalization experiments have failed in developing countries. In her study "Rethinking the Trading System," she concludes:

> "The multilateral trading system is in urgent need of radical change. Maintaining status quo will consign low-income countries to further deindustrialisation, inequitable growth and poverty. The malaise of our time is the tendency to tinker with the system, hoping that things will improve. The WTO is constantly engaged in such exercises – through superficial and reluctant routines of special and differential treatment negotiations (if even), aid for trade, or whatever the trend of the day may be. These half-hearted attempts at change lull the majority into complacency, and appease people's conscience, even as the real work continues – opening up yet more developing country markets to satisfy the insatiable appetites of the giant corporations" (Kwa, 2007, p. 54).

In his book Trade is War: The West's War Against the World, Yash Tandon (2018) not only describes the WTO as an arena of global trade war (pp. 18–61), he also goes into detail on bilateral and regional trade and investment agreements, including those of China and other BRICS states (pp. 62–111). He points to a "Global Anarchy," the absence of a centralized global governance structure: "there are vast chunks of global governance matters which are left to corporations" (p. 177). In this context, he claims that there is no regulatory system for commodities. Following an alternative perspective of development – a holistic bottom-up approach to development – he draws the following conclusion from his analysis of the WTO:

> "[T]he WTO was crafted by the US and EU, and there are structurally embedded aspects of the WTO that are resistant to change, except where it suits Western interests […]."
> "Asymmetrical power relations are part of the dynamics of global negotiations and outcomes […]."
> "In the WTO, Europe is the most aggressive player [...] The Global South is, of course, not as united as Europe […] African countries are among the weakest […]."
> "The WTO is a trade negotiating forum. Its assumption that development is a by-product of trade is based on an untenable neoliberal ideology. There is no empirical evidence to support this assumption."
> "The WTO is a veritable battleground where the warring parties fight over real issues – as lethal in their impact on the lives of millions in the South as 'real' wars. Trade kills" (Tandon, 2018, pp. 56–60).

For Shamel Azmeh, senior lecturer at the Global Development Institute (GDI) at the University of Manchester, the recent stalemate in the WTO – caused by a number of factors – "has enabled developing countries to obstruct the agenda of the advanced economies in areas such as e-commerce, services and investments" (Azmeh, 2024, p. 393).

A more comprehensive view (i.e., one that goes beyond the WTO) is provided by Gorden Moyo, a former minister in the government of Zimbabwe and now research fellow in the Faculty of Humanities at the University of the Free State (South Africa). In his book Africa in the Global Economy, he examines the role that powerful global institutions such as the "Bretton Woods Troika" (IMF, World Bank, WTO), multinational corporations, and international rating agencies play in marginalizing Africa in the global economy. In his analysis, he draws on heterodox theories, including dependency, core-periphery, world systems, and Marxist theories, as well as the decolonial approach. He concludes with a call for a decolonial African agency that should champion an epistemic rebellion against the neoliberal and neoclassic economic traditions that have historically been deployed to justify Africa's subordinate position in global economic governance. The chapter dedicated to the troika concludes with the words:

> "This chapter has attempted to demonstrate that the global financial system is sheltered by the troika of the World Bank, the IMF, and the WTO. It was recalled that for almost half a century, these institutions have been pushing for neo-liberal policy prescriptions that have been detrimental to Africa's economic and social development... It was also noted that although countries like Brazil, Russia, India, and China have been spear-heading a rebellion against the World Bank and the IMF, their efforts so far have not benefited Africa. Instead, the arrival of the BRIC countries in Africa has resulted in the diversification of the imperial agents that seek to benefit from the continent's natural resources, minerals, markets… [T]here is a need to radically reform the global financial architecture in order to de-prioritize and destabilize the predominance of the interest of imperialists, neo-imperialists, global capitalists, and creditors that have kept Africa marginalized in global affairs. Nothing short of radical transformation will resolve the problem of financial apartheid in Africa – existing patterns of financial subordination, financial subjugation and decapitalization will likely continue defining Africa's economic and financial landscape" (Moyo, 2024, p. 57).

2.7. Trade policy and gender equality

Men and women are or will be affected differently by trade and trade agreements. This fact is nowadays widely acknowledged and can also be found in many of the publications of intergovernmental organizations, think tanks, parliaments like the European Parliament, and governments and is partly a component of a few FTAs. A joint report by World Bank and the WTO demonstrates that women are often more economically vulnerable than men and thus are less likely to be resilient in the face of a crisis (World Bank & WTO, 2020, p. 3). An overview publication on trade policy and gender equality shows how far and wide the debate has become in terms of content and geographic coverage. Nevertheless, its editors come to the following assessment:

> "These recent developments reaffirm the intention and willingness of the WTO, as the largest trade organization, to engage in making trade more inclusive. And for many, it is a development that is already too late in coming. **To date, the WTO rulebook remains gender-blind, in the sense that it does not contain a single explicit provision that relates to gender equality** [emphasis ours]. Moreover, scholars have observed that the WTO makes a difficult case for the representation of women and their interests, as its multilateral framework is perhaps not ready to take on this additional issue over and above the 'legacy' and traditional issues lingering on the negotiation waiting list (such as agriculture, fisheries and services). Even among the newer issues being debated for inclusion – such as digital trade, e-commerce, labour and intellectual property – gender-related issues still face some resistance. This demonstrates that, despite the many strides that have been made to advance gender issues at the multilateral level, questions remain about the suitability of the WTO as a forum to lead the démarche on gender and international trade. Nevertheless, recent trends have shown a promising role for regional trade agreements (RTAs) – regional, bilateral, free or preferential – in advancing gender equality […] Even though we are yet to see concrete evidence of benefits that gender mainstreaming in trade agreements can have, more and more countries are embracing this approach" (Bahri, López, & Remy, 2023b, pp. 2–3).

2.8. The growth controversy

Amongst the general objectives of the European Union, "balanced economic growth" figures in Article 3 TEU. In both scientific literature and political debate, trade is considered to be a main driver for GDP growth. Looking at the statistics, the global balance of the growth impact of trade is not as positive as one might assume. From 1960 to 1980, in the era before the great liberalization, real per-capita income grew in 116 states by a yearly rate of 3.1 percent; between 1980 and 2000, after and during the great liberalization, only at 1.4 percent. In Latin America, this growth was 2.8 percent between 1960 and 1980; between 1980 and 1998 only 0.3 percent. In sub-Saharan Africa (most countries of this region are WTO members, and this region was among the first regions forced to liberalize markets and reduce import tariffs), growth shrank from a yearly 1.6 percent fom 1960 to 1980 to minus 0.8 percent per year between 1980 and 1998 (Chang, 2003a, pp. 128–129). A study of the World Commission on the Social Dimension of Globalization (2004, p. 35) concluded: "At the very least this outcome is at variance with the more optimistic predictions on the growth-enhancing impact of globalization." The authors of this Working Paper deem the analysed period relevant for the decision to found a "free trade organization" (the WTO). Looking at the data, such a conclusion was not coherent.

The Vienna Institute for International Economic Studies' Senior Research Associate Leon Podkaminer (2016, p. 3) confirmed in a long-term study from 1960 to 2016 that 1) "growth in per capita Gross Global Product (GGP) has weakened secularly […] since the early 1970s"; 2) "trade has not been driving global economic growth"; and 3) just the opposite, "expanding trade may have slowed down global output growth." Podkaminer suggests two causal relationships. First, trade liberalization leads to growing inequality, lowering the purchase power and demand of lower- and middle-income classes. Second, undifferentiated liberalization brings financial instability, which leads to crises that lower GDP growth or even turn it negative (pp. 16–17).

Ranja Guptara, an Indian expert from the Third World Network, adds: "Third, free trade takes policy space away that can cater to growth and sustainable development e.g. using agricultural and industrial subsidies to support the developing agriculture sector and infant industry, or also domestic policies to tax e.g. digital corporations" (personal communication, November 29, 2021).

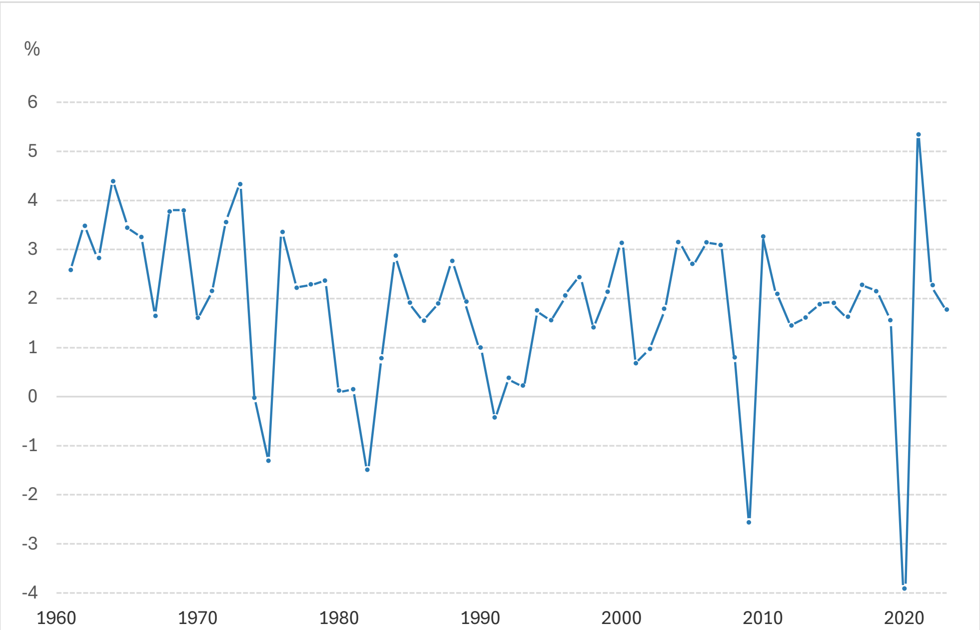


Chart 4: Annual GDP per capita growth 1960–2022 worldwide (World Bank, 2024d)

Dani Rodrik (2021, p. 2) concludes that "growth gains from trade are uncertain." He gives an additional reason: productivity gains in export sectors can be offset across the whole economy by the shift of labour to sectors of lower productivity.

> "When labour moves to lower-productivity service activities, where technological externalities are less significant, or employment levels remain depressed in adversely affected regions, the economy-wide effects are considerably less salutary. Local economic decline and de-industrialization have been linked not only to poorer productivity performance, but to a variety of social ills ranging from family breakdown to rising rates of addiction and suicide (Case and Deaton, 2020). The UK's international economic specialization has generally promoted financial services and a strong pound, to the detriment of many parts of the real economy" (Rodrik, 2021, p. 9).

The point of this Working Paper is by no means that trade should induce higher growth, but to show that free trade did not even hold the promise with which it was enforced.

A clear point of our Working Paper is that current studies conclude that, although GDP growth has slowed down, an absolute decoupling between GDP growth and environmental degradation and ecological destruction is not realistic (Haberl et al., 2020). According to a recent study on progress towards Sustainable Development Goals 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) and 12 (Ensure sustainable consumption and production patterns) (United Nations, 2024a), the global material footprint has quadrupled since 1970 and keeps growing, although with an indication of plateauing since 2014. The authors predict: "At current trends, absolute decoupling is unlikely to occur over the next few decades" (Lenzen et al., 2022). Ward et al. (2016, p. 1) conclude: "It is therefore misleading to develop growth-oriented policy around the expectation that decoupling is possible."

Nevertheless, in 2021, in its reviewed trade strategy, the EU emphasized the case for GDP growth: "The latest OECD long-term forecasts indicate that real GDP in the euro area will increase by 1.4% annually (compounded annual growth rate) over the next 10 years" (European Commission, 2021a, p. 2). This "prediction" is completely at odds with the rebutted decoupling thesis. The argument becomes even sharper if the environmental damages that the EU causes abroad are included in the full picture. In the year 2000, the EU had a slight deficit in its trade balance, yet imported goods with a total mass of 7.3 billion tonnes, against exports weighing in at just 2.3 billion tonnes (Wuppertal Institut, 2005, p. 71). This imbalance reflects the huge ecological impact of the EU's economy on the whole world. According to the Commission's Science for Environment Policy Service, 31 percent of GHG emissions caused by consumption within the EU actually occurred in countries outside the EU. Likewise, 31 percent of land use and 42 percent of the water footprint of the EU was the result of trade with external countries (Science for Environment Policy, 2013, p. 5). Over the past years, these trends continue. Bruckner et al. (2023, p. 593) show that the EU's consumption is connected to displacement of large-scale environmental pressures and impacts outside of its borders:

> "Seven of the analysed pressures and impacts (all ecotoxicity indicators, GHG emissions, particulate matter formation, photochemical oxidation and material consumption) increased notably outside the EU, while decreasing within. Outsourcing environmental pressures and impacts from richer to poorer regions is apparent on a global scale today […] as pressures and impacts embodied in trade are growing […] Meanwhile, large-scale net flows of resources embodied in trade from poorer to richer countries, so called ecologically unequal exchange, have been confirmed in recent research […] The analysis of EV-ratios [emissions-to-added-value-ratio] connected to EU consumption adds to the discussion on ecologically unequal exchange, as it highlights the unbeneficial situation for many non-EU countries."

2.9. The inadequate dichotomy of "free trade" and "protectionism"

Taking a closer look at the euphonious term "free trade," it turns out to be an extreme position in the meaning of "more trade" is always better and "opening up borders" is a goal of trade policy (rather than a means). It is the opposite extreme to "protectionism," as it turns the closure of borders and the establishment of barriers to trade into an end. That is the difference between "protection" (reasonable) and "protectionism" (nonsensical). Framing is key: whereas everybody likes to be an advocate of "free trade," which sounds fancy, nobody wants to be called a "protectionist."

The problem is that these two extremes are not seen as opposed extremes, but simply as "good" (free trade) and "bad" (protectionism) or, in economists' terms, "efficient" and "inefficient." As so often happens, third options are not discussed, said to not exist ("There is no alternative"), or said to be "not needed" (Samuelson as cited in Rieke, 2004). Although there is a quite obvious third way: to consider trade as a means. A means is sometimes welcome and sometimes worthy of limiting, all depending on the effects of its use on the goals. If trade is reconsidered as a means, what are the goals?

2.10. What is actually the goal of trade?

The goals of trade should be the same as agreed in "non-economic" international law: peace, democracy, human rights, labour rights, gender justice, food sovereignty, climate stability, environmental protection, cultural diversity, social cohesion, and just distribution. If trade is not put at the service of overarching goals but is considered something desirable in and of itself, more of it can produce a broad range of collateral damage:

- the violation of human and labour rights
- increase of gender inequality
- climate change and loss of biodiversity
- lower social cohesion and increasing inequality
- weakening of democracy and participation
- political instability and threat to peace
- the undermining of food sovereignty through deregulation of the agricultural sector

It can actually damage all of a society's goals (Mander & Cavanough, 2003; Stiglitz, 2002 and 2006; Rodrik, 2011 and 2021; Ungericht, 2021; La Via Campesina, 2024).

There are two indicators that trade has factually become an end in and of itself:

- The achievement of the actual goals cannot be enforced by lawsuits – with very few very recent exceptions. Rather, what can be sued in most trade agreements is the protection of trade and investments – the means. This is just a different kind of "protectionism."
- The achievement of the goals is not measured in the evaluation of free trade agreements. Instead, quantitative trade volume is measured (in absolute monetary figures and as a share of trade of global GDP), and its growth is considered a goal – linked to the assumption and affirmation that (more) trade fosters GDP growth. The WTO was established with a growth promise of the global economy of 3 percent per year (Wallach & Sforza, 1999, p. 134).

The problem is that GDP is correlated to a very narrow definition of "economy" and only a very precarious relation to its sometimes-suggested goal of "welfare."

In (neoclassical) mainstream economics, economy is defined as "the process or system by which goods and services are produced, sold, and bought in a country or region" (The Britannica Dictionary, 2024). Although some textbooks suggest that economics deals with "wants and needs" (Mankiw & Taylor, 2014, p. 2), these are usually referred to as "utility" and, further, as "revealed preferences." These are equalized to what consumers buy or are ready to pay. Consumer spending, company investments, and government spending, plus exports minus imports, add up to a country's GDP. And GDP per capita is, in a next step, equalized with "welfare": the final goal of the economy.

More precisely, in (neoclassical) economic theory, welfare is measured by adding up consumer surplus and producer surplus and, if relevant, government revenues are added (e.g., if governments impose an import tax, they get the tax revenues). Consumer surplus is the difference between the price consumers are willing to pay for products and the actual price they have to pay. Producer surplus is the difference between the price at which producers are willing to sell their products and the price they actually can get for their products.

In comparing situations with and without trade restrictions, it is measured whether the sum of consumer surplus, producer surplus, and government revenues is increasing or decreasing. If it is increasing it is called a welfare gain, since theoretically those who are gaining can compensate those who are losing (Krugman et al., 2023, pp. 248–252).

Box 6: Definition of economy (the object), welfare (the goal), and welfare gain (success) in neoclassical mainstream economics

The problem is that these definitions of economy, welfare, and welfare gain do not depict the full reality of the satisfaction of (basic) human needs, nor a good life for all humans, nor the stability of the planetary ecosystems. As a consequence, economists are not prepared to measure the contribution of a trade agreement to the success of a meaningfully defined economy.

In order to acquire this ability, object and goal have to be defined first. A different definition of welfare is needed that includes broader aspects of a good life, including human rights and living in a healthy environment (Herrmann, 2014; Menges & Thiede, 2023, pp. 303–368). Also, human beings in other countries, nature, non-human beings, and future generations need to be included. Becker (2023) suggests "a re-definition of individual well-being and societal welfare beyond rational utility maximization, efficiency, and growth." In the 2023 edition of their widely used textbook, Mankiw and Taylor enlarge their definition of "economics." It now "also covers the work done by unpaid carers and homemakers" and "the way in which our activities influence not only our own well-being but also that of others and the environment" (Mankiw & Taylor, 2023, p 1). As everything begins with the definition of "economy" and its goals, we will see that in detail in chapter 4.2.2.

2.11. Lobbying and regulatory capture

Neoclassical mainstream economists who do not take into consideration the shortcomings of the model shown by economists since the beginning of the twentieth century can be considered effective lobbyists of free trade. Together with vested interests in business and politics, they are the cause of the implementation and conservation of a trade order that is equally as obsolete as the theory from which it flows. The influence of lobby groups like the European Chamber of Commerce, the American Chamber of Commerce, Business Europe, the European Roundtable of Industrialists, the International Chamber of Commerce, etc. on trade policy-makers is by far higher than that of average citizens who are affected by trade deals. Aligned with the theory of comparative advantage and with neoclassical economists' view of "efficiency," they lobby for:

- progressive trade liberalization as a goal without regard for the true goals
- more trade and investment protection agreements on the multi-, pluri-, and bilateral level (CEO, 2017)

- the increase of trade in absolute terms
- the increase of the share of trade as a part of GDP as a goal
- economic success measurement with GDP (Philipsen, 2015)

Also on the national level, industry lobbies influence governments decisively. As an example, in the debate on the EU's controversial free trade agreements with Canada (CETA) and the USA (TTIP), in Austria, just few weeks after the publication of a representative survey in which a mere 6 percent of the population expressed support for CETA (and 4 percent for TTIP) ("CETA und TTIP: Zustimmung in Österreich sehr gering," 2016), the country's prime minister voted in favour of CETA in the Council of the European Union, even though 88 percent of the members of his own party were against ("SPÖ-Befragung: 88 Prozent gegen vorläufige Ceta-Anwendung," 2016). The phenomenon that democratically elected governments and parliaments act against the explicit will of majorities is what the British political scientist Colin Crouch (2004) calls "post-democracy." Likewise, the phenomenon that economists have a different view on an "economic" issue than the populace at large has been coined "econocracy" by a trio of authors (see box 7). It seems that, in the field of trade policy, econocracy and post-democracy often make a perfect match.

"Post-democracy":

The official state form is a (liberal) democracy. There are free and universal elections, guaranteed fundamental rights, and a plurality of media. Still, some of the decisions of governments and parliaments do not represent the values, preferences, or needs of the majority of the citizenry as their representatives are influenced or captured by powerful lobby groups (Crouch, 2004).

"Econocracy":

Opinion leaders have a different understanding of "economy" and its goals than the average population. The people neither understand nor support what, according to mainstream economists, should be considered meaningful, efficient, and successful economic activities. They would rather focus on the satisfaction of basic needs, strong social cohesion, just distribution, stable ecosystems, participatory democracy, and local economies instead of maximizing economic efficiency and GDP growth (Earle, Moran & Ward-Perkins, 2017).

Box 7: Definition of "post-democracy" and "econocracy"

2.12. "Post-democracy" and "econocracy"

A dystopian perspective of international (trade) law, based on econocracy and post-democracy, would include:

- transnational corporations gain unlimited power (no global fusion control, no size limit)
- transnational corporations litigate successfully against democratic regulations with ISDS (at a future MIC)
- "regulatory cooperation" between governments assures that no future regulation hinders or harms free trade and investor protection
- global supply chains become endless, intransparent, non-sustainable, and a threat to resilience and local economic structures
- competition of locations weakens democratic participation and sovereignty further
- transnational corporations pay ever less taxes, and inequality hits new records

- forests, biodiversity, water, and other ecological commons turn into commodities, which leads to the aggravation of all environmental problems
- forced migration due to increasing social inequality, environmental destruction, overexploitation of commons, and climate change leads to more restricted immigration laws, "homeland security" laws, and citizen control (Korten, 1995; Monbiot, 2014; Wallach & Sforza, 1999)

3. A Brief Analysis of the EU's External Trade Policy

3.1. The role of trade in the EU’s development and strategy

Trade is among the European Union’s oldest spheres of competence. The Treaty of Rome in 1957 included the Common Commercial Policy (CCP) as a core element of the economic dimension of European integration. From the very beginning, this process was characterized by a complementarity of the internal and external agendas of trade policy.

During the 1990s the CCP came to be seen as an important vehicle for promoting the interests of EU businesses, aiming at an intensification of their international operations. The growth contribution derived from exports and international investments became a prime motivation for the EU to engage more actively in international trade diplomacy. With the Lisbon Agenda of 2000 establishing competitiveness as an overarching economic policy goal of the EU, trade became increasingly seen as a critical component of growth policies. A trade research team around the Austrian Foundation for Development Research observes:

“Since the onset of the financial crisis in 2007, the external orientation of EU policy-makers has, if anything, increased. With austerity imposed as the general orientation of EU crisis policies, growth could not be achieved via increases in domestic demand. This left export promotion as the only option […] thus rendering the orientation of the current EU trade policy regime increasingly neo-mercantilist” (Grumiller, Raza & Tröster, 2016, p. 5).

According to the authors, traditional mercantilist strategies are associated with protectionist trade policies; by contrast, neo-mercantilist strategy is focused on national or regional trade surpluses. “Since dominant economies are able to achieve a trade surplus under conditions of free trade, the promotion of free trade might be part of a neo-mercantilist strategy” (Grumiller, Raza & Tröster, 2016, p. 5).

As a result, the EU’s current account balance (goods + services + primary income + secondary income) developed towards an increasing surplus over the last twenty years, oscillating between 2 and 4 percent of GDP, with a single exception in 2022, where it showed a deficit. In 2023 the surplus amounted to 323.7 billion euros (see chart 5).

Current account balance
Calendar and seasonally adjusted, as % of GDP

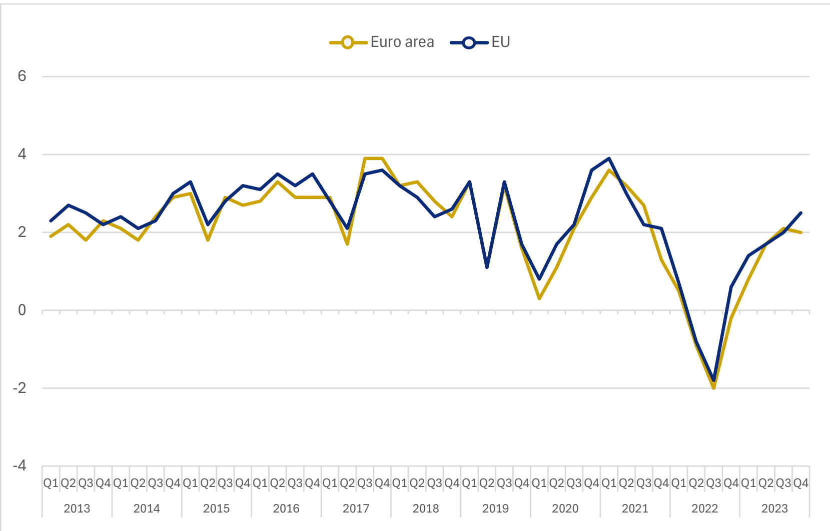


Chart 5: Current account balance of the EU (Eurostat, 2024a)

When looking at the foreign trade figures for the twenty-seven EU member states, two aspects are important: firstly, the distinction between trade within the EU (intra-EU) – that is, cross-border trade between the member states – and then trade with countries outside the EU (extra-EU). For trade in goods as well as for trade in services, intra-EU trade is more important than extra-EU trade (see table 6).

EU27	2023 Total trade with world in bn €	With extra-EU27 in bn €	Share of World (extra-EU trade) in %	With intra-EU27 (value)	2023 Share of World (intra-trade) in %
Trade in goods	13220	5073	38.4	8147	61.6
Trade in services	5105	2517	49.3	2558	50.7

Table 6: EU trade with world, extra-EU and intra-EU, 2023 (Directorate-General for Trade of the European Commission, 2024b, p. 60)

Secondly, for this Working Paper, it is also important to know what percentage of trade is already conducted under the regime of free trade agreements and what percentage is still conducted exclusively under WTO rules (see table 7). According to the European Commission, the WTO is still economically significant despite all the EU FTAs: "Even taking into account the EU's successes in negotiating trade agreements with key trading partners, two thirds of the EU's trade with the rest of the world still takes place on the basis of market access and rules that are underwritten by the WTO. This includes [the] trade with the United States, China, India and Russia" (EU Commission, 2021f, p. 2).

EU 27	2023 Exports (bn €)	2023 Exports share in Extra-EU (%)	2022-2023 Exports Growth (%)	2023 Imports (bn €)	2023 Imports share in Extra EU (%)	2022-2023 Imports Growth (%)	2023 Total Trade (bn €)	2023 Total trade share in Extra-EU (%)	2022-2023 Total Trade Growth (%)
Extra-EU trade	2555	100	-0.6	2519	100	-16,2	5073	100	-9
Under Preferential FTA in place (74 partners)	1266	49.6	1.1	1058	42	-10.4	2324	45.8	-4.5
FTAs under adoption or ratification (25 partners)	100	3.9	-6.2	86	3.4	-14.5	186	3.7	-10.2
Total FTAs	1366	53.5	0.7	1144	45.4	-10.6	2510	49.5	-4.7

Table 7: EU trade in goods by FTA partner, 2023 (Directorate-General for Trade of the European Commission, 2023, p. 44 and 2024b, p. 52)

If we look at the European Union's (EU27) trade with the rest of the world (extra-EU trade), the yearly published DG Trade Statistical Guide provides figures and statements that present the EU as the biggest player in world trade if we take exports and imports together (see table 8).

	Value in billion EUR					Compound annual growth rate			World share	World ranking
Reporter	2013	2018	2021	2022	2023	2013-2023	2018-2023	2022-2023	2023	2023
World	**29 546**	**35 562**	**39 100**	**50 046**	**47 230**	**4.8%**	**5.8%**	**-5.6%**	**100.0%**	
EU27	**4 636**	**5 771**	**6 305**	**8 017**	**7 616**	**5.1%**	**5.7%**	**-5.0%**	**16.1%**	**1**
Australia	477	541	586	795	759	4.7%	7.0%	-4.5%	1.6%	14
Brazil	470	457	511	706	669	3.6%	7.9%	-5.3%	1.4%	16
Canada	871	983	1 054	1 389	1 335	4.4%	6.3%	-3.9%	2.8%	9
China	3 537	4 599	5 807	6 846	6 399	6.1%	6.8%	-6.5%	13.5%	2
Hong Kong	876	1 178	1 291	1 355	1 303	4.0%	2.0%	-3.9%	2.8%	10
India	797	1 027	1 185	1 656	1 556	6.9%	8.7%	-6.0%	3.3%	6
Japan	1 395	1 595	1 611	1 923	1 790	2.5%	2.3%	-6.9%	3.8%	5
Malaysia	393	466	504	688	624	4.7%	6.0%	-9.4%	1.3%	20
Mexico	643	876	949	1 263	1 250	6.9%	7.4%	-1.0%	2.6%	11
Saudi Arabia	563	445	435	672	639	1.3%	7.5%	-4.9%	1.4%	19
Singapore	811	1 015	1 178	1 542	1 408	5.7%	6.8%	-8.6%	3.0%	8
South Korea	970	1 166	1 272	1 596	1 429	4.0%	4.2%	-10.5%	3.0%	7
Switzerland	691	733	845	1 017	1 059	4.4%	7.7%	4.2%	2.2%	12
Thailand	434	536	521	653	641	4.0%	3.7%	-1.7%	1.4%	18
Türkiye	382	426	498	713	710	6.4%	10.8%	-0.4%	1.5%	15
United Arab Emirates	417	524	621	933	965	8.8%	13.0%	3.4%	2.0%	13
United Kingdom	1 348	1 689	1 574	2 035	2 023	4.1%	3.7%	-0.6%	4.3%	4
USA	3 787	4 770	5 041	6 620	6 361	5.3%	5.9%	-3.9%	13.5%	3
Vietnam	213	428	574	718	655	11.9%	8.9%	-8.7%	1.4%	17

Coverage: excluding intra-EU trade
Sources: IMF DOTS, WTO

Table 8: Total extra-EU trade, 2023 (exports and imports) in goods and services with world (Directorate-General for Trade of the European Commission, 2024b, p. 29)

In 2023, the EU:

- Was the world's second goods trader after China but before the USA with a share of around 14 percent in total world trade in goods (imports and exports taken together). The EU's share in the previous years was a little bit higher with 14.2 percent (2022) and 14.1 percent (2021).
- Was the world's first services trader before the USA, the United Kingdom, and China with a share of around 22.8 percent in total world services trade. The EU's share in the previous years was 23.3 percent (2022) and 24.5 percent (2021).
- Remained the world's first trader of goods and services, imports and exports combined, accounting for an estimated 16.1 percent of world trade. The EU's share in the two previous years 2022 and 2021 was 16.2 percent. The EU exported over €3.9 trillion worth of goods and services and imported €3.7 trillion worth of goods and services.
- Is – compared with China and the USA – the most important trading partner for seventy-four countries, while China is the first trading partner for seventy-one countries, and the USA for twenty-eight. Data for 2019 show the same number for the EU (seventy-four trading partners), a lower number for China (sixty-six), and a higher number for the US (thirty-one), demonstrating China's growing role in world trade.

