



Civil Society FfD Mechanism Thematic Briefing



TRADE AND DEVELOPMENT

Why this Briefing and What is it About?

This is the time for civil society organizations (CSOs) and social movements from all over the world to unite under a strong call for a systemic transformation of the global trade and financial architecture and global division of labor, towards a just, green, and feminist recovery post-COVID-19. And the UN, as the only global institution mandated to address economic and social challenges where developing countries have an equal say, is the space to do so. This is where the UN Financing for Development (FfD) process comes in - as a space to advance on the systemic changes we urgently need to see.

This briefing on Global Trade Policy is part of a broader toolkit introducing the FfD process and the Civil Society FfD Mechanism's role in it, being built as an attempt to make navigating the FfD process and its interrelated domains more accessible for a non-technical audience. In this briefing we explore the challenges faced by the Global South with regards to the governance and expansion of international trade and how human and environmental rights are affected. We also highlight several recommendations that governments can take to ensure international trade helps meet the development objectives and human rights of people in the Global South.

Box 1. The Civil Society Financing for Development Mechanism

The CS FfD Mechanism is civil society's coordination body for collective engagement in the FfD process. The Mechanism has been active in its present format (Global Social Economy Group - GSEG listserv) since the Doha FfD Review Conference in 2008, though many of its members are engaged since the Monterrey FfD Conference in 2002. It is an open virtual list containing several hundreds of organizations and networks from diverse regions and constituencies around the world. CS FfD Mechanism's core principle is ensuring that civil society can speak with one collective voice.

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History & Context

In paragraph 4 of the Monterrey Consensus in 2002, UN member states, international agencies, and civil society committed themselves to “promoting international trade as an engine for development.” Towards this objective, trade relations must be transformed to generate jobs, incomes, promote domestic capabilities and provide access to technology and life-saving medicines and treatments. Trade must also address, not aggravate, global crises in human rights, economic management, debt, health, and climate change.

However, the international trade regime embodied in the World Trade Organization (WTO) has largely locked in harmful market liberalization and deregulation reforms promoted by International Monetary Fund and the World Bank (IMF-WB). Together, these three institutions have swayed global trade rules in favor of large, industrialized countries and large multinational corporations at the expense of human and environmental rights. Since the WTO’s creation in 1995, the scope of its rules has expanded from trade in agricultural and industrial goods, to trade in services, as well as to intellectual property rights and government procurement (see Box. 2 on Key WTO Agreements).

Box 2. Key WTO Agreements

Below are the key agreements that were born out of the Uruguay Round (1986-1994) of negotiations that established the WTO in 1995.

- Agreement on Agriculture (AoA)
- General Agreement on Trade in Services (GATS)
- Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on Trade-Related Investment Measures (TRIMs)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

In 2001, the Doha Round was launched. Below are some of the agreements signed under the Doha Round.

- Non-agriculture Market Access (NAMA)
- Agreement on Subsidies and Countervailing Measures (ASCM)
- Trade Facilitation Agreement (TFA)
- Revised Agreement on Government Procurement

Developing countries do recognize the developmental role of trade and have sought reforms in the global trading system. While special and differential treatment (SDT) has been part of all the WTO Agreements since 1995, developing countries demanded flexibilities around implementation issues of the WTO agreements during the WTO's Doha Round so that they could benefit more from access to the markets of developed countries. Developed countries have continuously sidelined these concerns and, instead, introduced the so-called "new issues" that expand access for themselves in developing countries' markets for services, agricultural and non-agricultural products. Two decades after the Doha Round, developing country concerns in the WTO regime remain to be addressed.

Box 3. What is SDT?

Special and differential treatment (SDT) provisions in WTO agreements give developing countries some flexibilities which include:

- longer time periods for implementing agreements and commitments
- measures to increase trading opportunities for these countries
- provisions requiring all WTO members to safeguard the trade interests of developing countries
- support to help developing countries build the infrastructure to undertake WTO work, handle disputes, and implement technical standard
- provisions related to least-developed country (LDC) members.¹

SDT provisions aim to aid developing countries use trade to support their development objectives by helping to cushion the impacts of trade and investments liberalization,

among others. Developing countries have advocated to strengthen SDT provisions with proposals such as the targeted use of subsidies to develop local industries and promote food security; application of Duty Free Quota Free to 100 percent of exports by LDCs; and not making LDCs adopt new commitments during their accession to the WTO.²

However, developed countries in the WTO have consistently refused to accept these proposals and attempted to further weaken SDT by introducing measures including changing existing criteria on which developing countries can access SDT and trying to break the solidarity and collective bargaining among developing countries through the case-by-case negotiations of SDT.

