



IS THIS WHAT DEMOCRACY LOOKS LIKE?

**CLAIMING DEMOCRATIC
CONTROL OVER EU TRADE AND
INVESTMENT POLICY-MAKING**

This document is one of a series of issue-specific papers produced by
the Alternative Trade Mandate Alliance



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DEMOCRACY LOOKSLIKE?

CLAIMING DEMOCRATIC CONTROL OVER EU TRADE AND INVESTMENT POLICY-MAKING

THE FORMATION OF THE EU'S TRADE AND INVESTMENT POLICY HAS BEEN WIDELY CRITICISED FOR A LACK OF TRANSPARENCY, A SEVERE DEMOCRATIC DEFICIT AND A RAMPANT CORPORATE BIAS.

As part of the Alternative Trade Mandate Alliance¹, a working group² has drafted the following paper, which addresses firstly, what we see as the problems with the EU's trade and investment policy-making process as it is now, and secondly, our vision for what a transparent, democratic and accountable alternative to this process could look like.

While this paper focuses on the process of EU trade and investment policy-making, the Alternative Trade Mandate alliance hopes to reframe the entire debate surrounding what we now call 'trade'. The current hegemonic notion suggests that trade policy-making's sole goal is an ever-increasing amount of 'deep', i.e. all-encompassing free trade agreements. This goal effectively ensures the wants and needs of corporations, but overlooks or even counters the socio-economic, ecological and democratic interests of the broader public.

As a result, in order to become the most 'competitive' region in the world, pressure is created that drives down wages, hollows out social benefits, reduces job security, reduces access to essential services, jeopardises equitable taxation and plunders natural resources – in other words, a severe rolling back of democratic achievements. Moreover, trade agreements reduce the democratic space to design policies to

achieve general public interest objectives and to direct private economic actors towards these goals.

The Alternative Trade Mandate Alliance wants to propose a different goal of trade and investment policy-making. It should strengthen common aspirations towards a more sustainable, socio-economically just and equitable society, as well as further democratic achievements nationally, regionally and internationally. This is in stark contrast to the current situation where trade has been perverted into an instrument of control, actively used by elites to undermine these very same aspirations and democratic achievements. The only way to counter this is by people unanimously claiming democratic control over the EU's trade policy, along the lines of the following principles: a) transparency and openness instead of secrecy; b) policy-making by elected Parliaments instead of unelected bureaucrats; c) peoples' involvement instead of policy-capture by corporate lobby groups.

It is also worth noting that, while this paper, and the work of the Alternative Trade Mandate Alliance more generally, is focused on trade and trade related policy in the EU, much of the analysis and many of the proposals would equally apply to other aspects of EU economic policy.

Trade policy is significant and important in its own right but it is also representative of a set of assumptions that underpin economic policy-making more generally. The Alternative Trade Mandate alliance is actively seeking to place its work in the context of the growing opposition to the 'austerity' programmes being imposed on European citizens and the search for alternative, more socially just economic models for Europe to follow.

¹The Alternative Trade Mandate Alliance is an alliance of currently almost 50 organisations, developing an alternative vision of European trade policy that puts people and planet before big business. For more information, see: www.alternativetrademandate.org

²The following groups have participated in the discussion and have contributed to this paper: 11.11.11. (Belgium), Afrika Contact (Denmark), ALTER EU, Arbeiterkammer (Austria), Corporate Europe Observatory (Belgium/Netherlands), Demokratie Jetzt (Germany), Ecologistas en accion (Spain), European Coordination Via Campesina (ECVC), European Public Services Union (EPSU), Fair Trade Advocacy Office (Belgium), International Trade Union Confederation, SOMO (Netherlands), Statewatch (UK), Transnational Institute (Netherlands). Academics, staff of the European Parliament and activists from movements such as the 15 May movement in Spain have also contributed to the discussion. They do not necessarily agree with each and every detail in this paper, but support the general line of thinking.

