Trade Union
Advisory Committee
to the OECD
Commission syndicale consultative auprès de l'OCDE

Mapping Out Trade and Investment Policy Issues

Briefing note

Paris, 8 September 2021

The trade union movement has long been raising concerns about globalisation being imbalanced, favouring trade and capital liberalisation without considering broader economic and social aspects than just GDP growth. The defining moments (and missed opportunities) of this process date back to the 1990s (Singapore and Seattle WTO Ministerial Conferences in 1996 and 1999, respectively), followed by the rising trend of business responsibility in global supply chains in the 2000s, culminating with a "new generation" of trade and investment agreements in the 2010s, that changed little, in fact. In 2018, TUAC warned about an *"incomplete, outdated and imbalanced [multilateral] framework"*, one that, in response, would require *"a new progressive trade and investment agenda that shifts […] towards effective policy coherence with human rights and labour, environmental and integrity standards, while preserving the right to regulate and to defend against unfair competition"*.[i]

The COVID-19 crisis put the role and impact of trade and investment under the policy lens again. The reason is twofold: first, supply chain disruptions exposed the fragility, rather than the efficiency of a highly inter-connected global system, in which partial shutdowns of production and the concentration of suppliers in specific segments and regions produced serious global supply failures. To this date, logjams in the global shipping industry continue to pose considerable risks to global industries relying on finished and semi-finished components from China. Second, the enormous social toll paid by workers worldwide, in terms of lost jobs and precarious employment, brought to the forefront job precariousness and poor job quality both in OECD and non-OECD countries, where trade policy has a significant role in shaping the nature and location of jobs worldwide.

Already before the COVID-19 crisis erupted, an emerging trend of international distrust in multilateralism and open markets was noticeable, with new frictions between major global players. While such stances were dictated by potential short-term political gains, an underlying malaise is palpable. Among the reasons, the role of the unequal re-distribution of globalisation has to be recognised. Trade and investment liberalisation has in many instances delivered the opposite from the promise of higher growth and more secure jobs: market power concentration, supplier dependency and bottlenecks, but also abrupt reallocation of production capacity, geographic concentration of gains and losses, fierce competition on labour costs have put the working people across OECD countries under increasing pressure. The answer to this cannot simply boil down to lowering further barriers to trade, investment, claiming that market forces and competition alone will distribute welfare in the most efficient way. The fundamental question is how trade and investment agreements can mitigate the risks and enhance the opportunities of free trade for the people, both from the perspective of consumers *and* workers.

Since the onset of the crisis, the OECD has been openly re-discussing its trade and investment policy framework. To help inform that process within an OECD-setting, this note by the TUAC maps out the main trade union issues around sustainable and inclusive trade and investment policies.

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Trade liberalisation as a competitive shock to working people

The established consensus in economic analysis is that trade increases access to cheaper goods and services, raising consumers' welfare, besides raising competition and hence, in the longer run, innovation, investments and employment growth. Most often policymakers have intended trade liberalisation as a stand-alone policy that would lead to aggregate welfare improvements simply by removing barriers to trade and boosting employment at the aggregate level, without proper considerations about the impact on domestic jobs and specific groups of workers. Trade unions, on the other hand, have for a long time pointed out that trade liberalisation most often comes as an external shock and a major source of uncertainty for workers. Competitive pressures might offer opportunities and benefits in the medium and long term, for consumers in particular, but they also come with short-term costs and risks, such as increased outsourcing, growth in non-standard work and lower wages.

There is ample literature on the nuanced linkages between trade and jobs, and between trade and investment and jobs. The joint publication by the ILO and the WTO "*Making Globalization Socially Sustainable*" of 2011 had already mapped out the policy issues around trade and employment[ii], showing that trade liberalisation can have both positive and negative effects on employment and GDP; increase the vulnerability of domestic labour markets to external shocks; and that gains from globalisation are not equally distributed. For its part, in a 2012 report on "Policy Priorities for International Trade and Jobs", the OECD found that: "*benefits of trade do not accrue automatically, and policies that complement trade opening are needed to have full positive effects on growth and employment. […] Some workers may experience unemployment or may even see their real wages decline as they change jobs. For these reasons, policies that embed trade reforms in a context of macroeconomic stability and a sound investment climate on the one hand, and, on the other, protection for workers, maintenance of high-quality working conditions, and facilitation of labour transitions, can play an important role in realising the potential wage, employment and income gains associated with trade*"[iii].

The OECD's aspiration to "Make trade work for all"

Since 2012, the OECD has maintained a strong focus on the design of the right domestic setting for trade opening. In 2017, in a chapter titled "Making trade work for all",[iv] the OECD found that "*making trade, and the evolving demands for skills associated with changing tastes and technology, work for all may require more targeted policy action where it is needed most: in regions and for workers who are most vulnerable to disruptions. Measures helping regions to grow and workers to adjust to a new environment are the most likely to bear fruit. Enhanced packages of measures to assist displaced workers, reduce barriers to occupational and geographical mobility and equip workers with skills needed in the labour market would all help the move from declining to expanding activities. Creating the conditions for growth in regions hit by trade, technology, and taste shocks is also necessary*."