The impasse in the WTO Doha Round negotiations since 2008 due to disagreements on tariff cuts and agricultural subsidies hastened the rise of plurilateral, bilateral and regional trade and investment agreements. These agreements often include commitments that are beyond what is contained in the WTO in terms of liberalization, deregulation, as well as investor protection. The Comprehensive and Progressive Transpacific Partnership Agreement (CPTPP); EU-ACP Economic Partnership Agreements (EU-ACP-EPAs) and Regional Comprehensive Economic Partnership (RCEP), for example, push further than WTO commitments on tariff cuts, liberalization of investments, and ending preferences for local companies on government procurement. Investment protection through investor-state dispute settlement (ISDS) is also expanded to the detriment of policy-making for human and environmental rights and development. These agreements have also introduced new disciplines that straitjacket state policies needed by countries seeking to benefit from the rapidly expanding trade in the digital economy. CPTPP and RCEP have also undermined democracy because they have been negotiated behind closed doors.

Box 4. What are plurilaterals?³

The multilateral approach includes all WTO members and applies the principle of consensus. Because of this, WTO negotiations take long to conclude because of every member's agreement is required. To continue discussions on certain difficult issues, any group of like-minded countries can choose to conduct plurilateral talks which can result

in agreements that are applicable to them. Inside the WTO, Agreement on Government Procurement is a plurilateral agreement, while issue-based plurilateral discussions on services, domestic regulation, investment facilitation, e-commerce, environmental goods, and micro small and medium enterprises (MSMEs) have been launched by several member-states.

Plurilaterals are often the gateway for commitments to liberalization, deregulation, and stronger protection of intellectual property that are beyond what is already covered in the WTO. In the services plurilaterals, for example, developed countries are pushing for more requirements on transparency and standard setting on services. This will provide corporations more leverage, as they create spaces to influence the shaping of domestic laws and regulations according to their benefit before these laws get adopted. Corporate lobbying has also shaped these agreements through privileged access to negotiations and undue influence on government offices responsible for crafting the agreements.

During the MC11 in Buenos Aires (2017), progress in plurilaterals was pushed through Joint Statement Initiatives (JSIs) on e-commerce, investment facilitation, micro, small and medium-sized enterprises (MSMEs), and services domestic regulation. These JSIs have been criticized for pushing pro-corporate agenda. For example, the e-commerce JSI will allow Big Tech to control the collection and manipulation of data for profit at the expense of developing countries and communities who will be unable to access and use that data for the public good, or for digital industrialization strategies.⁴

Trade and investment agreements, whether in the WTO or in the bilateral or plurilateral talks often replicate and aggravate the colonial and unequal power relations between developed and developing countries. Unequal trade relations dominated by advanced economies have helped maintain commodity dependence in about two thirds of developing countries and 101 countries globally.⁵ Commodity dependence, a situation wherein 60% of total merchandise exports is composed of primary goods, makes afflicted developing countries highly vulnerable to commodities price volatilities and major disruptions in global trade. This is highly prominent in African countries who must struggle against colonial-era extractivism surmounting their role as sources of cheap raw materials for more developed countries. In UNCTAD's report in 2021, the number of commodity-dependent countries in Africa increased from 40 between 2008-2009, to 45 between 2018-2019. Mass lockdowns and disruptions in global trade during the onslaught of COVID-19 in 2022 resulted in liquidity problems for commodity-

dependent African countries. For example, the fall in the prices of cocoa, one of Ghana's three main commodity exports, spelled disaster for the country's revenues, as well as for the small holders dependent on cocoa exports for their livelihoods⁶ and contributed to the debt crisis.⁷

Trade and investment rules have prodded the transfer of control of public services to private corporations, favoured cheap imports from developed countries to the detriment of local producers, and allowed international corporations to extract the value from cheaply paid labor and natural resources from developing countries. These agreements have also expanded the influence of corporations in policy making for development. But while they secure super profits, they also frequently violate human rights with impunity.

