



CAN EUROPE'S POSITION ON TRADE AND TRADE POLICY

Climate Action Network (CAN) Europe is Europe's leading NGO coalition fighting dangerous climate change. With over 170 member organisations from 38 European countries, representing over 1.500 NGOs and more than 47 million citizens, CAN Europe promotes sustainable climate, energy and development policies throughout Europe.

For decades, European trade policy has aimed to liberalise international trade, allowing European companies to access foreign markets, raw materials and labour, leading to deregulation often against the public interest and contributing to negative social and environmental impacts both here and abroad. This form of unfettered economic globalisation has deepened global inequality, concentrated wealth and brought the world to the brink of climate catastrophe and natural resource depletion, making us vulnerable to global pandemics such as COVID-19.

The current model of international trade is deeply unsustainable and must be transformed. Instead of harming people and the planet, international trade and trade policy could play an important role in avoiding climate breakdown if we align it with climate policies. To this end, we demand:

1. Trade agreements must not contradict or restrict climate policies.
2. Trade policy must become an instrument of climate policy and help to transform the economy towards climate neutrality. This includes bringing the volume of traded goods back to a level that respects planetary boundaries.
3. Trade policy needs substantial reform, not greenwashing.

1. TRADE AGREEMENTS MUST NOT CONTRADICT OR RESTRICT CLIMATE POLICIES

The EU wants to become climate neutral within the next decades. Other European countries have made similar commitments or are expected to do so in future. In order to achieve climate neutrality, European countries must transition major sectors of their economy (industry, agriculture, energy, transport etc.) to drastically reduce harmful greenhouse gas (GHG) emissions while at the same time protecting and restoring natural carbon sinks. Trade policy must help facilitate such a transition or at the very least not stand in the way of achieving it.

The EU has committed to ensure that all EU actions and policies contribute to the aims of its Green Deal.¹ In stark contradiction to this objective, EU trade policy continues to preserve the status quo of unsustainable economic and business practices and fails to reverse the destruction of ecosystems:

1.1. Trade policy preserves an unsustainable economic model

EU trade policy continues to open up markets for European businesses to sell products and services, irrespective of their carbon intensity or their overall harmfulness. For instance, Europe is the largest exporter of cars and car parts.² Several existing EU trade agreements (e.g. Chile, Turkey, South Africa³) or currently under negotiation (e.g. Mercosur⁴, Australia, USA) have resulted or will result in lower tariffs and other trade barriers for the automotive industry which has so far failed to take sufficient climate action.

With these trade agreements, the EU facilitates the export of highly polluting cars, which do not even have to comply with EU emission standards when being exported. Trade policy therefore negates incentives for the automotive industry to undergo the necessary transition.

The standard argument for such policies is that of international competition: If we don't sell SUVs to regions like Mercosur, then China or the US will. This attitude leads to a race amongst the top trading nations to strike ever more bilateral trade agreements, guarding interests of their polluting industries. This is catastrophic from a climate perspective both because it facilitates the dissemination of polluting products and because it reinforces a backwards-looking industrial policy that fails to force industries to innovate and become climate-neutral.

Another example is the chemical industry, which is also highly problematic from a climate standpoint. This sector accounts for 10% of global energy use and 28% of industrial energy use, making it the most energy-intensive industry⁵. Moreover, it uses fossil fuels as inputs for many chemical products, including plastics, pesticides and fertilisers.

The European chemical industry has continuously lobbied for the elimination of all chemical tariffs, the removal of non-tariff barriers and further intellectual property rights protections⁶ - with considerable success. For example, it is projected to be one of the main beneficiaries of the EU-Japan trade agreement with exports to Japan estimated to increase by €1.6 billion

¹ Communication from the Commission. The European Green Deal. COM(2019) 640 final. Brussels, 11.12.2019.

² AJG Simoes, CA Hidalgo (2011). [The Economic Complexity Observatory](#): An Analytical Tool for Understanding the Dynamics of Economic Development. Workshops at the Twenty-Fifth AAAI Conference on Artificial Intelligence.

³ Institut der deutschen Wirtschaft Köln (2015). [TTIP – Challenges and Opportunities for the European Automotive Industry](#). IW policy paper 28/2015.