The total trade (without intra-EU trade) accounts for 44.9 percent of the EU's GDP; this number is lower than the comparable numbers for the UK (65.4 percent) and Japan (45.9 percent), but higher than the numbers for China (39.2 percent) and the US (25.1 percent).

In connection with the publication of the "Trade Policy Review – An Open, Sustainable and Assertive Trade Policy," the Commission published the following figures (European Commission, 2021l, p. 1):

- EU firms that both import and export account for 95 percent by value of all goods traded in and out of the EU.
- The EU economy relies on imports, which provide access to critical raw materials and inputs.
- Sixty percent of EU imports are actually used to produce EU goods.
- Overall, the EU's increased openness to imports is considered to have made grow its GDP by about €550 billion since 1995.

For more data on EU trade see Annex 2.

3.2. Legal sources

The two principal treaties on which the EU is based are the Treaty on the Functioning of the European Union (TFEU; originates from the Treaty of Rome or Treaty establishing the European Economic Community/EEC Treaty, effective since 1958) and the Treaty on European Union (TEU; originates from the Maastricht Treaty, effective since 1993). These main treaties, plus their attached protocols and declarations, have been altered by amending treaties at least once a decade since they came into force, the latest being the Treaty of Lisbon, which entered into force in 2009. The Lisbon Treaty also made the Charter of Fundamental Rights legally binding, though it remains a separate document (European Union, 2012).

3.2.1. Art. 206 TFEU: The legal source of free trade policy

Keeping the free trade/protectionism dichotomy in mind, the EU has opted for one of the two extreme positions. Art. 206 TFEU says: "By establishing a customs union […] the Union shall contribute […] to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers." It is the successor of former Article 131 of the Treaty establishing the European Community, in the version of the Nice Treaty: "By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers." Both in the former and the current article, there is no consideration of or limitation against other goals – the abolition of restrictions on trade is formulated as an end, and thus trade can be considered an end in itself. The following Article 207 states, only in its final sentence: "The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action." These "principles" and "objectives" are outlined in Art. 21 TEU.

3.2.2. Art. 21 TEU: Principles and objectives of the Union's external action

Article 21 TEU (1) first lays out the principles:

> "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
>
> The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first

subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations."

In (2) the objectives are stipulated, amongst them:

> [...]
>
> b) consolidate and support democracy, the rule of law, human rights and the principles of international law
>
> c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter
>
> d) foster the sustainable [...] development of developing countries, with the primary aim of eradicating poverty [...]
>
> f) preserve and improve […] the sustainable management of global natural resources, in order to ensure sustainable development [...]
>
> h) promote an international system based on stronger multilateral cooperation and good global governance"

Only one point out of eight, point (e), formulates the objective to "encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade." It entails the only mentioning of trade in Art. 21, and even there it is not defined as an objective, but as a means: it does not say that the "progressive abolition of restrictions on trade" is an end, but the "integration of all countries into the world economy" is; "including through" more trade expresses that (more) trade is one means amongst others, and the concrete wording even allows the interpretation of "including through more trade, and also through the limitation of trade" if necessary a) to include countries that are left behind more than others into the world economy or b) to pursue the other seven goals listed in the same article.

3.2.3. Values and cross-cutting clauses

Art 21 para 2 TEU refers to the values of the EU enshrined in article 2, amongst which figure the respect for human dignity, democracy, the respect for human rights, and others. Furthermore, a series of cross-cutting clauses in the TFEU refers to overarching principles and objectives. For instance, Article 11 TFEU says: "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development." Article 9 includes "a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health." In addition, article 10 (anti-discrimination), article 12 (consumer protection) and article 14 (services of general interest) are cross-sectional clauses, this means they hold true for all EU policies, including trade policy (Frischhut, 2022, p. 150).

Even more surprisingly, in the current EU's external trade policy, only trade and the protection of investment are enforceable, whereas all other objectives are at best only addressed, but not enforceable. "Free and fair trade" is mentioned as one of many objectives of the European Union in Art. 3 TEU, after "sustainable development of the Earth" and "solidarity and mutual respect among peoples" and before "eradication of poverty and the protection of human rights," but this article is referred to neither in Art. 207 TFEU nor in Art. 21 TEU.

3.3. Multi-, pluri-, or bilateral agreements?

Whereas Article 21 TEU defines as a principle to give priority to multilateral rules within the UN ("it shall promote multilateral solutions to common problems, in particular in the framework of the United Nations"), WTO rules are multilateral, but not within the UN – for the reasons set out in section 2.3.

Nevertheless, although the WTO, right after its start, reached a stalemate and no major agreements were achieved, the industrial countries did not return to the "harbour" of the UN – making a third attempt to found and regulate international trade within a UN body – instead they shifted to enforce bilateral and plurilateral trade and investment agreements progressively. A first parallel maneuver to the WTO took place in the OECD in 1995, where there was a push to conclude a Multilateral Agreement on Investment (MAI). This failed, too, in 1998 mainly due to the French parliament's refusal to continue negotiations (George, 1999) and the preceding public pressure by low-income countries, trade unions, and NGOs (de Brie, 1998). In the framework of the so-called Millennium Round of the WTO, an attempt was made from 1998 onwards to anchor the investment agenda within the WTO and to secure it through a new agreement. However, this attempt to make investment and trade a success as one of the four so-called Singapore issues within the WTO failed in the two subsequent WTO ministerial conferences in Seattle in 1999 (Khor, 1999; George, 2000) and in Cancún in 2003 due to the resistance of the developing countries and civil society (Khor, 2003).

With the 2006 report "Global Europe: Competing in the world. A contribution to the EU's growth and jobs strategy," the EU undertook a shift in its external trade strategy. The European Commission (2006, p. 8) intensified its engagement for bilateral and plurilateral free trade agreements (FTAs), knowing that it would be controversial to sideline the multilateral level: "Free trade agreements can also carry risks for the multilateral trading system. They can complicate trade, erode the principle of non-discrimination and exclude the weakest economies." Precisely, but: "The key economic criteria for new FTA partners should be market potential (economic size and growth) and the level of protection against EU export interests (tariffs and non-tariff barriers)" (European Commission, 2006, p. 9). That is what it seems to be really about: not the multilateral level, not the UN system, not the weakest economies or (sustainable) development, but new markets and "EU export interests." In "Global Europe," the EC states: "Europe must reject protectionism. Protectionism raises prices for consumers and businesses, and limits choice" (European Commission 2006, p. 4). Such a reasoning – addressing primarily consumer choice and prices – is one-sided and reductionist. It does not reflect the full spirit of Art. 21 TEU.

3.4. Trade and sustainable development

As shown, "sustainability" and "sustainable development" figure repeatedly in the EU primary law. Frischhut thoroughly analysed the EU treaties and found in them:

> "see recital 9 TEU ("principle of sustainable development"), Art 3(3) TEU ("sustainable development of Europe"), recital 3 Charter of Fundamental Rights of the European Union (CFR) (promotion of "balanced and sustainable development"), Art 11 TFEU (cross-sectional clause of environmental protection), Art 37 CFR ("environmental protection"), Art 3(5) TEU ("sustainable development of the Earth") or Art 21(2) TEU (Union's external action)" (Frischhut, 2022, pp. 207–208).

In 2015, the Sustainable Development Goals were agreed by the United Nations. In these, the term "trade" does not figure among the seventeen main goals, but only among some of the subordinated targets and indicators (see section 4.1.2.). In the same year, the EC subtitled its new Trade Strategy "Trade for All" with "Towards a more responsible trade and investment policy" and refers to the SDGs: "The EU will continue its long-standing commitment to sustainable development in its trade policies, contributing to the newly agreed global sustainable development goals (SDGs) under the 2030 Agenda for Sustainable Development" (European Commission, 2015, p. 7).

Since the EU-Republic of Korea Free Trade Agreement – politically concluded in 2009, provisionally applied since July 2011, and formally ratified in 2015 – EU trade agreements progressively contain rules on trade and sustainable development. These rules are summarized in a specific chapter on the promotion of sustainable development, by focusing on trade- and investment-related aspects of labour and environmental issues, but they do not clearly refer to the other chapters of the agreements. In these chapters on trade and sustainable development ("TSD chapters"), "the EU and its trade partners commit to:

- effectively enforce their environmental and labour laws;
- not deviate from environmental or labour laws to encourage trade or investment, and thereby preventing a 'race to the bottom';
- sustainably trade natural resources, such as timber and fish;
- combat illegal trade in threatened and endangered species of fauna and flora;
- encourage trade that supports tackling climate change, and;
- promote practices such as corporate social responsibility" (European Commission, 2024d).

Of the sixteen FTAs negotiated since EU-South Korea, most of which have already entered into force, only two agreements contain the possibility of enforcing the provisions contained in the TSD chapters (European Commission, 2024d). The two examples are the Free Trade Agreement between the EU and New Zealand (Council of the European Union, 2024a), which entered into force on 1 May 2024; and the Economic Partnership Agreement with Kenya, which was signed on 18 December 2023 and entered into force on 1 July 2024 (Council of the European Union, 2024b). In addition, climate protection is enforceable as an essential element in the Trade and Cooperation Agreement with the United Kingdom (in force since 2021), although this is regulated outside the TSD chapter of the agreement (Gehring, 2024).

Apart from these rare exceptions, "provisions in TSD chapters are excluded from the agreements' main dispute settlement provisions and are instead subject to a parallel process aimed at cooperation and dialogue, which appears to be more or less toothless – in both law and practice" (Cross, 2020, p. 40). For example, one of the first dispute settlement cases between the EU and Korea on labour rights conventions is considered a "clear example of stakeholder demotivation" and ineffectiveness: it took five years after the first concerns were raised by the EU-Korea FTA Domestic Advisory Groups (DAGs) and the European Parliament for the Commission to initiate the official consultation mechanism (Blot, Oger & Leturcq, 2021, p. 3). Until 2024, Korea had not ratified the Abolition of Forced Labour Convention, one of the fundamental instruments of the International Labour Organization (ILO, 2024).

As a general trend, the growing array of free trade agreements, (comprehensive) investment agreements, investment protection agreements, and association agreements contain at least references to sustainable development or their own TSD chapters. However, there are – with the mentioned few exceptions – no actual enforceable measures for implementing sustainability commitments in these agreements. Although they are being propagated for new agreements, it remains to be seen whether the old agreements will be improved. As of 2024, enforcement mechanisms are still weak and not on an equal level with trade liberalization and investment protection (ClientEarth et al., 2021, pp. 3–4).

As mentioned in chapter 3.1, the European Commission again changed its trade strategy in 2021, in alignment with the Green Deal: "The EU needs a new trade policy strategy – one that will support achieving its domestic and external policy objectives and promote greater sustainability" (European Commission, 2021a, p. 1). As a result of the review of the fifteen-point action plan announced in the Trade Policy Review 2021 (TPR) to improve the implementation and enforcement of the chapters on trade and sustainable development in trade agreements, the EU Commission adopted its "Communication of the Power of Trade Partnerships: Working together for green and fair economic growth" in June 2022 (European Commission, 2022). Among other things, the communication aims to show how the contribution of EU trade agreements to promoting the protection of the environment and labour rights worldwide can be improved. It identifies six political priorities, the sixth of which is the enforceability of measures "as a last resort":

1. "The need to work more proactively with partners;
2. Strengthening a targeted and country-specific approach to TSD;
3. Mainstreaming sustainability beyond the TSD chapter of trade agreements;
4. Strengthening monitoring of the implementation of TSD commitments;
5. Strengthening the role of civil society, and;
6. Strengthening enforcement through trade sanctions as a last resort" (pp. 4–12)

In addition, the EU Commission published a study it commissioned that presents and compares the different TSD approaches of a few EU trading partners (Velut et al. 2022).

Nevertheless, some scholars question the usefulness of enforceability of TSD chapters from the perspective of trade justice. Orbie states:

> "These chapters have indeed been key to the EU's assertion of promoting a value-based, ethical and sustainable trade agenda. Since the mid-2000s, all EU free trade agreements have included such a chapter whereby parties commit to respect the core conventions of the International Labour Organization (ILO) and multilateral environmental agreements such as the Paris Climate Agreement. While the legitimacy of these norms has barely been disputed, much criticism has been voiced about the 'soft', 'cooperative' and 'incentive-based' nature of TSD chapters, which are binding but are not enforceable through sanctions" (Orbie, 2021b, pp. 198–199).

Orbie asks if enforceability is a way forward or in the wrong direction: "Would it really be a step towards trade justice, and global justice more generally?" (p. 200). He presents four objections:

> "First, the impact of trade sanctions is dubious. Research shows that sanctions mainly affect the most vulnerable people, in this case workers and small producers that face higher tariffs at EU borders […].
>
> Second, the EU's market power is limited and decreasing […].
>
> Third, tougher enforcement of human rights, labour and environmental norms may be interpreted as neo-colonial interference […]
>
> Fourth, TSD chapters, even enforceable ones, will always be overshadowed by the general thrust of a trade agreement that envisages far-reaching marketization. Today's trade agreements open and deepen markets not only through tariff and quota liberalization, but also through services liberalization, investment facilitation, government procurement opening, intellectual property protection, mutual recognition of standards, etc." (pp. 200–201).

Orbie concludes: "Strengthened TSD chapters might enhance some pockets of trade justice, but they only potentially address the worst violations of core conventions. Meanwhile, many negative impacts on vulnerable people, on governments' policy space, and on natural resources remain unaddressed and are even reinforced. Indeed, the logic of trade agreements remains … to stimulate trade" (p. 201).

Furthermore, the authors of this Working Paper see the stand-alone nature of TSD chapters critical. Sustainability and other ethical aspects should be integrated in all chapters of an agreement and not just in one chapter.

Finally, the focus of the more recent FTAs on the Paris Agreement does not consider the fact that although the Paris Agreement is a legally binding international treaty on climate change, it does not contain any legal enforcement mechanisms, apart from the voluntary commitment of the 195 parties to the Paris Agreement.

3.5. Geo-politicization and silent departure from free trade and multilateralism

In parallel to this not yet substantial trend towards sustainability in trade, the European Commission, under the impression of the Covid-19 pandemic, which also led to a crisis of global supply chains, also introduced the term "strategic autonomy" in May 2020, which comes from military (defence) planning. The EU Commission states:

> "Global trade and its integrated value chains will remain a fundamental growth engine and will be essential for Europe's recovery. With this in mind, Europe will pursue a model of open strategic autonomy. This will mean shaping the new system of global economic governance and developing mutually beneficial bilateral relations, while protecting ourselves from unfair and abusive practices. This will also help us diversify and solidify global supply chains to protect us from future crises and will help strengthen the international role of the euro. In this spirit, the EU will undertake a Trade Policy Review to ensure the continuous flow of goods and services worldwide and to reform the World Trade Organization" (European Commission, 2020a, p. 13).

Already nine months later, in February 2021, the new Trade Policy Review titled "An Open, Sustainable and Assertive Trade Policy" was published, consisting of a communication (European Commission, 2021a), an annex on Reforming the WTO (European Commission, 2021b), a Q&A paper (2021c), a press release (2021d), and several factsheets (2021e-h).

According to the communication, "[o]pen strategic autonomy emphasizes the EU's ability to make its own choices and shape the world around it through leadership and engagement, reflecting its strategic interests and values" (European Commission, 2021a, p. 4). The concept of Open Strategic Autonomy enables the EU to become stronger on three levels, both economically and geopolitically:

- "**Open** to trade and investment for the EU economy to recover from the crisis and remain competitive and connected to the world
- **Sustainable and responsible** to lead internationally to shape a greener and fairer world, reinforcing existing alliances and engaging with a range of partners
- **Assertive against** unfair and coercive practices and ready to enforce its rights, while always favouring international cooperation to solve global problems" (European Commission, 2021e).

Or to put it in one sentence: "Open Strategic Autonomy means cooperating multilaterally wherever we can, acting autonomously wherever we must" (European Commission, 2021e). Against earlier announcements, this is a clear statement for abandoning the multilateral stage progressively.

Several academics have analysed this new course or rhetoric. For Jan Orbie, the new TPR "marks a radical shift from the previously insulated, technocratic and mostly free trade-oriented position of the Commission's Directorate General for Trade. After decades of following a headstrong course, EU trade officials seem to finally join the European foreign policy family. Since COVID-19 struck the European continent, EU trade talk has adopted the 'resilience' and 'strategic autonomy' concepts that were already central to the EU Global Strategy" (Orbie, 2021b, p. 197).

Antonio Salvador M. Alcazar III, Camille Nessel, and Jan Orbie point out:

> "Although the updated Trade Policy Review of February 2021 puts more emphasis on Europe's strategic autonomy and geopolitical goals, it equally stresses that EU trade policies 'increase trading opportunities for developing countries to reduce poverty and to create jobs based on international values and principles, such as labour and human rights' and pledges that sustainable development commitments in EU trade agreements will be further enforced" (Alcazar III, Nessel & Orbie, 2022, p. 183).

The authors rebut that the European Union's common commercial relations with the former colonies and, more broadly, with the "tiers monde" today are based on benevolence, depoliticized practices, equal partnerships, and values. They point to efforts in postcolonial, post-development, post-structuralist, and other heterodox research traditions to deconstruct these outdated assumptions. They propose different "subject positions" with which we can rethink our knowledge of EU trade policy and the Eurocentrism behind it by turning to decolonial thinking (p. 182).

Sjorre Couvreur, Ferdi De Ville, Thomas Jacobs, and Jan Orbie (2022) analyse how the European Commission discursively justifies its geopolitical shift in its current trade policy. In previous EU trade discourses since the 2000s, the EU has consistently portrayed itself as a "normative" power that transcends geopolitics and strives for free trade and multilateralism, while the other trading powers have essentially been seen as geopolitically self-interested, protectionist, and regionalist. Through this othering strategy, the EU creates a difference between itself and the "Other," through which an international European identity is constructed, and certain policies are legitimized. After mentioning the multitude of new trade defence instruments through the TPR, their research focuses on what some experts call the EU's "most powerful weapon" in this new arsenal: the EU's Anti-Coercion Instrument (ACI), published at the end of 2021 (European Commission, 2021h). These new instruments give the European Commission the ability to unilaterally restrict access to the European market.

The four authors identify a double strategy of othering in the EU's justification of the ACI: "On the one hand, the Union contrasts its current assertive turn in trade against its previous 'naïve' normative and free trade-oriented policy. On the other hand, we observed a juxtaposition between a 'bad' 'offensive' geopoliticization of trade policy versus a 'good' 'defensive' geopoliticization of trade" (p. 78). The rhetoric in the various official documents and media statements analysed suggests that the EU makes this distinction through a strategy of othering, in which it places its own geopolitical trade policy on the good, defensive side, while associating the bad, offensive geopoliticization of trade with other actors such as China, Russia, or the US. The EU's new geopolitical trade policy is thus presented as a "provoked" reaction to the offensive geopoliticization of trade policy by other international players. The continued but updated version of its othering discourse allows the EU to adapt to an ever-increasing geo-economic competition in trade without losing face and creating a political incoherence with its more normative trade objectives.

The authors of this Working Paper argue that setting one's sovereign priorities in trade policy should not remain reserved to the EU, but hold true for all partners of a solidary trade zone that allows for more flexibility and domestic policy choice while committing to balanced trade, in order to avoid both protectionism and neo-mercantilism.

3.6. Conflicts between the current EU trade policy and Art. 21 TEU, and international conventions on climate, SDGs, human rights, peace, etc.

In the following table, structural contradictions between the principles and objectives of the TEU and the practice of the EU's external trade policy are highlighted. Column 3 includes elements of UNETZ that will be described in detail in section 5.2.

EU Policy Goal Art. 21 TEU	Current EU trade policy	Possible alternatives as part of the UNETZ model
"Multilateral solutions, in particular in the framework of the United Nations" (1)	The WTO is not part of the UN system. Consequently, trade law is not strongly linked to the UN Charter, human rights law, climate protection law, and other fields of established international law.	The UNETZ represents a multilateral solution, in the framework of the United Nations.
"multilateral solutions" (1), "promote an international system based on stronger multilateral cooperation" (2h)	Aside from the WTO, which counts on 166 members (including the EU and its 27 member states), the EU has been and is in negotiations for trade agreements with 133 countries – this means with almost all non-EU WTO members. Agreements with 78 countries are in place (or provisionally applied), from which 63 were concluded in 2008 or later. Another 5 agreements with 26 countries are pending for signature or ratification, 10 agreements (covering 8 countries) are currently being negotiated, 5 agreements with a total of 21 countries are on hold (European Commission, 2024e). Contrary to this development, in June 2018, "in a context of growing trade tensions, the European Council underlines the importance of preserving and deepening the rules-based multilateral system" (Council of the European Union, 2018).	UNETZ is designed as a single multilateral trade zone that would replace all existing bilateral, plurilateral, and WTO agreements. The existing dispute settlement mechanisms and trade courts would be replaced by a UNETZ Court and DSU. UNETZ allows much more flexibility than the WTO rules, which would make bilateral agreements obsolete.
"preserve peace, prevent conflicts" (2c); "respect for the principles of the United Nations Charter and international law" (1)	The WTO says that "the multilateral trading system can contribute to stability. Some would argue that this can even contribute to international peace" (WTO, 2024p). But it does not do it actively. If one WTO member country goes to war against another, no sanctions are foreseen. Warring countries remain	UNETZ is designed to preserve peace effectively by sanctioning warring nations. Nations involved in war of aggression could be sanctioned with a cross tariff over all products and services of, for example, 20 percent – for the time of war. (In case one EU member is affected, the sanctions would affect all EU members equally.) Such a provision could build on article

	unpunished and can trade as freely as peaceful countries.	XXI of the GATT, which allows restrictions on trade – especially of specific goods – for security reasons ("security exception").
"Democracy" (1), "consolidate and support democracy" (2b)	According to the Council of the European Union (2024c), "EU's trade policy is also used as a vehicle for the promotion of European principles and values, from democracy and human rights to environment and social rights." Nevertheless, many of WTO's members are "closed" or "electoral autocracies," and the EU has concluded or is negotiating trade/investment agreements with 15 "closed" and another 42 "electoral autocracies." The closed autocracies are Bahrain, China, Eswatini, Jordan, Katar, Kuwait, Morocco, Oman, Palestine/Gaza, Saudi Arabia, Somalia, Sudan, Thailand, UAE, and Vietnam, according to V-Dem Institute (2021, p. 32).	UNETZ is designed to use the four categories of more or less democratic or autocratic state forms defined by the Gothenburg University V-Dem Institute (2021) to use trade policy to enhance higher levels of democracy (from electoral to liberal) and make trade for autocracies (electoral or closed) more difficult.
"the universality and indivisibility of human rights and fundamental freedoms" (1)	The European Union calls itself a "frontrunner in implementing the UN Guiding Principles on Business and Human Rights" (European Union, 2021b) that define the responsibilities of governments and businesses for ensuring that human rights violations in the supply chains are avoided or ended (United Nations Human Rights Office of the High Commissioner, 2011). Despite these efforts, human rights violations in the supply chain occur up to the present. In 2020, a new record of 227 environmentalists were killed globally (Marshall, 2021). According to environmental activists, "companies and consumers in Europe bear at least some responsibility" for this violence (Düttmann, 2021). Workers face security risks (Shams, 2018), and unionists life risk. In 2018, 53 trade unionists were killed in 10 countries (ITUC, 2019, p. 5); with 8 of these, the EU has trade agreements. Local residents' health is at risk when industrial accidents occur (NDTV, 2021).	UNETZ would protect and promote human rights threefold: 1. Signatories of existing human rights covenants would trade more freely with each other. 2. It would make use of a World Court of Human Rights that could be called by workers, communities, or consumers. 3. It would build on a third human rights covenant about "ecological human rights."
"equality" (1)	Foreign investors (companies or persons) can file a lawsuit against states at international trade courts if they deem themselves indirectly expropriated,	To ensure equality, UNETZ is meant to promote a World Court of Human

	whereas national investors and individuals affected by the investment cannot even file a lawsuit before an international court when transnational corporations violate their human rights directly. Thus, in the current EU external trade policy, foreign investors are "more equal" than local businesses and affected people.	Rights and does not include an ISDS system.
"solidarity" (1)	The EU allows free movement of capital in tax havens (Art. 63 TFEU); it opens the path to tax avoidance.	UNETZ would include a Global Tax Authority that promotes tax cooperation and transparency among member states, whose tasks include the administration of a global register for financial assets of natural and legal persons, a HNWI tax (on High Net Worth Individuals), and the global coordination of the taxation of transnational corporations.
"integration of all countries into the world economy" (2e)	After the "lost decade" for development of the 1980s for the Global South (Federal Reserve History, 2024), bilateral and plurilateral trade agreements can disadvantage third-party countries. An impact assessment study on the planned free trade agreement between the EU and the USA (TTIP) predicted a negative impact on the GDP of 2.8 percent for Latin America, of 2.1 percent for Africa, and of 1.4 percent for low-income countries (LIC) (Raza et al., 2014, p. V). Another study predicted for Tunisia a reduction of trade with the EU of 4.4 percent, for Morocco of 5.4 percent, and for Egypt of 7.7 percent (Felbermayr, Heid & Lehwald, 2013, p. 17).	UNETZ would be equally open to all countries although with clear conditions and incentives. The centerpiece of even trade balances, together with the option of positive discrimination of low-income countries, would avoid disadvantageous effects on low-income countries and offer positive incentives for them.
"foster the sustainable economic, social and environmental development of developing countries with the primary goal of eradicating poverty" (2d)	Reduction or eradication of poverty is often a promise in trade agreements, but not an enforceable goal. Especially for its Economic Partnership Agreements (EPAs) with African countries, the EU highlights export opportunities (e.g., for textiles from Madagascar, cocoa products from Ghana and Cameroon, or fish and table grapes from Namibia) (European Commission, 2019a, p. 13). However, these positive examples hide the overall structural effect of enforced free trade. Deindustrialization due to imports from the North and South-South competition (for the benefit of the	UNETZ would give developing countries the freedom to protect infant industries, sensitive sectors, and public goods and services, and apply all kinds of domestic policies in order to achieve sustainable development and eliminate poverty. A HNWI tax would additionally be used to help achieve all UN Sustainable Development Goals.

	importing North) offset isolated successful examples. LDC share in global exports "has hovered around a mere 1 percent since 2010" (UNCTAD, 2024g). Poverty, if not measured with the World Bank benchmark of USD 1.90 per person per day, but with a more realistic USD 5 to 10, has increased from 3 to 5 billion persons since 1980 (Hickel, 2016, p. 6).	
"ensure sustainable development" (2f)	The current "EU position in world trade" states: "EU trade policy seeks to create growth" (European Commission, 2024f). But, decoupling of GDP growth and ecological consumption has not proven to work (Haberl et al., 2020; Ward et al., 2016, p. 1). 31 percent each of the EU's GHG emissions and land use, and 42 percent of water footprint was the result of trade with external countries (Science for Environment Policy, 2013, p. 5). Union consumption contributes to 10 percent of global deforestation (European Parliament, 2023), and estimates show that, in 2017, the EU was responsible for 16 percent of tropical deforestation linked to internationally traded commodities like meat, palm oil, or soy (WWF, 2021). Trade drives a third of threats to species. Coffee-growing in Mexico, palm oil plantations in Malaysia, and beef production in Brazil are a few examples of industries with imported products linked to biodiversity loss (Science for Environment Policy, 2013, p. 8). In all trade agreements since the EU-Korea agreement (signed in 2010; entered into force: December 2015), the EU has included Trade and Sustainability chapters. The problem is that they are, in most cases, not effectively enforceable. Blot, Oger & Leturcq (2021, p. 1) conclude that "despite years of promising rhetoric, EU trade is not yet making a positive contribution to sustainable development."	UNETZ has sustainability in its inherent policy design. Concretely, it builds on five elements: 1. Ethical world trade does not aim at GDP growth, but at the improvement of the Common Good Product, which includes the satisfaction of basic needs, life quality, and ecosystem stability. The achievement of these goals is measured as GDP is today. 2. Ratification of and compliance with Multilateral Environmental Agreements (MEAs) is a condition of being a UNETZ member. Non-compliance can be sanctioned by the UNETZ Court. 3. Companies that want to access the UNETZ have to do a Common Good Balance Sheet. The higher they score, the freer they trade. 4. Member countries are totally free to implement stricter environmental protection policies. 5. UNETZ would add a third generation of human rights: "ecological human rights." These assure that mankind as a whole remains within the ecological planetary boundaries.
"sustainable management of global natural resources" (2f)	The EU Raw Materials Initiative (2008) reads quite aggressive rather than sustainable: "Securing reliable and undistorted access to raw materials is increasingly becoming an important factor for the EU's competitiveness […] the Commission will reinforce its work towards	UNETZ would, apart from the five above-listed sustainability policy measures inherent in its design, build on ecological resilience, regional circular economy, and economic subsidiarity, especially as for raw materials, energy, and waste

	achieving stronger disciplines on export restrictions […] The EU will take vigorous action to challenge measures which violate WTO or bilateral rules, using all mechanisms and instruments available, including enforcement through the use of dispute settlement (European Commission, 2008, pp. 2 and 7). Positively, the EU's Conflict Minerals Regulation (2021) aims at cutting the nexus between mineral extraction and trading on the one hand, and violent conflicts, corruption, and structural fragility on the other. Nevertheless, NGOs have criticized the weak enforcement of the new regulation (European NGO Coalition on Conflict Materials, 2021). Likewise, the recent EU Regulation on Deforestation-free products (European Commission, 2024g) is a long-overdue initiative that is necessary to address and eliminate the impact of the EU's consumption on forests. Yet, its scope must be extended to protect other valuable ecosystems (and human rights) and to regulate finance.	management. Apart from this principal reorientation towards circularity, sufficiency, and resilience, internationally traded raw materials would have to meet ambitious sustainability requirements: - Availability and enforcement of (and compliance with) rules to regulate the production of commodities (and derived goods) so that they are not associated with deforestation, forest degradation, ecosystem conversion or degradation, nor with human rights violations, becomes a mandatory element of the Common Good Balance Sheet. - The same holds true for conflict minerals – importers and manufacturers have to prove that they do no harm, otherwise they would fulfil a "negative aspect" in the Common Good Balance Sheet (see chapter 5.3.1.), which lowers the overall result significantly and leads to substantial disadvantages.

Table 9: Gaps between principles and objectives of the EU's external action and the impact (or goal) of its trade agreements, and alternatives proposed

3.7. Who is deciding trade policy in the EU today?

Poor decisions from a democratic perspective might correlate to a poor design of decision-making processes. In this section, the question is: Who is formally responsible for the EU's (free) trade agenda, alongside the decision-making process for a new trade agreement?

1. The legal basis for the EU's trade policy comes from the treaties. The two articles on external trade policy in the TFEU, Art. 206 and 207, were introduced with the Lisbon Treaty, which was concluded in 2007, entered into force on 1 December 2009, and changed both the TEU and the TFEU. The Lisbon Treaty was adopted by the member states of the EU. The citizens were not involved, with the exception of Ireland, where the citizens in a first referendum voted against, and in a second in favour of the Lisbon Treaty. In all other member countries, it was the representatives of the citizens who co-decided who has the right to mandate trade negotiations, how the negotiations are concluded, and who has the right to decide on the outcome.