The Challenges

Restriction of domestic policy space for developing countries

Policy space – or “the scope for domestic policies, especially in the areas of trade, investment and industrial development”⁸ – is crucial for developing countries governments to implement pro-people measures, respond to crises, and fulfill their obligation of “primary responsibility for ... [the country's] own economic and social development” (paragraph 6 of the Monterrey Consensus) . However, the policy space of the governments of developing countries has been eroded by neoliberal policies of liberalization, deregulation, and privatization championed by the IMF-WB through structural adjustment programs (SAPs) and loan conditionalities. Numerous studies exposed how these SAPs and conditionalities have led to reductions in government spending. Such reductions have consequently created conditions that promoted distress privatizations of services such as healthcare and education, downsizing and wage stagnation among government employees, and declines in productive capacities in agricultural and manufacturing sectors of developing countries.⁹

Trade liberalization and investment protection measures contained in the WTO and other trade and investment treaties are hardening these neoliberal policy constraints by tying governments to legally-binding and enforceable agreements to protect foreign investments and open their markets to foreign products and businesses at the expense

of their capacity to implement commitments to several environmental and human rights conventions. For example, developing countries are facing challenges in upholding the right to food because of the constraints from WTO obligations regarding investing in their declining agriculture. Under the Agreement on Agriculture (AoA), subsidies can be considered as ‘trade distorting’, and therefore, should not be allowed. This policy has contributed to the chronic food insecurity, food-import dependence, hunger, and poverty among farmers in the developing countries who must compete against cheap food imports. Ironically, while developing countries have been blocked from giving minimum support to their agriculture sector and farmers, massive trade-distorting agricultural subsidies under very inequitable AoA rules have been and are continuously being used by developed countries to boost their own agricultural production and exports. In addition, developing countries lack the requisite safeguards to protect their agriculture, hence the call for a Special Safeguard Mechanism (see Box 5), which has not been addressed. In this sense, WTO rules are kicking away from under developing countries the same ladder that enabled developed countries to overcome poverty.

Box 5. WTO 12th Ministerial Conference (MC12) and Developing Countries’ Demands on Agriculture

Developing countries have pushed for the following demands in the WTO concerning agriculture:

- a permanent solution on public stockholding for food security that will allow developing countries purchase food at administered prices,
- a “special safeguard mechanism” that would allow developing countries to raise tariffs temporarily in the event of a sudden surge in import volumes or a price depression,
- and measures to ensure fair markets for cotton.

The first two proposals were to help developing countries ensure food security by making food affordable for their population. These measures are particularly important during crises, such as the COVID-19 pandemic and the Russian-Ukraine war which have triggered food crises. The third proposal was to help cotton-exporting LDC countries gain fair market access for their products by disciplining the huge subsidies that developed countries pump into their cotton industries.

However, decisions on these proposals have yet again been put on hold during the MC12, mainly due to developed countries' refusal to even negotiate on these outcomes. Instead, a Ministerial Declaration on the Emergency Response to Food Insecurity was adopted. However, the language adopted in the declaration does not provide new tools for developing countries to address food insecurity. Instead, it again intervenes on governments' policy space to use export policy restrictions, which may be needed by developing countries to ensure that they have sufficient food for their populations. The declaration also puts additional restrictions on the capacity of developing countries to apply emergency measures for food security by conditioning these measures to "minimize trade distortions as far as possible; be temporary, targeted, transparent, and proportionate". These restrictions are to be met on top of the tests for length of the period of application, criticalness of the shortage, and the essentiality of the product to the country that need to be met to qualify for exemptions under the General Agreement on Tariffs and Trade (GATT).¹⁰

Another area where trade and investment agreements intervene in governments' policy space is government procurement. The development of local industries which can be supported by governments through public procurement from local companies are cut-off from this support because of trade rules that prevent governments from making this preference. The CPTPP and the WTO plurilateral agreement on government procurement, for example, uphold non-discriminatory treatment toward domestic and foreign firms in government purchasing decisions above certain thresholds and in certain sectors. This means that more technologically and financially advanced firms of developed countries can participate in procurement tenders issued by developing countries and compete with local firms which may not have the same capacities.