⁴ The MERCOSUR is a regional economic area in Latin America with four active members: Argentina, Brazil, Paraguay and Uruguay. The EU and Mercosur have announced political agreement for a trade deal in June 2019.

⁵ European Commission Joint Research Centre (2017). [Energy efficiency and GHG emissions: Prospective scenarios for the Chemical and Petrochemical Industry](#).

⁶ See for instance: [Trade Policy Guidelines of the German Chemical Industry](#). Position Paper, November 2010.

according to DG Trade.⁷ Several of the EU's recent FTAs eliminate all import duties for chemical products (e.g. Canada⁸ and Vietnam⁹). From 2004 to 2017, the European chemical industry managed to double its export value to €158 billion.¹⁰

The EU is missing an opportunity with its trade policy to curb the industry's adverse effects on climate, biodiversity and human health. Worse, it facilitates the industry's exporting of toxic substances abroad, even if they are illegal in the EU. Over half of pesticides that German chemical giants Bayer and BASF export to Brazil are classified as Highly Hazardous Pesticides and many of them are banned within the EU, include Fipronil – linked to the mass deaths of more than 400 million bees in early 2019 – and Chlorpyrifos, which is hazardous for mammals and bees.¹¹ If it comes to pass, the EU-Mercosur trade agreement will abolish the import tariffs for pesticides containing these substances¹², thus making them even more readily available.

Once in effect, free trade agreements create lock-in effects that are felt for decades. We therefore call on European countries to stop negotiating and ratifying any new free trade agreements (FTAs) that contradict countries' objective of transitioning their economy towards climate neutrality. Existing trade agreements should be reviewed to assess how far they help or hinder EU climate targets, and revised accordingly.

1.2. Trade policy promotes unsustainable agriculture

Since 2000, international trade in agricultural goods has tripled.¹³ The EU is the world's largest trader of agricultural goods, accounting for almost 40% of the world's agricultural imports and 41% of exports.¹⁴

The liberalisation and deregulation of trade in conjunction with misguided agricultural policies has led to an agricultural system that is export-oriented and specialised, characterised by the trade of a handful of agricultural commodities rather than encouraging countries to diversify, making them both environmentally and economically vulnerable. As a consequence, there has been a massive increase in industrial livestock production and chemically-intensive monocultures of crops.

At the same time, trade liberalisation has meant that corporate concentration of the food system has increased as large corporations compete on equal footing with small businesses. This has not only led to increased buyer power of a handful of companies and declining farm prices for producers, it has also spurred a race to the bottom for food standards as farmers have to compete with traded products that are often produced with lower standards such as on animal welfare or levels of water contamination from livestock faeces.

⁷ European Commission. [A new EU trade agreement with Japan](#). July 2018.

⁸ European Commission. CETA overview. September 2017.

⁹ Kingdom of the Netherlands. [European Union-Vietnam Free Trade Agreement](#). Retrieved on 18 August 2020.

¹⁰ Cefic. 2020 Facts & Figures of the European Chemical Industry.

¹¹ Greenpeace Germany. [EU-Mercosur: Double standards concerning agrottoxics](#). May 2020.

¹² Greenpeace Germany. [EU-Mercosur: Double standards concerning agrottoxics](#). May 2020.

¹³ In value. FAO (2018). The State of Agricultural Commodity Markets.

¹⁴ In value. FAO (2018). The State of Agricultural Commodity Markets.

Understandably, many European farmers are becoming more opposed to higher environmental standards¹⁵ when they are forced to compete with producers that are not compelled to follow the same rules. Many are not even paid farm prices that meet their cost of production, forcing them to leave farming altogether. The past two decades have seen a strong trend towards large-scale, intensive production in most OECD countries.¹⁶ In the EU, the average farm size increased by 4% per year between 2005 and 2013.¹⁷

The market shares of large multinational companies in trade and food processing have increased sharply. For instance only four agribusinesses control up to 90% of global grain trade.¹⁸ In the meat sector, the three largest corporations account for 11% of all beef slaughtered globally.¹⁹ Corporations also dominate the increasingly complex, industrial food value chains, which require energy-intensive processing, packaging and refrigeration. Farmers' and workers' rights in this system are continually being infringed. In some countries, small-scale farmers or indigenous people are forcibly driven off their land. This food system is responsible for up to 37% of global GHG emissions²⁰ and is the main driver of loss in biodiversity. Approximately 80% of global deforestation is caused by the expansion of land used for agriculture.²¹ The meat and dairy industry are particularly damaging in this respect because vast areas of land are needed to keep animals or to grow feedstock.