2. The Council of the European Union mandates the European Commission with trade negotiations and defines the modalities thereof. Since the adoption of the Lisbon Treaty, this competence is written down in Art. 218 TFEU. The members of the Council have direct democratic legitimation on the level of the nation states they represent, but not as a body at the EU level. The Commission, whose members are proposed by the member states and confirmed as a team by the European Parliament, has no direct democratic legitimation at all.

3. Negotiations on trade agreements used to be secret. Some stakeholders, including NGOs, are involved and consulted, but the citizens are not. Do trade negotiations take place behind closed doors? Who – apart from the Commission – knows what is being negotiated, when, and with whom? There are very different views on this: the European Commission (2024h) aims at being "the world's most transparent public institution in the field of trade policy," and a former commissioner of trade called the EU "the most transparent trade negotiator in the world" (Malmström, 2019), but even the member states, directly linked to the Commission through the Trade Policy Committee (Council of the European Union, 2024d), complain about insufficient information (Corporate Europe Observatory, 2018). NGOs constantly criticize the lack of transparency in the negotiations (Anders Handeln, Friends of the Earth Europe and Netzwerk gerechter Welthandel, 2024) and leak negotiation documents (Greenpeace Netherlands, 2024), whereas academia sometimes takes one side or the other. It is true that there are written and oral reports on negotiating rounds, there are and have been expert groups on individual aspects of trade policy and currently negotiated trade agreements (European Commission, 2024i), but participants of such meetings report that the flow of information is very poor. It is a fact that the Commission has the freedom to talk to whomever it wants. According to the Corporate Europe Observatory (2014), 92 percent of the European Commission's meetings in preparation for the TTIP negotiations were with industrial lobbyists.

4. There is no legal requirement that a mandate for negotiations is checked by a judicial body if it is compatible with EU law or international law. TFEU Art. 207 (3) simply states: "The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules." Considering that trade agreements have substantial consequences on living and working conditions, the environment, social cohesion, and distribution, one can ask why there is no mandatory evaluation of trade mandates. An ex post scrutiny by the Court of Justice is possible, but only if one of the institutions or a member state asks for it, and on the basis of specific questions. This means that the compatibility of an agreement with fundamental EU law principles is practically never verified.

5. The EC usually commissions a general Impact Assessment Study and a Sustainability Impact Assessment Study (SIA), on its sole discretion. The European Commission "conducts analyses on various aspects of EU trade policy in order to assess the impact of trade on the EU and global economy. The economic analysis is undertaken by the Chief Economist team in DG Trade and independent consultants with funding from the Commission" (European Commission, 2024j). Regarding trade agreements, the first impact assessment was conducted in 1999 for the then-planned WTO Millennium Round negotiations. Since then, the system of reviews has expanded: in the 2010 Communication on "Trade, Growth and World Affairs," the Commission announced it would:

> "step up a gear in embedding impact assessments and evaluations in trade policy making. This includes carrying out impact assessments on all new trade initiatives with a potentially significant economic, social or environmental impact on the EU and its trading partners, including developing countries. We will pay particular attention to wide consultation and involvement of civil society in the sustainability impact assessments that we carry out during trade negotiations. Once negotiations are concluded and before signature, we will prepare for the Parliament and Council an analysis of consequences of the proposed deal for the EU. Finally, to help monitor the impacts of existing EU trade agreements, we will be carrying out ex post evaluation on a more systematic basis."

The studies commissioned by the European Commission and carried out by external consultants, as a rule, make an argument in favour of a new free trade agreement, on the grounds of net GDP and employment growth. The authors of this paper are not aware of any impact assessment study commissioned by the EC that does not recommend the conclusion of a specific trade agreement. The way in which SIAs are conducted and their results used was thoroughly analysed by Dupré and Dauphin (2022).

6. The Commission systematically discards the concerns of civil society about the impact of trade. When over three million citizens promoted a European Citizens' Initiative (ECI), asking for the cancellation of the TTIP negotiating mandate and non-conclusion of CETA negotiations (European Union, 2024b), the response of the Commission was to declare it inadmissible, without responding on the merits of the initiative. This was the expected result of a system whereby the body with the competence to evaluate and decide on the

admissibility of a citizens' initiative (i.e., the European Commission) was the same that was negotiating TTIP and CETA. This is as if a contracting party could decide if the tender decision was correct. More importantly, dismissing a citizens' initiative that later, in its self-organized form, gathered the support of 3.2 million EU citizens, is not precisely "hearing their voices," as announced prominently by the Commission with the "Plan D" (European Commission, 2005).

Tellingly, two years and eight months later, the European General Court (2017) "[a]nnuls Commission Decision C(2014) 6501 final [...] rejecting the request for registration of the proposed European citizens' initiative entitled 'Stop TTIP.'" But this ruling came too late: the European Parliament had already approved CETA in February 2017, which led to its provisional application (of the EU part). The citizens were excluded from participation and co-determination by the fact that, according to the General Court's ruling, the EC "infringed Article 11(4) TEU and Article 4(2)(b)."

7. The Commission initially also wanted to exclude national parliaments from voting on the end result of negotiations (in the case of CETA) to avoid the risk that the ratification of the deal would fail (Kafsack, 2016). Italy was in support of the Commission's position, but many others opposed (Zeit online, 2016). Finally, the EC presented it to the Council as a "mixed" agreement (European Commission, 2016). This means that the agreement affects the competences of both the member states and the Union. CETA and TTIP even interfere in the competence of local authorities, if the provision of public services or public employment is drawn into trade policy. The question of whether a trade agreement affects national policies and competences is highly relevant, because the answer determines whether the negotiated agreement is approved only by EU institutions ("EU only") or also by national parliaments ("mixed agreement"). It is the Commission who makes the initial proposal to the Council about who is allowed to decide after the conclusion of the negotiations.

8. The citizens have no say on the result of the negotiations, although, apart from the dismissed initiative, there were broad protests against it (e.g., CETA with 300,000 demonstrators in Germany) (BUND, 2016). Trade agreements are decided by the EU co-legislators (Council and Parliament) and, in case of mixed agreements, additionally by national parliaments. Although a trade agreement is first and foremost for the benefit of the citizens, they currently have no voice in the whole process.

4. Vision and Goals for the Economy

4.1. There are plenty of alternatives (TAPAS)

In economics it often seems like there are no alternative views possible, as described in chapters 2.10. to 2.12. Especially, the neoclassical paradigm has a "double immunity shield" against innovation: Firstly, it works with a degree of mathematics that deters most of the interested debaters, thinkers, and the general public from the transdisciplinary discourse of what economy is and should be about (Ortlieb, 2006; Graupe, 2017, pp. 12–21; Felber, 2019c, pp. 25–34). Many educated people used to say: "I don't understand a lot about economics," leaving this field to the assumed experts. A second element of "econocracy" (see chapter 2.11.) is the "TINA" argument: "There is no alternative" (Earle, Moran & Ward-Perkins, 2017). If economics were a natural science, such a position could make sense: to gravity, there is currently no alternative theory available. Although even in natural sciences, time after time, the scientific community has proven that the worldview can change. The philosopher of science Thomas Kuhn (2017) has collected a long series of examples in which natural scientists changed their discipline's "paradigm." So, even in natural sciences, it's incautious and obsolete to talk about and teach "endurable truths" (Samuelson & Nordhaus, 2016, p. 10). Since economics is a social science, it does not deal with natural phenomena but with social constructions, such as markets, companies, money, or trade (Dürmeier, von Egan-Krieger & Peukert, 2008; Van Treeck and Urban, 2016). Consequently, there are alternative ways to understand, define, design, regulate, and practice "the economy."

Still, influential economists like Friedrich August von Hayek – a prominent scholar of the Austrian School of Economics, awarded with the Swedish Riksbank's prize in economics in 1974 for his theoretical work on money and economic fluctuations – developed a world view in which the cornerstones of the economic order cannot be changed easily. Hayek described a "spontaneous" order of things with the term kosmos in contrast to a man-made artificial order that he coined taxis; then, he associated markets and economic relations with this quasi-natural order which by definition is difficult to change or whose change should not even be thought (Hayek, 2003, 40–56). Hayek was one of the main advisors of Margaret Thatcher, the prime minister of the UK from 1979–1990. When Thatcher coined the famous slogan "There is no alternative" (Berlinski, 2011), she translated Hayek's message into politics. Hayek had taken this message from his mentor, the supervisor of his doctoral thesis, Ludwig von Mises: "Either capitalism or communism, there is no alternative in between" (Ötsch, 2018, p. 29). This resembles the previously introduced "false dichotomy" of "free trade" vs. "protectionism."

Hayek was a believer in a global "market society" where humans, society, and democracy behave according to the logic and assumed "laws" of the market. But, on the one hand, markets are man-made – they do not imply natural laws. On the other, empirical studies have proven that most human beings behave differently from what market ideology suggests (Thielscher, 2022, p. 151).

Nevertheless, the belief in self-regulatory functioning of markets and the free trade ideology "enjoys still a widespread acceptance in mainstream economics" (Schumacher, 2013, p. 99). Despite the developments in international trade theories described in chapter 2.1., according to The Economist (2011, p. 5), the theory of comparative advantage is "one of the least controversial ideas in economics." Paul Samuelson, who himself got the Riksbank's prize in economics in 1970, discovered that there are also losers in free trade, but he said in 2004: "Most of the facts support Ricardo's worldview and his theory of free trade […] There is no convincing alternative […] If we really needed a new theory for international trade, I would write it myself. But we don't need it" (interviewed by Rieke, 2004).

What normally is not mentioned is that economists like Samuelson focus more on their theoretical models in which the benefits for the winners could be used to compensate the losers. Unfortunately, in reality this is rarely the case.

One of the journalists who most prominently translated the TINA message into media language is Thomas Friedman (2000, p. 105), a New York Times author, who wrote in his book The Lexus and the Olive Tree: "The free market is the only ideology left." He seconded Francis Fukuyama (1992), who claimed to observe "the end of history" with the "marriage" of capitalism, free trade, and liberal democracies. Contrary to their assumptions and assertions, free trade has come along with a sharp decline of democracy globally. According to the V-Dem Institute of the University of Gothenburg (2021, p. 6), "the global decline of liberal democracies during the past 10 years is steep and continues in 2020, especially in the Asia-Pacific region, Central Asia, Eastern Europe, and Latin America." Liberal democracies diminished over the past decade from forty-four countries to thirty-two (V-Dem Institute, 2023, p. 11).

More importantly, alternatives to the model for which no alternative is said to exist, are numerous. Their joint answer to TINA is "TAPAS": There are plenty of alternatives.

4.1.1. Alternative schools of economics

The neoclassical is just one theoretical school of economics. There are many others: Keynesian, Neokeynesian, Historical, Institutional, Complexity, Marxian, Ecological, Feminist, and Austrian School of Economics (Exploring Economics, 2024). Usually, students of economics don't learn all these theories, but only one or very few. Michael Wickens (2011, p. XV) writes in the introduction of his textbook Macroeconomic Theory: A Dynamic General Equilibrium Approach: "The virtue of DSGE [Dynamic Stochastic General Equilibrium] macroeconomics is brought out by the following encounter with a frustrated student. He protested that he knew there were many theories of macroeconomics, so why was I teaching him only one? My reply was that this was because only one theory was required to analyse the economy, and it seemed easier to remember one all-embracing theory than a large number of different theories."

The authors of this Working Paper prefer the approach to economic science of the International Student Initiative for Pluralist Economics (ISIPE, 2024), who ask for both a greater diversity of theories within the discipline of economics as well as for a comprehensive contextualization of economic science and its connection with ethics, ecology, history, democracy theory, psychology, gender studies, and post-colonialism.

It is a fact that heterodox theoretical schools choose a different approach to international trade and do not support the free trade idea. For instance, in ecological economics, values like proximity, circularity, cohesive communities, resilience, or democratic control (Daly & Cobb jr., 1994, pp. 209–235) rank higher than neoclassical values, such as international division of labour, efficient allocation of resources, more trade, or "broader consumers' choice" (European Commission, 2006, p. 4) when it is already as broad as it was in 2006 in the EU.

4.1.2. Alternative economic models and practices

There are many concrete and practical economic models aiming at solving social and ecological challenges – the list of existing TAPAS is quite long. One of the first alternatives to the unlimited growth paradigm was Herman Daly's Steady State Economy as early as in the 1980s. This former leading World Bank economist is also considered the founder of the theoretical school of ecological economics that focuses on sufficiency instead of growth (Daly, 1991). Out of this school, the Degrowth or Post-growth movement has emerged, with branches in France (Serge Latouche), Italy (Maurizio Pallazzi), and Germany (Nico Paech, Barbara Muraca, Andrea Vetter, Matthias Schmelzer), as well as internationally (Tim Jackson, Jason Hickel, and Timothée Parrique). The movement organizes a series of conferences with high numbers of participants. In May 2023, a Beyond Growth conference was held in the European Parliament with approximately two thousand participants in situ (Parrique, 2023).

The British economist Kate Raworth (2017) proposes a Doughnut Economy. The doughnut consists of two limits: the inner – social – limit indicates what amount of global resource consumption is at least necessary to satisfy the basic needs of all living humans. The outer – ecological – limit indicates how much humans can consume without deteriorating the global ecosystems. It is equally a redistributive and regenerative model for the economy.

The Economy for the Common Good (ECG) is a model for an ethical market economy and a more holistic successor of the European "social market economy" (EESC, 2015; Felber, 2019a; Göpel, 2016, pp. 122–126; Ulrich, P., 2019). It ties in with the original "oikonomía," whose goal was to provide the wellbeing of all household members. Aristotle distinguished oikonomía from its opposite: if someone strove first and foremost for material goods such as money or wealth, he called such behaviour "chrematistiké" – the ancient predecessor of modern capitalism (Dierksmeier & Pierson, 2009). The ECG movement has spread since its start in Austria in 2010 to more than thirty countries on several continents.

The Commons Theory – advocated and developed, amongst others, by the first female winner of the Riksbank Award in economics, Elinor Ostrom (2011), and more recently by Silke Helfrich and David Bollier (2014) – tries to define common principles, criteria, and patterns for the multifold and diverse practices of "commoning." Commoning is an umbrella concept for economic activities "beyond market and state" that are about "restoring the deep connection between a community's values-intentions and the connections they can establish with a shared resource" (Doran, 2017, p. 107). Concrete examples range from community supported agriculture and non-profit cooperatives to commons-based peer production and open source software.

Also, the Social and Solidarity Economy is a mainly practical model, based on cooperatives and not-for-profit entities, including projects in the agrarian sector and banks, some of which are associated with the European Federation of Ethical and Alternative Banks and Financiers (FEBEA). On the European level, several organizations have joined the umbrella alliance Social Economy Europe.

Next to commons, cooperatives, and social businesses, there are more practices that try to contribute to the "Great Transformation" towards a sustainable, solidary, just, and democratic economy and civilization. Amongst these are permaculture, Community Supported Agriculture, Transition Towns, ecovillages (united in the Global Ecovillage Network), local currencies, some types of cryptocurrencies, open-source projects, commons-based peer production, barter systems, and more.

The common denominator of these schools, narratives, models, and practices is that nowhere trade is considered a goal, but a means. The goals range from a good life for everybody, human and labour rights, social cohesion and just distribution, gender justice and political participation, ecological stability and food sovereignty. These goals align with the goals of non-economic international law from the establishment of the UNO and the Universal Declaration of Human Rights to ILO and UNESCO conventions, from Multilateral Environmental Agreements to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement that builds on it. Trade is generally considered a means to help achieve these goals and principles.

The Sustainable Development Goals (SDGs) follow this pattern. Trade is not directly mentioned in the 17 goals, but it appears in the targets of two goals: goal 14 ("Conserve and sustainably use the oceans, seas and marine resources for sustainable development" (United Nations, 2024b)) and goal 17 ("Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development" (United Nations, 2024c)). Target 14.6, with a deadline of 2020, made a direct link to the WTO negotiation on fisheries subsidies ("By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing") and put, partly with delayed success, pressure on WTO members to conclude the negotiation started more than twenty years ago as part of the Doha Development Round in 2001 (WTO, 2024q). The WTO Agreement on Fisheries Subsidies was finally adopted at the Twelfth Ministerial Conference (MC12) in Geneva in June 2022, but it was still waiting to become operational when this Working Paper was finished.

Among the 19 "targets" of goal 17, targets 10 to 12 form a section on "trade" and include the promotion of "a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization" (target 10) as well as "doubling the least developed countries' share of global exports by 2020" (target 11) (United Nations, 2024d). One can read this as "trade is one means" – amongst many others – to help achieve the overarching goal of sustainable development.

4.2. Orienting trade towards the democratically defined goals of the economy

4.2.1. What is economy, its goals, and the goal of trade?

How do we know that a trade agreement is successful? How do we measure that? Currently, the most important indicator of the "success" of a trade agreement is GDP growth. But what does GDP measure? Does it measure "economic activities"? Or the achievement of the goals of the economy? GDP measures the aggregate value of the final goods and services produced in the country and sold via markets in one year. But is this the same as "economy"? According to neoclassical textbooks and The Britannica Dictionary (2024), economy is "the process or system by which goods and services are produced, sold, and bought in a country or region." As argued, this is a very problematic definition of "economy" for three reasons:

- Many human (basic) needs are not satisfied via products or services sold and bought at markets; but if the economy is about "human needs" or the satisfaction thereof, they get lost and become invisible.
- Moreover, there are products and services sold and bought at markets do not satisfy human (basic) needs; they just meet a demand dissociated from true (or basic) needs; economists talk about "revealed preferences" instead of needs.
- Some products and services sold at markets even impede the satisfaction of human needs, both for the mode of production or the effect of the products (weapons) or services (tax evasion).

If "economy" is equalized with market transactions, then economic success is measured correctly with GDP, and then the "goal" of trade is to contribute to GDP growth. The higher the GDP, the higher a country's "welfare."

But this is a flawed construction that culminates in the equalization of GDP and welfare. Two methodological problems of GDP have become increasingly visible over the last years:

1. GDP can grow while everything that really matters in people's lives can worsen: health, equality, inclusion and social cohesion, power concentration, happiness, or life expectancy. It has become obvious that GDP does not measure what really matters – what the actual goal and definition of economy should be (van Dieren, 1995; Philipsen, 2015; Jackson, 2016).

2. GDP accounts positively for many destructive and harmful activities, including possibly the most damaging of all: the production of weapons and even wars. It is a historical fact that GDP was developed during World War II by Simon Kuznets in order to calculate the optimum increase of military expense in proportion to the whole economy (Philipsen, 2015, pp. 107–116). Giving positive value to negative activities is methodologically flawed. This criticism is not new. As early as the 1960s, presidential candidate Robert Kennedy (1968) concluded his speech at the University of Kansas with his famous remarks about GDP: "It measures everything in short, except that which makes life worthwhile." Consequently, it is counterproductive to conclude a new trade agreement with the argument that it contributes to GDP growth.

4.2.2. Fixing the fundamentals: Economy for the Common Good

The Economy for the Common Good (German original "Gemeinwohl-Ökonomie") (Felber, 2018) tries to resolve these problems from the root. First, it offers a new definition of "economy," building on a long series of heterodox schools and alternative narratives and models of economy, which only recently have entered mainstream textbooks (see box 8). Here are the key "ingredients" of the proposed definition:

- Economy is primarily about the satisfaction of the (basic) needs of humans – very close to the original meaning of "oikonomía": providing for the wellbeing (in the meaning of satisfaction of needs) of household members.
- It does not matter how and where basic needs are met: via markets, public goods, commons, gift giving, or in households.
- Economic activities must not deteriorate the ecological foundations of life, and they must not diminish the ability of future generations to satisfy their (basic) needs: sustainability and/or intergenerational justice is imperative.
- Economic activities shall not contradict or undermine, but rather promote and be in line with, fundamental democratic and social/relational values such as solidarity, justice, or democracy.

As a consequence of the consideration and integration of "ingredients" into a definition of economy, three authors of the Economy for the Common Good movement have developed and offer this definition: economy is about "the satisfaction of the needs of living and future human generations, in alignment with democratic values and ecological planetary boundaries" (Dolderer, Felber & Teitscheid 2021, p. 7.) In shorter words: the common good. This may not be a perfect definition, but at least it's a start. It goes beyond most current mainstream textbooks of economics. And it has radical consequences for a) the definition of the goals of the economy, b) the measurement of economic success, c) the definition of the goals of trade, and d) the evaluation of how successful trade agreements are.

"Economics is the study of how society manages its scarce resources."

Mankiw and Taylor (2014, p. 2)

"Economics […] explores […] the way in which our activities influence not only our own well-being but also that of others and the environment."

Mankiw and Taylor (2023, p. 1)

"Economics is the study of how people manage their resources to meet their needs and enhance their well-being."

Goodwin et al. (2015, p. 40)

"Economics is the science of the satisfaction of the needs of living and future human generations, in alignment with democratic values and ecological planetary boundaries."

Dolderer, Felber and Teitscheid (2021, p. 7)

Box 8: Definitions of "economics" in textbooks and scientific literature

4.2.3. Common Good Product

In a second step, the Economy for the Common Good movement makes a proposal on how to define the goals of the economy. The concrete idea is to compose democratically a "Common Good Product" that will replace GDP as the overarching goal system for the economy – and, consequently, trade.

This could be done directly by the people through a citizens' assembly or an economic convention (ECOnGOOD, 2022). The latter is a year-long working process of a representative national assembly that elaborates several proposals for the final voting by the citizens. In this process, the members can submit proposals for the most relevant aspects of quality of life, wellbeing for all, and the common good, inspired by experts and in contact with citizens. Of all these proposals, the top twenty could be included in the final Common Good Product (CGP) or Index (CGI). The final goals will be operationalized with measurable and comparable indicators – this could be the contribution of interdisciplinary science. The Common Good Index could be measured using neutral points rather than in monetary terms. Its result would be comparable both across time and space.

Then comes the most relevant step: once the CGP is in place, all decisions of economic and other policies could be evaluated and taken according to their contribution to the growth of the CGP rather than GDP. Trade and trade policy measures, as all policy measures, could be evaluated according to their contribution to the Common Good Product – with a "CGP screening tool." This helps evaluate the positive/negative impact of a political decision (e.g., the adoption of a trade agreement) on all sub-goals of the Common Good Product. If trade contributes to the rise of a democratically composed CGP – irrespective of its positive or negative contribution to GDP – then finally trade will serve as a means for the goals of the economy and economic policy.

Fixing the fundamentals of economy and trade	
Definition of economy (as a start for a broad discussion)	"The satisfaction of the needs of living and future human generations, in alignment with democratic values and ecological planetary boundaries."
Goals	common good, democratically defined and composed by, for example, 20 sub-goals and measured with indicators
Success measurement	Common Good Product (economy) Common Good Balance Sheet (business) Common Good Assessment (finance)
Trade	is a means to help achieve the goals of the economy (growth of the CGP)
Evaluation of trade (agreements)	its impact on the CGP with a CGP screening tool

Table 10: Fixing the fundamentals of economy and trade

5. Key Elements of an Ethical World Trade Order

5.1. One World Approach

There is a strong case for a multilateral approach: the multifold ecological, climate, social, hunger, health, migration, and other crises on the one hand, and the global spread of technologies and economic globalization, on the other, have catalyzed the emergence of a self-conception of mankind as one global community in "one world" or "one earthship." If mankind is one global society or family, we need one common agreement on basic values, human rights, and policy goals. It is now time to work on the "political" globalization, rather than merely technological or "economic" globalization.

The WTO reached a stalemate right after its start because it was not established in an equal and fair global spirit: rich countries wanted to impose their (export) interests on the large majority of poorer countries. They were accustomed to prepare decisions in the famous "Green Room" meetings with selected members and then ask everyone else to sign (Jones, 2009, p. 353).

Green Room meetings

The name "Green Room" consultations comes from the colour of the wallpaper in the director-general's conference room (when Arthur Dunkel was in this position from 1980 to 1993). Since then, the colour of the wallpaper has changed in the DG's conference room – to an off-white grey. But the renewed consultations are still being referred to by diplomats as Green Room consultations (Raghavan, 1999).

These consultations are designed to provide the basis for a consensus on critical negotiating issues that can be brought to the WTO membership as a whole. Green Rooms can be considered a necessary feature of consensus building in such a large organization, but they have been criticized because they tend to favour representation from large and high-income member countries (Jones, 2009, p. 349).

Box 9: Green Room meetings

According to diverse authors, such a "neo-colonial" policy style failed together with the attempt to push ever further down the limits on trade, turning it into a political priority over everything else (Wallach & Sforza, 1999; Khor, 2002; Jawara & Kwa, 2004; Wallach & Woodall, 2004; Tandon, 2018; ReCommons Europe 2020; Moyo, 2024; Stiglitz, 2024). It was just a question of time when the WTO would end up in a stalemate, in which the trade body has been since at least 2008.

The EU's strategy to try to bypass the deadlocked WTO via bilateral and plurilateral FTAs and BITs is not in line with the TEU: the latter clearly mandates the search for a) multilateral solutions b) within the UN system. Art. 21 (h) TEU mandates to "promote an international system based on stronger multilateral cooperation and good global governance."

Whereas the EC neglected this mandate, giving priority to short-term business interests, this Working Paper builds more consequently on the TEU and its principles and objectives for the external action of the EU, to which trade policy belongs. The authors propose a multilateral solution aligned with the values and objectives of the TEU.

The proposed shift of strategy becomes even more convincing if we take into consideration historical precedents: it would be the third attempt to regulate global trade within the United Nations, after the first attempt in 1944 (ITO) and the second in 1964 (UNCTAD). Maybe now the time has come for a United Nations Ethical Trade Zone (UNETZ). Facing pressing global ecological, social, human rights, and security problems, there is a window of opportunity to rewrite global trade rules in alignment with (non-economic) international law – from the Universal Declaration of Human Rights to the ILO's labour conventions, from the Convention on Biological Diversity to the UNFCCC – and in better alignment with the principles and objectives of the European Union's external action.

Bearing in mind this historical record, such an initiative would very probably quickly gain momentum if the European Union took it. Considering the weight of the EU, it would be only a matter of time before more countries followed the flow. The UNETZ would entail a substantial reform of the global rule-based trade order, building on concrete ideas with historical precedents. It would not be something new, but something overdue – combined with an adequate response to the current pressing challenges of mankind, which range from climate change and the loss of biodiversity to excessive inequality and the erosion of social cohesion, to involuntary migration and armed conflicts. There are also other thinkers who conclude that "in a balanced world trade system the WTO will play a significantly less important role and it will be integrated in the UN system" (Klimenta, 2006, p. 145), who advocate for "fairer and more sustainable alternatives" to the WTO (Orbie, 2020), for a "new system of global multilateral rules" with a "fundamentally new institution" (OWINFS, 2021, p. 4), for a "new multilateralism" (Gallagher & Kozul-Wright, 2019) or "A New Global Deal" (João Rodrigues, 2024).

5.2. United Nations Ethical Trade Zone (UNETZ)

A group of willing countries, among which the authors suggest the European Union to be, could start a new international trading zone that does not obey the "free trade paradigm" but implements the "ethical world trade paradigm." This United Nations Ethical Trade Zone (UNETZ) would:

- support the values and goals of the international community: from human and labour rights to climate and biodiversity protection
- allow democratic scope at the local and the national level (political "dancewear" instead of "straitjackets")
- aim at level current account balances for all trading partners, best achieved with a global trade currency (which was already proposed by John Maynard Keynes in 1943)
- enable countries at a lower industrial-technological level to catch up with more developed countries (allow "development ladders")
- ensure cultural and economic diversity and diversification, and therefore innovativeness and resilience

This zone and its regulating body would be placed within the UN system. Participants would trade with each other on more favourable terms than with non-members – leaving behind both extremes of free trade and protectionism.

The core idea is to place trade in the background, whereas the "level playing field" in the foreground will be provided for the more relevant topics and objectives: human rights, labour rights, indigenous people's rights, gender justice, nature's rights, climate protection, biodiversity protection, environmental protection, tax justice, moderation of inequality, protection of cultural diversity, protection of farmers' own seed-reproduction capacity, and others. Trade turns into a means to help achieve these goals.

Two of the WTO's core principles, "national treatment (NT)" (treating foreigners and locals equally) and "most favoured nation (MFN)" (treating other countries equally) would be replaced, as these prioritize trade over every other consideration ("non-trade concerns"), which has proven to be an inversion of the order of values and objectives. Every country will be allowed to prioritize local and national producers, albeit within an agreed international framework based on even trade balances. Likewise, no country will be forced to treat all countries equally – how favourably they trade with one another could depend on a country's engagement for peace, human rights, climate protection, and so forth. That would not be structurally different from today, where countries can sue one another before the WTO jurisdiction (Panel and Appellate Body) if a country violates the jointly agreed rules – only the goals and motives for lawsuits would be different. Nevertheless, different from the design and rule-system of the WTO, all participants of the UNETZ will be equal winners, as even current account balances of all countries would be one of the core design elements (see section 5.2.2.).

It would not be the first attempt to build an Ethical Trading Zone within the UN, nor would all countries have to be a member from the start. The ITO was negotiated between "only" 44 nations. UNCTAD was initiated by 36 developing countries, who turned into the "G77," which today counts 134 members. The WTO was founded by 67 nations, which have increased to 166 today. The two existing covenants on human rights came into force after just 35 states had ratified them. So, if the EU took initiative for an Ethical Trading Zone within the UN, it would presumably find a comparable group of willing partners easily. A United Nations Ethical Trade Zone might become effective if, for example, 50 UN member states were to ratify its founding charter. New members could join at any time.

In 2019, 5 states (Fiji, Iceland, New Zealand, Norway, and Costa Rica) launched an initiative towards a plurilateral "Agreement on Climate Change, Trade and Sustainability" (ACCTS) covering three areas: a) liberalization of environmental goods and services, b) reform of fossil fuel subsidies, and c) guidelines for eco-labelling programmes (MFAT, 2024). Switzerland joined ACCTS in 2020. In general, the agreement offers all WTO members the option of joining it. Furthermore, it is intended that the ACCTS will eventually become part of the WTO and thus become multilateral (SECO, 2024).

The 6 ACCTS countries are also members of the WTO Fossil Fuel Subsidy Reform Initiative FFSR (WTO, 2024r), together with 42 other WTO members (including the EU and its member states). They presented a proposal for a WTO FFSR at the WTO Ministerial Conference in 2024, known as the Ministerial Statement on Fossil Fuel Subsidies, which contains an annex with the next steps on concrete options (WTO, 2024s).