1. THIS IS WHAT DEMOCRACY LOOKS LIKE – OUR CONCEPT³

We believe that the quality of a democracy depends on the extent to which people have effective possibilities to influence the political process. Political decisions should:

- be made by people themselves, directly or through their elected representatives;
- be selected from a range of genuine policy alternatives;
- be based on transparent procedures;
- not be pre-structured in respect of content by any non-transparent special interests – for example, as a result of certain forms of lobbying;
- be reversible and open to challenge by people, for example, in referenda.

2. THE UNDEMOCRATIC STATUS QUO OF EU TRADE POLICY

2.1. WHAT IS EU TRADE POLICY AND WHO HAS A SAY IN IT?

Trade was the first policy area where the European Commission received competence. To this day, compared to the other EU institutions, the formation of the EU's trade policy is still clearly dominated by the Commission. It is a non-elected body but is, nonetheless, the only EU institution that can initiate trade policy, legislation and negotiations. Neither citizens, nor Parliaments, nor EU governments have this right.

Trade policy covers a whole host of measures, including negotiating trade agreements with other countries and regions, implementing these agreements, internal legislation on issues ranging from the shipment of waste to trade sanctions targeted at specific countries, organising consultations and briefings, commissioning studies, taking anti-dumping measures, participating in dispute settlement etc.

In the following, we will focus on the process of the EU's trade negotiations with other countries. Trade agreements have become ever-more encompassing, often with severe consequences for the policy space of governments to pursue policies in the interest of health, the environment, labour etc.

Both the EU's position in these negotiations, and the Commission's role therein, have huge consequences in the everyday lives of literally billions of people.

2.2. INITIATING TRADE NEGOTIATIONS: MOCK-CONSULTATIONS, 'FREE-TRADE' IDEOLOGY AND OPACITY

The European Commission makes proposals for the aims and general direction of its trade negotiations with other countries by drafting so called 'negotiation directives' or 'mandates', supposedly reflecting the wants and needs of the EU. Once the EU member states, i.e. the European Council, have authorised the mandate, the Commission negotiates on behalf of the EU. The mandate is not disclosed to the public. Parliaments have no say in it, neither on the EU nor the national level. Especially in the initial phase of trade negotiations then, the European Commission plays a crucial role. Where this phase could provide ample

³ Based on: Efler, Michael/ Häfner, Gerald/ Huber, Roman/ Vogel, Percy (2009): Europe. Not without the people.



opportunity to engage with all actors interested in these negotiations and the wider European public, the formulation of the mandate and indeed the following negotiation process is, unfortunately, effectively closed off from any meaningful interventions by public (as opposed to private or corporate) interest groups. Rather, at the few opportunities where the Commission grants certain parts of civil society the possibility to take part, it happens in an almost mocking fashion.

The Commission consults stakeholders through public (online) consultations and its so-called 'civil society dialogue' on EU-trade policy. However, the system of public consultations does not invite the input of individuals and groups who are not embedded in EU policy processes. Contributions to online consultations and attendees of the civil society dialogue are dominated by lobby groups, mainly from the corporate sector and with an office in Brussels.⁴

Furthermore, civil society inputs only come as answers to questions, which are often leading and selective in terms of what is or is not asked. Usually answers are collected in a quantitative way, which gives little opportunity for suggesting genuine policy alternatives.⁵ This suggests that the Commission seeks to fulfil its consultation obligations as a largely symbolic or pro-forma exercise, i.e. as cheaply as possible and in a way that allows for consultation outcomes to be easily spun in support of predetermined policy initiatives.

Consequently, policy initiatives proposed by the Commission echo the ideological position that is firmly institutionalized within it, namely a distinct pro-free trade bias.⁶ This bias is also reflected in the responses to civil society concerns, for example in the civil society dialogue, where they are regularly dismissed as

'misunderstandings' or 'ignorance'.⁷ When legitimate political arguments and concerns are brushed away in such a manner, leaving only space for tiny alterations, the trend towards a 'technification' of trade policy becomes even more entrenched, moving the debate ever-further from the broader public. This is even more appalling at a time when the EU's economic approach is the subject of so much debate.