Greenpeace estimates that global meat consumption must be halved by 2050 to keep global warming below 1.5°C.²² Nevertheless, the EU is in the process of exacerbating the problem with numerous FTAs that liberalise meat and dairy trade. Some of them predominantly open up markets for EU exports (e.g. Japan, Canada), some open the EU market for foreign imports (e.g. Mercosur, New Zealand, Indonesia²³, Mexico, Canada).

Not just our ecosystem and agrarian economy is being harmed from this agricultural trade system; it also locks developing countries into poverty and cements North-South inequality. Farmers in many developing countries face unfair competition from highly subsidised imports from the EU, which destroy local markets and livelihoods. Many least developed countries export low-cost primary commodities like cocoa, coffee and tea. These monocultures are often damaging for the environment and bring little income for growers. It is also damaging

¹⁵ For instance, protest of Dutch farmers in October 2019, French farmers in November 2019 and German farmers in January 2020.

¹⁶ Bokusheva, R. and S. Kimura (2016), "Cross-Country Comparison of Farm Size Distribution", OECD Food, Agriculture and Fisheries Papers, No. 94, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/5jlv81sclr35-en>

¹⁷ European Commission (2018). [Farm Structures](#).

¹⁸ IPES Food-Panel. [Towards a common food policy for the European Union](#). February 2019.

¹⁹ Own calculation based on IATP/GRAIN. Emissions Impossible. July 2018, Appendix "Livestock products – Corporate Emissions B" and <https://ourworldindata.org/meat-production#number-of-animals-slaughtered>

²⁰ SAPEA, Science Advice for Policy by European Academies. (2020). [A sustainable food system for the European Union](#). Berlin: SAPEA. <https://doi.org/10.26356/sustainablefood>. This figure includes "crop and livestock production, transportation, changing land use (including deforestation) and food loss and waste". According to the [IPCC accounting](#), the share of GHG emissions from agriculture is 12% (2010) but this figure excludes for instance any GHG emissions from energy use in the production process of agricultural inputs or during production.

²¹ European Commission (2019). [Protecting and restoring the world's forests: stepping up EU action to halt deforestation and forest degradation](#). Factsheet, July 2019.

²² Greenpeace. Less is more. Reducing meat and dairy for a healthier life and planet. March 2018.

²³ The negotiations with New Zealand and Indonesia are still ongoing, so this assessment is based on what has transmitted so far.

for food sovereignty because specialisation in export crops means that people become dependent on imported foods, whose price can suddenly spike in crisis times as we currently experience during the COVID-19 pandemic.

We call on European countries to revise existing trade agreements and not sign any new FTAs that lock-in this export-oriented, industrialised agricultural model that makes agricultural systems more vulnerable rather than climate resilient, fuels unsustainable consumption patterns and exacerbates deforestation and biodiversity loss. Food is not just another commodity, but rather integral to social and environmental wellbeing. Any future agricultural trade policy must allow governments to strengthen domestic agricultural production towards climate resilience, support food security and sovereignty, secure workers' and farmers' rights, end loss of biodiversity, protect the environment and improve human health as well as animal welfare.

1.3. Trade policies that restrict climate policies

The current trading regime includes a number of rules that restrict the policy space for climate legislation. Some of these restrictions are written into the rules of the World Trade Organisation (WTO); others are contained in the EU's plurilateral and bilateral trade and investment agreements. We call on European countries and the EU to eliminate such rules from future and existing trade agreements, in particular:

- Extensive rights²⁴ for foreign investors and Investor-State Dispute Settlement as a way to enforce these rights:

Such provisions can be used to attack states for passing legislation in the public interest. Recently, we have seen attempts by fossil fuel companies to target climate policies such as German utility firm Uniper threatening the Netherlands with a dispute for phasing-out coal.

