

NEW THINKING ON TRADE POLICY AND DEVELOPMENT

TRADE POLICY AND SOVEREIGNTY



PSE

Socialist Group in the
European Parliament

The Socialist Group has decided to launch a series of reflections on new thinking on trade policy and development. We have opened this up to contributions from external experts from different backgrounds, contrasting their views with those of our Group Members and helping us to enrich our analysis and our proposals.

For this second pamphlet, and after having dealt with the relationship between multi-lateral negotiations and bilateral or regional negotiations, we have chosen the theme 'Sovereignty and Trade Policy'.

Indeed, the increase in the number of trade agreements in the world is leading to restrictions or loss of sovereignty which go beyond mere trade liberalisation and affect states' domestic regulation in areas such as foreign investment, services (including certain public services), public procurement and sometimes even public health care, as we have seen with the rules on intellectual property and medicinal products.

Because the European Union is itself also involved in the negotiation of numerous trade agreements (the future Economic Partnership Agreements with the ACP countries and the coming mandates to negotiate with Korea, India and the countries of the ASEAN), the Socialist Group in the European Parliament wishes to encourage extensive reflection on the extent and scope of the sovereignty concessions that the EU can for its part accept and, moreover, can request from its partners, in particular from developing countries.

The full participation, in all respects, of the European Parliament and the parliaments of partner countries in the decision making process with regard to trade remains a key demand.

While keeping the conclusion of multilateral negotiations within the WTO as the main objective, the Socialist Group wishes to turn its attention to the new EU bilateral trade policy proposed by the Communication from the Commission on 'Global Europe: competing in the world', so that implementation of this new strategy does not undermine the basic elements of our partners' sovereignty and that development remains the priority for future negotiations.

In this pamphlet are contributions from Max van den Berg (Socialist Group Coordinator of the European Parliament Committee on Development), Yash Tandon (Executive Director of the South Centre) and Faizel Ismail (South Africa's Ambassador to the WTO) which will help launch our reflections on the relationship between sovereignty and trade policy. We invite everyone with an interest in these issues to send their comments to:

pse-newtradethinking@europarl.europa.eu

Our third pamphlet will deal with the theme 'Employment and Trade'.

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Vice-President of the Socialist Group in the European Parliament

A Common European Trade Policy: Benefits and Points for Improvement

Max van den Berg

Socialist Group Coordinator of the European Parliament Committee on Development

A common trade policy has been in place in the European Union for many years now. But being 'caught' in the internal market rules and WTO rulings, national governments sometimes find it difficult to meet their citizens' demands on trade issues. On the other hand, European trade policy offers a large number of benefits – such as leverage in world trade negotiations – that outweigh these dilemmas.

In the Treaty of Rome of 1958 the European Community laid down the objective of the foundation of a European customs union. Besides abolishing customs duties inside the EC, it meant the establishment of a common external tariff for products being imported into the European market. The common European trade policy was born. The member states are still reaping the benefits of it and the EU has grown to be the world's biggest trading bloc.

To achieve all this, Member States had to sacrifice some of their sovereignty in the field of trade policy. Nowadays, the European Commission negotiates in the World Trade Organisation on behalf of all EU member states, based on a mandate that is given to Commissioner Mandelson. The Commission has started negotiating many bilateral and regional free trade agreements, with Mercosur, the Andean Community, Central America, and will continue with Korea, India and the ASEAN countries, among others, in the years to come. Conclusion of these agreements is stated to be one of the top priorities of European trade policy, owing to the stalemate in the Doha Round multilateral trade negotiations in the WTO.

People may feel uncomfortable with this shift of power on trade policy from their own capitals to Brussels. It is our task to listen carefully to these concerns and to explain the benefits of a common trade policy. Accepting that compromises are needed for a common European trade policy is not always easy. For national governments this means balancing the interests and concerns of their citizens and their commitment to internal market rules and consequently common trade policy.

A common EU trade policy offers a wide range of opportunities. As the world's biggest market, the EU is an interesting trading partner for all other countries. Our strong negotiating position can and must be used to promote environmental and labour standards in a more efficient and effective manner at both bilateral and regional level. For example, the

EU grants additional trade preferences to vulnerable developing countries that have implemented sustainable development and good governance policies under the 'GSP+' incentive, as happened recently with El Salvador. On the other hand, it has withdrawn incentives for non-compliance, as in the case of Belarus. The EU also makes effective use of its leverage in trade to promote non-trade concerns in trade agreements, such as labour and environmental standards. The Socialist Group has been extremely active on this issue.

In this way the EU can make a real difference in the world. Shifting some national sovereignty on trade policy to European level opens a window of opportunity to promote our European and social democratic values.