The COVID-19 pandemic has also showed that binding and enforceable trade rules can block countries from taking policy measures that could prevent deaths. The Trade Related Aspects of Intellectual Property Rights (TRIPs) of the WTO "standardizes the practice of protecting inventions among WTO members through copyrights, trademarks, industrial design, and patents held by nationals of fellow WTO members."¹¹ Pharmaceutical corporations have used the TRIPs agreement to monopolize the production and control prices of medicines, vaccines, and treatments. During the COVID-19 pandemic, more than a hundred countries proposed a TRIPs waiver that would allow countries to not enforce the TRIPs rules to ensure access to COVID-19 vaccines, medicines,

and diagnostic and medical technologies. However, pharmaceutical companies have actively lobbied against the waiver which would have hugely contributed to saving millions of lives by allowing increased access to vaccines and treatments for COVID-19. Instead, powerful pharma lobbies and developed countries chose to protect profits over protecting human lives, especially those from the Global South whose access to vaccines and treatments for COVID-19 remain limited.

Box 6. WTO MC 12 and the TRIPs Waiver

In October 2020, India and South Africa requested that the WTO consider a temporary waiver to suspend intellectual property obligations under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement on vaccines and other medical products needed to control the COVID-19 pandemic. Admittedly, the vaccine is not the sole solution to ending the pandemic. But the TRIPS waiver could help make the production of life-saving products for developing nations affordable by temporarily eliminating some of the barriers to the access to technology in producing the vaccine and other medical products for controlling COVID-19.

The temporary TRIPS waiver proposal gained the support of more than 100 countries. However, developed countries such as the United Kingdom (UK), Norway, Switzerland, and the European Union (EU) – including Germany – continued to undermine and block the proposal. While the research and development of the COVID-19 vaccines was largely financed by public funding,¹² big pharmaceutical companies stood fiercely against sharing the vaccine know-how. The Pharmaceutical Research and Manufacturers of America (PhRMA), representing some of the largest drug companies in the world, lobbied, and continues to lobby, in a way that prevents the sharing of important vaccine knowledge.

During the MC12, civil society condemned the efforts of the EU, US, UK, and Switzerland to protect the profits of Big Pharma. MC12 reached a limited agreement that allowed flexibility only regarding exports of products under compulsory licensing (CL) and was limited only to vaccines, not diagnostics or therapeutics. Instead of a real waiver, the MC12 result was in reality a TRIPs-plus agreement, because it included provisions that have more requirements on monitoring and reporting than TRIPs in order to avail of the limited flexibilities on vaccines, that excluded all treatments and tests and all forms of intellectual property except patents.¹³ Moreover, the agreement stipulates “developing countries with existing capacity to manufacture COVID-19 vaccines are encouraged to

make a binding commitment not to avail themselves of this agreement”, which totally violates the purpose of a waiver that aims to deliver more vaccines to developing countries.

During the General Council meetings regarding paragraph eight of the MC12 “Ministerial Decision on the TRIPS Agreement”¹⁴ on an extension to the “production and supply of COVID-19 diagnostics and therapeutics,” Switzerland and the United Kingdom continued their opposition to extend the decision to therapeutics and diagnostics.¹⁵ Due to disagreements, the decision on paragraph eight is suspended until the General Council meeting in November 2023.¹⁶

These are just a few examples of how trade rules can deter governments from implementing industrial policies that can promote economic development and create local jobs, and from upholding and protecting people’s right to food and health. These rules, combined with investment protection through the investor-state dispute settlement (ISDS) system (see below) in many trade and investment agreements, can further constrain pro-people development policymaking on the one hand, and increase corporate power on the other.

Increased corporate power through ISDS

Box 7. What is ISDS?

Investor-state dispute settlement (ISDS) is a mechanism included in many trade and investment agreements to settle disputes. Settling these investor disputes relies on arbitration rather than public courts. Under agreements which include ISDS mechanisms, a company from one signatory state investing in another signatory state can argue that new laws or regulations could negatively affect its expected profits or investment potential, and seek compensation in a binding arbitration tribunal. Corporations typically seek compensation which may amount to millions or billions of US dollars.