The exclusion of the wider public stands in total contrast to the attention granted to the interests of corporations. Driven by the ideological bias that considers trade policy as first and foremost in the interests of major export-oriented EU companies and industries, the European Commission grants big business interests privileged access and undue influence over its policy.⁸

In public consultations and numerous exclusive meetings, the Commission provides a platform for businesses to provide detailed information on problems they face in exporting goods and services, setting up businesses, purchasing raw materials etc. The Commission's negotiation proposals (the aforementioned mandates) are already tailored to these corporate interests.

2.3. NEGOTIATING AND CONCLUDING TRADE AGREEMENTS: FURTHERING THE OBSCURITY AND CORPORATE CAPTURE

The active exclusion of civil society from the initial phases of the EU's trade negotiations with third countries is furthered by the fact that the negotiations take place behind closed doors. Neither negotiation mandates, nor positions, nor draft texts, nor

⁴ For the public consultations, see: <http://trade.ec.europa.eu/consultations/>; for participants of the civil society dialogue meetings, see: <http://trade.ec.europa.eu/civilsoc/doclist.cfm>.

⁵ See the questions in all recent public consultations which have taken place: For the public consultations, see: <http://trade.ec.europa.eu/consultations/>.

⁶ Academics have indeed described the staff at the Commission's trade department as "generally free-trade oriented career trade officials... with only attenuated connections to voters or constituents or political concerns"; see: Hillman, Jennifer/ Kleimann, David (2010): Trading Places. The new dynamics of EU trade-policy under the Treaty of Lisbon, p.3.

⁷ See, Kim Bizzari/ Mariano Iossa (2007): From hearing to listening. Improving the dialogue between DG Trade and civil society. See also the exchange of letters between S2B and then Trade Commissioner Ashton on the civil society dialogue in 2009.

meaningful reports about negotiations are released to the general public before negotiations are concluded. Citizens or NGOs requesting this information from the Commission are usually told that it is inaccessible because public release “would damage international relations”. The logic behind the whole secrecy is that otherwise the EU bargaining position would be undermined. The message is: We are in a trade war with other countries; they should not know what we want.

Corporate lobby groups, however, are given more information than the wider public. In regular exclusive meetings and through correspondence, the Commission grants them access to sensitive information about on-going trade negotiations – information that it withholds from public interest groups. Big corporations also have an exclusive seat in the EU’s market access working groups with the Commission and the member states. Here, they can voice their wants and needs and get updated about the Commission’s policy initiatives. As a result, corporate fingerprints are all over the Commission’s positions in on-going trade negotiations. On the other hand, it is hard to find evidence of the Commission responding positively to the concerns about trade issues voiced by social, development or environmental groups.⁹

In addition to corporate lobby groups, the Commission regularly informs two committees about the state of on-going trade negotiations: the Trade Policy Committee of the Council, the body representing the EU member states; and the Committee on International Trade of the European Parliament. Both the Council and the European Parliament have to give their consent to a trade agreement once the Commission has concluded negotiations.

The Trade Policy Committee (TPC) of the European Council consists of unelected officials from national ministries, not held accountable by voters or constituents; most of whom have a pro-free trade bias. In line with the Commission, the TPC is a thoroughly opaque body which meets behind closed doors, does not publish the proposals it debates and only sporadically releases heavily censored minutes of its meetings, preventing the public from comprehending its deliberations and decisions.

It does not even make public who sits on the committee. TPC outcomes, or requests for guidance in case of failure to agree, are presented to the Committee of Permanent Representatives (COREPER) and subsequently to the Council. COREPER and Council deliberations remain equally confidential. In the cases where the Council does release information about its intergovernmental meetings, its standard practice is to blank out names of the member states so that citizens and civil society organisations are unable to see which government made which proposal.¹⁰ Information, if released, is only released once the decision has been taken. Apart from the business interest groups, member states hardly consult or inform civil society or even their Parliaments on the positions they take in the TPC.