Foreign investors can enforce these rights using a controversial mechanism called Investor-State Dispute Settlement (ISDS). ISDS, including new versions such as the Investor Court System (ICS) or the Multilateral Investment Court (MIC), allows corporations to seek high compensation payments for climate policies and should therefore no longer be included in new trade and investment agreements and eliminated from existing treaties (For a more comprehensive critique of ISDS, see our [position paper on the Energy Charter Treaty](#)).

- Rules or mechanisms that assess climate policies from the perspective of their trade restrictiveness:

The international trade regime, based on WTO rules with a dispute settlement mechanism to enforce these rules, can grant a party the right to impose trade sanctions. The mere threat of the dispute can create a “chilling effect” on governments in enacting domestic rules that they consider might run afoul of the WTO. On the other hand, the international climate regime is based on the United Nations Framework

²⁴ Such as “fair and equitable treatment”, protection from “indirect expropriation” and “legitimate expectations”.

Convention on Climate Change (UNFCCC) and the Paris Agreement, neither of which entails an enforcement mechanism. This does not bode well for the inevitable clash between parties' obligations to take climate action and their commitments under WTO agreements.

The WTO and FTAs permit measures targeting harmful production activities but only under certain conditions. In case of a dispute, the initial burden of proof lies with the trade-restricting state. It must show that trade restrictions are necessary to its environmental policy, proportionate to their objective and applied in a non-discriminatory fashion. The arguments provided are analysed and evaluated through the lenses of international trade law, by WTO adjudicators. This results in a structural supremacy of trade law over environmental law.

Trade rules that stand in the way of ambitious climate policy must be revised, for instance by adding a Climate Waiver²⁵ to WTO rules, which would clearly exempt all climate policies from WTO rules.

European countries must also take these problematic WTO provisions out of FTAs and instead reaffirm their rights to take ambitious climate action. They could for instance 1) add a hierarchy clause²⁶ to trade agreements, that ensures the rules of the UNFCCC regime prevail in case of conflict with the trade or investment agreement; 2) include better Exception clauses²⁷ in trade agreements to clarify that measures taken to combat climate change do not have to comply with narrow WTO provisions for public policy exceptions; 3) reaffirm countries' obligation to act in accordance with the Paris Agreement and other Multilateral Environment Agreements (MEAs)²⁸; 4) in case of a dispute over a climate measure, ensure that climate experts – not trade experts – assess the effectiveness of this measure and the question whether it should prevail in spite of its trade impact.

- Regulatory Cooperation must not restrict ambitious climate policy:

The EU has introduced mechanisms for “regulatory cooperation” into its new generation of trade agreements. These mechanisms are intended to remove regulatory barriers to trade and ensure that any new regulations introduced by trade partners do not constitute a restriction to international trade. Climate policies and social or environmental standards can thus be considered potential barriers to trade. Through regulatory cooperation committees enshrined in FTAs, corporations and industry lobbyists may get a chance to scrutinise proposed legislations even before the public or parliaments get a chance to review them. Regulatory cooperation provisions make FTAs “living agreements” because of their ability to influence future and proposed rules and legislations, thereby dramatically expanding the scope of deregulation well after the agreement has been signed off by parliaments. Such provisions should therefore be eliminated from trade agreements.

²⁵ See James Bacchus (2017). The Case for a WTO Climate Waiver. Centre for International Governance Innovation.

²⁶ Laurens Ankersmit. Jessica C. Lawrence (2019). Making EU FTAs ‘Paris safe’.

²⁷ Laurens Ankersmit. Jessica C. Lawrence (2019). Making EU FTAs ‘Paris safe’.

²⁸ Ciaran Cross (2020). Anchoring climate and environmental protection in EU trade agreements. April 2020.

- Rules that hamper the dissemination of climate-friendly technologies:

Government schemes to foster and expand the renewable energy sector have been found in breach of WTO rules, often because they are seen to unfairly advantage local over foreign content.²⁹ Therefore, trade rules that prohibit countries to set local content or other performance requirements must be excluded from trade and investment agreements.