Such complementary policies require a clarity of vision and willingness to intervene and co-ordinate multi-dimensional policies that few governments have shown so far. As a result, negative spillovers from free trade agreements have been more widespread and more enduring than previously realised, particularly because they have implications for way more than trade policy alone, including labour, investment, taxation, the environment and others. In the absence of active policy intervention to manage and contain the negative impact, they risk nullifying the longer-term benefits of international trade. Concrete trade policies put in place by governments have insufficiently addressed how to assist and protect workers in the adjustment process, ensuring that trade not only raises the number of existing jobs, but also delivers a higher job quality for the workers impacted in the process. This would imply ex-ante considerations on the impact on labour in the stipulation of trade agreements, as well as the co-ordination of labour, investment and industrial policy. On the contrary, on several occasions trade liberalisation was matched with labour market reforms leading to higher job flexibility. The proclaimed goal was to facilitate the reallocation of redundant workers relying mostly on market forces, with interventions limited to active labour market policies and training programmes to boost skills.

Not just about skills: the impact of trade and investment liberalisation on bargaining power

While it is true that the shift in jobs that follows a trade and investment opening process should be addressed by equipping workers with the right know-how to reallocate from declining to emerging firms and sectors, there are more challenges to job creation than skills alone, including the fundamental question of workers' bargaining power and job quality. With higher mobility for capital than for labour, investors and employers have a stronger incentive towards delocalisation, thereby lowering the bargaining position of workers and putting additional pressure on social protection standards in developed countries. The bargaining power of investors is increased when trade and investment agreement enhance foreign investor protection (as opposed to local employment protection) and when measures to boost job mobility individualise and transfer risks from employers to workers only.

The loss of bargaining power and social protection are crucial concerns. However, it also has implications on the behavioural aspect of individuals and institutions. Workers are more willing to fight for better working conditions or relocate from positions of stable and decently paid jobs, which in turn increases labour mobility without endangering work and living conditions. The same goes for their representative organisations and hence for the quality of social dialogue. Unless there are countervailing forces at the domestic level and built-in mechanisms in trade and investment agreements, trade liberalisation leads to downward pressure on wages, social protection and workers' rights. Unfair competition based on social dumping becomes pervasive, with corporations shifting production based on pure labour cost considerations, without concerns for basic workers' rights. Inherent inequalities undermine societal trust in global and national governance and in the private sector.

Issues at stake

Building trade and investment policies that work for all requires specific interventions to harmonise economic and societal objectives: i) at the domestic policy level; ii) internationally, to integrate labour clauses and standards in international agreements; iii) smart, forward-looking policies to steer future trade, including intangibles, towards broader value sharing and societal benefits; and iv) a broader reconsideration of what represents "fair" competition and the role of taxation.

1. A strong and resilient domestic setting

Opening borders to trade and investment implies competitive pressures for domestic companies, particularly those that are not internationalised and operate on the domestic market only. This is good insofar it forces companies to become more efficient in order to remain competitive, boosting productivity and reducing prices to consumers. However, the source of foreign competitiveness often relies on very different labour costs, in countries where wages, taxation and social contributions are and should not be comparable to developed economies. This generates a race to the bottom in terms of labour cost and labour standards that many companies cannot afford and therefore either exit the market, offshore production to oversea destinations either through foreign direct investments or through outsourcing. In all cases, the result is the same: the loss of domestic jobs, particularly for lower- and medium-skilled workers and in regions with declining sectors.

For this reason, it is important to have buffers in place, in order to minimise the shock to workers and make sure that even where their jobs cannot be protected, they are able to land similar or better ones. The OECD 2018 Jobs Strategy and following editions of the Employment Outlook make a strong case for resilient labour markets, collective bargaining - multi-employer coordinated bargaining, minimum floors and unemployment benefits that can smooth consumption, help workers access training and jobs search. Such policies are also crucial to smooth the impact of trade liberalisation, and can help win the trust of citizens when it comes to trade liberalisation policies, while maximising opportunities of trade for workers.

Next to re-building strong labour institutions (after decades of structural reforms that went in the direction of labour market deregulation), governments in advanced economies should prevent the risk of trade liberalisation leading to de-industrialisation. This includes targeted industrial policies that promote innovation across sectors, with a focus on job creation in green and digital technologies – in both production and services, and re-launch manufacturing, with the explicit goal of maintaining domestic capacity competitive at the global level. Such policies can help drive the green revolution and environmental transformation needed to maintain future jobs and the resilience of domestic economies in the international context.

2. Internationally, design trade and investment agreements that balance stakeholders' interests

Trade agreements and their subsequent impact on labour markets do not happen in a bubble. There are important implications and trade-offs between international trade, taxation and investment agreements that drive companies' decisions affecting workers in both receiving and sending economies. Internationally, securing respect for human rights and labour standards should become a pre-condition for any trade negotiation and be included in multilateral and bilateral trade agreements in a manner that makes them enforceable. These include, but are not limited to, the ILO Core Conventions, the United Nations Guiding Principles on Business and Human Rights (UNGPs), the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the related OECD Due Diligence Guidance.