The Committee on International Trade (INTA) of the European Parliament is the only institution that regularly debates EU trade policy in public. Its ‘legislative observatory’ contains all parliamentary documents related to a current policy, including draft proposals and amendments. But more and more INTA meetings are held “in camera”, i.e. behind closed doors, or even in closed thematic sub-groups. Negotiations between the Parliament, the Council and

⁸ See, for example, Seattle to Brussels Network (2005): *The EU Corporate Trade Agenda. The role and the interests of corporations and their lobby groups in Trade Policy-Making in the European Union*; Seattle to Brussels Network (2006): *Corporate Power over EU Trade Policy. Good for business, bad for the World*. Corporate Europe Observatory/ India FDI Watch (2010): *Trade Invaders. How big business is driving the EU-India free trade negotiations*.

⁹ See, for example, Corporate Europe Observatory/ India FDI Watch (2010): *Trade Invaders. How big business is driving the EU-India free trade negotiations*; Corporate Europe Observatory (2011): *European Commission sued for giving privileged access to corporate lobby groups in EU-India trade relations*.

¹⁰ See Access Info’s history of getting access to Council minutes including the names of the countries which had been for or against any particular amendment: www.access-info.org/en/european-union/36-reform-of-the-access-rules.



the Commission take place during secret meetings of representatives of the three institutions, the so called trilogues. In both cases, MEPs are bound by confidentiality agreements not to divulge what they hear. Even the voting in Parliament is non-transparent: amendments are regularly changed last minute into compromise amendments, which are not accessible to the public. Recorded votes ('roll-call' votes) show which MEP voted what, but far from all votes cast are roll-call votes.

To sum up then: from the initial drafting and granting of the mandate to the Commission, to the Commission's actual negotiations and finally to the Council's and Parliament's reading and eventual ratification of the trade agreements, it is an obscure process, dominated by unelected bureaucrats, giving very little space for democratic oversight and heavily captured by corporate lobby groups.

The result is an aggressive market opening agenda, which considers labour rights, health, environmental and consumer protection as barriers that need to be smoothed out – in Europe and abroad. Eventually, this will grant more power to corporations globally and contribute to a severe rolling back of democratic achievements.

3. LONG LIVE DEMOCRACY!

Based on the above analysis of contemporary decision making processes in EU-trade and investment policy, we suggest a totally new procedure for initiating, negotiating and finalising trade agreements along the lines of the following principles: a) transparency and openness instead of secrecy; b) policy-making by

elected Parliaments instead of unelected bureaucrats; c) peoples' involvement instead of policy-capture by corporate lobby groups.

3.1. STRENGTHENING THE ROLE OF THE EUROPEAN AND NATIONAL PARLIAMENTS

If democracy is about political decisions being made by people themselves or elected representatives, trade and investment policies cannot remain within an unelected body such as the European Commission. One point of departure for our alternative is to reduce the role of the Commission and to strengthen the role of Parliaments, on the European and national level, at all stages of the decision making and trade negotiating process.

It is vital that the national Parliaments play a clear role in the process so as to ensure inclusion; that the debates surrounding trade are grounded in each individual member state; and that the concerns of the public in all of the member states are adequately represented.

An enhanced role for the Parliaments implies that

- only national Parliaments and the European Parliament can take the initiative to launch the process leading to trade negotiations;
- the member state governments must obtain approval from their Parliaments for the positions that they take in the Council;
- National Parliaments and the European Parliament have full access to all relevant information, both from their governments and directly from the European Commission;

- the national Parliaments together with the European Parliament working in cooperation have a decisive role at all stages of the process as follows:
 - the right to initiate trade negotiations;
 - approval of the mandate for trade negotiations;
 - giving guidance to the negotiations;
 - amendment of the negotiating outcome;
 - approval of the final trade agreements;
 - review of the impact of the agreements;
 - initiating and deciding on the revision of trade agreements.
- Parliamentary (and also government representatives) have the right to be present at negotiating meetings.