Intellectual property rights can be another hindrance to the dissemination of low carbon technologies. Only four countries – Japan, the US, Germany and China – hold 60% of all patents on renewable technology³⁰. The TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement allows countries to use compulsory licenses in “circumstances of extreme urgency”. So far, this provision has primarily been used for compulsory licences for medicines. FTAs should clarify that the climate crisis falls within the definition of “circumstances of extreme urgency” to aid the transfer of climate-related technologies.³¹

- Rules that restrict utilising public services and procurement for climate action:

Public services have an important role in a just transition. For instance, much of the local transport and railway sector remains in public hands and is key to a successful transition of the transport sector. We reject mechanisms in FTAs that put public services under irreversible liberalisation or deregulation requirements (such as ratchet clauses or investment protection provisions that protect private companies’ right to carry out public services).

Similarly, public procurement provisions in FTAs can unfairly advantage the most powerful private actors. Public authorities must not be hindered from including social or environmental criteria in their procurement, for instance the ability to decide a tender on the basis of a product’s Life Cycle Cost or its Carbon Footprint. Utilised consistently, public procurement could help to stimulate demand for low-carbon products.

²⁹ In 2016, for example the WTO Appellate Body found India in breach of WTO rules for imposing local content requirements on the renewable energy sector. India had argued that this was necessary to achieve its commitments under the UNFCCC to increase the share of power generation from renewable sources to 40%. The WTO body found in its assessment that the UNFCCC was irrelevant to the case.

³⁰ Rivera León et al (2018). Measuring innovation in energy technologies: green patents as captured by WIPO’s IPC green inventory. Economic Research Working Paper No. 44, World Intellectual Property Organization, September 2018.

³¹ Ciaran Cross. Anchoring climate and environmental protection in EU trade agreements. April 2020.

2. ALIGNING TRADE AND CLIMATE POLICIES

The previous chapter looked at ways to reduce the harmfulness of trade policy for the climate. This chapter goes further in suggesting ways to align trade and trade policy with climate mitigation. To this end, trade must become a tool for ambitious climate action and the transformation to a net-zero carbon economy. We call on European countries and the EU to establish:

2.1. A new aim and logic of trade policy

As noted earlier, trade agreements have thus far been used as a means to liberalise and deregulate trade with the aim to open up markets, access raw materials and cheap labour for European companies. But trade agreements should not maximise profits for corporations, but rather maximise benefits for people and the planet. We envision a trade system based on equity and justice that aids the transition towards climate neutrality and resilience. To this end, trade agreements must:

- Help phase-out the extraction and use of fossil fuels
- Support the reduction of Europe's overall GHG emissions, while preventing leakages into other parts of the world
- Aid to bring material use down to a level that respects planetary boundaries
- Promote global justice and ensure food security worldwide
- Ensure governments have the policy making space at all levels of government to enact ambitious climate action and adaptation plans
- Prevent the destruction of carbon sinks and incentivise ecosystem restoration
- Facilitate the dissemination of green technologies

These criteria should form the basis of a climate impact assessment, which ought to become mandatory before Member States give the European Commission a mandate to start negotiations for a new trade agreement.

2.2. A fossil-free trade system

Scientists believe that a massive proportion of the world's fossil fuels must stay in the ground to avert climate meltdown³². Yet, fossil fuels are the world's number one traded commodity³³, accounting for 72.2 % of the EU's energy demand.³⁴ This can only be sustained because the EU imports more than half of the energy it consumes.³⁵ The extraction of fossil fuels intended

³² Over 80% of coal, 50% of gas and 30% of oil reserves "should remain unused from 2010 to 2050 in order to meet the target of 2 °C." according to McGlade, C., Ekins, P. The geographical distribution of fossil fuels unused when limiting global warming to 2 °C. *Nature* **517**, 187–190 (2015). <https://doi.org/10.1038/nature14016>.

³³ Crude petroleum accounted for 5.86% of world trade in 2018, making it the most traded good by value. Refined petroleum ranked 3rd, petroleum gas ranked 9th. Source: <https://oec.world/en/profile/hs92/crude-petroleum>.

³⁴ Figures from 2017 for EU-28. Source: EuroStat. [Energy Statistics - An overview](#). Retrieved on 18 August 2020.