If Member States agree to shift powers from national to European level, thorough democratic scrutiny and transparency are essential. But at the moment the establishment of the Commission's negotiating mandates for trade agreements still lacks the legal involvement of the European Parliament through the codecision procedure. That is unacceptable. Trade negotiations on services must be demystified by granting full access to requests and offers for the European Parliament, national parliaments and civil society as a whole - the full text of offers and requests should be made public at the time of their transmission. A new treaty should definitely include a legally binding provision to achieve more democratic control.

But how about respecting the national sovereignty of our partner countries outside the EU? As far as less developed countries are concerned, although trade has positive effects imbalanced trade relationships can also lead to economic dependency and loss of a society's ability to govern its own affairs. Regional and bilateral trade agreements instead of multilateral agreements weaken the negotiating power of developing countries even further as they cannot make a stand together as they can in multilateral talks.

Unfortunately, even nowadays the Commission tries to force the so-called Singapore issues on our developing country partners in the negotiations for the new Economic Partnership Agreements (EPAs). The Singapore issues include investment protection, competition policy, transparency in government procurement and trade facilitation. Developing countries have repeatedly refused to take these issues on board in the WTO negotiations. However, the EU continues to press hard to include these issues in bilateral and regional trade agreements, not only in the case of EPAs. Instead of pressing its partners into unfavourable agreements, the European Commission should acknowledge and respect the wishes of our trading partners.

The same goes for respecting the sovereign decision of national governments on the liberalisation of public and private services. Countries should not be forced to privatise or liberalise public services such as water, education etc. They should be allowed to choose their own time and pace. The PSE Group states that public services cannot be treated just as a product traded on the free market. Such services are not a matter solely of consumer choice, but also of basic human needs. They should not be dismantled or

undermined. Therefore, although the EU has a strong interest in expanding export opportunities for services providers, it must honour its commitment to make neither offers nor requests in the areas of public health and education when negotiating trade agreements.

WTO members who are developing countries must be allowed to decide on their own pace and sequencing of trade liberalisation and must not be required to undertake more than they can handle according to their level of development. Special and differential treatment as well as trade facilitation mechanisms should be designed to assist less developed countries to become equal partners in the world trading system. Regarding agriculture negotiations, the WTO should introduce a "development box" for the LDC, so that they can tackle food safety and rural employment, which are major issues when it comes to eradicating poverty. The EU must press hard to ensure that technical assistance and capacity building are adequately resourced, in order that developing countries do not lose out in the negotiations.



Sovereignty, Trade Policy and the Multilateral Trading System

Faizel Ismail

Ambassador of South Africa to the WTO

During the past few decades, the forces of globalization, characterized by the increased flows of capital, goods and services and propelled by rapid innovations in technology and the reduced cost of communications and transport, have undermined the sovereign authority of states and resulted in the need for new global rules and governance. The Bretton Woods Conference held in 1944 created the World Bank and the IMF and envisaged the creation of an international trade organization. However, whilst the GATT (General Agreement on Trade and Tariffs) has been in existence since 1947, it took fifty years for an international organization on trade to come into being when the WTO was formed in 1995.

Civil society activists at Seattle and subsequent Ministerial Meetings of the WTO have criticized the WTO for double standards with its rules favouring the rich nations. Some theorists have argued that the multilateral trading system should be regarded as a global public good at least in form. The latter have argued that to make the system work for the benefit of all, i.e., a global public good in substance, it needs to ensure that there is a fair distribution of the benefits of trade both between and within countries. There is wide acceptance amongst the 150 WTO members that the rule of law or the rules based system is essential for all to benefit from international trade, particularly the economically weaker members. However, developing countries who now constitute the vast majority of WTO members have challenged the existing rules and practices of the GATT/WTO for being unfair, imbalanced and inimical to their development needs. The reasons for this lie in the evolution of the GATT/WTO.

The GATT adopted the principle of Most Favoured Nation (MFN) i.e., the principle of non-discrimination or that all contracting parties to be treated equally. This was based on the traditional Westphalian concept of Sovereign equality of states. However, the concept that all states were economically equal and should undertake the same level of trade commitments and obligations was challenged by developing countries in the GATT, as they became de-colonized. Thus the principle of differentiation of obligations – special and differential treatment (S&DT) – evolved to take into account these different levels of obligations between developed and developing countries, in the GATT.

Does Special and Differential Treatment (S&DT) constitute the core development content of the WTO?

The writer has argued elsewhere that S&DT does not constitute the core development content of the WTO.¹ S&DT issues are related to three main concerns of developing countries. First, is the issue of market access (mainly concerned with preferences and longer implementation periods). Second, is the concern with the need for flexibility in the rules. Third, is the need for aid for technical assistance and capacity building. These concerns are reflected in over 150 provisions in the GATT since 1947.