National Parliaments should also play an important role in ensuring the active participation of citizens.

3.2. ASSURING MEANINGFUL CIVIL SOCIETY PARTICIPATION

Democracies are based on the principle of political equality, implying that all citizens together determine public policy on an equal footing. This requires that they have equal opportunities to express their opinion and be heard.

In order to ensure a maximum level of transparency, inclusion and participation, national Parliaments would be in charge of organising national civil society participation, according to what would be appropriate for the contexts in each individual member state. Such participation would be repeated several times during the process. Before a negotiating mandate is drafted, the Parliaments initiate the process by organising

extensive independent, transparent and inclusive needs tests amongst organised civil society in EU member states. Similarly, needs tests should take place in the partner country. This would clarify whether a trade agreement would be in the public interest in the first place.

The first draft of the negotiating mandate, prepared by the Commission, would be based on these needs tests. In order to receive feedback on this first draft, a process of mandatory consultations amongst civil society at both national and EU-level would take place, again overseen by the Parliaments.

The form of the consultations would first and foremost centre on the Commission receiving and acting on any and all input and concerns as voiced by the stakeholders. Thus, upon receiving inputs, the Commission would revise the mandate according to the concerns voiced. The revised draft is then discussed by the Member State governments in the Trade Policy Committee and presented to national Parliaments and the European Parliament for approval.

The Parliaments will also regularly organise public consultations on the progress of the negotiations in which government and Commission representatives will take part.

The Commission will on a regular basis and in pace with new policy and negotiating developments give public updates on the state of negotiations. Civil society representatives and Parliamentarians can be present in negotiations. As the “devil is in the detail” the Commission will have to publish the negotiating texts as they stand at least once a year.



If during the negotiations the European Parliament, national governments or Parliaments find that a revision of the negotiating mandate is required, a new 'phase' of consultations at national as well as EU-level, would take place. These consultations would take the same form as that described above.

When a draft agreement has been reached between the Commission and the partner country, the draft is subjected to an independent sustainability and human rights impact assessment and published to allow for another round of public consultation for democratic scrutiny. This facilitates a final phase, where the agreement is once again widely discussed.

During the implementation of any trade agreements, detailed reports of the joint Parliamentary, government and civil society bodies created by the agreements are made public. The impact of the agreement is regularly assessed by these bodies, including in the partner country. A thorough assessment has to take place at least every five years. At any time the national and European Parliament, as well as the partner country, can demand to negotiate revisions to the agreement.

3.3. PREVENTING CORPORATE CAPTURE

Throughout the consultation and decision making process privileged access and policy capture by industry lobby groups must be prevented.

Consequently, consultations would ensure that a diverse range of interests and viewpoints are proactively consulted, including those that will be directly and indirectly affected by a trade agreement. To ensure the highest level of transparency in these consultations and to inform the public about who

tries to influence trade negotiations, on whose behalf, with what means, agenda and what success, the Commission, member states and Parliaments should regularly and pro-actively provide online transparency about meetings and correspondence between officials, Parliamentarians and lobbyists (which must all be recorded in order to be heard), including the date, information on participants and the issues that were discussed. The draft negotiation mandates and the final one should contain a list of lobby groups which were consulted on the issue and which inputs civil servants considered valuable (or not), and why (legislative footprint reports).

Special advisory groups such as the market access working groups and teams, which are currently dominated by corporate lobbyists and work completely in the dark, would no longer be needed in the broad, transparent and participatory consultation processes we envision, and consequently should be shut down.

'The Alternative Trade Mandate Alliance is an alliance of development and farmers' groups, Fair Trade activists, trade unionists, migrant workers, environmentalists, women's, human rights, faith and consumer groups from all over Europe, developing an alternative vision of European trade policy that puts people and planet before big business.'

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