³⁵ EuroStat. [World Trade in Goods](#). Retrieved on 18 August 2020.

for the European market often comes at the expense of human suffering and environmental damages, particularly in poorer countries. We call on European countries to:

- 1) Support efforts on the multilateral level to end subsidies for fossil fuels. As long as these attempts are unsuccessful, European countries should include enforceable and detailed provisions in trade agreements that commit parties to swiftly phase-out fossil fuel subsidies.
- 2) End investment protection for fossil fuels in all future and existing trade and investment agreements. In particular, European countries should withdraw from the Energy Charter Treaty as it threatens to make the transition to clean energy unnecessary costly and slow (See our [position paper on the Energy Charter Treaty](#)).
- 3) Exclude provisions in FTAs that proscribe “technology neutrality”, i.e. requirements to treat different sources of energy the same, irrespective of their harmfulness for people and the planet.
- 4) Stop signing trade agreements that lock-in the liberalisation of trade in fossil fuels such as the Comprehensive Economic and Trade Agreement with Canada (CETA). Canada currently produces 4.8 million barrels of crude oil per year and intends to increase this amount to 7.1 million barrels by 2040.³⁶ A high share of Canadian oil is derived from tar sands, which is particularly damaging for the environment. CETA would restrict the EU’s ability to regulate imports of Canadian oil in the future - for instance with higher tariffs³⁷ or measures that impede imports of oil derived from tar sands. These are one among many reasons why EU Member States should not ratify the agreement.³⁸
- 5) Take supply side action: The best way to avoid fossil fuels burning is to keep them in the ground. European countries should support initiatives aimed to phase-out the extraction of fossil fuels. Even local authorities could contribute by declaring fossil-free zones. On a multilateral level, European countries should work towards the establishment of a fossil-fuel non-proliferation treaty³⁹, in which signatories commit to phase out the extraction of fossil fuels.

2.3. A trade system that reduces Europe’s overall GHG emissions

The UNFCCC and its subsequent agreements such as the Kyoto Protocol and the Paris Agreement are based on the principle that countries have to account for production-based emissions, meaning for those emissions that originate in their own country, not for those emissions they import. Many rich countries must therefore only account for a small fraction of their actual emissions because GHGs from goods and services they consume were

³⁶ Government of Canada. [Canada’s Energy Future 2019](#). Retrieved on 18 August 2020.

³⁷ The EU currently charges no or very low import tariffs on fossil fuels. The CETA agreement guarantees Canada these low tariffs for imports into the EU.

³⁸ CETA was ratified by EU institutions in 2017 and is currently undergoing national ratification. About half of EU Member States have already completed this process, in others ratification is still ongoing. In the meantime, the part of the agreement that is solely in EU competence is applied provisionally.

³⁹ Peter Newell & Andrew Simms (2019): Towards a fossil fuel non-proliferation treaty, *Climate Policy*, DOI: 10.1080/14693062.2019.1636759

emitted outside their boundaries. For instance, in 2004, about a third of all carbon consumed in the EU28 was imported.⁴⁰

Thus by increasing trade, countries can achieve their emission reduction targets without changing their consumption levels. To some extent, this is already the case: when developed countries' emissions have been adjusted for trade, their emissions have increased, not decreased.⁴¹

If no action is taken, as developed countries decarbonise, their share of emissions embodied in imports as a percentage of the total national carbon footprint will continue to increase.⁴² For instance, Fellmann et. al. suggest that emission leakage may be as high as 91%, if the EU achieves its agricultural GHG reduction target of 28% in 2030 by lowering domestic production and compensating by increased imports.⁴³ To avoid this, European countries will have to lower demand for agricultural products, in particular those that cause high emissions such as meat and dairy.

In order to achieve overall emission reductions, we call on European countries to take measures to ensure that imported emissions do not offset reductions from GHG reductions within the EU. As a first step, countries should include reduction targets for imported emissions in their Nationally Determined Contributions (NDCs).⁴⁴ This would include policies that incentivise better efficiency in domestic and foreign production as well as policies to bring European consumption to a sustainable level. Trade agreements must not lead to carbon leakage as per a country's climate target, which should be assessed as part of the mandatory climate impact assessment.

2.4. A trade system with sustainable supply chains

Trade liberalisation and cheaper transportation (in particular technological innovation in container shipping) have enabled corporations to produce products in distant locations where the costs of labour, inputs and social and environmental standards are lower. Sometimes, parts of one good are shipped across several countries multiple times for various steps of value-addition before being transported to the destination of the end consumer as a final product.