Market Access was mainly about preferences, which served to ameliorate and compensate somewhat for the increasingly high barriers erected in the US, Japan and the EU against agricultural imports and textiles. Preferences were based on the colonialist system preferring some developing countries and not others, and thus fundamentally discriminatory.

As the GATT developed the rules reflected the competitive capacities of developed countries. In manufacturing where developed countries were very competitive the Uruguay Round TRIMs (Trade-Related Investment Measures) Agreement abolished subsidies. Whilst, in Agriculture, the boxes created in the UR Agriculture Agreement (Amber, Blue and Green) to provide some disciplines on trade distorting subsidies contained enough loopholes to allow the EU and US to actually increase their expenditure on subsidies. On intellectual property rights, the TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement provided increased protection for largely developed country research and development. Thus the call for S&DT flexibilities by developing countries in the TRIMs Agreement and the TRIPs Agreement were largely to ameliorate this inequity.

Capacity Building was largely a best endeavour effort in the GATT and was directed mainly at the capacity of countries to participate and implement GATT rules rather than address supply-side issues.

An important issue to ponder is why it was that developing countries were so keen on resolving the 88 S&DT proposals that were put on the Agenda at the Doha Ministerial Conference. These proposals called for the existing S&D provisions to be made more precise, mandatory and operational.²

However, these issues do not constitute the central Development Dimension of the GATT/WTO. They remain important in the system and are still valid. Their basic purpose is to recognise that vast differences remain in the economic and trade capacities of developed and developing countries. So what then does constitute development in the WTO? By drawing from the work of Amartya Sen one can develop four essential dimensions of Development in the WTO.

¹ See Ismail, F., "Mainstreaming Development in the World Trade Organization", *Journal of World Trade*, Vol. 39, No.1, February 2005

² See Ismail, F., "How can Least-Developed Countries and Other Small, Weak and Vulnerable Economies Also Gain from the Doha Development Agenda on the Road to Hong Kong?", *Journal of World Trade* 40 (1) 37-68, 2006.

Sen defines development as “the removal of unfreedom...”³ Development in the view of Sen is the process of expanding human freedoms. Thus, for Sen, development is understood as the process of removing unfreedoms. Four types of unfreedom or deprivation are identified in Sen’s work that are relevant to the discussion on development and the multilateral trading system. Firstly, Sen argues that deprivations can result when people are denied economic *opportunities*. Secondly, Sen argues that poverty should be understood not so much as low incomes but as a deprivation of basic capabilities. Thirdly, whilst Sen argues for *government regulation* to enable markets to work more effectively, he states that a system of ethics based on social justice is required to build vision and trust for the successful use of the market mechanism. Fourthly, Sen argues that the deprivation of the *opportunity to participate in crucial decisions* regarding public affairs is to deny people the right to develop.

In the context of the ongoing Doha Round how should we translate this perspective? Firstly, it does mean that to provide developing countries with *opportunities to export* in global markets, we have to tilt the balance towards a level playing field and, in line with the promise of the Doha mandate for a development Round, somewhat in favour of developing countries this time. This is because the previous eight rounds of GATT did not provide real access for the products of developing countries viz. in agriculture and textiles. In agriculture, we have to also remove the distortions caused by subsidies in developed countries that prevent and undermine developing countries from pursuing their comparative advantage. Secondly, we all have the responsibility to ensure that the poorest countries are provided with the *capacity to produce, and export* thus allowing them too to benefit from the opportunities in the global economy. Thirdly, the rules of the trading system also need to be balanced, whilst strengthening a rules based system for all to benefit, it should provide sufficient flexibilities to prevent developing countries from bearing the cost of these rules, without the benefits. Fourthly, the *participation of developing countries* in the process is crucial to ensure that they are engaged in negotiating the new rules in a fair and democratic manner.

³ See A., *Development as Freedom*, Anchor Books, New York, 1999, p.3



Trade Policy and National Sovereignty in the Context of the New Geopolitical

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The PSE Group's initiative to provide a platform for fresh thinking on trade policy and development is a welcome move. It takes the debate out of its current *mercantilist* nexus into the *development* one. That itself is a progressive step. Secondly, it encourages "out of the box" thinking, a move beyond the current "free trade" ideological bind that fails to recognize the changed reality on the ground as well as the negative effects of uncritical trade liberalization.