The system only provides for foreign companies to sue states, not the other way around.

(Excerpt from <https://isds.bilaterals.org/>)

Unlike in other trade disputes, the Investor-State Dispute Settlement (ISDS) mechanism in trade and investment agreements allow foreign investors to use international tribunals to directly sue governments to resolve investment disputes in secret arbitration cases. According to the Investment Policy Hub of the UNCTAD,¹⁷ there are around 1265 bilateral and multilateral trade and investment agreements and treaties that include ISDS in their provisions. These include the CPTPP, the UMSCA (United States-Mexico-Canada Agreement), the ACIA (ASEAN Comprehensive Investment Agreement), Investment Protocol of the South African Development Community (SADC), and the Eurasian Investment Agreement. While the RCEP does not yet include ISDS, future negotiations may include ISDS in the future.

While promoters of ISDS claim that this mechanism aims to protect the rights of investors against abuse of power by governments, the mechanism heavily constrains policy space of governments to formulate necessary policies and laws including development policies, contravenes democratic principles and the public's right to information. As of 31 December 2022, there are around 1257 known ISDS cases launched against governments, which suggests that there may be more.¹⁸ These cases are lodged in opaque, secretive international corporate courts which do not have mechanisms to safeguard the rights and interests of the public. While these corporate courts have the discretion to accept or reject amicus briefs, these briefs are often rejected or placed significant constraints on them.¹⁹

ISDS is being used by corporations to sue governments, which in turn enables them to bend public policy in their favor at the expense of human rights. According to UNCTAD's Investment Dispute Settlement Navigator, investors often alleged breaches of fair and equitable treatmentⁱ and expropriation (direct or indirect)ⁱⁱ in the ISDS cases filed against governments.

For example, when Argentina was plunged into an economic crisis in between 2001-2002, the government adopted several emergency measures to ease the burden of the

ⁱ Fair and equitable treatment is a common standard present in investment treaties but its interpretation varies widely. For an extensive discussion, see <https://www.acerislaw.com/fair-and-equitable-treatment-in-investment-arbitration/>.

ⁱⁱ Expropriation in international investment law is concerned with the State's right to exercise sovereignty over its territory and at the same time, the State's obligation to respect properties belonging to foreigners. While expropriation is not an entirely illegitimate act, investment treaties often require that these are 'lawful', inter alia, (1) the expropriation must be for a public purpose, (2) in accordance with due process, (3) non-discriminatory, and (4) accompanied by (prompt and adequate) compensation. Under direct expropriation, the host State deliberately seizes property and transfer its rights to itself or to a State entity (Aceris Law, <https://www.acerislaw.com/expropriation-in-investment-arbitration/>) . Indirect expropriation occurs when a state takes effective control of, or otherwise interferes with the use, enjoyment or benefit of, an investment, strongly depreciating its economic value, even without a direct taking of property (International Institute for Sustainable Development, <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/>)

public and ensure that basic human rights are met. In response, corporations such as Suez (France) and Enron (USA) sued Argentina on the basis of alleged breaches of direct and indirect expropriation of their assets, and breach of fair and equitable treatment when Argentina froze tariff increases and payments to foreign companies that operate the water, electricity, and gas distribution services in the country. The cases were decided in favor of the investors. The Suez and Enron cases alone cost the Argentinian government, which was already in crisis, more than USD 700 million awarded to these companies.

Tax justice is also being undermined by ISDS. Between 198 to 2021, around 165 known tax-related ISDS cases were filed by corporations.²⁰ These include cases wherein governments withdrew subsidies or tax exemptions (*Micula v. Romania (I)*), increased taxes on windfall profits (*Burlington v. Ecuador*, *ConocoPhillips v. Venezuela*), and made legislative reforms to enable the transition to renewable energy (*The PV Investors v. Spain*, *Charanne and Construction Investments v. Spain*). More than 90% of these cases were from investors from developed countries, while more than 40% of the respondent governments are developing countries. The increasing use of ISDS to avoid paying their fair share of taxes while extracting huge profits from the South by corporations from the North confines the development prospects of global South countries. The erosion of tax bases often leads to reduction in budgets for public services and increased dependence on indirect and regressive taxation to generate revenue for the government, which in turn hurts the poor the most. It is also interesting to note that while developing country governments are encouraged to use tax revenues to finance their development needs under the FfD and SDG frameworks, the ISDS potentially constrains that capacity.