Most of the supporters of the WTO statement on the FFSR are also members of the new "Climate Club." The idea of establishing climate clubs was first introduced by the economist William Nordhaus in 2015, even before the Paris Agreement was adopted as a legally binding international treaty on climate protection on 12 December 2015. The idea was then further developed in the context of institutions such as the G7 and in the Conferences of the Parties (COPs) of the UNFCCC climate negotiations, before being officially launched at the UNFCCC COP28 at the end of 2023. In its own words, the Climate Club (2023) is "an open, cooperative, and inclusive forum of climate-ambitious countries with the goal of supporting the effective implementation of the Paris Agreement and decisions thereunder. It aims to support accelerating climate action and increasing ambition to achieve global net zero greenhouse gas (GHG) emissions by or around mid-century, with a particular focus on decarbonising industry."

ACCTS, FFSR, and the Climate Club show that, on the one hand, there is a series of parallel forums that have different focuses. It remains to be seen whether concrete actions will follow the declarations and meetings; it is a fact that several key players need to raise the level of ambition in order to meet the target of the Paris climate protection agreement (UNFCCC, 2023). Still, these initiatives can be considered potential germs of a future UNETZ.

In a future UNETZ, any failure to sign or ratify a UN agreement in defined relevant fields would be treated as a "foul," as it gives the country in question an unfair competitive advantage and thus would make it liable to protective tariffs in return. In the end, foul play would have to cost global traders more, not less. The "level playing field" should be level for fair players, whereas foul players would meet negative sanctions and suffer disadvantages. The core of the ethical trade system might be an exhaustive list of every (existing, gestating, and planned) UN agreement under which non-ratifying countries were liable to pay customs duties to those that ratified it when their companies search for market access. Lower or higher protective tariffs might then be imposed according to the gravity and impact of the agreement. For example, the tariff might be set at:

- 20 percent in the case of a war of aggression (stated by the UN)
- 15 percent in the case of the refusal of ecological human rights (explained in section 5.2.6.2.)
- 10 percent in the case of the refusal to abide by human rights pacts
- 5 percent in the case of failure to abide by environmental agreements or agreements to protect cultural diversity
- 3 percent in the case of non-implementation of the ILO's core labour standards
- 1 percent in the case of non-implementation of an ILO's governance (priority) convention
- 0.1 percent in the case of non-implementation of a normal ILO convention

The criteria for the proposed percentages is that the tariffs should neither be insignificant nor prohibitive. The criteria for the ranking is relevance – peace ranks highest – and also the number of possibly relevant agreements. The numbers can be adapted related to new insights into the gravity of violations. An ethical UN tariff system might be schematically represented as follows:

Domain	Additional tariff	Total for domain
1 Peace		***20%***
2 Human rights		***30%***
Civil Covenant	*10%*	
Social Covenant	*10%*	
Human Rights Court	*10%*	
3 Labour rights		***48%***
Core standards 1–8	*3%*	*24%*
Governance (priority) conventions	*1%*	*4%*
ILO convention	*0.1%*	*20%*
4 Environmental protection		***65%***
Each priority agreement	*5%*	*45%*
Ecological human rights	*20%*	
5 Cultural diversity & farmers' rights		***20%***
UNESCO Convention	*10%*	
Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)	*10%*	

6 Taxes		***30%***
Participation in financial register with automatic exchange of information	*10%*	
1% HNWI tax (for UN funding)	*10%*	
Country-by-country reporting, unitary taxation, minimum tax rate, and assessment basis	*10%*	
7 Global merger control		***10%***
8 Corporate obligations		***25%***
Common Good Balance Sheet	*10%*	
Court for Corporate Crime	*10%*	
Nullification of ISDS	*5%*	

Table 11: Ethical tariffs in case of non-ratification and non-execution of diverse UN agreements

It is daring to propose tariffs in the early twenty-first century. Until recently, for mainstream economics, they were as unwelcome as a disease. Leading textbook author Samuelson (2004, p. 143) described them as the cause of "economic arteriosclerosis." Yet to reject tariffs flatly is to turn a blind eye to history: tariffs have been trusty companions to all industrial countries, in waves that have punctuated the last few centuries. And the states that today discredit them the most are the very ones that made full use of them in their own history, as we discussed in section 2.4. Apart from that historical fact, tariffs are still in worldwide use today, and even the EU boasts that they amounted to 25.2 billion euros in 2022 (European Commission, 2024k), accounting for 15 percent of its budgetary revenue (Council of the European Union, 2021, p. 1). In some poor countries, they make up almost half of state revenue (see table 12).

High customs countries	**Customs % of total government revenue**	**Low customs countries**	**Customs % of total government revenue**
Angola	40.7%	Luxembourg	0.2%
Zimbabwe	38.9%	Iraq	0.2%
Sudan	27.7%	France	0.5%
Nepal	20.3%	Germany	0.7%
India	15.1%	United States	1.1%
Paraguay	10.1%	Australia	2.6%

Table 12: Customs as % of total state revenue (World Customs Organization, 2015, pp. 58–63)

But even today, the European Union levies some product categories with high import duties, and the highest applied tariffs are even triple digit. This is at odds with the free trade rhetoric.

Highest average MFN tariffs	Tariffs in %	Top MFN tariffs in certain product categories	Tariffs in %
Dairy products	32.3	Agricultural products	171.6
Sugar and confectionery	17.0	Animal products	116.6
Meats	19.0	Fruits and vegetables	160.0

Table 13: EU's highest average and top MFN tariffs (WTO, 2024t)

At a fundamental level, a tariff is an instrument for steering economic policy, like interest base rates or taxes. One might just as well reject taxes or interest rates in principle, by using misnomers like "free money" or "free state" (analogously to "free trade"). But just as the aim of interest rates is not to make investment unprofitable but to navigate the economic cycle, and just as taxes are not supposed to confiscate income but to ensure just distribution and the funding of public goods, so tariffs are not fundamentally directed against trade. The purposes they serve are the targeted selection, differentiation, measuring, and steering of trade. Those who would throw out tariffs with the "bathwater" of protectionism deprive countries and policy-makers of an important tool of economic policy (and democratic sovereignty). (The EU's Carbon Border Adjustment Mechanism (see chapter 5.2.6.1) is just another instrument of trade policy, but with a similar effect.)

5.2.1. UNETZ Court

In order to assure that signatories fulfil their duties of human rights protection, environmental rights protection, environmental protection, or climate protection, one could learn from free traders – namely the founders of the WTO and signatories of BITs – as well as from the founders of the UN. International law works best in both cases if there is a possibility to act against a country that is violating its obligations: if a country violates its free trade obligations, it can be brought before a WTO panel. The WTO dispute settlement system – and especially the appellate body – is currently in crisis (WTO, 2024u), but from 1995 until 2024, WTO members have submitted 624 requests for consultations, the first stage in the dispute settlement process, and over 350 rulings have been issued (WTO, 2024v). Or, if a government violates the UN Charter by starting a military aggression against another country, UN forces can be authorized by a decision of the Security Council to stop the aggression. If a country in Europe violates the human rights of (one of) its citizens, the affected person(s) can bring the state before the European Court of Human Rights in Strasbourg. War criminals can be brought to the International Criminal Court in Den Haag (ICC).

The very same would be the case with the UNETZ: members that have signed the underlying treaty – which is first and foremost the entry ticket – would submit themselves to a UNETZ Court if they do not fulfil their duties under the signed agreement. It would be a "rule-based" system like the WTO, just with different rules. Same as in the WTO, this dispute-settlement mechanism could only be used by states (state-to-state). Individual claimants will be empowered to file lawsuits against corporations at a different tribunal (see section 5.3.2. "International Court for Corporate Crime").

The UNETZ Court could sanction violators of their commitments with, for example, a quarter of the custom duty for non-members. After four years of continuous violation, that member would lose its member status and be treated as a non-member.

5.2.2. Trade balances in equilibrium (Keynes' ICU & Bancor Plan)

Especially for small countries, it is dangerous if they continuously have trade deficits, since this can lead to debt crises or sovereign bankruptcy. That is why a multilateral and fair trade system should be based on more or less even trade balances. The sum of all trade balances globally is zero; a surplus in one country's balance is mirrored necessarily with another country's deficit. If trade balances are simply left to chance, imbalances can build up over time and ultimately draw countries into sovereign bankruptcy, or at least into an economic and debt crisis. If the vision that a trade agreement should serve "the universal good of the whole" (Ricardo, 1911, p. 81) is to be taken seriously, it must logically provide for a compensatory mechanism for trade imbalances. Consequently, the prime condition of becoming a member of the future UNETZ is a country's commitment to a trade balance in equilibrium – including the submission to a sanction mechanism for deviators, both towards surplus and deficit.

As shown in chapter 2.1.2., this idea was already exposed in detail by J. M. Keynes (1943), but it was dismissed at the Bretton Woods Conference in 1944 and not picked up again until the Great Financial Crisis in the early twenty-first century. John Maynard Keynes came to this realization during the Great Depression, then gradually refined it into the proposed solution that he presented to the Bretton Woods conference in 1944 – as the delegate of Great Britain. His proposal would have brought about a genuine change in the international trade and currency system; it would for the first time, by mathematical necessity, have brought the same benefits to all who participated in it. The centerpiece of Keynes' idea was an international complementary currency to be used in trade calculations between states, via an International Clearing Union (ICU). Only the central banks of member states would have an account in this, which would show the balance of imports and exports for each country. A surplus would lead to a positive balance on the account, a deficit to a negative balance. (There is a similarity here to today's target system of the European Central Bank.) Keynes called the reckoning unit "bancor"; today we might use a term like "globo" or "terra." If all participating countries had even trade balances, their trade accounts would balance one another out; "the whole" would be "admirably" in balance (Ricardo, 1911, p. 81).

Keynes provided consistently for countermeasures in the event of imbalances. Should any country's trade balance deviate by a quarter or more from its quota (the average value of exports/imports over the previous three years), it would have to pay a 1 percent tax (on the amount of deviation) into the ICU reserve fund. Should it deviate by more than 50 percent, a further 1 percent would be charged. (This recalls the theoretical penalties in the eurozone for deviations from the Maastricht criteria.) What can be seen as a "disruptive innovation" in Keynes' proposal is that the penalties would be imposed on countries with a surplus as well as those with a deficit. The fault for any imbalance would no longer lie with one side only; both sides were called upon with the same vigour to restore equilibrium.

Furthermore, the ICU was supposed to acquire more and more rights to intervene as the deviation grew larger. In the case of an overdraft (trade deficit) of more than a quarter, the affected country would have to adjust its exchange rate downward (depreciation); or if it rose above a half, the ICU had the power to impose controls on the movement of capital and to fall back on the country's gold reserves; if it reached more than three-quarters, the ICU could withdraw the country's right to debit its account and declare it insolvent. The proposals for countries in surplus would be no less effective – measures to raise internal demand, to adjust the exchange rate upward (currency appreciation), and to reduce duties and import restrictions, as well as loans to countries in deficit. Keynes justified these ambitious measures as follows: "We are too ready today to assume the inevitability of unbalanced trade positions, thus making the opposite error to those who assumed the tendency of exports and imports to equality" (Keynes, 1943, p. 28). And: "We need a system possessed of an internal stabilizing mechanism, by which pressure is exercised on any country whose balance of payments with the rest of the world is departing from equilibrium in either direction" (Keynes, 1943, p. 20).

Another innovation is the idea that surplus countries could award credits to deficit countries. Logically, the level of interest on these would have to be lower than the penalty, so that both sides had an incentive to make the credit transaction. This element would even function with negative interest rates, involving genuine aid by surplus to deficit countries. A rate of minus 1 percent on part of the surpluses would still work out 50 percent cheaper than having to pay penalties of 2 percent.

Keynes was aware of the scale of what he had in mind: "It has been suggested that so ambitious a proposal is open to criticism on the ground that it requires from the members of the Union a greater surrender of their sovereign rights than they will readily concede. [NB: Perhaps that depends on who is the sovereign.] But no greater surrender is required than in a commercial treaty [...] A greater readiness to accept super-national arrangements must be required in the post-war world" (p. 36). Still under the impression of World War II, Keynes made a plea for "financial disarmament" and ended on a solemn note: "The plan makes a beginning at the future economic ordering of the world between nations and 'the winning of the peace'" (p. 36).

The authors of this Working Paper consider Keynes' idea to be more convincing than Ricardo's theory of comparative advantage; for not only is it as precise mathematically, but its application would make eminent sense. It would make the world a little more just and peaceful. This may well be why it failed in 1944 – because of the US government. Keynes' opposite number at the negotiating table, Harry Dexter White, proposed the dollar rather than the bancor as the world's reserve currency, promising to back it with gold. And instead of the ICU, he proposed a World Bank and an International Monetary Fund – the Bretton Woods twins were implemented and have been the object of ample critical analysis (Stiglitz, 2002; Felber, 2006; Klein, 2014).

The predictable collapse of Bretton Woods in the early 1970s ushered in a period of major crises. As Susan George (2007) put it: "With an ITO and an ICU, we could have had a world order in which no country could run a huge trade deficit (the United States deficit stood at $716 billion in 2005) or the huge trade surplus of contemporary China. Under such a system, crushing third world debt and the devastating structural adjustment policies applied by the World Bank and the IMF would have been unthinkable." George Monbiot (2003, p. 164), for his part, has written: "The gift which Keynes has offered us, and which we have so far refused to accept, is a world in which the poor nations are neither condemned to do as the rich nations say, nor condemned to stay poor."

With the mind-shift triggered by the financial crash of 2008, the "gift" might be finally accepted. Leading economists and bankers finally took up Keynes' idea. One of the first was the governor of the People's Bank of China, Zhou Xiaochuan, who stated in an essay (2009, p. 2) that "the collapse of the Bretton Woods system, which was based on the White approach, indicates that the Keynesian approach may have been more farsighted." A few months later, in its report to the UN General Assembly, the team around Joseph Stiglitz described it as "an idea whose time has come" (United Nations, 2009, p. 110). The UNETZ founders could implement the plan and make it a cornerstone of its architecture.

Of course, Keynes' proposal would have to be carefully considered and analysed for potential amendments and updating; Keynes himself suggested this in a number of places. One improvement might be that low-income countries, above all the forty-five least developed countries (LDCs), would not be penalized for any limited trade surpluses. Insofar as they closed the development gap, this special treatment would then be discontinued. On the other side, the highest-income countries might be partly exempted from penalties if they ran a moderate trade deficit with poor countries.

5.2.3. Democracy first

Whereas democracy is a strong value both in the EU and the UN, free trade and investment protection law is definitely a "tight straitjacket" – for democracy. Under free trade rules, countries are not allowed to:

- treat their own companies better than foreign companies (GATT-WTO principle of "national treatment")
- treat companies from one country better than from another (GATT-WTO principle of "most favoured nation")
- treat products differently if they have been produced differently ("like products"), with few and highly restricted exceptions – for example, with "forest-risk-commodities" (FRC)
- require local content in FDI (sometimes explicitly forbidden in FTAs and BITs)
- regulate investors – for example, employing a minimum share of local workforce or reinvesting a minimum share of profits in the country (sometimes explicitly forbidden in FTAs and BITs)
- provide for public goods if they do not appear on a list of exceptions (approach in the failed extension of GATS)

From the perspective of domestic regulators and democratic self-determination, free trade laws are like fetters of freedom that make it more difficult for countries to execute a whole range of policies to obtain diverse objectives:

Policy field	**Design objective**
Industrial policy	Development of "infant industries"
Structural policy	Diversification and resilience
Energy policy	Protection of ecosystems
Financial policy	Financial market stability
Environmental policy	Protection of the environment
Consumer protection policy	Protection of consumers' rights
Labour and social policy	Safe working places and social cohesion
Public services policy	Universal provision of the population
Technology policy	Sustainable development and democratic control

Table 14: Domestic policy design objectives in conflict with "free trade"

In other words, what appears as a gain of freedom for some just by the term "free trade," turns out to be a severe loss of freedom for others. Concretely, traders and investors, progressively large multinational corporations (which control between one third and two thirds of global trade (UNCTAD, 2023a, xi), are at odds with a whole country's population, political system, democratic culture, policy preferences, and cultural values (Mies & Werlhof, 1998; Shiva, 2006). One could say that free trade law is a kind of protectionism of international traders and investors, whereas it is a straitjacket for everyone else. This does not mean that countries without free trade "fetters" are automatically more democratic: the "straitjacket" is put on democracies and autocratic states likewise.

5.2.4. Strip off the "straitjacket" (Friedman) and put on a "dancer's dress"

The above proposed ethical trade order allows a fair and reasonable resolution of Rodrik's "trilemma of globalization" and to implement his preference for the protection of democratic self-determination. Every country can maintain existing regulations and introduce new regulations to pursue the domestic policy objectives it wants: regional policy, structural policy, employment policy, competition policy, infant industry policy, or the provision of public goods. Trade partners do not get the right to intervene in a country's internal policies, nor can they sue or overrule them by means of international trade courts.

Every country is invited to strip off what Thomas Friedman called a political mission "straitjacket." Instead, it can pull on a democratic "dancer's dress," which means that it can be as open or protected as it wants. It meets no restriction in applying domestic policies and regulations.

The only condition is that a participating country keeps its trade balance in equilibrium, as described above. Under this condition, a country cannot take advantage of any protection measure in order to export more than it imports. If it chooses stronger protection, it either has to open up different sectors for further imports, or export less; it would help countries with a structural surplus – like the EU, and especially Germany and China – to focus more on their internal markets and end heavy trade conflicts.

The term "protectionist" would become as obsolete as "neo-mercantilist," as neither strategy would make sense in such a system. Likewise, "dumping" would be a curable illness: if a country really "dumped" unfairly on another country's market – like the EU has done or is still doing with milk powder, chicken wings, and tomatoes on Caribbean and African markets – these countries could easily, and without having to fear a WTO lawsuit or retaliation, exclude these goods from import. Rich countries have the ability to subsidize their farmers. Poor countries have barely other means than applying import tariffs. If the latter don't want to reduce their own exports, in return, the anti-dumpers would have to let in fairer products or more sustainable services or technologies (maybe from a waiting list). The more sustainable, climate-friendly, and responsible an offer to the world market, the higher the probability to get access: ethical world trade.

5.2.5. Put back the "development ladder" (List)

The dancer's dress should be especially comfortable for developing countries. As shown, Cambridge economist Ha-Joon Chang (2003a) from South Korea advocates for allowing every country to use the same ladder to climb over the wall of poverty that now developed countries (NDCs) used in their own history – which means that they can protect their infant industries, or protect more than richer countries. Martin Khor (2000, pp. 26–27) breaks it down into further detail: "Developing countries must have the ability, freedom and flexibility to make strategic choices in finance, trade and investment policies, where they can decide on the rate and scope of liberalization and combine this appropriately with the defence of local firms and farms."

With the proposed design of the international trade relations, this "problem" would be resolved. An additional proposal is to allow poorer countries a certain trade surplus without sanctioning them. This "positive discrimination" would allow poor countries to catch up with richer countries and close the global divide between countries. Such a "positive discrimination" of the weaker (in terms of average per capita monetary income) would not be something new in trade law. The GATT knows the "special and differential treatment" mechanism, and the EU has launched two initiatives for least developed countries with the EBA

(Everything but Arms: removes tariffs and quotas for all imports of goods, except arms and ammunition) and GSP+ (gives developing countries a special incentive to pursue sustainable development and good governance) (European Commission, 2019d and 2024l), even if these initiatives are unilateral – that is, not reciprocal and not free of "paternalistic" approaches. Also, more recent FTAs include the principle of "common but differentiated responsibilities" (CBDR), which originates from Principle 7 of the Rio Declaration on Environment and Development and also figures in Art. 3 of the United Nations Framework Convention on Climate Change (UNFCCC); both were signed at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, in Rio de Janeiro in June 1992. The common principle could be the general goal of even trade balances; the differentiated responsibility would be the limited allowance for low-income countries of achieving a certain surplus.

Keynes' proposal could be fine-tuned in the following way:

- Lower Development Countries (LDC) (Nielsen, 2011, p. 27) could be allowed to build a surplus in their trade balance up to 10% of their GDP without suffering any sanction.
- Middle Development Countries (MDC) could be allowed to have a trade deficit up to 5% of their GDP.
- Higher Development Countries (HDC) could be allowed to go to a deficit of their trade balance up to 5% of their GDP with MDC and LDC, each.

5.2.6. Sustainable and climate-positive trade

Recalling the fundamental approach in this Working Paper: trade is a means, whereas sound and stable ecosystems and sustainable development are goals. Consequently, trade has to be profoundly and comprehensively checked – if and how it contributes to these goals. Trade law has to be clearly subordinated to human rights, climate, and environmental protection laws and regulations, as well as to labour standards. Ricardo's theory is completely ignorant of any ecological implication and thus not applicable to current challenges. Neoclassical "environmental economists" might argue that it is sufficient to put a price to environmental damage in order to "restore" Ricardo and the market principles. This is more easily said than done: if a price is put to ecological destruction only when it becomes visible, destruction – with all its complex systemic implications – is already ongoing and difficult to mitigate or stop. On the other hand, putting a price on every species, ecosystem, and "ecosystem service" (e.g., climate stability, biodiversity, biological pest control, clean drinking water, clean air, etc.) turns the planet into a commodity: a tradable good itself. This Working Paper suggests a different approach to the relationship of ecology and economy, following the concept of "deep ecology": Nature and the planetary ecosystems are considered the foundation of life and all economic activities, including trade. They have an intrinsic value and are protected by International Law and National Constitutional Law. The range of policy tools is broad, from protecting and prohibiting the use of highly endangered species or sensitive ecosystems to a global resource management and limited per capita consumption rights, from ecotaxes to integrated reporting and accounting rules for companies. For each case, the best method of regulation to achieve the goal – effective protection and conservation of natural resources and the ecological heritage of mankind for all generations – has to be done ex ante: ecology and the planetary boundaries (Rockström et al., 2009; Richardson et al., 2023) should form an implicit part of economic theory.

In the TEU, the EU has already set these goals and priorities (see section 3.2.2.). The problem that has become ever more patent is that existing trade agreements – concretely the "free trade" agreements and investment protection treaties – do not respect this order of things, but "put them on their head": trade is given priority, and the environment and ecology are on the losing end.

As a consequence of rising awareness of this trade-off between free trade and environmental and climate policy, the European Commission (2019a) addresses trade in its Green Deal several times:

Trade in the Green Deal	Comments
"Trade policy can support the EU's ecological transition."	This effect/objective has to be assured with a consistent strategy. The authors suggest the EU promotes UNETZ, which is designed in such a way that ecological transition will be possible.
"Climate policy implications should become an integral part of the EU's thinking and action on external issues"	Climate policy needs to get priority over trade rules; that is why the EU needs to advocate for a new trade regime, which will be reached with UNETZ.
"Commitments to sustainability have been continuously strengthened in EU trade agreements, in particular with regard to enhancing climate change action"	Up to 2024, except for climate in the EU-UK Trade and Cooperation Agreement, signed on 30 December 2020 and entered into force on 1 May 2021 (European Union, 2021a), that can be suspended if the Paris Agreement is violated (European Commission, 2020b), and for the TSD Chapter in EU-New Zealand (European Union, 2024a), there is no further example of an enforceable sustainability commitment in an FTA. The goal shall be that all the EU's trade agreements contain sustainability and climate protection as a priority. This can best be achieved by implementing UNETZ and replacing existing agreements without binding climate protection.
"The Commission has also been stepping up efforts to implement and enforce the sustainable development commitments of EU trade agreements, and these efforts will be further enhanced with the appointment of a Chief Trade Enforcement Officer"	Sustainable development commitments can best be achieved if the Chief Trade Enforcement Officer is trained in sustainable development and takes the suggestions incorporated in the proposal for UNETZ as a basis for his work.
"On climate change more specifically, the EU's most recent agreements all include a binding commitment of the Parties to ratify and effectively implement the Paris Agreement."	These commitments need to become enforceable to make sure that the Paris Agreement will be effectively implemented.
"The Commission will propose to make the respect of the Paris Agreement an essential element for all future comprehensive trade agreements."	The EU can best achieve this by promoting UNETZ.
"The EU's trade policy facilitates trade and investment in green goods and services and promotes climate-friendly public procurement."	This could be achieved by advancing the CSRD. The sustainability report could be assessed and evaluated with a quantitative score; high scores – due to greener products and services – would lead to freer trade and priority in public procurement (see chapter 5.3.).
"Trade policy also needs to ensure undistorted, fair trade and investment in raw	Trade policy needs to ensure that countries in Africa, Latin America, and Asia can use their raw materials in the first place to achieve their own green transition. The EU's Raw Material Initiative needs to be modified in a way that it

materials that the EU economy needs for the green transition.”	ensures fair rules on access and benefit sharing and that extraction is done in the most environmentally friendly way possible without causing damage and depletion of biological resources in developing countries. Up to 2024, many cases of environmental damage and depletion of environmental resources were reported (Arias, 2021, pp. 18–70).
“All chemicals, materials, food, and other products that are placed on the European market must fully comply with relevant EU regulations and standards.”	This must include wage, labour, social, and tax standards in the whole supply chain. The EU needs to commit itself to helping developing countries meet the standards.
“The EU will strengthen its engagement with Africa for the wider deployment and trade of sustainable and clean energy.”	The EU should strive for self-provision with energy and help African countries generate sustainable and clean energy, since the cleanest energy is generated and consumed locally.
“support a just transition globally”	A just transition globally can be achieved with UNETZ. That is why the EU should take the lead in implementing an ethical trade zone under the umbrella of the United Nations.

Table 15: Analysis of the EU Green Deal’s climate protection ambition

The most emblematic and currently most intensively discussed instrument of the EU is the Carbon Border Adjustment Mechanism CBAM (European Commission, 2024m). This instrument can be considered an equivalent to the above-proposed ethical protection tariffs, in the subcategory of ecological protection tariffs. To broaden the spectrum of possible policy measures, we will discuss two alternatives to achieve sustainable trade in the following section. Approach 1 is based on giving a price to an externality; approach 2 tries to convert the use and consumption of a scarce ecological resource into a (limited) equal right – or budget – for everyone.

5.2.6.1. Approach 1: The EU’s CBAM

Yearly CO_2 emissions have more than quadrupled since the establishment of the General Agreement on Tariffs and Trade (GATT) in 1947. Since the creation of the WTO in 1995, these emissions have increased by 50 percent (UNCTAD, 2021, p. 8). To counter this trend of increasing greenhouse gas emissions, the EU introduced in 2005 its Emissions Trading System (EU ETS). The EU ETS makes polluters pay for emissions, thereby establishing economic incentives to reduce them. The price for allowances varied between EUR 3 and 30 from 2013 to 2020; from 2021, it increased sharply, hitting the EUR 100 threshold in March 2023, and falling back to EUR 70 in June 2024 (Trading Economics, 2024). The ETS was heavily criticized, especially for the design element that heavy industries receive free allowances to remain competitive. Some examples for current allowances (European Commission, 2021k):

Installation	Company	Branch	Country	Free allowances 2021–2025 (tons of CO_2)
Complejo Industrial Cartagena	Repsol Petróleo, S. A.	Oil	Spain	9.1
Usine de Saint Pierre La Cour	LafargeHolcim Ciments	Cement	France	4.0
Complesso Raffineria, IGCC e Impianti Nord	SARLUX SRL	Steel	Italy	10.7
BASF Antwerpen	BASF Antwerpen	Chemicals	Belgium	18.2
Hüttenwerk Duisburg	thyssenkrupp Steel Europe AG	Steel	Germany	73.9
voestalpine Stahl Linz	voestalpine Stahl GmbH	Steel	Austria	34.2
Chemelot	Chemelot	Chemicals	Netherlands	20.0
Azomures SA	Azomures SA	Fertilizers	Romania	6.2
Luleå	SSAB EMEA AB	Oil	Sweden	14.0

Table 16: Examples of free allowances 2021–2025 in the EU ETS

In July 2021, the European Commission presented a proposal for a new Carbon Border Adjustment Mechanism that additionally puts a carbon price on imports of a targeted selection of products. The goal is to further reduce CO_2 emissions and prevent "carbon leakage," that is, where companies based in the EU could move carbon-intensive production abroad to take advantage of lax standards, or EU products could be replaced by more carbon-intensive imports. The goal is also "to encourage cleaner industrial production in non-EU countries" (European Commission, 2024c). Iceland, Liechtenstein, Norway, and Switzerland will be excluded from the mechanism since their emissions trading system is linked to the EU's carbon market. Once a global carbon price is achieved, the CBAM would become obsolete.

The final act was signed on 10 May 2023 and applied from October 2023 onward (European Union, 2023). CBAM started with a transitional period (till the end of 2025) without financial obligations and with simplified reporting obligations for those affected. In the first phase, it will cover only a selected number of goods of high environmental impact: iron and steel, aluminum, cement, fertilizers, hydrogen, and electricity generation. The transitional period "will serve to familiarize all stakeholders with the system, gather experience and data and optimize the final design from 2026" (UBA, 2024). CBAM is part of the European "Fit for 55" climate package and complements, according to the German Environment Agency, "the increasingly ambitious EU Emissions Trading Scheme (EU ETS 1). The border adjustment system combines protection against the shifting of CO_2 emissions abroad ('carbon leakage') with effective CO_2 pricing" (UBA, 2024).

Once the definitive system becomes fully operational in 2026, EU importers will have to declare annually the quantity of goods and the amount of embedded emissions in the total goods they imported into the EU in the preceding year, and surrender the corresponding amount of CBAM certificates. If importers can prove that a carbon price has already been paid during the production of the imported goods, the corresponding amount can be deducted (European Commission, 2024c).

Free allowances for sectors covered by the CBAM would be phased out from 2026 until 2035. To avoid being incompatible with rules of the World Trade Organization, the CBAM will apply only to the proportion of emissions that does not benefit from free allowances under the ETS. Environmental and consumer groups have repeatedly pointed out that any subsidies to fossil-fuel intensive industries under the ETS must be phased out as they could easily undermine public support for climate policies (Sánchez Nicolás, 2021).

UNCTAD (2021) alerts in an assessment study that developing countries' exports to the EU, on an average, would decrease by 1.4 percent in case of a carbon price of USD 44 (combined with a CBAM) and by 2.4 percent with a carbon price of USD 88 (p. 23). The most affected developing countries would be India, Brazil, and South Africa, whereas the most negatively affected countries of all would be the Russian Federation, China, and Turkey (UNCTAD, 2021, p. 9). As for the effect on emissions, the UNCTAD study calculates a reduction of 13 percent of CO_2 emissions with an imputed price per ton of USD 44 and of 21 percent with USD 88, respectively (UNCTAD, 2021, p. 23).

For Lunenborg and Naidu (2024, p. 1) of the South Centre, the EU's Carbon Border Adjustment "is discriminatory in specified sectors across a number of areas. Under CBAM, importers face more costs for embedded carbon emissions compared to EU domestic producers." Dupré, Leré, and Lickel (2021) outlined some of the important technical, legal, and political considerations for an effective and fair carbon adjustment and highlighted that a "key element in the acceptance of this mechanism by Europe's trading partners will be to prove, at every stage, that it is indeed a climate measure, not only in terms of its design and implementation but also the intended use of the revenue associated with this mechanism, including its allocation to the funding of mitigation and adaptation in developing countries." Eleanor Scott and Lidia Tamellini from Carbon Market Watch propose that "[r]evenues from the Carbon Border Adjustment Mechanism should be directed to finance climate action in the world's least developed countries that are affected by the CBAM" (LIFE ETX, 2024, p. 36).