This system exploits human beings, animals and nature, in particular in poorer countries. Changing it will require European countries to:

⁴⁰ Peters, G. P., Davis, S. J., and Andrew, R.: [A synthesis of carbon in international trade](https://doi.org/10.5194/bg-9-3247-2012), Biogeosciences, 9, 3247–3276, <https://doi.org/10.5194/bg-9-3247-2012>, 2012. Figure 7.

⁴¹ Kanemoto, K., D. Moran, M. Lenzen, and A. Geschke (2014), International trade undermines national emission reduction targets: New evidence from air pollution, *Global Environ. Change.*, 24, 52–59.

⁴² Richard Wood, et.al. (2019): [Beyond peak emission transfers: historical impacts of globalization and future impacts of climate policies on international emission transfers](https://doi.org/10.1080/14693062.2019.1619507), Climate Policy, DOI: 10.1080/14693062.2019.1619507

⁴³ Fellmann, T., Witzke, P., Weiss, F. et al. [Major challenges of integrating agriculture into climate change mitigation policy frameworks](https://doi.org/10.1007/s11027-017-9743-2). *Mitig Adapt Strateg Glob Change* **23**, 451–468 (2018). <https://doi.org/10.1007/s11027-017-9743-2>

⁴⁴ This proposal has also been made by Springmann, M. (2014). Integrating emissions transfers into policy-making. *Nature Climate Change*, 4, 177–181.

1) Ensure the sustainability of all products marketed in the EU:

European countries need strong standards for both domestic products and those that are imported. For food supplies, for instance, the EU employs a system of import conditions that is meant to ensure that imports are broadly in line with EU standards for food safety and food hygiene, although in practice this is not always the case.⁴⁵ For other products, health, safety or technical standards might apply. The EU should strengthen and enhance this system, for instance with carbon-content requirements, and ensure that a sufficient number of tests are carried out to prove imports adhere to these standards. FTAs or informal trade pacts should not undermine this system, nor limit the EU's ability to tighten rules for domestic and foreign producers.

European countries must also ensure that imports were produced under fair conditions without human rights violations or environmental crimes. We therefore urge European countries and the EU to introduce mandatory due diligence legislation that would make importers legally accountable for human rights abuses and environmental damages along their supply chains and give victims of harm access to judicial remedies. Such legislation should establish a corporate duty to respect human rights and the environment and require companies and financial institutions to identify, prevent, mitigate and account for abuses and harm in their domestic and global operations, activities, products, services, supply chains and exports.⁴⁶

2) Stop deforestation and ecosystems conversion and degradation:

The EU causes 7,290 kha of forests to be lost per year due to consuming timber products or products grown on deforested land⁴⁷ – an area larger than Ireland⁴⁸. Destruction is particularly driven by our consumption of commodities such as soy (mostly used to feed farm animals), palm oil, beef, rubber and cocoa as well as by industrial logging and other extractive industries. These drivers also lead to the conversion or degradation of many other natural ecosystems such as wetlands, peatlands, savannahs, shrublands and grasslands.

In its Green Deal, the EU's 2030 Biodiversity and Farm to Fork strategies, the European Commission has recognised the importance of forests for climate mitigation, biodiversity and livelihoods and has committed to proposing legislation and other measures to tackle deforestation and forest degradation associated with products on the EU market.

We call on the EU to fulfill this commitment and to adopt a regulation that applies to all forest and ecosystem risk commodities, i.e. commodities and derived products that pose a threat to natural forests and ecosystems, as well as to the rights of the communities and indigenous

⁴⁵ For example, genetically modified organisms can enter the EU as feedstock for animals but meat from these animals does not require labelling. Food treated with pesticides banned in the EU can also enter the EU market, provided it complies with EU maximum residue limits. Moreover, there is the danger that the EU will lower import standards as part of ongoing trade negotiations. According to media reports, the EU is for instance deliberating to increase the maximum level of residues for certain chemicals in foodstuff in a formal or informal agreement with the USA. (See Corporate Europe Observatory. [A fast track to weaker food standards](#). Retrieved on 18 August 2020.) Finally, a lack of tests can mean that the EU's import system is not properly implemented and hence undermined.