While it can be argued that the final judgements in ISDS cases have been in favor of governments (327) versus for corporations (249) and settled (171),²¹ most of the government wins are by developed country governments, most notably the US. Moreover, the public absorb losses whenever ISDS cases are filed. ISDS cases, whether won, lost, or settled by the government, drain public funds and money that could have been used to finance health, education, transition to renewable energy, or gender-affirming policies. In 2012, Veolia lost an ISDS case against Egypt's raise in minimum wage. However, the Egyptian government lost millions of US dollars during the six years of arbitration. The OECD estimates that these costs may amount to anywhere between USD 8 million to USD 30 million.²²

While the network of global rules enable private corporations rights to extract profit, the rights of the people and the environment where these entities operate are violated, with little recourse to justice.

Lack of accountability for environmental and human rights violations resulting from trade and investment agreements

Liberalization and deregulation commitments in trade and investment agreements often uphold corporate profits while dismissing people's rights to water and health, suppressing labor rights, and disregarding of environmental standards. For example, investors are being invited to set up their businesses in the special economic zones (SEZs) of Mexico, Bangladesh, and the Philippines to boost these countries' exports. Aside from the tax incentives and other perks to attract investors, corporations that operate in these SEZs often violate the right to organize under independent unions and hire laborers in flexible contracts. Women often experience the worst types of labor exploitation in these SEZ, such as, but not limited to, the lack of maternity benefits, sexual violence, and wage discrimination.²³

Trade and investment agreements are often not assessed for their impacts on human and environmental rights before and after their implementation to ensure any adverse effects are addressed.ⁱⁱⁱ Moreover, current accountability mechanisms are not enough to reign in this power to protect human rights. Even when challenged, corporations often pass the blame onto smaller MSMEs operating down the value chain and refuse to take responsibility. They also refuse to acknowledge that the exploitation at the ground level often happens because of the excessive pressure on small suppliers to supply cheap while the MNCs at the head of the value chain corner all the profits. Victims of corporate human rights abuses have limited or no access to legal means in cases against multinational enterprises. Seeking to remain attractive for foreign investments, developing countries often engage in a race to the bottom when it comes to human rights protections. In addition, weak domestic (courts) laws and a lack of global legally binding accountability mechanisms enable corporations to enjoy profits from cheap labor, inflict widespread destruction of the environment, and displace communities from their homes and livelihoods without fear of liability. There is no complete record of the corporate violations of human rights that are enabled by trade and investment agreements. The Environmental Justice Atlas²⁴ alone recorded around 1060 cases, wherein about 96 corporations are involved in violations with heavy environmental and social impacts.

ⁱⁱⁱ See the UN Office of the High Commissioner on Human Rights (OHCHR) discussion on trade and development and the value of human rights impact assessments in trade agreements <https://www.ohchr.org/en/development/trade-and-investment>

Box 8. Bloody Sugar: Corporate Land Grabs in Cambodia Under the EU's Everything But Arms

The Everything But Arms (EBA) is a trade initiative established by the European Union (EU) in 2001 that gives Least Development Countries (LDCs) duty-free access to EU's markets. The EBA applies to all of LDC's exports except for weapons and ammunitions.²⁵