As there is no doubt about the positive impact of a CBAM on the one side, and on the other the main objection is that developing countries would suffer a loss of export opportunities and income. A solution could be the participation of developing countries in the above-proposed UNETZ. This would grant them the possibility of a (transitory) trade balance surplus with developed countries; the discussed exemption of LDCs and SIDS from the EU CBAM would not be necessary – another gain for the climate. On the other hand, the proposed use of revenue for green technology transfer can be implemented also within the UNETZ, as one element of North–South solidarity (common but differentiated responsibilities) and (historical) responsibility. In any case, the EU and UNETZ members should make a big effort to help developing countries raise their standards, through technology transfer (see section 5.2.7.), industrial cooperation, and direct financial aid.

Additionally, the UNETZ would not only look at the most prominent environmental topic on the agenda – climate stability – but at all (nine) planetary boundaries: focusing on just one problem could turn out to be a major systemic risk at the end of the day (UNU-EHS, 2023). In the UNETZ, all MEA would matter and become part of a sanctionable rule-based trade order.

5.2.6.2. Approach 2: "Ecological Human Rights"

A different approach to make global trade sustainable considering all planetary boundaries is the idea of "ecological human rights" in the form of per-capita emission budgets. The base for this concept is the calculation of all ecological consumptions with an integral unit (e.g., the "ecological footprint"). According to this widely known concept, each human being has 1.6 global hectares or 16,000 global square metres available to him or her each year.

The precise thinking here is as follows. The planet's annual endowment of resources to humankind could be shared among all persons and enshrined as an ecological human (usage) right, in the sense of an unconditional, non-negotiable, and inalienable basic right. It would be part of a UN environmental covenant, a third pact alongside the existing International Covenant on Civil and Political Rights and the International

Covenant on Economic, Social and Cultural Rights. This usage right would be equal for all humans, like the right to vote: each person has only one vote, regardless of how wealthy, clever, or "important" he or she may be. Similarly, all humans have the right to use one eight-billionth of what nature gives us humans each year, without degrading the planetary ecosystem or significantly robbing other species of living space.

The goal is to prevent the planet from being exploited and overburdened by one species – man – but also to protect future generations of our species from over-consumption on the part of present generations.

Currently, human beings consume the annual endowment of 1.7 planets in renewable and non-renewable resources and ecosystem services (Global Footprint Network, 2024a). Already a decade ago, the average inhabitant of an industrial country consumed two to eight times more than they would be entitled to under a globally just and sustainable distribution (Global Footprint Network, 2024b). According to UNEP's 2024 Global Resource Outlook (UNEP & International Resource Panel, 2024), the extraction of the Earth's natural resources tripled in the past five decades with dramatic environmental impacts: "Overall, resource extraction and processing account for over 60 per cent of planet-warming emissions and for 40 per cent of health-related impacts of air pollution" (UNEP, 2024). The outlook emphasizes the fact that at the heart of global resource use are fundamental inequalities: "low-income countries consume six times less materials and generate 10 times less climate impacts than those living in high-income countries. Upper middle-income countries have more than doubled resource use in the past 50 years due to their own growth in infrastructure and the relocation of resource intensive processes from high-income countries. At the same time, per capita resource use and related environmental impacts in low-income countries has remained relatively low and almost unchanged since 1995" (UNEP, 2024).

Consequently, the global consumption budget of humanity would have to be at least a third lower than average consumption is today. The question is how usage could be measured and regulated. The idea is to introduce a "second (ecological) price," indicated, for example, in "global hectares" (or joules or CO_2 equivalents), which is the unit of the ecological footprint. When we make a purchase with our debit or credit card, two prices would be charged on our accounts: the financial price on the cash account, and the ecological price on the ecological account.

The annual consumption right could be logged as a "credit" on every person's ecological account and used up in the course of the year – or saved for a later (larger) consumption. The ecological account could be electronically linked to everyone's debit and credit cards, so that all non-cash purchases (90 percent of all purchases in 2024 in high-consumption countries) would be automatically included. Thereby the system of financial price marking would be extended to the recording of ecological consumption. As a precondition, each good and service offered for sale on the (global) market would have to show not only a barcode for the financial price, but also its ecological "price" (i.e., amount of resources use).

In the case that humankind – with all people living today having satisfied their basic needs – remained within the ecological limits of planet earth, a two-step model with further advantages might then be developed. The biological surplus reserves could remain untouched. Another option is to certify as non-negotiable and inalienable only the part of the endowment that is necessary to cover all basic needs: assuming 1.3 global hectares per person. The surplus reserve, comprising 0.3 hectares per person, and only that, would become a tradable commodity. This would have the following advantages:

- Poor people who lacked the (financial) purchasing power to use up their whole ecological budget might sell what was left to better-off individuals, to their mutual benefit.
- Today's "over-consumers" would have a longer transitional period in which to adjust.
- Frugal individuals could give, or sell cheaply, additional eco-rights to other individuals or to common good-oriented NGOs or research institutions.
- Another possibility might be that humankind contents itself with less than the allowable maximum and curtails the overall ecological budget.

For the industrial countries, such an environmental pact would be an effective way into a "post-growth society" (Seidl & Zahrnt, 2010), a "post-growth economy" (Paech, 2012; Jackson, 2016; Hickel, 2021; Schmelzer, Vetter and Vansintjan, 2022), or a "steady-state economy" (CASSE, 2024). Poor countries, on the other hand, that consumed even less per capita than the planet gave per person, would still be able to "catch up," though only within the limits of global sustainability. In the year 2024, in countries such as Morocco, French Guiana, or the Solomon Islands, people consume on an average 1.6 global hectares (Global Footprint Network, 2024b). This does not mean that all humans globally have to adjust to their lifestyles but rather reduce (or be allowed to increase) their ecological consumption to a comparable level. While the rich would have to lower their material life standard, this new benchmark does not mean that their life quality would sink. On the contrary: interdisciplinary research shows that a life rich in relationships, nature experience, internal wealth, and spiritual growth makes people happier than a materialistic lifestyle and an excess of things and stuff (Dittmar, 2021; Jackson, 2021).

The "ecological debt" (Martínez-Alier & Oliveres, 2010) of the North and the ex-colonial powers would not be wiped out, but it would at least cease to grow – a compromise that would therefore be to the North's advantage.

The definition, development, and implementation of ecological accounts could become a task of the United Nations Environmental Programme UNEP or the United Nations Development Programme (UNDP), or a joint venture of both. No new UN body would have to be created.

5.2.7. Technology transfer

An ongoing controversial issue in international trade law is the protection of intellectual property rights, such as patents, copyrights, trademarks, or geographical indications. From a historical point of view, the legal protection of intellectual property is a comparatively recent phenomenon. Switzerland, headquarters of globally operating pharmaceutical companies, which demand international protection of IP forcefully, was itself free from IP rights until 1907. The Netherlands introduced legal IP protections in 1817, but abolished them in 1869, with the argument that they pose monopolies contrary to a free market order, and only reintroduced them in 1912 (Wagenaar, 2021). In the health sector, property rights came even later: in Germany in 1968, in Japan in 1976, in Switzerland in 1977, and in Italy only in 1978 (Stiglitz, 2006, p. 148).

It is even more surprising that only twenty years later, with the start of the WTO, one of its pillars – the Agreement on Trade Related Intellectual Property Rights (TRIPS) – was introduced, including protection rights on sensitive products such as medicine and living organisms. This system was proposed and pushed by the US, the EU, and other developed countries. It lacks a balance between innovators' rights and public interests such as, for example, development objectives, public health objectives, ecological considerations, or indigenous communities' rights. The TRIPS agreement was definitely not established for the global common good. Rather, one can consider it a success of business lobbies. James Enyart from Monsanto put it in honest words: "Industry identified a major problem for international trade. It crafted a solution, reduced it to a concrete proposal, and sold it to our own and other governments. The industries and traders of world commerce have played simultaneously the role of patients, diagnosticians, and the prescribing physicians" (Attac, 2004, p. 15; Keayla, 1998). The resulting agreement is an impressive example of regulatory capture by powerful corporations in a post-democratic world.

Today, patent filings concentrate on five offices: USA, EU, Japan, China, and South Korea. The combined share of these top five grew from 75.2 percent in 2007 to 84.5 percent in 2017. By comparison, in the same period, the share of African countries went down from 0.8 to 0.5 percent, of Oceania from 1.9 to 1.1 percent, and of Latin America from 3.1 to 1.8 percent (WIPO, 2018, p. 26). It follows that the current scheme of international IP protection deepens and widens the global divide. Moreover, IP protection leads to biopiracy, the dissemination of genetically modified organisms (GMO) and corporate structures in the agricultural sector, as well as unaffordable medicine for the poor (Felber, 2006, pp. 199–218; Herrmann, 2016, pp. 199–203; Herrmann, 2020, pp. 260–262).

Joseph Stiglitz (2006, p. 148) criticizes the current rules of intellectual property rights fundamentally: "The enclosure of intellectual commons causes a loss of efficiency […] the national economy loses in the short term, as monopolistic prizes diminish the general welfare, and in the longer term due to the decline of innovations." For the international level, he concludes: "The protection of intellectual property does not really belong in a trade agreement […] By now, it should be clear that the TRIPS agreement was a mistake" (pp. 155 and 169). Birdsall, Rodrik, and Subramanian (2005, p. 144) conclude in Foreign Affairs: "The rich countries cannot just amend TRIPS; they must abolish it altogether. A simple comparison makes the point clear: major industrial countries such as Italy, Japan, and Switzerland adopted pharmaceuticals patent protection when their per capita income was about $20,000; developing countries will adopt it at income levels of $500 per capita, in the case of the poorest, and $2,000–4,000 for the middle-income countries. By these standards, forcing developing countries to abide by TRIPS is about 50–100 years premature."

5.2.8. Development-friendly Rules for Intellectual Property (DRIP)

A more development-friendly and one-world approach that puts technology at the service of the common good rather than restricting it for monopolistic private interests could invert the TRIPS logic accordingly. An agreement on "Development-promoting Rules for Intellectual Property" (DRIP) could promote know-how transfer from richer to more needy countries and simultaneously protect IPRs between countries of similar per capita income. A concrete proposal could be:

- Countries with a yearly average per capita income below USD 10,000 could use international intellectual property for free (e.g., on the basis of a compulsory licence that the state assigns domestic companies).
- Countries with a yearly average per capita income between USD 10,000 and 15,000 could introduce a compulsory licence regime on request, which allows public institutions and private actors to use international intellectual property on approval of their application; in return, they could be encouraged to realize a common good balance sheet (this will be explained in section 5.3.1.) or an equivalent sustainability reporting standard.
- Countries with a per capita income between USD 15,000 and 20,000 could introduce the same scheme, but oblige companies to present a common good balance sheet and require a minimum score of, for example, five hundred points (which is quite a high score) or a comparable score of an equivalent sustainability reporting standard.

On the other hand, companies from countries with a per-capita income higher than USD 20,000 could be rewarded if they actively disclose the information necessary for reproducing their products or technologies by firms in poor countries. If they disclose this information globally, they could score even higher in their common good balance sheet (or alternative instrument). At a later point, the GDP thresholds could be replaced by (parts of) the Common Good Product.

5.2.9. General Agreement on Public Services (GAPS)

Whereas TRIPS is one pillar of the WTO treaty system, the General Agreement on Trade in Services (GATS) is another. A first version of GATS was implemented with the completion of the last GATT round (the Uruguay Round) and the foundation of the WTO in 1994. It included a so-called built-in agenda: the agreement achieved during the Uruguay Round specifies future dates for continuing review or negotiations of specific sectors or subject areas (WTO, 2024w). Simultaneously, business lobbies from industrialized countries pushed for a new GATS negotiation round with deeper and broader liberalization. New negotiations started in 2000 "to achieve a higher level of market opening" (WTO, 2024x). Against this new offensive of free trade "forces," broad criticism arose from civil society movements – but also from developing countries – and had its impact on the failure of the WTO Ministerial Conferences in 1999 and 2003 (see chapter 1.2.).

According to the prominent trade liberalization proponent Jagdish Bhagwati from Columbia University, the Doha Round "failed in November 2011, after ten years of talks, despite official efforts by many countries, including the United Kingdom and Germany, and by nearly all eminent trade scholars today" (Bhagwati, 2012). The WTO and its bodies have difficulty admitting that the DDA has ended and will never fulfil the envisaged work programme under the "single undertaking" rule ("Virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately. 'Nothing is agreed until everything is agreed'" (WTO, 2024y)). This is exemplified by the final communiqué of the Tenth WTO Ministerial Conference in Nairobi in 2015, which first states "we welcome the progress in the DDA, which is embodied in the following Decisions and Declarations we have adopted at our Tenth Session" but a little later acknowledges that members "have different views" on how to address the future of the Doha Round negotiations (WTO, 2015).

In order to circumvent the deadlock in the GATS negotiations, the proponents of further liberalization of the services sector chose an additional path. In addition to the multilateral GATS negotiations, they tried the path of plurilateral negotiations for a Trade in Services Agreement, abbreviated as TiSA, since 2012 (ITUC, 2016, p. 3). Based on the GATS agreement, TiSA was initially supposed to be adopted by only some WTO members and then open for signature by all WTO members with a "take it or leave it" offer. Negotiations under the joint leadership of Australia, the European Union, and the United States were generally not conducted in the WTO, but with selected WTO members – less than a third of the total WTO membership – in the Geneva embassies of the main TiSA proponents (Swiss Confederation, State Secretary of Economic Affairs, 2024; European Parliament, 2024). It was thus possible to keep open whether the negotiations were conducted inside or outside the WTO. However, it was clear who was behind TiSA, as the International Trade Union Confederation ITUC (2016, p. 3) writes: "The main participants who have been the strongest proponents of services liberalisation in the WTO's Doha Round services negotiations facetiously call themselves the 'Really Good Friends of Services'. Others mockingly call them the 'Really Good Friends of Transnational Corporations'.

Between March 2013 and November 2016, twenty-one rounds of TiSA negotiations took place. The European Parliament's Legislative Train Schedule describes the latest state of negotiations at the end of 2016 as follows: "Negotiations were said to have been at an advanced stage, although the ambition to have an agreed text did not materialize and TiSA-negotiations were halted. On a separate track, following a joint declaration in December 2017 Buenos Aires WTO Ministerial Conference, a group of WTO members is negotiating on domestic services regulation on a plurilateral basis" (European Parliament, 2024). Which brings us back to the previously mentioned JSI or Joint Statement Initiatives.

This stalemate could be interpreted as an indicator and used as an opportunity to choose a different approach towards the (universal) provision of (basic) services to all people, not just for those with enough purchasing power. The most sensitive services are considered "public services" or "services of general interest": supply of drinking water, electricity, sewage services, health and elderly care, education, IT and telecommunication, or public transport. Many scholars and international organizations consider them (social, economic, and cultural) human rights and thus suggest to keep them off the market with its profit logic. Furthermore, several of the seventeen SDGs address the universal provision of all humans with these basic services. So, more important than creating new global markets for transnational corporations is providing those humans with these basic goods that as yet are excluded from (affordable) provision.

An according international agreement could be called General Agreement on Public Services "GAPS" (Felber, 2006, pp. 270–273). Willing countries could establish a collaboration platform and help out countries in need with technical, financial, and manpower assistance to establish excellent public services. This platform could be established in collaboration with Public Services International (PSI), a global union federation of workers in public services with seven hundred affiliates representing thirty million workers in 154 countries. Together with other civil society actors and scientific institutions, a powerful alliance with a noble goal could help provide all humans with essential services. Projects could be implemented as "Public Popular Partnerships," which have proven to be a viable alternative to public private partnerships, according to PSI's slogan "People over Profit" (Public Services International, 2024).

5.2.10. Summarizing table of UNETZ structure

From a structural point of view, UNETZ – including GAPS and DRIP – would not differ in any meaningful way from the system of WTO agreements, which relies on the three main pillars GATT, GATS, and TRIPS. For a better understanding of the proposed shift from outside the UN to inside the UN system, the following table summarizes the basic idea of a UNETZ that could replace the WTO free trade system.

	Umbrella Agreement Establishing WTO		
	Goods	Services	Intellectual Property
Basic Principles	GATT	GATS	TRIPS
Dispute Settlement	WTO DSU (state to state)		
Transparency	Trade Policy Review		

Table 17: Basic structure of the WTO agreements (WTO, 2024z)

	Agreement Establishing UNETZ		
	Goods & Services	Public Services	Intellectual Property
Basic Principles	UNETZ	GAPS	DRIP
Dispute Settlement	UNETZ Court (state to state)		
Transparency	Policy Coherence Committee		

Table 18: Basic structure of a future UNETZ

5.3. Company level

Admittedly, a UNETZ would be a major step in the evolution of international law; its establishment would require a significant political effort. Nevertheless, the effort is worth it, as international economic law, which belongs to the "hardest" international law, has decoupled from the core of international law: maintenance of peace, human rights, sustainable development, and cultural diversity. Actually, there should be no international economic law that is not aligned with the core international law (same as with the principles and objectives of the EU's external action).

Nevertheless, there is a strategic option to achieve these goals at least partly with a lower effort than changing and further evolving international law: regulating the access of companies to global markets. The principle is as follows: companies that contribute more to the defined policy goals of a UNETZ could enjoy an easier market access, whereas companies that care less about the global common good or even cause harm would face disadvantages. This is an inversion of the current situation, in which the externalizers of costs – through strategic relocation, "regulatory arbitrage seeking," and "ethical leakage" – enjoy lower costs, lower market prices and, consequently, a competitive advantage. This is nonsensical regarding the values and objectives of the international community.

There have been several efforts to enforce transparency and sanction misbehaviour amongst multinational enterprises, but up to date, all of them have failed. UN member governments were not ready to decide on binding rules for "Global Players" so far. The famous "level playing field" did not include binding and enforceable rules for its users. At least there have been some attempts to establish global rules. The most eminent effort was made in 2003 with the "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights." This set of eighteen binding norms was drafted by the UN Sub-Commission on the Promotion and Protection of Human Rights, and it included norms on anti-corruption, human rights, labour rights, health and public safety, consumer protection, environmental protection, and sustainable development (United Nations Economic and Social Council, 2003). The catalogue was progressive in three respects:

- International law would have become directly binding on corporations.
- International corporations would have become responsible for human rights violations on the part of their suppliers and joint-venture partners.
- These corporations would have made themselves complicit if countries in which they operate violated human rights and the corporations profited from it.

The proposal received a very warm welcome from a broad range of NGOs. It was adopted by the Sub-Commission and submitted to its parent body, the UN Commission on Human Rights. There, it was dismissed entirely, due to the strong resistance of the governments of the US, Canada, the UK, Australia, and other countries (Felber, 2019b, p. 144–149).

What followed was an era of talking about voluntary good behaviour of companies, "corporate social responsibility," according reports and, later, "non-financial reporting." Some of the frameworks that emerged are the United Nations Guiding Principles on Business and Human Rights, the UN Global Compact, the Global Reporting Initiative (GRI), the OECD Guidelines for Multinational Enterprises, or the ILO principles concerning multinational enterprises and social policy. Later, the B Corps (Certified B Corporations), the Common Good Balance Sheet, the German Sustainability Code, the Future Fit Foundation standard, and others joined.

In 2011, the EU revised its position on CSR, which no longer was considered merely voluntary: "Certain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility" (European Commission, 2011).

In 2014, the EU adopted the Non-financial Reporting Directive (NFRD), which obliged eleven thousand companies (out of twenty-two million) to report on a broad range of ethical topics, such as human rights, labour standards, environmental standards, diversity, and anti-corruption measures. From the start, there was broad criticism on the implementation of the directive: from the narrow scope to the freedom to choose any reporting standard (or none) to the fact that the content did not need to be checked by an external auditor nor had legal consequences. Consequently, already in 2021, the EC presented the draft of a revised directive, which entered into force as CSRD (Corporate Sustainability Reporting Directive). According to the European Commission (2021i, p. 9), instead of eleven thousand, from the year 2024 onwards, forty-nine thousand firms will have to report (0.2 percent instead of 0.05 percent of all companies, according to Eurostat (2024b)). The EC commissioned the Belgian limited company EFRAG (European Financial Reporting Advisory Group) with the definition of concrete European Sustainability Reporting Standards (ESRS) – missing out on the opportunity to establish an ESRAG (European Sustainability Reporting Advisory Group), set up by a broad range of stakeholders, including the developers of the most widely used sustainability reporting frameworks. Instead, EFRAG was commissioned to implement a governance reform and admit some CSOs as members. A clear improvement is that the reports will be validated – not evaluated – by external auditors, in most member countries financial auditors (Austria also admits non-financial auditors). Still, no legal consequences or incentives are considered. The criterion of linked legal incentives is, according to the authors' view, the key requirement of an effective mandatory sustainability reporting standard, as it would turn the current competitive disadvantage of do-gooders into an advantage.

In EFRAG's evaluation of existing standards, no criteria were published. The only categorization conducted was in "generic," "topical," "sectorial," and "SME-only" initiatives. Although the report states that part of the evaluation of existing standards was to "assess them against a set of defined criteria," these criteria are not presented in the paper (EFRAG, 2021, p. 43). A possible set of criteria was elaborated in a study of the Institute for Advanced Sustainability Studies (IASS), which assessed a selection of fourteen standards against ten "requirements" of a potential future legally binding standard (Brockhoff et al., 2020, p. 23–24):

▪ **Transparently developed:**	▪ **Impact:**
Participatory and transparent process of development, inclusion of all stakeholders	What is reported makes a difference for society in achieving its goals: basic values, sustainability, common good
▪ **Universal:**	▪ **Verification:**
Cover all relevant sustainability and ethical issues (including power concentration, tax justice, etc.)	External audit, analogue to financial reporting
▪ **User-friendly and proportionate:**	▪ **Mandatory:**
The framework should be applicable and adjustable for organisations of all legal forms, sizes, and branches	From voluntary CSR to legally binding rules – equality of financial and non-financial reporting
▪ **Intelligible:**	▪ **Legal incentives:**
For all stakeholders, not only for framework developers and auditors	In order to penalize the externalisation of costs and reward the externalisation of benefits
▪ **Measurable & comparable:**	▪ **Visibility:**
The result should be allowing an easy distinction of corporate sustainability performance (e.g., through a quantitative (non-financial) evaluation system)	The result should be easily accessible for the general public (e.g., through the company register and on the company's website) – as well as at a glance on products (combined with a QR code)

Table 19: Requirements of a future mandatory European (or International) Sustainability Reporting Standard (based on Brockhoff et al., 2020)

Next to the CSRD, the EU adopted another "CS-" directive in 2024, the Corporate Sustainability Due Diligence Directive (CSDDD) that obliges EU companies with more than one thousand employees and a global turnover above 450 million euros to report about the management of human rights and environmental and social risks in their supply chains. This directive will have to be transposed into national law by 2026 and will take effect from then. It has been watered down significantly at the last moment by liberal and conservative European parties; amongst others, the scope of affected companies has been reduced, and the financial sector has been carved out from the directive.

Apart from these upcoming new regulations, the EU's bilateral and plurilateral trade agreements do not include binding rules for firms. As one author puts it, "at best, the EU's FTAs cite a catalogue of soft-law instruments that have long proven ineffective in preventing or remedying corporate misconduct" (Cross, 2020, p. 36).

5.3.1. Common Good Balance Sheet as entry ticket to access the world market

An effective tool to prevent corporate misconduct and incentivize corporate good behaviour is, amongst others, the Common Good Balance Sheet (Ulrich, 2019; Brockhoff et al., 2020). This instrument has been developed by the Economy for the Common Good movement (ECOnGOOD, 2024). The primary aim of the Balance Sheet is to orient corporate activity towards the common good and to document and publish the related information in a comparable manner in order to make it linkable to positive and negative incentives. The methodology bears a positive side ("ethical achievements") as well as a list of negative aspects in order to prevent grave corporate misconduct by means of sanctions. The Common Good Balance Sheet addresses the basic values most often found in democratic constitutions – human dignity, social justice, ecological sustainability, solidarity, and transparency/co-determination – and is designed to make their realization both measurable and susceptible to comparison, so that corporations recording higher ethical achievements (or fewer infringements) can be rewarded at the level of taxes, credits, public contracts, subsidies – or market access. The aim is to neutralize the current competitive disadvantage of ethical corporations vis-à-vis less ethical firms and to flip it into a competitive advantage. This would effect that:

- ethical goods and services are lower priced than unethical ones
- corporations can be successful only if they help solve global social and ecological problems; if they contribute to a holistic "wealth of nations," not to their impoverishment
- grave human rights violations lead to the "ethical insolvency" and default of corporations

The last point is linked to the new and old idea of issuing licences to operate for large corporations, which have to be renewed if they are to continue existing as legal persons (Korten, 1995, pp. 56–57). The Common Good Balance Sheet would be an "entry card" to the world market, which, like the financial balance, would have to be drawn up yearly. Just as the result of the financial balance has legal consequences, so too should the result of the Common Good Balance. Repeated serious negative results would lead to the end of corporate freedom or, quite simply, to non-extension of the licence; good results lead to improved positions, ranging from credits through public contracts to free market access. The scale of incentives can be calibrated until all corporations together provide for the common good, contribute to the progressive fulfilment of most SDGs, and at least no longer cause harm.

An important advantage of the CGBS is that it already includes the supply chain and, thus, covers the idea of the European CSDDD and what in Germany has been implemented as the Act on Corporate Due Diligence Obligations in Supply Chains in 2021 ("Lieferkettengesetz"), as the whole supply chain is a key stakeholder in the methodology of the underlying matrix. A last aspect: following the classification of companies in big, medium, and small size, the reporting requirements could be different and "proportionate" to the size of companies. This is especially important with a view on developing countries where companies need more time and support to fulfil ambitious reporting duties.

With regard to implementation, the initiators of the UNETZ could start with requiring from all major companies of their territories such an "International Sustainability Reporting Standard" (ISRS), inviting ever more countries to apply the same. In case other states do not require such a standard, their companies may meet a market access hurdle of, for example, a 10 or 20 percent tariff rate, from which companies who do apply the standard may be exempted.

Alternatively, in case the UNETZ does not come into existence, or only with a declaration of good will, its members could just start with requiring a CGBS from companies that want to access their markets. The EU is powerful enough to require such a condition from firms that seek to enter its market. The CSRD will already oblige large non-EU companies that operate in the EU to fulfil the CSRD requirements from 2028. At the same time, the EU should offer trade partners technical assistance to introduce similar and ambitious reporting standards. At the UN level, the Sustainable Development Performance Indicator (SDPI) project, organized by the United Nations Research Institute for Social Development (UNRISD, 2023), could lead to the future international set of standards.

With or without UNETZ, the International Sustainability (or Ethical) Reporting Standards (IERS) will follow the International Financial Reporting Standards (IFRS) like a "twin sister." In the long run, companies may practice Integrated Reporting as a default mode. The disclosure of ethical information will become as natural as the already working disclosure of financial information. And one day no one will understand why, in the past, companies that – under the umbrella of "free trade" – heated up the climate, created excessive inequality, corrupted governments, and shifted profits to tax havens enjoyed equal treatment ("non-discrimination") with companies that did not cause these harms but made an ambitious effort to contribute to society's goals and basic values.

ECOnGOOD

Common Good Matrix 5.1

VALUE / STAKEHOLDER	HUMAN DIGNITY	SOLIDARITY AND SOCIAL JUSTICE	ENVIRONMENTAL SUSTAINABILITY	TRANSPARENCY AND CO-DETERMINATION
A: SUPPLIERS	**A1** Human dignity throughout the supply chain	**A2** Solidarity and social justice throughout the supply chain	**A3** Environmental sustainability through-out the supply chain	**A4** Transparency and co-determination throughout the supply chain
B: OWNERS, EQUITY AND FINANCIAL PARTNERS	**B1** Ethical position in relation to financial resources	**B2** Social position in relation to financial resources	**B3** Use of funds in relation to social and environmental impacts	**B4** Ownership and co-determination
C: EMPLOYEES AND CO-WORKERS	**C1** Human dignity at the workplace and working environment	**C2** Design of fair and just working agreements	**C3** Environmentally friendly behaviour of staff	**C4** Co-determination and transparency within the organization
D: CUSTOMERS AND BUSINESS PARTNERS	**D1** Ethical customer relations	**D2** Cooperation and solidarity with other organizations	**D3** Environmental impacts of products and services during use and end-of-life	**D4** Customer participation and product transparency
E: GLOBAL COMMUNITY, NATURE AND LIVING BEINGS	**E1** The purpose of products and services and their effect on society	**E2** Contribution to the community	**E3** Reduction of environmental impact	**E4** Transparency and co-determination

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Chart 6: Common Good Matrix, base of the Common Good Balance Sheet (version 5.1, valid from 2025) (ECOnGOOD, 2024)

5.3.2. International Court for Corporate Crime (ICCC)

A "pre-exercise" of sustainability reporting, or, alternatively, a part of it, could be the criminal prosecution of the most severe crimes of transnational corporations. On 14 July 2014, the United Nations Human Rights Council (2024) decided "to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)." The vote on the resolution was extremely close: the Philippines, Kenya, Morocco, Algeria, Burkina Faso, Pakistan, and Russia voted for; Austria, Germany, the UK, the USA, and others against. Would the people of Germany (from which, according to Art. 20(2) of the Constitution, "all state authority is derived") or the people of Austria (from which "law is derived") also have voted against? In the end, the proposal to set up the working group carried by twenty votes to fourteen, with thirteen abstentions. The United States absented itself from the first working session, and the EU – despite the fact that the European Parliament had supported active involvement – departed on the second day (Martens and Seitz, 2016, pp. 5 and 49). A first draft was issued in 2018 and has been updated repeatedly since; the tenth session of the working group will take place shortly after the finalizing of this Working Paper, at the end of October 2024 (Business & Human Rights Resource Center, 2024).

Its defined purpose comprises, amongst others:

- To clarify and ensure respect and fulfilment of the human rights obligations of business enterprises;
- To prevent the occurrence of human rights abuses in the context of business activities by effective mechanisms of monitoring, enforceability and accountability;
- To ensure access to gender-responsive, child-sensitive and victim-centered justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities;

It shall apply to all business activities, including business activities of transnational character.

In article 9, it recommends that jurisdiction with respect to claims brought by victims shall vest in the courts of the State where the human rights abuse occurred (draft version from July 2023).

This new attempt within the UN to make corporations accountable was and is accompanied by a broad civil society movement for a "Binding Treaty." Their "Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity" is supported by 250 civil society organizations (CSOs), trade unions, and communities (Binding Treaty, 2024; Stop Corporate Immunity, 2024; Treaty Movement, 2024). There is some momentum in the UN process, and it could lead one day to the establishment of an International Court for Corporate Crime (ICCC).