⁴⁶ NGO letter. [A call for EU human rights and environmental due diligence legislation](#). 3.10.2019.

⁴⁷ European Commission (2013). [The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation](#). Technical Report - 2013 - 063.

⁴⁸ According to [Wikipedia](#), Ireland has an area size of 70,273 km².

peoples whose livelihood depends on them. This EU regulation on forest and ecosystem risk commodities shall impose a mandatory and enforceable due diligence obligation on operators and traders to ensure that commodities such as beef, soy, and palm oil comply with clearly defined environmental and social sustainability criteria if they are sold on the EU market.⁴⁹

In particular, these commodities must not originate from land that, on 1 January 2008⁵⁰, had the status of natural forests or natural ecosystems (e.g. mangrove forest systems, peatlands and savannas, such as the Brazilian Cerrado).

Likewise, these commodities must respect indigenous communities' and tenure rights as protected by international obligations and customary international law, is consistent with the free prior and informed consent principle and has not resulted in the displacement of indigenous and local communities.

European countries should also use their FTAs to commit both partners to halt deforestation. Such commitments would have to be made in sufficient detail that they can be monitored and violations can be enforced⁵¹.

3) Put a price tag on pollution from international transport:

It is high time that European countries take responsibility for the emissions caused in international transportation of the goods and services we consume. They must ensure that the price of international transportation internalises environmental costs, for instance by introducing a carbon tax on transportation fuels or including international aviation and shipping in the Emissions Trading Scheme (ETS). Moreover, all types of subsidies for fossil fuels used in transportation, such as a tax exemption for kerosene, must be phased out.

3. SUBSTANTIAL REFORM INSTEAD OF GREENWASHING

The EU announced as part of its Green Deal to make the Paris Agreement an essential element clause in all new trade agreements. Such a clause would give either side the ability to take back commitments made in the trade agreement if the trading partner was violating the Paris Agreement.

We welcome this move in principle because it indicates that the EU wishes to enhance its legal instruments to challenge countries that refuse to do their fair share in climate mitigation. However, similar clauses in FTAs for the protection of human rights have so far failed to improve the enforcement of these rights.⁵² Moreover, it would be preferable to make the Paris Agreement itself legally enforceable. As long as this is not the case, the EU can try

⁴⁹ For a more detailed proposal for such a legislation, see Greenpeace (2020). A new EU regulation to protect the world's forests and ecosystems. EU Policy Briefing. August 2020.

⁵⁰ This is the date adopted in the Renewable Energy Directive. See Directive (EU) 2018/2001, Article 29 (3).

⁵¹ See Fern. [Forests and forest people in EU Free Trade Agreements](#). October 2018, page 32, for a detailed recommendation how to include such a commitment.

⁵² Nicolas Hachez. 'Essential elements' clauses in EU trade agreements. Making trade work in a way that helps Human Rights?. KU Leuven, Working Paper No. 158, April 2015.

to enforce it through its trade agreements, however, there are a number of challenges to this approach.

Future trade agreements would first of all need to define clearly what constitutes a violation of the Paris Agreement. Since NDCs are voluntary and are often well below the level of ambition required to achieve this objective, they cannot be taken as benchmarks for compliance. That's why other clear criteria would be needed and provisions that commit parties to fully implement measures necessary to achieve the Paris Agreement's overall objective to limit climate change to 1.5°C.

Parties would also have to agree on regular reviews of both parties' conduct and include a dispute settlement mechanism that would be able to impose trade sanctions. Both the state as well as civil society organisations should be able to trigger a dispute regarding a trading partner's social and environmental conduct. This would replace the current, insufficient dispute settlement mechanism entailed in Trade and Sustainable Development chapters.

However, even if a trade agreement would commit partners to fully implement the Paris Agreement, its provisions on trade liberalisation and deregulation often contradict such an objective or even restrict governments' ability to pursue ambitious climate policies (section 1). That's why we reject any attempt to 'green' free trade agreements by including vague and unenforceable language that supports the implementation of the Paris Agreement. Instead, European trade policies must be substantially reformed for international trade to play a beneficial role in climate mitigation.⁵³

⁵³ Trade will also have a role to play in climate adaptation but this is beyond the scope of this paper.