Cambodia was one of the beneficiaries of the EBA. Cambodia's exports to the EU increased by more than 200% between 2011 to 2016. However, the EBA also fueled land grabbing in Cambodia for sugar exports to the EU. To boost exports through the EBA, the Cambodian government issued Economic Land Concessions (ELCs) that allow corporations to use lands to produce export products. Corporations such as Ve Wong Corporation (Taiwan), KSL Group (Thailand), Rui Feng (China), Lan Feng (China), Heng You (China) and Heng Nong (China), Mitr Phol (Thailand) were granted ELCs. These companies worked in tandem with local corporations (such as Koh Kong Plantation, Koh Kong Sugar Industry, Phnom Penh Sugar, Kampong Speu Sugar), owned by the prime minister, Hun Sen, and the Cambodian senator, Ly Yong Phat. As a result, farmers in the lands granted to corporations under the ELCs found themselves without land, hungry, and in deep poverty. Those who were hired in the corporate plantations suffered from inhuman working conditions. Additionally, more than one quarter of Cambodian forests have been cut off and numerous water sources have been polluted.²⁶

Civil society launched campaigns starting in 2012 to stop the land grabs. This forced the EU to conduct their own investigation and conclude its decision in 2020 to suspend preferential trade for Cambodia under EBA. Although this is step in the right direction, it is still unknown whether the demands of the communities to cancel the ELCs and return the lands that were taken have been met.

Civil society has been advocating for a legally binding instrument (LBI) on Business and Human Rights that will address direct and indirect violations of transnational companies and redress the power imbalance between corporations and the people. Campaigns have been launched for an LBI that will strengthen international legal security and governments' position in the frame of contracts with enterprises, as well as to ensure a fair international regulatory playing field for business and investment. Inter alia, the treaty should correct existing legal asymmetries, recognizing states human rights' extraterritorial obligations and international obligations of TNCs. It should include recourse mechanisms accessible for the victims in all the states where the involved companies along the value chain are domiciled or have their substantial activities and ensure their joint responsibility.²⁷

Our Recommendations: Trade and investment frameworks that respect human rights and care for both people and planet

Neoliberal policies championed by the IMF, World Bank, and WTO, and pushed by advanced economies in different international fora have kept many Global South countries in a state of underdevelopment. Trade and capital account liberalization are being promoted to encourage exports and attract foreign capital that will therefore usher in economic growth. This economic growth is expected to help developing countries get out debt dependence and achieve sustainable development goals. However, the dominance of advanced economies in promoting neoliberal development model in global economic development have largely maintained social and economic inequalities. Rules governing trade and capital account liberalization have allowed developed countries and corporations extract resources from developing countries and exploit their weak economic position. Illicit financial flows and inequitable global tax rules allow corporations to evade taxes from developing countries with weak tax regimes.

Meanwhile, the cycles of boom and bust which characterize capitalism are happening with more frequency and with more intensity in the era of a hyper globalized economy, encouraged by more trade and capital account liberalization. With each period of bust, crisis hit developing countries and marginalized communities hard, pushing them into debt. The global debt architecture, dominated by developed countries who are the creditors themselves, has largely failed to address the debt crises, worsening economic and social crises in developing countries. The compounding effects of trade and capital account liberalization and unjust trade and taxation prevent developing countries from channeling of resources to policies and programs that will transform economies towards achieving human rights, gender equality, and genuine sustainable development.

It is therefore important to oppose neoliberal trade and investment agreements in the light of their grave consequences for people-centered development on the one hand and promotion of increasing corporate power and the worsening of inequalities on the other.

The CS FfD Mechanism calls for:

- Assessing development impacts of current trade and investment frameworks
 - Continuous reviews should be undertaken at the UN under the FfD process of changes in binding trade and investment agreements, including at the WTO, regarding their impact on developing countries' policy flexibility in meeting their development, climate and human rights objectives;
 - Agree a multilateral agreement for a coordinated and permanent termination of Investor-State-Dispute-Settlement (ISDS) cases, and non-implementation or violation of current trade and investment commitments, including Intellectual property rights rules through the TRIPs and TRIPs plus agreements, if these conflict with public policy objectives including economic and health objectives;
 - Conclude an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and hold them accountable for human rights violations by supporting the ongoing negotiations for the UN Binding Treaty on Business and Human rights under the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

How to engage?

The CS FfD Mechanism has been campaigning and advocating for trade and investment that will facilitate genuine sustainable development through multiple entry points. Examples include: direct engagement on trade and investment issues in the FfD process by providing inputs to the yearly Financing for Sustainable Development Reports and to the FfD Forum negotiations. To join the CS FfD Mechanism, please fill the google form at this [link](#).

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Endnotes

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