Similarly, François Rigaux has proposed an International Court for Transnational Corporations, with the power to prosecute TNCs in both civil and criminal law and to consider the responsibility of individuals therein:

> "An international court for TNCs should be created through a treaty between States, such as the International Criminal Court [...] in Rome and must be competent to judge TNCs both civilly and criminally without excluding the responsibility of individuals. International law in effect regarding human rights should be applied, establishing a hierarchy of rights where priority is granted to the most essential of these rights, such as the right to life, to health, the right not to suffer torture or cruel, inhuman or degrading treatment" (Campagna, 2004, p. 1248).

In the same spirit, a World Court of Human Rights has been proposed by three human rights experts, as discussed in the following section.

5.3.3. World Court of Human Rights (WCHR)

On the occasion of the sixtieth anniversary of the Universal Declaration of Human Rights, the human rights experts Julia Kozma, Manfred Nowak, and Martin Scheinin (2010) drew up a consolidated proposal for a World Court of Human Rights. They had noted that, despite the extensive obligations of governments and other bodies under international law, "large numbers of human beings in all parts of the world [were] suffering everyday violations of their human rights" (p. 9). Moreover, they wrote, "the vast majority of human beings around the world have no access to effective domestic, regional or universal remedy against violations of their human rights and have no chance of being provided with adequate reparation for the harm suffered through these human rights violations" (p. 9). The purpose of the proposed world court was to close this "enormous gap" between existing obligations and the lack of effective enforcement of human rights. Its decisions would be "final and binding" with regard to human rights violations by state and relevant non-state players and provide for appropriate compensation to be paid to their victims (Kozma et al., 2010, p. 10). The legal basis for this was a list of twenty-one international agreements for the protection of human rights – from the Slavery Convention of 1926 through the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) to the International Convention for the Protection of All Persons from Enforced Disappearance (2006). Complaints could be lodged with the court by any person, NGO, or group of individuals claiming to be the victim of a violation, provided that it had exhausted the national channels available to it.

A key feature of the proposal is that the duty to uphold human rights would not only apply to states but also to business corporations (Art. 4). The authors propose that, initially, corporations could voluntarily recognize the competence of the court (Art. 51). At a later stage, it would be enough that the state in which they had their headquarters recognized the court in order to hold them accountable (Kozma et al., 2010, p. 29). The World Court of Human Rights (WCHR) might be established in The Hague, alongside the International Court of Justice (the main jurisdiction under the UN Charter) and the International Criminal Court (the UN's "war crimes court"). Human rights should be worth this institutional coverage. Members of the ethical UN trade zone could protect themselves by imposing a tariff of 10 percent on states for each of the two human rights covenants that they did not ratify, with a further 10 percent on states that did not recognize the competence of the World Court of Human Rights.

5.3.4. Nullify Investor-State Dispute Settlement and corresponding tribunals

A binding Treaty and a new international tribunal before which corporations can be sued would invert the current trend towards ever more agreements with an Investor-State Dispute Settlement (ISDS) mechanism and international tribunals that admit these litigations and a growing number of lawsuits (1,332 by end of 2023, according to UNCTAD (2024b)). ISDS face heavy opposition from civil society in many countries. In the CETA negotiations, it became a deal-breaker. The main criticisms against these direct suing rights for corporations are:

- direct expropriations, the main argument in favour of ISDS, have become very rare;
- "indirect" expropriation includes any policy change and can be abused to challenge virtually every democratically decided regulation (e.g., to protect the environment and the climate);
- it takes away too much sovereignty from states and grants too much power to corporations;
- they are discriminatory: only foreign companies can use them, which establishes unequal rights between domestic and foreign companies;
- the enforcement of human rights with litigation rights for humans when corporations violate their rights should enjoy priority on the political agenda over suing rights of legal persons on the international level.

As a reaction to this multifold criticism and lost lawsuits, many countries – such as India, Indonesia, Ecuador, Bolivia, and South Africa – are now abrogating or re-negotiating their Bilateral Investment Treaties (BITs). In 2017, for the first time, the number of effective terminations of BITs outpaced the number of new treaties signed, with 22 terminations taking effect and only 18 new treaties concluded. The total number of effective terminations was 309 at the end of 2019 (Bernasconi-Osterwalder & Brewin, 2020, p. 1).

Also, the European Parliament requested in a resolution of 8 July 2015 (on the then-planned Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States) the replacement of ISDS with a new system, subject to "democratic principles and scrutiny." The new system should allow transparent treatment of cases by publicly appointed, independent professional judges in public hearings and include an appellate mechanism. In a subsequent resolution of 5 July 2016, the European Parliament made a plea for establishing a "multilateral solution to investment disputes" (European Parliament, 2016a, Rec. 68).

In March 2018, the Council mandated the Commission to negotiate a convention establishing a Multilateral Investment Court (MIC) on behalf of the European Union. Multilateral talks had started in late 2017 under the auspices of the Working Group III of the United Nations Commission on International Trade Law (UNCITRAL). The Commission's goal is "to restore confidence in international investment agreements" (European Commission, 2021j, p. 2.). The Sixth Inter-sessional Meeting of the Working Group took place from 7 to 8 September 2023 in Singapore (UNCITRAL, 2024a). In the aftermath of the meeting, the UNCITRAL secretariat came up with a "Draft statute of a standing mechanism for the resolution of international investment disputes," but called it "informal" (UNCITRAL, 2024b).

The centerpiece of a permanent court (MIC) are judges appointed for long terms of office replacing ad hoc tribunals that work with experts frequently "illiterate" in anything else but trade law. Permanent judges would also prevent conflict of interest where an arbiter in one case may be the lawyer for a company in a subsequent case that is the complainant in the first one. Further reforms of the future MIC include:

- an Appeal Tribunal will be added to the Tribunal of First Instance
- hearings will be opened up to the public
- interested parties (NGOs, trade unions, citizens' representatives) have the chance to intervene in the proceedings and make submissions

A predecessor of the future MIC, the EU's new Investment Court System (ICS) was first anchored in trade agreements and ongoing negotiations with Canada (CETA), Mexico, Singapore, and Vietnam. In April 2019, the European Court of Justice confirmed the compatibility of the ICS with EU Treaties (European Commission, 2019c).

It is important to be aware that both reform projects, ICS and MIC, simply improve the arbitration system, address the conflict-of-interest issues thereof, and lift the procedure to common state of law standards. But they do not address ISDS as such and their underlying ill-definition of "investment" and "(indirect) expropriation." The fact that corporations are given the right to sue governments for pursuing domestic policy objectives is not questioned. The authors of this paper share this fundamental criticism: instead of saving the ISDS system, ISDS and associated international tribunals should be considered an ill-design of international law and removed altogether. As long as human rights are not protected properly against direct violation by corporations, it is at least disproportionate if not principally inappropriate to discuss "indirect expropriation" and "unfair treatment" of corporations. Cross (2020, p. 38) proposes a "multilateral declaration" of governments to nullify the ISDS clauses in their FTAs and BITs. Such a nullification of ISDS could become one element of the UNETZ.

5.3.5. Withdrawal from the Energy Charter Treaty

Linked to the problematic role of ISDS is a lively controversy around the Energy Charter Treaty (ECT). This multilateral framework for energy cooperation is designed "to promote energy security through the operation of more open and competitive energy markets" (International Energy Charter, 2024). The Treaty was signed in December 1994 and entered into legal force in April 1998. As of 1 July 2024, the ECT homepage lists fifty signatories and contracting parties to the Treaty, including those that have declared their intention to withdraw from the treaty. Originally, the EU Commission, Euratom, and all EU member states were members.

The Treaty's provisions focus, according to its website, on four broad areas:

- the protection of foreign investments, based on the extension of national treatment, or most-favoured nation treatment (whichever is more favourable) and protection against key non-commercial risks
- non-discriminatory conditions for trade in energy materials, products, and energy-related equipment based on WTO rules, and provisions to ensure reliable cross-border energy transit flows through pipelines, grids, and other means of transportation
- the resolution of disputes between participating states, and – in the case of investments – between investors and host states (ISDS)
- the promotion of energy efficiency and attempts to minimise the environmental impact of energy production and use (International Energy Charter, 2024)

With this treaty, the contracting parties guarantee foreign investors far-reaching rights. If, in the energy investor's opinion, a government has violated the principle of "fair and equitable treatment," the investor can sue states before international arbitration courts for billions of euros in compensation. The treaty was signed in the 1990s to offer protection for Western companies investing in energy initiatives in former Soviet states, as many of these were deemed risky for potential investors. But currently, it is mainly used by European companies to sue European states – see the latest cases of a Swiss company against Germany, or the withdrawn lawsuits of Uniper and RWE against the Netherlands. Seventy-four percent of the Energy Charter cases are now lawsuits brought by EU investors against EU states. In the years to come, the threat of ECT lawsuits could prevent states from adopting ambitious climate policies – in some cases, this is already happening. Leaving is not easy: states can be sued up to twenty years after leaving ("sunset clause"). For instance, after Italy left the ECT in 2016, the British oil company Rockhopper sued in 2017 against the ban on producing oil and gas near the coast, claiming lost investment and future profits of 281 million euros. It won the lawsuit and was awarded 190 million euros (UNCTAD, 2024h).

More recent cases:

In 2019, the Dutch government decided a coal phase-out. Shortly after this decision, the German energy companies RWE and Uniper, which both have power plants in the Netherlands, threatened to sue the country before the International Centre for Settlement of Investment Disputes (ICSID). In both cases, the amount claimed is EUR 1.4 billion; the claims were filed on 2 February and 30 April 2021 respectively. Both claims were ultimately withdrawn, and the proceedings before the ICSID were discontinued in January 2024 (RWE) and March 2024 (Uniper) (ICSID, 2024c and 2024d). Uniper was mandated to do so when the German government took over 99 percent of the company's shares in the gas crisis. Still, it was not willing to bear the costs of the trial. The Netherlands asked the panel that the costs should be borne by Uniper, but the tribunal denied (ICSID, 2023). As a consequence, the Netherlands suffered financial damage from its coal phase-out.

In 2020, the Slovenian government asked the British company Ascent, who was exploring fracking in the country, for an environmental impact assessment; this was enough to prompt the investor to send a message to the Slovenian government via its lawyers threatening to "reserve their right to initiate international arbitral proceedings" if no solution was found (Enyo Law, 2020). Additionally, the government's 2022 mining law amendment, which banned the use of hydraulic stimulation for the exploration and exploitation of hydrocarbons, was a further reason for Ascent to file a lawsuit asking for 500 million euros in compensation. The case is pending (UNCTAD, 2024i).

In 2023, leaked documents unveiled that the Klesch Group Holdings Limited, a UK- and Switzerland-based oil-refining company, is suing the EU, Germany, and Denmark over windfall tax measures introduced in response to the energy crisis due to the war in Ukraine. Klesch demands EUR 95 million in compensation from Germany and Denmark after the two countries set their utility levies at 33 percent for profits above the 20 percent average. In addition, the company is also suing the European Commission for an undisclosed sum over the windfall tax regulation (NESLEN, 2023).

In October 2023, the Swiss energy company AET (Azienda Elettrica Ticinese) took Germany to court over the German coal phase-out. AET holds a 15 percent stake in the Trianel hard coal-fired power plant in Lünen, North Rhine-Westphalia, which is due to be decommissioned in 2032 (PowerShift, 2023). Details of the claim are not yet publicly known. In March 2024, an ICSID tribunal was established and had its first session in April of the same year (ICSID, 2024).

Wary of these litigation risks due to phase-outs from fossil fuels, the ECT contracting parties started to negotiate a "modernization" of the treaty in 2018. The most ambitious proposal comes from the EC (Bernasconi-Osterwalder, Schaugg & van den Berghe, 2021), which stated that the treaty is no longer in line with the Paris Agreement and the EU's ambitions with regard to the energy transition, while also calls from academia (University of Warwick, School of Law, 2023) in the United Kingdom and on a global level more than four hundred civil society organizations demanded to leave the outdated treaty (CSOs, 2021).

An agreement is unlikely to happen, as unanimity of parties is required. Moreover, according to a study of the International Institute for Sustainable Development (IISD), the EU proposal would cause sixty-one coal power plants to continue to be protected by the ECT for a period of ten years. As an alternative, IISD proposes the withdrawal of the EU member states from the ECT – following the example of Italy. In this case, only sixteen coal power plants would continue to be protected by the ECT (Schaugg, 2021, p. 5). Consequently, in a first step, EU member states of the ECT could renounce mutually the "sunset clause" and then leave the Treaty collectively.

After an earlier proposal to modernize the ECT failed to gain the required majority among member states, the European Commission published a proposal for a Council Decision on the withdrawal of the Union from the Energy Charter Treaty on 7 July 2023. The lack of an EU position de facto blocked the ECT modernization process. Due to numerous concerns regarding the protection of fossil fuel investments and a lack of prospects for change, several countries announced their intention to unilaterally terminate the treaty. France, Germany, Poland, and Luxembourg have already canceled their membership. In addition, the Netherlands, Slovenia, Spain, and, more recently, Denmark, Ireland, and Portugal have also announced their intention to leave the treaty unilaterally. On 30 May 2024, the Council of the EU then decided that, on the one hand, the European Union and Euratom would withdraw from the Energy Charter Treaty (Council of the European Union, 2024e). On the other hand, the member states were given the option of supporting the modernization of the treaty at the next Energy Charter Conference, which was expected to take place at the end of 2024. The decisions are interlinked, as they form the two pillars of a political compromise. The Council's decision gives the EU and Euratom the final "green light" to withdraw from the Energy Charter Treaty after the European Parliament approved it at its last plenary session in April 2024. The Council also pointed out that, due to the "sunset clause," the contracting parties are still bound by the provisions of the ECT for twenty years after withdrawal and are still subject to the risk of disputes during this period. Shortly before the EU Council decision, the former EU member state United Kingdom sent a notification of withdrawal to the ECT secretariat on 26 April 2024; the withdrawal will be effective on 27 April 2025 (ECT, 2024). On 27 June 2024, the European Union "took the final and formal step of exiting the Energy Charter Treaty […] EU notifies its withdrawal […] The withdrawal will take effect one year after the depositary has received the notification" (Council of the European Union, 2024f).

5.4. Strengthening the global governance architecture

In its best times, the WTO was called the "global government," which it formally never was. The nickname was due to its power of enforcement concerning international trade rules. Meanwhile, the functioning of the Dispute Settlement Understanding (DSU) is in a crisis, as the USA has refused since 2007 to re-elect existing members or to appoint new judges to the Appellate Body (AB) (Lehne, 2019, pp. 7–10). In 2019, the seats for two retiring AB members could not be filled, leaving only one member on the AB until December 2020 (WTO, 2024u), whose decisions, however, must be made by three people. Bernard Hoekman, European University Institute & Centre for Economic Policy Research (CEPR) and Petros C. Mavroidis, Columbia Law School, describe the situation and its consequences as follows: "As a result, there is no longer a multilateral forum to hear new appeals. Many WTO Members fear that without the AB the WTO dispute settlement system will lose much of its predictability and may eventually collapse" (Hoekman & Mavroidis, 2020, p. 8).

Before this crisis, the nickname was justified. No comparable tribunal at the global level took care of climate and biodiversity protection, tax justice, financial stability, human and workers' rights, anti-corruption, or lobby-control. Dani Rodrik (2011, p. xvi) noted: "There is no global antitrust authority, no global lender of last resort, no global safety net, and, of course, no global democracy."

Maybe its time has come, similar to Keynes' idea of an ICU. Different from a global government (or a World Parliament) that would decide binding rules for the whole world, global governance is a set of agreements and institutions made up by sovereign member states. These institutions usually have a limited mandate, and their power depends strongly on international enforcement mechanisms such as tribunals, whose rulings are accepted and implemented by member states (United Nations, 2009).

In the following chapter, we will discuss a series of institutions that could improve international cooperation, prioritizing humanity's most burning needs and goals, and putting "economic" interests on a secondary level.

5.4.1. New institutions and agreements

As described in section 5.2.1., an International Clearing Union would become one centerpiece of the UNETZ. Another one could be a UNETZ Court that acts with rulings against countries who fail to meet their commitments under the agreement; the agreement is the base for their preferential trade amongst each other. As explained, this is the same logic as in the WTO's DSU. Only if countries can rely on the enforcement of the agreed rules and the acceptance of rulings by the commonly established tribunal, a rule-based system can be considered hard international law that will work.

A "light version" of the UNETZ could rest only upon trade balances in equilibrium, but then the basic idea of promoting climate and biodiversity protection, etc. would get lost, and the letter "E" for "ethical" would not make sense any longer; it would be a mere United Nations Solidary Trading Zone (UNSTZ).

5.4.1.1. Global merger control

A global merger control could be the next building block of a stronger global governance. It would be interesting to hear David Ricardo's or Adam Smith's opinion if a "utopian" had told them that – as a consequence of their proposals – one day not every country would specialize in specific goods and services, but rather a few corporations whose size exceeds that of most countries. This is definitely not what either had in mind when they made their visionary ideas public. Adam Smith wrote about "the baker, brewer, butcher" next door, but not about institutional investors of the size and power of Meta (Facebook), Alphabet, Pfizer, or Blackrock.

Considering this gap between original idea and reality, it is interesting that – in 2024 – a proposal for a global merger control that limits the size of multinational enterprises to a level at which they do not pose a risk to the social fabric and democratic community sounds like an impossible utopia. The countries forming part of the ethical trade zone might limit the power of global corporations so that they will no longer be able to enforce their agenda against the interests of the majority of the people and the common good. George Monbiot (2014) insists: "The key political issue of our age, by which you can judge the intent of all political parties, is what to do about corporate power." That sounds like the voice of the age, but it is not new. Back in 1950, the celebrated German economist Walter Eucken (2012, p. 85), broadly acknowledged as one of the forefathers of the "social market economy," espoused a similar view: "So, it is not the so-called abuses of economic power that need to be fought, but economic power itself."

A global merger control could be composed of two elements: Element one could be an absolute size limit for corporations, above which citizens deem them too powerful (e.g., ten billion USD or euros). Element two could be a lower threshold, above which firms can only grow if they score an excellent result in their common good balance sheet, clearly above the average (in 2024, between 200 and 300 points; the potential range in the score of the CGBS is from –3,600 points to +1,000 points). The bigger they want to grow (i.e., the closer they want to come to the absolute limit), the higher they have to score. Only the most sustainable and responsible companies would have a chance to reach the absolute maximum size, for example:

Turnover in €	**Minimum score CGBS**
1–2.5 billion	500
2.5–5 billion	600
5–7.5 billion	700
7.5–10 billion	800

Table 20: Scheme of sustainability performance thresholds for a Global Merger Control

5.4.1.2. Global Tax Authority

Number three among the new members of the "family" of global governance institutions could be a Global Tax Authority. One of the most criticized shortcomings of the current design of economic globalization is the widely used practice of tax evasion by transnational companies, associated with massive illicit financial flows (IFF), as well as by wealthy individuals. This is considered "poisonous" for the potential benefits and the associated acceptance of globalization, for at least four reasons:

1. Globalization itself leads to increasing inequality due to the economies of scale and the fact that it is not British textile producers who export to other nations, but international corporations with international ownership. The increased amount of profits and revenues and wealth growth for individuals widens the gap. Consequently, tax schemes ought to be more progressive with globalization than without.

2. As a consequence of tax evasion of rich persons and powerful companies, a growing tax burden has to be borne by the middle and lower class across the globe; at the same time, "austerity policies" for the middle class and the poor are legitimated with the impossibility to increase the tax burden. This way, the social gap widens even more.

3. Poorer countries also bear a heavy burden of IFFs. A study by Global Financial Integrity (2017) found that over the period between 2005 and 2014, IFFs were likely to account for 14.1 to 24.0 percent of total developing country trade, on average. Total IFFs were between USD 2 trillion to USD 3.5 trillion in 2014. An average of 87 percent of illicit financial outflows were due to the fraudulent mis-invoicing of trade. In 2020, the United Nations Office on Drugs and Crime issued a Conceptual Framework for the statistical measurement of IFFs (UNDOC & UNCTAD, 2020) which was endorsed by the UN Statistical Office in 2023. First country-specific data were published in 2023 (UNCTAD, 2023b).

4. The "super-rich" decouple from society, and they start enormous projects like Starlink (Elon Musk), advocate human presence beyond Earth (Jeff Bezos), or finance and influence international bodies like the WHO (Bill and Melinda Gates Foundation) without any democratic process and legitimation (WHO, 2023).

Consequently, a principle and premise of economic globalization should be that the benefits are shared at least as fairly as within countries. Therefore, the authors propose the following possible tasks of a Global Tax Authority:

<u>1. Create a global financial register</u>

The French economist Gabriel Zucman (2014, p. 136) considers a "World Financial Registry" (worldwide register of securities, showing who owns which assets and bonds) to be the decisive step in the global struggle against tax avoidance and evasion. Such a register of financial properties can be understood as an analogy to the land registry – a compulsory record of all real estate assets, which serves two purposes: on the one hand, to establish what belongs to whom (property law and protection – the "freedom" side of the property "coin"), and on the other, how much tax is due on it (the "responsibility" side). In July 2016, a resolution of the EU Parliament (2016b) welcomed "a global register of all assets held by persons, companies and entities such as trusts and foundations, to which the tax authorities [would] have unrestricted access." In tax matters, the EU Parliament has no legislative powers. It's up to the governments of member states to take initiative for such a register. But the EC could at least make a proposal to tackle this issue, in order to implement the values of "equality" and "solidarity" in article 21 TEU. The full implementation of such a register would be a significant step towards the closure of secrecy jurisdictions all over the globe (Tax Justice Network, 2024).

<u>2. Coordinate a global HNWI tax</u>

Having said this, the "winners of globalization" could be made to contribute a bit more to fix some of its problems. HNWIs are people who have liquid financial assets (excluding the property they live in themselves) worth at least one million US dollars. Their number has increased from 6 million in 1996 (the first recorded year) to 22.8 million in 2023, and their combined wealth from USD 15.1 trillion in 1995 to USD 86.8 trillion in 2023 (Capgemini Research Institute, 1997, pp. 2–3; and 2024, p. 8) – some twenty times the economic output of Germany. A globalization tax of 1 percent would bring in USD 850 billion, and even 0.1 percent would bring in USD 85 billion. By comparison, the regular budget of the UN system for 2024 amounts to USD 3.59 billion (United Nations, 2023). Although the world is richer than ever before, it is "flat and skinny" when it comes to implementation of the UN Sustainable Development Goals (SDGs). To fully finance them, an extra USD 0.8 trillion to USD 1.5 trillion is needed each year (Oxfam International & Development Finance International, 2015, p. 30). This amount could be raised with a tax of 1 to 2 percent on HNWI assets – that is far less than what these assets used to grow per year over the last decades.

<u>3. Coordinate the taxation of corporations</u>

A lot of research has been done on how companies could meet a level playing field in tax matters. Currently, the playing field is as uneven as a rollercoaster. In 2017, Google declared a profit of 22.7 billion USD at the Bermuda Islands, where the corporate profit tax is at 0 percent (Zucman, 2020, p. 109). From 2014 to 2020, the thirty-six systemic European banks have booked 20 billion euros of profits in seventeen tax havens (Aliprandi, Barake & Chouc 2021, p. 3). Experts on tax justice estimate that countries are missing out on more than USD 427 billion in tax every year as a result of international corporate tax avoidance and private tax evasion (Mansour, 2020).

As a consequence, both statutory and effective corporate tax rates show a long-term decline. Between 1985 and 2018, nominal tax rates globally shrank from close to 50 percent to 24 percent (Zucman, 2020, p. 123). According to OECD statistics, the decline continued to 23.1 percent in 2023 (OECD, 2023, p. 24). The average effective tax rate is even lower: it declined from 21.7 percent in 2017 to 20.2 percent in 2022 (p. 13). Finally, the share of corporate taxes of GDP went down from its last peak in 2008 (3.5 percent) to 3.0 percent in 2020 (p. 15).

In order to stop this trend, in 2013 a political initiative was started within the OECD with an Inclusive Framework on Base Erosion and Profit Shifting (BEPS). After thorough negotiations, on 8 October 2021, over 135 members of the Framework, representing more than 95 percent of global GDP, joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits (OECD, 2022).

The plan comprises two elements. Firstly, pillar one: through the creation of new nexus rules, some taxing rights will be reallocated from the site of production to where the products are sold (known as "market jurisdictions"). Part of pillar one is the country-by-country reporting. Large corporations (with earnings above 750 million euros) must submit in the country where they have their head office a country-by-country list of their economic activities. This information is not made public; it only goes to the tax authorities. As of April 2024, 103 jurisdictions had ratified the agreement (OECD, 2024a).

Pillar two is an effective minimum corporate tax of 15 percent for large MNEs, which seeks to respond to continued concerns regarding profit shifting, harmful tax competition, and a damaging "race-to-the-bottom" on corporate tax rates. As of 9 June 2023, 139 member jurisdictions have joined this two-pillar BEPS framework (OECD, 2024b).

Whereas France's finance minister in 2021, Bruno Le Maire, celebrated the deal as a "once-in-a-century tax revolution" in international tax cooperation (Meredith, 2021), civil society experts who had been working for decades on tax justice criticize a couple of significant shortcomings:

- Only a few corporations fall under the scope (turnover > USD 20 billion and profitability > 10 percent), and only a small part of their excessive profits (OECD, 2021a); Amazon, for example, could be exempt from the tax, in spite of a net profit of USD 21 billion in 2020, because this profit was less than 10 percent of the turnover.
- The OECD counts additional revenues for governments of member countries of USD 150 billion (OECD, 2021b). But the "lion's share" of the revenues would go to the largest OECD members at a time when lower-income countries already lose the greatest share of tax revenue to corporate tax abuse.
- Considering the fact that nominal tax rates were at around 50 percent globally in 1985 and that effective tax rates were still above 20 percent in 2023, a minimum rate of 15 percent is considered far too low by some NGOs. Countries with currently higher tax rates could even feel invited to lower it.

An ambitious and effective global tax coordination could be composed of four elements:

- a minimum tax rate of 25 to 35 percent
- a unified tax base, closing all existing loopholes
- mandatory dual taxation agreements according to the charging method (if the tax rate in the country of origin is, say, 30 percent, the difference to the minimum rate is charged additionally in the country of origin)
- "unitary" taxation according to real economic activities (in proportion to invested capital, turnover, and employment) in each country

Such a fourfold approach would effectively end tax competition in relation to corporations and linked tax erosion. Countries would receive a fairer share of companies' income instead of being played off against one another. Sufficient funding for social welfare, public goods and services, climate and biodiversity protection, and the achievement of the Sustainable Development Goals could be assured.

A Global Tax Authority could take on these and other tasks; it could become a body of the United Nations and, as such, replace the current aspirations for tax coordination and cooperation of the OECD and the G20.

5.4.2. Critique of the flaws of the UN system

If one proposes a new UN agreement or body, skepticism is the usual first reaction: the United Nations system often has proven to be ineffective, and its decisions are, except for a few exceptions, not enforceable. Governments of member states are frequently captured by vested interests and undermine necessary reforms and decisions, diplomats with lack of expertise keep the quality of discussions and number of solutions low, and corruption undermines both the legitimacy and the efficiency of UN programs (Leinen & Salm, 2024).

In addition, with major governments abrogating from the responsibility of funding the UN, there is increasing dependence on private sector funds, resulting partially in a competition between UN agencies for accessing such private funding. This has severely compromised the case for the UN in recent times (WHO, 2023).

All of this is true, and still the question is: What are the alternatives? For some time, the WTO was considered a more effective forum due to its tribunal and power of enforcement of trade rules. But, as argued before, this seeming "advantage" has shrunk: ironically, since its start in 1995, the WTO has taken no major step forward. The Singapore issues (from the 1996 conference) have failed to advance, as has the so-called Doha Round for the most part. Since the "Battle of Seattle" in 1999, progress has come to a halt. That is why bilateral and regional trade and investment agreements are concluded in great numbers. With the stagnation of the Appellate Body of the WTO Dispute Settlement Mechanism, the WTO's advantage is almost gone, and the inefficiency argument no longer applies only to the UN.

On the contrary, the UN has gained force with the start of the International Criminal Court (ICC) in The Hague in 2003 and, although too weak and lacking enforcement, the series of Climate Summits. In 2022, the United Nations General Assembly adopted a new human right of access to "a clean, healthy and sustainable environment" (United Nations, 2022). Looked at from that side, the UN system is functioning quite well. If the political will exists, it can be improved in both breadth and depth.

A booster of more effective decisions and enforceable agreements could be democratization through inclusion of member states – especially developing and least developed countries – as well as civil society organizations and citizens. Thanks to referenda, citizens' assemblies, and other innovative democratic processes and instruments, national governments could be mandated by their sovereign citizens to take a determined position on an international issue. Through this direct mandate, the distorting influence of vested interests could be overcome. An even more visionary perspective is the establishment of global citizens' councils. If these work well on the national level, one could at least try them out at the global level too. One example, which has already been described in section 2.3., is giving citizens the choice if they prefer global trade rules within the UN system aligned with existing international law, or outside without binding relations. People's wisdom is frequently underestimated, or sometimes that of their (elected) representatives overestimated. A new power balance between principal (sovereign citizens) and agent (elected governments and parliaments) could be a cornerstone of tomorrow's democracy, even on the global scale (see chapter 6).

5.4.3. Alternative: Reform all existing and future trade and investment agreements

One alternative to a systemic overhaul, redesign, or "reset" of the global trade order could be the reform of the EU's existing and future bilateral and multilateral trade and investment agreements. This work has been done recently by Cross (2020). Summarizing, he makes sixteen proposals, amongst which figure:

- Supremacy of MEAs in new or revised FTAs or in multilateral declarations that overrule existing FTAs
- Submission of all clauses on the environment to the general dispute settlement mechanism
- Inclusion of the precautionary principle (Cross (2020, p. 15): "The absence of any reference to the precautionary principle in the SPS [Sanitary and Phytosanitary Measures] Chapters of the EU's FTAs to date is particularly perplexing.")
- Phasing out subsidies for fossil fuels (this would increase government revenue by USD 2.9 trillion, while reducing global carbon emissions by more than 20 percent and air pollution-related deaths by 55 percent (Coady et al., 2015, p. 6))
- Allowing compulsory licensing for climate-friendly technologies and exempting their promotion from anti-dumping sanctions
- Elimination of the prohibition of requiring technology transfer or local content quota from investors
- Replacing references to UPOV (promotion of commercial seed growers) to ITPGRFA (promotion of farmers' rights and food sovereignty)
- Allowance of the different treatment of like products that stem from different production processes and methods
- Support for the development of methods to calculate the carbon embodied in products (which is also the base for ecological human rights)

Admittedly, a redesign of international trade relations from scratch would be a highly ambitious endeavour. But repairing, amending, and redesigning hundreds and thousands of bilateral agreements would also require a major effort; in any case it would be a highly complex and piecemeal process with the risk of different stipulations and even contradicting obligations in each agreement. Different from that, a major advantage of a UNETZ would be: it would replace all other trade agreements.