The New Geo-Political Dynamics

The world has changed dramatically over the last just five years. The following bullet point presentation of the major factors for change may suffice to show the emerging Odyssey:

- The emergence of Brazil, China, India, Russia and South Africa as global or dominant regional economic players;
- The near crumbling of the World Bank and the IMF as, respectively, the "development" and "short term financing" arms of the global system;
- The collapse of the "Washington Consensus" has hollowed out neoliberal development theory of its content, as well as exposed serious legitimacy deficit in the Bretton Woods Institutions;
- The expansion of the knowledge economy, and emerging synergies in science, technology and the Internet in the South – for example, in health and communications – is a challenge to the intellectual property regimes dominated by Northern corporations;
- The Global System of Trade Preferences (GSTP) between South and South has unexplored promises for the future;
- The new political dynamism in Latin America, new initiatives on regional integration, and new ways of harnessing resources (such as oil and gas) for the development of the people rather than for export;
- The Second (Economic) Bandung in 2005 and emerging trade and investment linkages between Asia and Africa;
- The new bold approaches to tackling the Debt Problem – for example, in Argentina, Brazil, Nigeria and the Philippines.

The impact of all these factors has not been adequately understood let alone analysed. It is a fast evolving landscape. One thing is clear however: it is no longer possible to think of trade in the old idiom, or even to give trade the importance it has had since the founding of the WTO in 1994.

*Trade is likely to become a secondary handmaiden of the more important realities of **sovereignty** over natural resources, control over investment flows, and radical change in intellectual property regimes.*

What role can PSE play in this changing landscape?

Although small in numbers in the European Parliament, the PSE could have a *perspective advantage* over the more conservative groups in the EP. The EP itself does not have much influence over trade negotiations, whether in relation to the WTO or to the Economic Partnership Agreements (EPAs) with the poor ACP countries. These are gathering crust in the fenced kraal of the European Commission, occasionally visited, without much effect, by the Trade Commissioner, Peter Mandelson.

However, the PSE, if it captures the centre stage of political debate, can have significant impact through, for example:

1. Locating the trade debate within the larger unfolding drama of development in significant parts of the world. This, alas, has not yet made a discernible impact in the poorer countries of the South, especially in Africa;
2. Reaching out to European civil society and NGOs many of whom have a far more enlightened and realistic appreciation of the changing dynamics of global trade, environment and the knowledge economy than national and pan-European bureaucracies;
3. Reaching out to similarly enlightened sections of the civil society, NGOs, and inter-governmental organizations (such as the South Centre) in the South;
4. Giving a clear message to the mainstream media in Europe, providing them analysis of the risks of short-sighted mercantilist thinking, and possible alternatives;
5. Making a forceful case in Parliament and public, as well as media that lack of development in the South (especially in Africa) is critical to peace and security not only of the South but also of the North. Illegal immigration, criminality (e.g. drug trade) are incidental byproducts of lack of development ;
6. European bureaucracies are presently engaged in the so-called "coherence debate". The PSE can shape the course and outcome of this debate to make it development sensitive.

Issues for PSE in the area of Trade Policy

Given the asymmetric power relationship and unfair rules-making and rules-enforcement in institutions such as the WTO and the EU in relation to EPA negotiations, progressive institutions, including PSE, should, a.o.:

1. Seriously address the one hundred or so asymmetries and imbalances in the WTO system;
2. Insist on the Application of Special and Differential provisions in the entire system of global trading, including the WTO, the EPA negotiations, and bilateral trade and investment treaties;
3. Make sure that the development objectives of the Doha Round are put upfront and not sacrificed to the selectively liberalized agenda of the big players;
4. Argue for the Provision of genuine and effective adjustment costs imposed on the poor countries by trade and financial liberalization;
5. Argue for compensation costs when such forced liberalization results in losses in revenue or employment to the poor nations;
6. Refrain from false inducements ("aid for trade" for example) aimed at persuading poor countries to accept trade deals negotiated above their heads and without their proper participation; for aid for trade to be meaningful it has to genuinely address issues of supply side constraints in the South;
7. Slow down EPA negotiations between the EU and the ACP countries until a comprehensive review is done of the negotiations, and until a proper framework is put in place that is consistent with the development goals of the Cotonou Agreement.

Conclusion

It is a new world. The monopolar world of US hegemony is coming to an end. Older countries of the North are likely to become protectionist because they cannot face competition in trade in goods from emerging trading giants in Asia and Latin America. The North will shift to investments, services and intellectual property monopoly protection as a means of evading competition.

In this evolving scenario, the countries that are likely to hurt most are weak and vulnerable African, ACP and landlocked and island economies. The collateral damage they will suffer from unbridled trade liberalization will have boomerang effect on the richer nations, no matter how high fences they erect.

Only an enlightened and progressive Europe, in alliance with progressive forces in the South, can avert an impending explosive development crisis, and harness positive forces for the disadvantaged majorities seeking to survive in the margins of global society.

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