Tellingly, Cross (2020, p. 11) finds that the democratization of trade policy is the "single most important enabling factor in transforming the EU's current approach." He pleads for "increased public participation before, during and after FTAs are negotiated."

The authors of this Working Paper agree with Cross' general conclusion. Accordingly, the following section is dedicated to a vision for deep democratization of the European Union as a whole and its trade policy in particular.

6. Towards "Sovereign Democracy"

6.1. The vision of a "sovereign democracy"

In the previous analysis the authors showed that governments and parliaments have been ready to avoid the UN system for the development of global trade rules; that they have given litigation rights to corporations, but not to citizens; that they have given the power to the EC to dismiss a legitimate citizens' initiative; that they adopted CETA even though only a tiny minority of the population wanted it…

The concept of "sovereign democracy" (Felber, 2019a, pp. 122–147) addresses the problem of a real, existing "post-democracy" (Crouch, 2004). It gives more power to the people to change everything they want to change. The word "sovereign" comes from Latin and means "to stand above all" – it refers to the highest instance in a state. In a monarchy, the sovereign instance is the king or the queen. In a democracy, the highest instance is the people.

If this truly is the case, the sovereign citizens can enjoy a series of "sovereign rights" (Felber, 2019a, pp. 127–128) that can be considered collective fundamental rights, as a counterpart to individual fundamental rights. Here is a proposal of sovereign rights the people should be entitled to enjoy:

	Sovereign right	**Recent example(s)/comments**
1	elaborate a completely new Constitution in a democratic process	Bolivia (2008), Ecuador (2009), Iceland (2011), Chile (2021–22)
2	amend the Constitution	Switzerland
3	define a framework mandate in the Constitution for trade policy	Change Article 206 TFEU
4	Initiate a citizens' assembly	Citizens' assemblies in Ireland, Germany, and France have been organized on the initiative of the governments; the citizens don't have the right yet.
5	repeal a law	In Italy, citizens can ask for a referendum to repeal a law if they gather 500,000 signatures. The referendum is valid if the absolute majority of the voters participate in it.
6	bring in a law to referendum (through people's initiative)	Switzerland
7	choose a government with a particular make-up	Currently, in most countries, citizens can only vote for a political party.
8	deselect the government in valid circumstances	For example, in case of declaration of war.

9	decide on a military mission abroad	Over the past centuries, governments have decided on their own, without the consent of the citizenry, to go to war.
10	take a basic utility under direct people's management	e.g., water, energy, or health – and thus exclude them from international trade liberalization
11	take the final decision on the monetary system	e.g., who has the right to issue (cash and electronic) money
12	take the final decision on the customs and duties system	e.g., decide upon the final result of a trade agreement or any other international agreement

Table 21: Proposed list of sovereign rights

The first and foremost sovereign right could be the right to draft, adopt, and amend the Constitution: the highest document should be the domain of the highest instance, no other. Having this right, the citizens of the EU could reformulate Art. 206 TFEU; they could define who gives the mandate for negotiations for an international agreement, how negotiations occur, and who decides over the result.

Likewise, they could decide which kind of European Citizens' Initiatives (ECIs) are admissible and which are not, and if a successful ECI leads to a European-wide referendum or to thorough discussion in the European Parliament or both.

6.2. The process to a trade agreement in a sovereign democracy, on the example of CETA

Linking up the analysis of the current political process in the EU to a new trade agreement, the alternative process proposed for a "sovereign democracy" could happen as follows:

1. The Constitution itself has to be democratic

Like all international treaties, the current EU treaties are the result of an intergovernmental process that, by its very nature, failed to directly involve citizens in the law-making process. In 2002, an "EU Convention" was appointed by parliaments and governments, from which the citizens were excluded: the citizens did not have a say in the composition of the convention, nor were they represented. And they were not asked about the result, almost: two of the first three referenda about the EU Constitution failed – in France, 54.7 percent of the citizens voted against, in the Netherlands 61.6 percent. After these rejections, the project to establish an EU "Constitution" was abandoned, and the member states continued with the ordinary process of amending the EU treaties. This led to the approval of the Lisbon Treaty with an intergovernmental process that did not involve EU citizens as a single "polity." The new Art. 206 TFEU on external trade policy entered into force, together with other new provisions of the Lisbon Treaty. Undeniably, the Lisbon Treaty brought a number of valuable innovations into the EU legal system, the most relevant probably being the entry into force of the EU Charter of Fundamental Rights from 2012. In addition to the new Article 206, changes were made to Articles 206 and 207 TFEU that increased the powers of the European Parliament and the democratic oversight over the conclusion of trade and of other international agreements of the EU.

However, particularly in light of the increased sphere of responsibility of the EU, it would have been preferable to abandon the current intergovernmental model in favour of a more democratic process whereby European citizens could have directly elected a convention and voted on its final proposal – with several alternative options, as the innovative decision-making method "systemic consensus" suggests (Visotschnig

& Schrotta, 2005). A similar process took place in Chile from 2021 to 2023. After heavy street protests and social unrest, in May 2021, a constitutional assembly was directly elected by the people, including 50 percent women and 13 percent representatives from the indigenous communities. Candidates to the Assembly did not have to belong to political parties; its first elected president, Elisa Loncón, is a Mapuche woman. After heavy lobbying against the assembly's proposal by conservative media and pressure groups, almost 62 percent of voters rejected the draft for a new constitution in September 2022. A second draft was also rejected in 2023. With this result, the constitutional process in Chile was closed (Undurraga, 2023). Although for many disappointing, this failed attempt to adopt a new constitution should not discourage citizens in other countries to use the instrument of a constitutional assembly.

<u>2. The framework mandate has to come from the citizens</u>

In such a process, or, alternatively, in a minor amendment of the Constitution, the legal basis Art. 206 TFEU could be (re)formulated by the people. For this, another precedent can serve as inspiration. In Germany, a first citizens' assembly took place on the further development of democracy in the country. In November 2019, twenty-two proposals – amongst others, the right of the citizens to initiate a citizens' assembly on their own initiative – were handed over to the then president of the Bundestag, Wolfgang Schäuble (Bürgerrat, 2019). He was so impressed that he arranged for the Bundestag to commission a second citizens' assembly on "Germany's role in the world," which included external trade policy. Amongst the outcomes figured:

- Germany should advocate for fairness, transparency, dignity, and sustainability in international trade.
- Germany should consider the economic interests of low-income countries.
- A supply chain law should be passed in Germany with the goal to achieve an international supply chain agreement on the base of unified standards.
- Germany should strive for a trade balance in equilibrium (Bürgerrat 2021, p. 30).

The latter is an unmistakably strong support of a representative sample of German citizens for the core element of the proposed UNETZ: an agreement on even trade balances. Unfortunately, deviating from the Irish precedent, by which it was inspired, the German citizens' assembly had no binding effect – it had the effect of a mere consultation. Nonetheless, one could argue that the EU citizens would most probably formulate Art. 206 TFEU differently from how the EU Convention did, if they were asked to do so. Here is a concrete proposal:

Art. 206 TFEU old	**Art. 206 TFEU new**
"By establishing a customs union […] the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers."	"By establishing a customs union […] the Union shall contribute, in the common interest, to the progressive implementation of human and labour rights, environmental and climate protection, gender justice, a more equitable distribution, social cohesion and cultural diversity: to the global common good. Trade is a means to help achieve these goals."

Table 22: Proposal for rewording of Art. 206 TFEU

EU citizens should be heard on how this – or any other Treaty provision – could be formulated, in order to bring EU policies in line with the aspirations and values expressed in the general principles of the EU Treaties and of the Charter of fundamental rights.

3. Direct mandate through direct representation

To assure a high degree of democratic legitimation for the negotiations of an international agreement, the according mandate should be given by a body that is directly elected by the people. At the EU level, the Parliament is the only body that fulfils this criterion. Consequently, it should fall to the European Parliament (as an option, its trade committee) to exercise the competence to give the mandate for starting negotiations on a new trade agreement – rather than the Council, which represents the intergovernmental dimension of the EU, but is not elected directly for this supranational function.

4. Verification of the mandate by the European Court of Justice (ECJ)

Once the Parliament approves a negotiating mandate, the ECJ should check its coherence with the general principles of the treaties and with the EU Charter of fundamental rights. If these are binding, a proposal for a bilateral trade agreement – with Canada, the US, or India – might fail from the beginning as Art. 21 TEU already today states priority for multilateral agreements within the UN. If it passed this hurdle, then the proposal would have to prove plausibly how this further agreement helps to protect the climate and biodiversity and human and labour rights more effectively, how it contributes to a more cohesive and inclusive society and the preservation of cultural diversity and indigenous people's rights, and how it helps to include all countries better into the global economy. If it fails to contribute positively to these criteria, the chance to get approval from the ECJ would then be very low. If there is a chance at all, it would probably only be if the Trade Committee can prove that the planned enforcement mechanism of the agreement serves to achieve these goals. Only then there is a chance to get the "green light" for starting negotiations.

5. Transparent and participatory negotiations

The "modalities" of negotiations are currently defined by the Council: "The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them" (Art. 218 TFEU). This means that currently the Council is responsible for secret or transparent negotiations and decides about who is asked and involved in negotiations. In the TTIP negotiations between the US and the EU that took place between 2013 and 2016, a "reading room" approach was chosen: only a few members of the European Parliament (MEPs) had access to TTIP confidential ("EU restricted") documents. For a long period, only MEPs with a direct "need to know" – for example, the International Trade Committee (INTA)'s chair and vice chairs as well as the coordinators of the political groups within the committee – could have access to consolidated texts and paper (but no electronic) copies of classified documents. Thus a total of about forty MEPs could only have access to confidential documents in a secure reading room while another sixty were allowed to read "EU limited" TTIP-related documents (mostly technical background papers) for a long time (Delimatsis, 2016, p. 1). Reading rooms existed also in some member states, like in Germany. From 1 February 2016, three years after the negotiations began, members of the federal government, members of the German Bundestag, and members of the Bundesrat were allowed to view selected negotiation documents in a reading room at the Ministry of Economics in Berlin. However, the conditions were characterized by massive distrust of the people's representatives and were strictly regulated: MPs had to hand over mobile phones, laptops, and other electronic devices before entering the reading room; they were only allowed to look at documents under supervision; MPs were only allowed to take handwritten notes, but not to make copies of documents. Should an MP make the contents of the documents public, he or she could face prison sentences (von Hein, 2016).

In a sovereign democracy, the citizens would define, via their representatives and via appropriate and meaningful consultation processes, negotiation guidelines for "agreements between the Union and third countries or international organisations" (Art. 218 TFEU). Two elements are of utter importance: negotiations are led in a transparent and participatory manner from the beginning:

1. According to the "old school" approach to diplomacy, "transparency in diplomatic negotiations and political discussions is an oxymoron" (Delimatsis, 2016, p. 1). But that is the past. A new style should align with the EC's "Plan D" from 2005, which was a lesson drawn from the failed EU Constitution. The EC (2005, p. 2) proposed the "Plan D for Democracy, Dialogue and Debate […] to stimulate a wider debate between

the European Union's democratic institutions and citizens." This could also be a starting point for shifting to a transparent negotiation style in international politics. If digitalization has its good side, every EU citizen could get a democracy account, from which one can monitor, comment, vote, or initiate (collectively) a new regulation.

2. To involve all affected parties in a transparent and fair manner in the ongoing negotiations, a list of the stakeholders affected by the negotiations should be drawn up and become part of the official protocol. The negotiator is obliged to meet equally frequently with representatives of these groups and is forbidden to hold meetings with corporations or lobbyists not listed in the EU lobby register. If it is necessary to choose among several corporations on a particular matter, preference should be given to the one with the best score on the Common Good Balance Sheet (or equivalent comprehensive sustainability report). Restricted rooms should, together with the WTO's "Green Rooms," be left to history.

6. Voting by the sovereign citizens

The result of the negotiations should be submitted for final decision, via an EU-wide referendum, to the body in whose name they ultimately took place: the citizens. Only if the sovereign approves of the negotiated agreement, the European Parliament and the parliaments of member states are allowed to sign it in their sovereign's name. International agreements affect the democratic sovereignty of a country in its essence. That is why they should be known in detail and approved by the sovereign instance. In a scenario of sovereign democracy, one cannot imagine that the European Commission negotiates twenty-nine free trade agreements simultaneously (as was the case in 2021), and the citizens are not consulted in a single case. Rather, the focus would lie on a single multilateral rule-based trade order that aligns with democratic values and the needs of the citizens.

Current process ("representative democracy")	**Alternative process proposed ("sovereign democracy")**
Constitutional basis comes from representatives of the sovereign – framework mandate for "dismantling of customs and other barriers"	Constitutional basis comes from the sovereign – (alternative) framework mandate is a result of participatory assemblies or conventions
Negotiating mandate comes from the Council (with no direct democratic legitimacy), on the recommendation of the Commission (ditto)	Negotiating mandate is issued by the Parliament's trade committee (with direct democratic legitimacy)
Mandate is not verified	ECJ verifies conformity of mandate with the treaties
Secret/intransparent negotiations according to directives defined by the Council of the EU; the negotiator (EC) meets with whomever it wants	Transparent and participatory negotiations according to directives defined by the sovereign citizens in a constitutional act
Final voting by EU organs (in EU-only agreements) or EU organs and parliaments of member states (in mixed agreements)	Final voting by the sovereign instance in whose name or for whose benefit the negotiations took place

Table 23: Process to a new trade agreement in the EU currently (post-democracy) and in the future (sovereign democracy)

7. Policy Recommendations

In this Working Paper, a fundamental redesign of the international trade order has been suggested, and the European Union might be the only candidate at the moment with the potential to propose and initiate it. The attempts to modernize free trade agreements recently launched by the EU Commission, some of which have not yet been completed, do not show sufficient positive changes, as they do not go beyond their primarily economically defined trade policy framework. This is shown by the result of the Commission's (2021a) Trade Policy Review, and it can be assumed that the review of sustainability chapters in free trade agreements will not free itself from the constraints of free trade either. Therefore, a fundamental system change is necessary, and this paper presents a discussion proposal for such a paradigm shift with the "ethical trade order" concept. An "ethical trade order" would be the equivalent alternative to a "free trade world" as a "sustainable economy" is Europe's answer to a "free market economy." It would fit well into the strategy of the Green Deal and match even better with the principles and objectives of the EU's external action laid down in the Treaty of the European Union.

An Ethical Trade Zone (ETZ) approach for an ethical trade order will also take time to implement and will require flanking and complementary measures and intermediate steps, which are listed below.

<u>List of concrete recommendations:</u>

1. Detach from the **misnomers** "**free trade**" and "**protectionism**" and discuss the role of trade in achieving the goals of societies.

2. Consider the – democratically defined – **common good** as the **overarching goal** of economic activities, including trade; measure a national economy's success with a **Common Good Product (CGP)** instead of the GDP currently used; and, consequently, evaluate a trade agreement's success on the basis of its contribution to the CGP.

3. Propose an **ethical trade zone within the UN**, possibly under the name **UNETZ** (United Nations Ethical Trade Zone); for details, see box 10.

4. The EU should promote the agreement on a third human rights covenant, a **UN Environmental Covenant** that introduces "**ecological human rights**," or add the latter to the existing Covenant on Economic, Social and Cultural Rights. These would not constitute an unfair burden-sharing between more and less industrialized countries but treat all humans as equals.

5a. The WTO agreement on IPR – TRIPS – should be abolished and replaced by **Development-friendly Rules on Intellectual Property (DRIP)**.

5b. The EU should support work towards a **General Agreement on Public Services (GAPS)** to promote and protect supply and access to services of general interest, in line with the principles set out in EU law. This agreement should ensure that cities, countries, and sub-national entities remain free to determine their policies for the provision of public services and encourage cooperation between countries to promote widespread access to universal services (notably water, healthcare, energy, transportation, post and electronic communications, sewage, waste removal, and others).

6a. The EU's CSRD should aim at a **unified and mandatory standard of sustainability reporting** that fulfils the **10 requirements** proposed by the IASS study (Brockhoff et al., 2020). Such an ambitious EU standard could become an international role model and blueprint for a **future International Sustainability Reporting Standard (ISRS)**.

6b. A **Binding Treaty** could hold companies accountable for their violations against human rights and labour rights, tax avoidance, lobby activities, and environmental damages they cause. To keep corporations accountable for these violations, either an **International Court for Corporate Crime (ICCC)** or a **World Court of Human Rights (WCHR)** should be established, or both. Individuals should be granted access to the latter.

6c. The EU should engage for a **multilateral declaration to phase out ISDS** and suspend its efforts to establish an MIC.

6d. Likewise, the EU, which very recently **withdrew from the Energy Charter Treaty**, should negotiate the repeal of the so-called "sunset clause" to prevent ISDS lawsuits from fossil fuel companies against states that phase out coal (and other fossil fuels).

7. The EU should engage for the **further development of a global governance architecture** as a necessary institutional and regulatory framework for international economic activities such as trade, finance, and investments. Concretely, an **International Clearing Union**, a **Global Merger Control**, and a **Global Tax Authority** could be the next building blocks in this architecture.

7a. The Global Tax Authority could introduce a **global financial register**, levy a **HNWI tax** of 1 to 2 percent of their personal wealth, and coordinate the **taxation of international enterprises**, based on four elements: a) a **minimum tax rate** of 25 to 35 percent; b) a **unified tax base**; c) **mandatory dual taxation agreements** according to the charging method; d) **unitary taxation principle**.

8a. The whole **process of decision-making** in trade policy should be **profoundly democratized**, through stakeholder participation, citizens' assemblies, and a general approach of "**sovereign democracy**."

8b. Trade mandates and trade agreement negotiations should **reflect the relation between Article 206 TFEU** and other, **overarching, provisions of the EU legal system**, including those governing the EU external action.

8c. **Negotiations** should be led in a **transparent and participatory manner**.

8d. The **European Citizens' Initiative** could be **upgraded** to a binding instrument. If the threshold is passed, a **European-wide referendum** follows automatically.

8e. If the European citizens wish, they could ask for **direct voting on a new trade agreement** via a successful citizens' initiative.

Core elements of a United Nations Ethical Trade Zone (UNETZ)

a) Its members commit to **even trade balances**, giving less developed countries the opportunity to achieve a limited surplus with developed countries.

b) Its members commit to the **fulfilment of international agreements** in the fields of peace, human rights, labour rights, farmers' rights, environmental protect ion, tax justice, and cultural diversity, including the **submission under a UNETZ Court**.

c) Its members can protect their advanced cooperation against countries that do not join the UNETZ with "**ethical tariffs**" of, for example, 1 percent for every not-ratified ILO core labour convention, 5 percent for every not-ratified relevant MEA, and 10 percent for every human rights covenant not ratified. Likewise, they could sanction members who violate the common commitments with a quarter of the according tariff for every year of violation of a specific agreement. After four years of continuous violation, a country would lose its membership and be treated as a non-member.

d) Its members **choose freely how open or protected they want to be**. Domestic policy is not affected by international trade and investment rules. All countries enjoy the same opportunity on their development path to **protect infant industries** and everything else they choose to protect for whatever reason. The resulting trade can be considered truly "free."

Box 10: Core elements of a United Nations Ethical Trade Zone (UNETZ)

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Annex 1: Draft questionnaire for citizens' assemblies on trade

In relation to trade policy, Felber (2019b, pp. 185–191) proposes twelve issues with a total of twenty questions – as concrete, practical guidelines for trade policy conventions of all shapes and sizes. Each proposition requires respondents to indicate their level of resistance, in a range between 0 and 10 points (of resistance).

Issue 1: Purpose of economic activity

1A: The purpose of all economic activity is to increase capital. The common good is a side-effect that comes automatically ("chrematistics").

1B: The purpose of all economic activity is to increase the common good. Capital and money are means to that end ("economics").

Issue 2: Role and value of trade

2A: Trade is a high economic freedom and therefore a goal to which human and labour rights, environmental protection, social security, and cohesion are subordinate ("free trade").

2B: Trade is a means that serves and is subordinate to the ends of human rights, environmental protection, fair distribution, and social cohesion ("ethical trade").

2C: Trade and the international division of labour should be rejected; countries should close their borders to the movement of goods and services ("protectionism").

3A: Customs barriers and other barriers to trade should be gradually eliminated (EU Treaty).

3B: Customs duties are a tool for steering trade and economic policy; they should be applied in a nuanced and measured way according to the goal in question.

Issue 3: Where trade should be regulated

4A: Trade should be regulated within the United Nations, in a manner consistent with human and labour rights, environmental agreements, climate protection, cultural diversity, food sovereignty, limits to inequality, etc. ("UN approach").

4B: Trade should be regulated outside the United Nations, since human and labour rights as well as environmental and climate protection are "non-trade issues," and free trade should not depend on compliance with them ("WTO approach").

4C: There is no need for any international regulation of trade, either within or outside the United Nations ("anti-globalization approach").

Issue 4: At what level should agreements be sought?

5A: The EU should seek to develop a single trade system at a multilateral level, even if there is not rapid progress towards this ("UN approach").

5B: The EU should conclude as soon as possible as many bilateral or regional agreements as it can ("CETA-TTIP approach").

5C: The EU should be equally driven in seeking to conclude trade agreements, without setting priorities ("UN-CETA-TTIP approach").

Issue 5: The negotiating process

6A: The framework mandate – the overarching goal whose attainment should be independently monitored – originates from the sovereign (sovereign democracy).

6B: The framework mandate originates from the EU Council, the EU Parliament, and the parliaments of the member states (EU Treaty).

7: The direct negotiating mandate originates from:

7A: the Council of the European Union

7B: the European Parliament

7C: the European Parliament, subject to the agreement of national parliaments

8A: The negotiating process takes place in secret.

8B: The negotiating process takes place transparently.

9A: The negotiating body may meet with anyone it wishes.

9B: The negotiating body must consult all affected sections of the population and include them in the negotiations, in accordance with a predefined protocol.

10A: The EU Council and the EU Parliament decide on the result of the negotiations.

10B: The EU institutions and the parliaments of member states decide on the result of the negotiations.

10C: The sovereign citizens decide on the result of the negotiations.

Issue 6: Ethical tariffs to protect human rights, labour rights, the environment, and health

11A: The government shall participate in a trade system in which countries that have ratified and respected the following UN agreements may protect themselves with additional tariffs against countries that do not ratify and respect these agreements:

- human rights
- labour rights
- environmental agreements
- cultural diversity
- corporate obligations
- exchange of tax information
- HNWI tax (e.g., 1 percent)

11B: The government shall participate in a trade system, regardless of whether its trading partners have ratified and respected the following UN agreements:

- human rights
- labour rights
- environmental agreements
- cultural diversity
- corporate obligations
- exchange of tax information
- HNWI tax (e.g., 1 percent)

Issue 7: Global institutions

12A: Global markets necessitate global institutions ("global governance approach"). The multilateral commercial and business order should therefore include:

- a clearing union and a reserve currency
- global merger control
- a global tax authority
- supervision of financial markets

12B: It is best if markets regulate themselves (the "flat earth approach"). The world market therefore has no need of:

- a clearing union and a reserve currency
- global merger control
- a global tax authority
- supervision of financial markets

Issue 8: Even trade balances

13A: Deviations from balanced trade should not be corrected; they are the result of the free play of market forces ("laissez-faire approach").

13B: All states commit to even trade balances in order to keep the world economy in equilibrium. Small, temporary deviations shall be tolerated, larger and longer deviations progressively sanctioned – by means of interest rates, favourable loans from surplus to deficit countries, and the revaluation/devaluation of national currencies ("Keynesian approach").

Issue 9: Reciprocity – equal treatment of developing countries?

14A: No "symmetrical" or reciprocal opening and liberalization can be expected from countries with different levels of prosperity. Countries with a lower degree of industrialization/diversification may resort to educational tariffs and other "infant industry" policy measures and assert greater protection of their markets ("non-reciprocity between unequals").

14B: Equal rights for all. All participants in a multilateral trade system must operate a basically symmetrical dismantling of tariffs and open their markets ("reciprocity between unequals").

Issue 10: Scope for democracy

15A: Restrictions on democratic regulatory powers – for example, a ban on subsidies, uniform rules for public employment, the limitation of foreign investment regulation, or enforced protection of intellectual property rights – should be component parts of the multilateral trade system ("straitjacket approach").

15B: Restrictions on democratic regulatory powers – for example, a ban on subsidies, uniform rules for public employment, the limitation of foreign investment regulation, or enforced protection of intellectual property rights – should not be component parts of the multilateral trade system ("autonomy approach").

Issue 11: Preference for local markets and resilience

16A: Local communities, administrative districts, regions, and states may promote local commercial circuits and give them precedence over distant or global economic relations ("economic subsidiarity").

16B: There must be no preference for local or regional economic circuits or relations ("level playing field").

17A: All countries should specialize in the production of goods and services in which they have comparative advantages and import the rest ("specialization approach").

17B: All countries should try to produce as many goods and services as possible and supplement and stimulate this by means of carefully measured trade ("resilience approach").

Issue 12: Scope for democracy

18A: Companies that wish to operate on the world market must draw up a Common Good Balance Sheet. The result of this will be decisive in determining more favourable or more expensive market access ("common good approach").

18B: All companies maintain uniformly free market access, regardless of their ethical performance ("unregulated markets approach").

19A: Companies that wish to have access to the world market may not exceed a certain world market share (e.g., 1 percent) and a certain size (e.g., a turnover or balance sheet total of USD 30 billion) ("liberal approach").

19B: Freedom of ownership may not be curtailed by size limits ("property is sacred approach").

20A: International trade and economic agreements should only protect private property and give it full rights ("capitalistic approach").

20B: International trade and economic agreements should cater to a range of ownership forms (public, private, collective, social, and ownership-free) and impose duties, conditions, and limits for all forms ("cultural diversity approach").

Annex 2: European Union (EU-27) trade statistics

Directorate-General (DG) Trade's annual statistical guide contains selected tables and graphs showing the current state and recent developments in trade between the European Union and its Member States and the rest of the world. It also includes a section on foreign direct investment (FDI). All following data are taken from the 2024 version of the DG Trade Statistical Guide.

As for trade in goods, agricultural products (excluding fish and fish products) represented 9.0% of EU exports of goods (worth EUR 2.327 billion) and 6.3% of EU imports of goods in 2023. The value of exports of agricultural products stagnated while imports decreased by 7.5% compared to 2022. This led to a trade surplus for agricultural products of EUR 70.2 billion in 2023, up from EUR 57.4 billion in 2022. Trade of non-agricultural products (which include fishery, raw materials, energy, and industrial products) amounted to 91% (worth EUR 2.327 billion). Exports fell slightly compared to 2022 (-0.6%), but imports more sharply (-16.8%), resulting in a negative trade balance for non-agricultural products of EUR -32.2 billion. Trade in all goods (agricultural and non-agricultural) showed a surplus of EUR 36 billion in 2023.

As for trade in services, the strongest export industries are "other business services" (23.4%), "telecommunication, computer, and information services" (20.5%), and transport services (17.7%). Looking at imports, "travel" (27.2%), "maintenance and repair services" (14.4%), and "insurance and pension services" had the highest shares. In 2023, exports shrank to EUR 1.340 billion, an reduction of 1.7%, imports rose to EUR 1.177 billion (+ 1.8%). The trade in services surplus amounted to EUR 163 billion, contributing significantly to the overall external trade surplus of the EU in 2023 of EUR 200 billion.

Extra-EU trade 2023	Exports			Imports			Balance
	Value 2023 (€ bn)	Share 2023 (%)	Var 22/23 (€ bn)	Value 2023 (€ bn)	Share 2023 (%)	Var 22/23 (€ bn)	Value 2023 (€ bn)
All products	**2 555.5**	**100.0%**	**-0.6%**	**2 517.6**	**100.0%**	**-16.3%**	**38.0**
Agricultural products	228.7	9.0%	0.0%	158.6	6.3%	-7.5%	70.2
Non-agricultural products	2 326.8	91.0%	-0.6%	2 359.0	93.7%	-16.8%	-32.2
SITC 0 - Food and live animals	159.9	6.3%	0.4%	132.5	5.3%	-3.4%	27.4
SITC 1 - Beverages and tobacco	43.9	1.7%	-1.6%	11.5	0.5%	1.9%	32.3
SITC 2 - Crude materials, inedible, except fuels	58.3	2.3%	-11.9%	82.5	3.3%	-22.0%	-24.3
SITC 3 - Mineral fuels, lubricants and related	142.6	5.6%	-20.9%	552.0	21.9%	-33.6%	-409.4
SITC 4 - Animal and vegetable oils, fats and waxes	9.7	0.4%	-2.5%	14.4	0.6%	-26.1%	-4.6
SITC 5 - Chemicals and related prod, n.e.c.	522.9	20.5%	-5.1%	325.0	12.9%	-10.5%	198.0
SITC 6 - Manufactures classified chiefly by material	255.3	10.0%	-7.3%	240.5	9.6%	-20.8%	14.8
SITC 7 - Machinery and transport equipment	1 025.5	40.1%	7.7%	814.9	32.4%	-1.7%	210.6
SITC 8 - Miscellaneous manufactured articles	296.7	11.6%	0.7%	321.8	12.8%	-10.4%	-25.1
SITC 9 - Commodities and transactions n.e.c.	40.7	1.6%	11.7%	22.6	0.9%	-51.5%	18.1

Source: EUROSTAT

Table 24: Extra-EU exports and imports by SITC category, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 5)

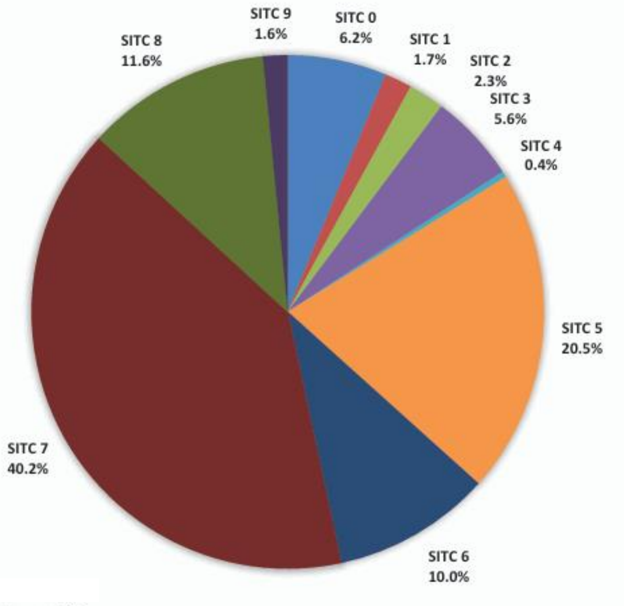
Extra-EU trade 2023		Total trade	Exports			Imports			Balance
		Value (€ bn)	Value 2023 (€ bn)	Share 2023 (%)	Var 22/23 (€ bn)	Value 2023 (€ bn)	Share 2023 (%)	Var 22/23 (€ bn)	Value 2023 (€ bn)
All partners		5 073.1	2 555.5	100.0%	-0.6%	2 517.6	100.0%	-16.3%	38.0
1	US	848.6	502.4	19.7%	-1.2%	346.3	13.8%	-3.6%	156.1
2	China	739.0	223.6	8.8%	-3.0%	515.4	20.5%	-17.8%	-291.9
3	UK	515.0	335.1	13.1%	2.0%	179.9	7.2%	-17.2%	155.2
4	Switzerland	327.2	188.7	7.4%	0.4%	138.5	5.5%	-4.9%	50.1
5	Türkiye	207.0	111.4	4.4%	11.9%	95.6	3.8%	-3.3%	15.8
6	Norway	180.2	61.0	2.4%	-9.7%	119.3	4.7%	-25.9%	-58.3
7	Japan	134.3	64.0	2.5%	-10.3%	70.3	2.8%	0.5%	-6.4
8	South Korea	130.7	57.8	2.3%	-3.8%	72.9	2.9%	0.8%	-15.1
9	India	113.3	48.3	1.9%	1.9%	64.9	2.6%	-4.1%	-16.6
10	Russia	89.1	38.3	1.5%	-30.3%	50.7	2.0%	-75.0%	-12.4
	Other partners	1 788.8	925.0	36.2%	1.2%	863.8	34.3%	-12.3%	61.2

Source: EUROSTAT

Table 25: Extra-EU exports and imports by partner, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 7)

EU exports of goods to extra-EU by sector, 2023 shares (%)

SITC 0 - Food and live animals
SITC 1 - Beverages and tobacco
SITC 2 - Crude materials, inedible, except fuels
SITC 3 - Mineral fuels, lubricants and related
SITC 4 - Animal and vegetable oils, fats and waxes
SITC 5 - Chemicals and related prod, n.e.c.
SITC 6 - Manufactures classified chiefly by material
SITC 7 - Machinery and transport equipment
SITC 8 - Miscellaneous manufactured articles
SITC 9 - Commodities and transactions n.e.c.



Source: Eurostat (Comext)

Chart 7: EU exports of goods to extra-EU by sector, 2023 shares (%) (Directorate-General for Trade of the European Commission, 2024b, p. 40)

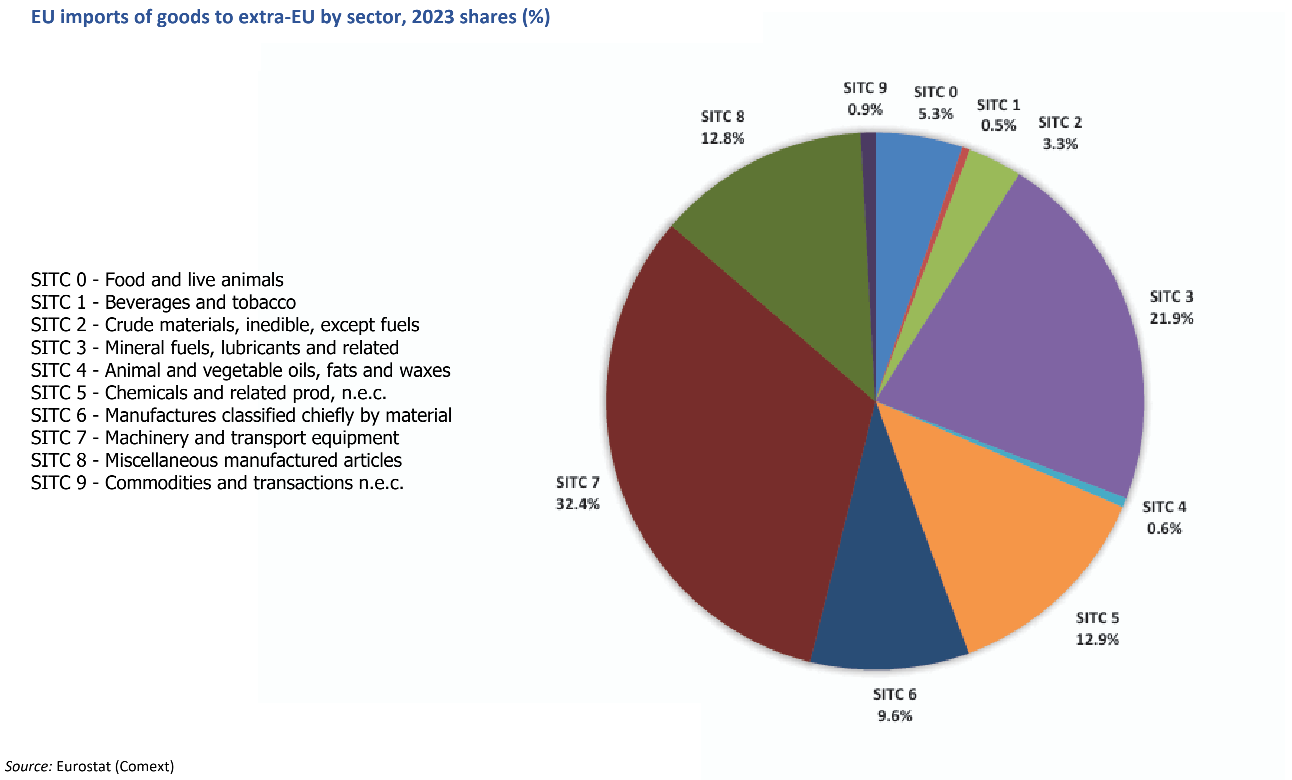


Chart 8: EU imports of goods from extra-EU by sector, 2023 shares (%) (Directorate-General for Trade of the European Commission, 2024b, p. 42)

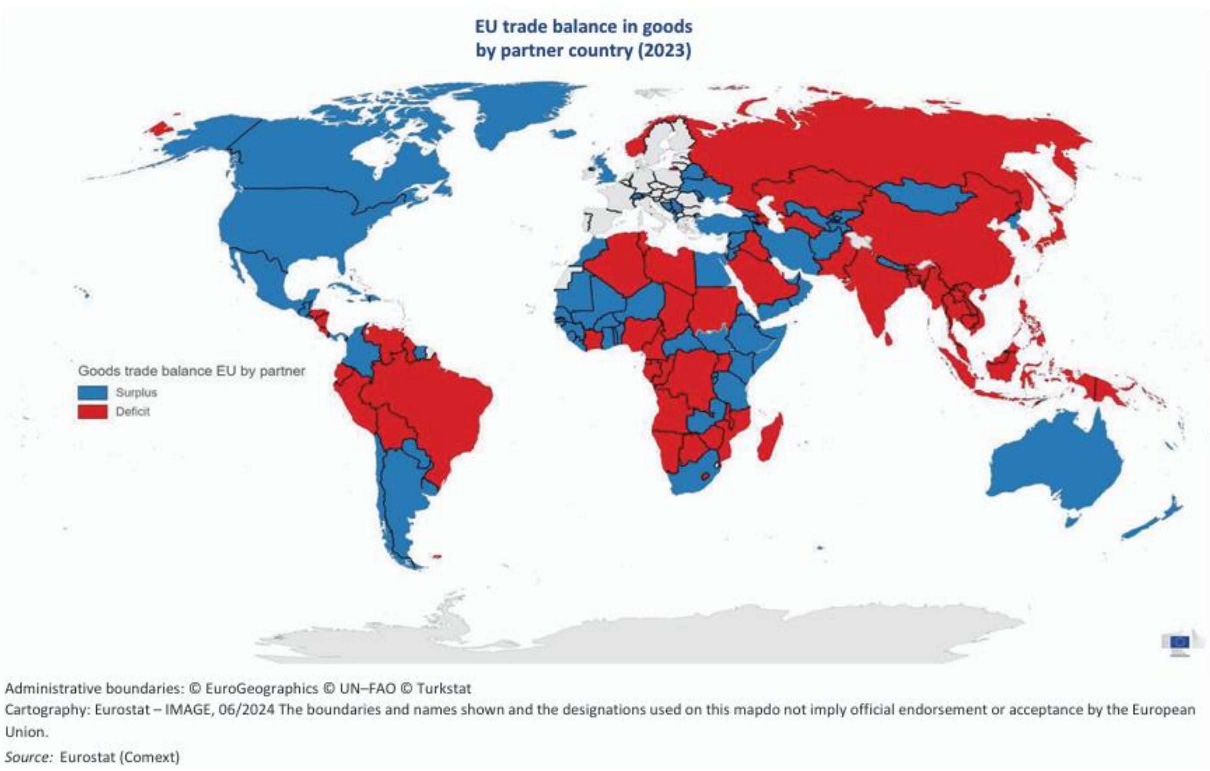


Chart 9: EU trade balance in goods by partner country, 2023 (Directorate-General for Trade of the European Commission, 2024b, p. 45)

SITC Rev.3		Exports				Imports				Trade balance
		Value 2023	Share in total 2023	Variation 2022-2023	CAGR 2013-2023	Value 2023	Share in total 2023	Variation 2022-2023	CAGR 2013-2023	Value 2023
TOTAL		**2 555**	**100.0%**	**-0.6%**	**3.7%**	**2 519**	**100.0%**	**-16.2%**	**4.4%**	**36**
SITC 0	Food and live animals	160	6.2%	0.3%	4.8%	133	5.3%	-3.4%	4.5%	27
SITC 1	Beverages and tobacco	44	1.7%	-1.3%	4.2%	12	0.5%	2.7%	2.1%	32
SITC 2	Crude materials, inedible, except fuels	58	2.3%	-12.4%	3.4%	82	3.3%	-22.2%	2.4%	- 24
SITC 3	Mineral fuels, lubricants and related materials	143	5.6%	-21.1%	1.3%	552	21.9%	-33.6%	1.3%	- 409
SITC 4	Animal and vegetable oils, fats and waxes	10	0.4%	-3.0%	5.5%	14	0.6%	-26.2%	5.3%	- 5
SITC 5	Chemicals and related products	522	20.5%	-5.3%	5.9%	325	12.9%	-10.5%	6.2%	197
SITC 6	Manufactured goods classified chiefly by material	255	10.0%	-7.4%	1.6%	241	9.6%	-20.8%	4.3%	15
SITC 7	Machinery and transport equipment	1 026	40.2%	7.8%	3.3%	817	32.4%	-1.4%	6.8%	210
SITC 8	Miscellaneous manufactured articles	297	11.6%	0.8%	4.5%	322	12.8%	-10.3%	5.1%	- 25
SITC 9	Commodities and transactions n.c.e.	40	1.6%	13.1%	2.7%	22	0.9%	-52.6%	-0.3%	18
AMA/NAMA										
AMA	Agricultural Products	229	8.9%	-0.1%	4.5%	159	6.3%	-7.5%	4.4%	70
NAMA	Non-Agricultural Products	2 326	91.1%	-0.6%	3.6%	2 360	93.7%	-16.7%	4.5%	- 34

n.c.e. = not classified elsewhere
Source: Eurostat (Comext)

Table 26: EU trade in goods with extra-EU by sector, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 43)

EBOPS		Exports				Imports				Trade balance
		Value 2023	Share in total 2023	Variation 2022-2023	CAGR 2013-2023	Value 2023	Share in total 2023	Variation 2022-2023	CAGR 2013-2023	Value 2023
TOTAL		**1 340**	**100.0%**	**-1.5%**	**6.8%**	**1 177**	**100.0%**	**1.8%**	**7.5%**	**164**
SA	Manufacturing services on physical inputs owned by others	38	2.8%	-1.3%	7.0%	23	2.0%	-8.5%	10.0%	14
SB	Maintenance and repair services n.i.e.	29	2.1%	4.5%	10.9%	20	1.7%	14.3%	7.2%	9
SC	Transport	237	17.7%	-22.3%	4.9%	212	18.0%	-9.4%	5.9%	25
SD	Travel	177	13.2%	18.6%	4.4%	120	10.2%	27.2%	3.3%	57
SE	Construction	11	0.8%	13.3%	0.2%	7	0.6%	-3.7%	3.0%	4
SF	Insurance and pension services	36	2.7%	25.5%	8.4%	34	2.9%	12.1%	8.9%	2
SG	Financial services	96	7.2%	3.9%	4.6%	79	6.7%	-2.3%	6.3%	18
SH	Charges for the use of intellectual property n.i.e.	98	7.3%	-3.8%	10.9%	201	17.1%	4.1%	16.4%	- 104
SI	Telecommunications, computer, and information services	275	20.5%	6.1%	11.5%	105	9.0%	3.7%	6.4%	170
SJ	Other business services	314	23.4%	0.2%	6.5%	365	31.0%	1.0%	8.1%	- 51
SK	Personal, cultural and recreational services	18	1.4%	-6.1%	9.5%	11	0.9%	11.7%	1.8%	7
SL	Government goods and services n.i.e.	6	0.4%	-7.7%	-2.3%	3	0.3%	-7.4%	-3.5%	3
SS	*Commercial services*	1 335	99.6%	-1.5%	6.9%	1 173	99.7%	1.9%	7.6%	161

n.i.e. = not included elsewhere.
Commercial services = services excluding government services n.i.e.
N.B.: Total includes services not allocated (not shown in the table). Services not allocated are not considered in the calculation of share in total.
Source : Eurostat (bop_its6_det).

Table 27: EU trade in services with extra-EU by sector, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 49)

Reporter	Value in billion EUR 2013	2018	2021	2022	2023	Compound annual growth rate 2013-2023	2018-2023	2022-2023	World share 2023	World ranking 2023
World	**11 704**	**13 402**	**15 251**	**19 221**	**17 665**	**4.2%**	**5.7%**	**-8.1%**	**100.0%**	
EU27	**1 748**	**2 021**	**2 149**	**2 512**	**2 501**	**3.6%**	**4.4%**	**-0.4%**	**14.2%**	**2**
Australia	191	216	291	392	344	6.1%	9.8%	-12.3%	1.9%	13
Brazil	181	205	238	318	314	5.7%	8.9%	-1.1%	1.8%	16
Canada	345	379	424	567	525	4.3%	6.7%	-7.4%	3.0%	8
China	1 665	2 118	2 848	3 423	3 165	6.6%	8.4%	-7.5%	17.9%	1
Hong Kong	346	482	568	581	533	4.4%	2.0%	-8.2%	3.0%	7
India	237	274	334	430	400	5.4%	7.9%	-7.2%	2.3%	11
Japan	538	625	639	709	663	2.1%	1.2%	-6.5%	3.8%	4
Malaysia	172	210	253	335	289	5.3%	6.7%	-13.6%	1.6%	18
Mexico	286	382	419	549	548	6.7%	7.5%	0.0%	3.1%	6
Saudi Arabia	358	250	236	387	314	-1.3%	4.7%	-18.8%	1.8%	17
Singapore	310	350	387	490	440	3.6%	4.7%	-10.2%	2.5%	10
South Korea	421	513	545	649	585	3.3%	2.7%	-9.9%	3.3%	5
Switzerland	269	262	321	382	389	3.7%	8.2%	1.8%	2.2%	12
Thailand	169	212	225	270	260	4.4%	4.2%	-3.5%	1.5%	20
Türkiye	122	150	190	241	236	6.9%	9.5%	-2.2%	1.3%	21
United Arab Emirates	201	195	227	360	329	5.1%	11.0%	-8.5%	1.9%	14
United Kingdom	407	464	385	495	451	1.0%	-0.6%	-8.9%	2.6%	9
USA	1 187	1 411	1 486	1 961	1 868	4.6%	5.8%	-4.8%	10.6%	3
Vietnam	97	203	279	346	319	12.6%	9.5%	-7.9%	1.8%	15

Coverage: excluding intra-EU trade
Source: IMF DOTS

Table 28: Exports of goods to world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 21)

Reporter	Value in billion EUR 2013	2018	2021	2022	2023	Compound annual growth rate 2013-2023	2018-2023	2022-2023	World share 2023	World ranking 2023
World	**11 798**	**13 787**	**15 556**	**20 000**	**18 141**	**4.4%**	**5.6%**	**-9.3%**	**100.0%**	
EU27	**1 626**	**1 898**	**2 108**	**2 984**	**2 505**	**4.4%**	**5.7%**	**-16.1%**	**13.8%**	**2**
Australia	186	204	223	291	270	3.8%	5.8%	-7.3%	1.5%	16
Brazil	191	161	197	275	236	2.2%	8.0%	-14.0%	1.3%	19
Canada	369	411	438	571	546	4.0%	5.8%	-4.4%	3.0%	10
China	1 468	1 807	2 265	2 579	2 371	4.9%	5.6%	-8.1%	13.1%	3
Hong Kong	395	531	604	635	606	4.4%	2.7%	-4.6%	3.3%	7
India	352	431	482	695	617	5.8%	7.4%	-11.3%	3.4%	6
Japan	627	634	650	852	727	1.5%	2.8%	-14.7%	4.0%	4
Malaysia	155	185	202	280	247	4.7%	6.0%	-12.1%	1.4%	18
Mexico	304	417	453	609	587	6.8%	7.1%	-3.6%	3.2%	9
Saudi Arabia	139	107	128	174	192	3.3%	12.3%	9.9%	1.1%	21
Singapore	281	314	344	452	392	3.4%	4.5%	-13.4%	2.2%	11
South Korea	388	453	520	695	594	4.4%	5.6%	-14.4%	3.3%	8
Switzerland	242	233	271	339	337	3.4%	7.6%	-0.6%	1.9%	13
Thailand	188	211	226	286	269	3.6%	4.9%	-6.1%	1.5%	17
Türkiye	196	196	230	345	335	5.5%	11.3%	-3.1%	1.8%	14
United Arab Emirates	153	207	243	335	381	9.5%	13.0%	13.8%	2.1%	12
United Kingdom	497	616	574	753	668	3.0%	1.6%	-11.3%	3.7%	5
USA	1 708	2 148	2 392	3 079	2 852	5.3%	5.8%	-7.4%	15.7%	1
Vietnam	97	197	275	333	292	11.6%	8.2%	-12.5%	1.6%	15

Coverage: excluding intra-EU trade
Source: IMF DOTS

Table 29: Imports of goods from world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 22)

Reporter	2013	2018	2021	2022	2023	2013-2023	2018-2023	2022-2023	2023	2023
	Value in billion EUR					Compound annual growth rate			World share	World ranking
World	**3 065**	**4 282**	**4 331**	**5 645**	**5 924**	**6.8%**	**6.7%**	**4.9%**	**100.0%**	
EU27	**692**	**994**	**1 093**	**1 362**	**1 387**	**7.2%**	**6.9%**	**1.9%**	**23.4%**	**1**
Australia	44	59	38	49	68	4.5%	3.1%	39.2%	1.2%	15
Brazil	28	29	27	38	42	4.0%	7.7%	9.1%	0.7%	22
Canada	71	89	94	118	126	6.0%	7.2%	6.9%	2.1%	10
China	156	230	333	403	353	8.5%	8.9%	-12.5%	6.0%	4
Hong Kong	79	96	67	79	90	1.4%	-1.2%	14.4%	1.5%	13
India	112	174	203	294	312	10.8%	12.5%	6.3%	5.3%	5
Japan	102	164	144	161	191	6.5%	3.1%	18.8%	3.2%	7
Malaysia	32	34	18	30	40	2.2%	3.0%	30.4%	0.7%	23
Mexico	21	34	32	46	48	8.9%	7.6%	5.7%	0.8%	18
Saudi Arabia	9	17	9	33	45	17.6%	20.9%	36.5%	0.8%	20
Singapore	107	179	239	320	303	11.0%	11.1%	-5.1%	5.1%	6
South Korea	78	88	101	124	114	3.9%	5.4%	-7.4%	1.9%	11
Switzerland	92	118	119	144	156	5.5%	5.8%	8.3%	2.6%	8
Thailand	41	66	22	37	52	2.4%	-4.4%	42.0%	0.9%	16
Türkiye	45	55	53	88	94	7.7%	11.2%	6.5%	1.6%	12
United Arab Emirates	16	61	87	147	154	25.4%	20.4%	4.8%	2.6%	9
United Kingdom	280	368	401	481	540	6.8%	8.0%	12.3%	9.1%	3
USA	542	733	681	901	949	5.8%	5.3%	5.3%	16.0%	2
Vietnam	8	13	3	13	18	8.4%	7.7%	41.4%	0.3%	30

Coverage: excluding intra-EU trade
Source: WTO

Table 30: Exports of services to world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 24)

Reporter	2013	2018	2021	2022	2023	2013-2023	2018-2023	2022-2023	2023	2023
	Value in billion EUR					Compound annual growth rate			World share	World ranking
World	**2 980**	**4 092**	**3 962**	**5 180**	**5 501**	**6.3%**	**6.1%**	**6.2%**	**100.0%**	
EU27	**570**	**859**	**956**	**1 160**	**1 223**	**7.9%**	**7.3%**	**5.5%**	**22.2%**	**1**
Australia	57	63	35	63	78	3.2%	4.2%	22.6%	1.4%	13
Brazil	70	62	49	76	77	0.9%	4.3%	0.9%	1.4%	14
Canada	87	103	98	133	137	4.7%	5.9%	3.4%	2.5%	9
China	249	445	361	442	511	7.4%	2.8%	15.6%	9.3%	3
Hong Kong	57	69	52	60	73	2.6%	1.2%	22.2%	1.3%	15
India	96	149	166	237	228	9.1%	8.9%	-3.7%	4.1%	6
Japan	129	172	177	201	209	5.0%	3.9%	4.1%	3.8%	7
Malaysia	34	38	31	43	48	3.6%	5.0%	12.3%	0.9%	21
Mexico	32	45	45	60	67	7.6%	8.4%	10.6%	1.2%	17
Saudi Arabia	58	71	62	78	89	4.4%	4.7%	13.7%	1.6%	12
Singapore	113	172	209	280	273	9.3%	9.7%	-2.5%	5.0%	5
South Korea	83	113	106	129	136	5.1%	3.8%	5.2%	2.5%	10
Switzerland	88	119	135	153	178	7.3%	8.3%	16.5%	3.2%	8
Thailand	36	47	49	60	60	5.3%	5.2%	0.3%	1.1%	18
Türkiye	19	25	25	38	45	9.0%	13.0%	19.2%	0.8%	23
United Arab Emirates	47	61	64	92	101	8.0%	10.6%	10.2%	1.8%	11
United Kingdom	165	242	215	305	364	8.3%	8.6%	19.3%	6.6%	4
USA	351	479	482	678	692	7.0%	7.6%	2.1%	12.6%	2
Vietnam	10	16	16	26	27	10.0%	11.4%	3.5%	0.5%	28

Coverage: excluding intra-EU trade
Source: WTO

Table 31: Imports of services from world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 25)

Reporter	Value in billion EUR					Compound annual growth rate			World share	World ranking
	2013	2018	2021	2022	2023	2013-2023	2018-2023	2022-2023	2023	2023
World	**14 769**	**17 683**	**19 582**	**24 866**	**23 588**	**4.8%**	**5.9%**	**-5.1%**	**100.0%**	
EU27	**2 440**	**3 015**	**3 242**	**3 874**	**3 888**	**4.8%**	**5.2%**	**0.4%**	**16.5%**	**1**
Australia	235	274	329	441	412	5.8%	8.5%	-6.6%	1.7%	14
Brazil	210	234	265	356	356	5.4%	8.8%	0.0%	1.5%	16
Canada	416	468	518	685	652	4.6%	6.8%	-4.9%	2.8%	9
China	1 820	2 348	3 181	3 826	3 517	6.8%	8.4%	-8.1%	14.9%	2
Hong Kong	425	578	635	660	623	3.9%	1.5%	-5.5%	2.6%	10
India	350	447	537	724	712	7.4%	9.7%	-1.7%	3.0%	7
Japan	640	789	784	870	854	2.9%	1.6%	-1.8%	3.6%	5
Malaysia	204	244	271	365	329	4.9%	6.2%	-9.9%	1.4%	19
Mexico	307	415	451	594	597	6.9%	7.5%	0.4%	2.5%	11
Saudi Arabia	367	268	245	420	359	-0.2%	6.0%	-14.5%	1.5%	15
Singapore	417	529	626	810	744	5.9%	7.1%	-8.2%	3.2%	6
South Korea	499	601	646	773	700	3.4%	3.1%	-9.5%	3.0%	8
Switzerland	361	380	440	526	545	4.2%	7.4%	3.6%	2.3%	12
Thailand	210	278	247	307	313	4.0%	2.4%	2.0%	1.3%	20
Türkiye	167	206	243	330	330	7.1%	9.9%	0.2%	1.4%	18
United Arab Emirates	217	256	314	506	482	8.3%	13.5%	-4.7%	2.0%	13
United Kingdom	686	832	785	976	991	3.7%	3.6%	1.5%	4.2%	4
USA	1 729	2 143	2 167	2 863	2 817	5.0%	5.6%	-1.6%	11.9%	3
Vietnam	105	215	283	359	337	12.4%	9.4%	-6.2%	1.4%	17

Coverage: excluding intra-EU trade
Sources: IMF DOTS, WTO

Table 32: Exports of goods and services to world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 27)

Reporter	Value in billion EUR					Compound annual growth rate			World share	World ranking
	2013	2018	2021	2022	2023	2013-2023	2018-2023	2022-2023	2023	2023
World	**14 778**	**17 879**	**19 518**	**25 180**	**23 641**	**4.8%**	**5.7%**	**-6.1%**	**100.0%**	
EU27	**2 196**	**2 757**	**3 064**	**4 144**	**3 728**	**5.4%**	**6.2%**	**-10.0%**	**15.8%**	**1**
Australia	242	267	258	354	347	3.7%	5.4%	-1.9%	1.5%	15
Brazil	260	223	246	350	313	1.8%	7.0%	-10.8%	1.3%	18
Canada	456	515	535	704	684	4.1%	5.8%	-2.9%	2.9%	8
China	1 717	2 252	2 626	3 020	2 881	5.3%	5.1%	-4.6%	12.2%	3
Hong Kong	451	600	656	695	680	4.2%	2.5%	-2.3%	2.9%	9
India	448	580	648	932	845	6.5%	7.8%	-9.4%	3.6%	6
Japan	755	806	827	1 053	936	2.2%	3.0%	-11.1%	4.0%	5
Malaysia	189	222	234	323	295	4.5%	5.8%	-8.8%	1.2%	19
Mexico	336	461	498	669	653	6.9%	7.2%	-2.3%	2.8%	11
Saudi Arabia	197	178	191	253	280	3.6%	9.5%	11.0%	1.2%	20
Singapore	393	486	552	732	665	5.4%	6.5%	-9.2%	2.8%	10
South Korea	471	565	626	824	730	4.5%	5.2%	-11.4%	3.1%	7
Switzerland	330	353	405	491	515	4.6%	7.9%	4.7%	2.2%	12
Thailand	224	258	275	346	329	3.9%	5.0%	-5.0%	1.4%	16
Türkiye	216	220	255	384	380	5.8%	11.5%	-0.9%	1.6%	14
United Arab Emirates	200	268	307	427	482	9.2%	12.4%	13.0%	2.0%	13
United Kingdom	662	858	789	1 059	1 032	4.5%	3.8%	-2.5%	4.4%	4
USA	2 058	2 626	2 874	3 757	3 544	5.6%	6.2%	-5.7%	15.0%	2
Vietnam	108	213	291	359	319	11.5%	8.4%	-11.4%	1.3%	17

Coverage: excluding intra-EU trade
Sources: IMF DOTS, WTO

Table 33: Imports of goods and services from world, 2023 (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 28)

Reporter	Value in billion EUR 2013	2018	2021	2022	2023	Compound annual growth rate 2013-2023	2018-2023	2022-2023	World share 2023	World ranking 2023
World	**29 546**	**35 562**	**39 100**	**50 046**	**47 230**	**4.8%**	**5.8%**	**-5.6%**	**100.0%**	
EU27	**4 636**	**5 771**	**6 305**	**8 017**	**7 616**	**5.1%**	**5.7%**	**-5.0%**	**16.1%**	1
Australia	477	541	586	795	759	4.7%	7.0%	-4.5%	1.6%	14
Brazil	470	457	511	706	669	3.6%	7.9%	-5.3%	1.4%	16
Canada	871	983	1 054	1 389	1 335	4.4%	6.3%	-3.9%	2.8%	9
China	3 537	4 599	5 807	6 846	6 399	6.1%	6.8%	-6.5%	13.5%	2
Hong Kong	876	1 178	1 291	1 355	1 303	4.0%	2.0%	-3.9%	2.8%	10
India	797	1 027	1 185	1 656	1 556	6.9%	8.7%	-6.0%	3.3%	6
Japan	1 395	1 595	1 611	1 923	1 790	2.5%	2.3%	-6.9%	3.8%	5
Malaysia	393	466	504	688	624	4.7%	6.0%	-9.4%	1.3%	20
Mexico	643	876	949	1 263	1 250	6.9%	7.4%	-1.0%	2.6%	11
Saudi Arabia	563	445	435	672	639	1.3%	7.5%	-4.9%	1.4%	19
Singapore	811	1 015	1 178	1 542	1 408	5.7%	6.8%	-8.6%	3.0%	8
South Korea	970	1 166	1 272	1 596	1 429	4.0%	4.2%	-10.5%	3.0%	7
Switzerland	691	733	845	1 017	1 059	4.4%	7.7%	4.2%	2.2%	12
Thailand	434	536	521	653	641	4.0%	3.7%	-1.7%	1.4%	18
Türkiye	382	426	498	713	710	6.4%	10.8%	-0.4%	1.5%	15
United Arab Emirates	417	524	621	933	965	8.8%	13.0%	3.4%	2.0%	13
United Kingdom	1 348	1 689	1 574	2 035	2 023	4.1%	3.7%	-0.6%	4.3%	4
USA	3 787	4 770	5 041	6 620	6 361	5.3%	5.9%	-3.9%	13.5%	3
Vietnam	213	428	574	718	655	11.9%	8.9%	-8.7%	1.4%	17

Coverage: excluding intra-EU trade
Sources: IMF DOTS, WTO

Table 8 (repetition from p. 35): Total extra-EU trade, 2023 (exports and imports) in goods and services with world (billion EUR, %) (Directorate-General for Trade of the European Commission, 2024b, p. 29)

Glossary

GROSS DOMESTIC PRODUCT (GDP): As an aggregate measure of production, the GDP of a country is equal to the sum of the gross value added of all resident institutional units engaged in production (plus any taxes, and minus any subsidies, on products not included in the value of their outputs).

INTRA-EU AND EXTRA-EU FLOWS: Extra-EU refers to transactions with all countries outside of the EU – the rest of the world except for the European Union (EU) Member States. Extra-EU transactions of the EU as a whole are the sum of the extra-EU transactions of the EU Member States. Intra-EU, on the other hand, refers to all transactions occurring within the EU. The exports of a particular Member State, for instance, can be split into two parts – on the one hand to the countries outside the EU, the rest of the world, "extra-EU," and on the other to the other Member States, "intra-EU."

TOTAL TRADE: Total trade is the sum of exports and imports. World total trade refers to the sum of exports and imports of all countries in the world with all other countries. Unless otherwise mentioned, intra-EU trade (i.e., trade of EU Member States with other EU Member States) has been removed from EU trade.

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