Investment treaties must also contribute to a proper regulation of labour, guaranteeing that the opening of economies does not devolve into fewer or more precarious jobs. Governments must commit to ILO Core Conventions, ratifying and enforcing them before an agreement is signed. Collective bargaining and freedom of association are proven essential means of achieving higher wages and better working conditions. Incentives are not enough. It should be a prerequisite to any international agreement that countries guarantee fundamental labour rights as a matter of economic as much as moral principles.

Monitoring, remedy and sanction mechanisms involving social partners should become important components of international agreements for smooth functioning. Beyond the inclusion of enforceable social clauses, trade and investment agreements should respect the right of government to regulate, including setting minimum floors and social protection while maintaining high environmental protection standards to fulfil the objectives of the Paris Climate Agreement and the Sustainable Development Goals.

Trade unions around the world have a long-standing position on the need for social chapters in all trade and investment agreements that deliver tangible results. Results that would not only leave countries enough room to regulate on labour and environmental issues, but also be used as a leverage to drive change and social progress and halt the well-known race to the bottom. The policy roadmap out of such a race is just as well known:

1. Governments must commit to ILO Core Conventions before an agreement is signed. Collective bargaining and freedom of association are proved to be essential means to reach higher wages and better working conditions. Incentives are not enough. It should be ensured as a prerequisite that countries guarantee fundamental labour rights.

2. Investment agreements must be used as a leverage for more responsible business conduct by foreign firms. Foreign investors should demonstrate their good practices before they can enjoy the benefits of an investment agreement. Due diligence processes in the supply chain should be a prerequisite. The OECD Guidelines for Multinational Enterprises and accompanying due diligence guidance have a central role to play here. Due diligence conducted with full engagement of stakeholders, hand in hand with workers' representatives and trade unions, is the most efficient way to appease tensions and to prevent conflict.

3. Labour chapters need enforcement procedures and proportionate sanctions. Investor-state dispute settlements are not the right instruments for enforcement because in case conflicts do arise, grievance mechanisms and remedies must be accessible to all; not just to foreign investors. Labour chapters in investment agreements should benefit from appropriate dispute settlement mechanisms between states, ensuring early warning mechanisms, access for victims and – importantly – sanctions, which could for instance

take the form of escalating penalties. The US-Mexico-Canada agreements offers an interesting precedent in this regard.

This roadmap has evolved over the years. Reflection, for example, is warranted on increasing corporate power and the limited room to manoeuvre left by international agreements for the development of local economies. The labour movement is concerned about trade and investment agreements empowering rent-seeking interests. The gains of FDI do not seem to be shared equitably, neither between companies nor between countries. A fresh thinking is therefore needed on how investment agreements can foster more spillover from foreign investment into domestic economies. Particular attention should be paid to performance requirements designed to help transfer know-how, increased innovation, and training of domestic workers.

3. Trade and digitalisation

Data represents an increasingly important value for firms, despite consistent challenges not only in regulating its use and circulation, but also even in assessing its economic value, which no doubt is conspicuous and rising. While the economic value of single individual's data is limited, large digital companies take enormous advantage from their ability to aggregate millions or even billions of data points and use them to their advantage, shaping and transforming in the process the global economy. The ITUC exposed in a 2020 report the far-reaching consequences of digital free trade agreements, which risk fortifying the positions of technology giants and data companies at the expense of workers' rights, wages, democracy and privacy.[v] Any company collecting data on consumer and workers – beyond the digital economy – is generating insights that should drive up its productivity and profits. This ability depends on know-how and digital infrastructure, both of which are often 'outsourced' to online platforms. They then maintain a gatekeeper function.

Governments are not yet equipped with their regulatory infrastructure and legislation to deal with the value and use of intangibles by private companies. Major companies in the digital economy would prefer to maintain the status quo or lock in their current advantage through international trade regulation that could later on prevent domestic institutions to intervene and regulate the market.

In particular, the e-commerce negotiations that are ongoing at the WTO, involving more than 70, mostly developed countries, could have wide-reaching consequences in this sense. Much broader than the regulation of e-commerce practices, the agreement, if reached in its current form, would regulate a number of key aspects of trade in intangibles, from electronic signatures, to source codes, cross-border data flows, data localisation and protection and open internet access. In other words, the negotiations reach well beyond their initial mandate. Implications on labour are multifold: value captured by a few incumbent digital players keeps less digitally savvy firms either out of the market, with negative consequences on employment. If the value is not correctly measures and shared beyond big-tech companies, the transmission channel from higher productivity to wages is broken, tilting the balance further towards a few large firms and employers.

For these reasons, negotiations on trade in intangibles should not be conducted at the WTO level but enlarged to include social partners and civil society, in democratically elected for a where it is possible to agree on the basic rules of the game and fully understand their impact on jobs, competition, transparency and personal data protection.

4. Broader challenges: the principle of fair competition and the role of taxation

According to a neoliberal perspective, any attempt to regulate markets, including through the establishment of trade and investment rules and boundaries, is an attack to free market competition that should always be avoided, or at least strictly limited. In 2021, the OECD adopted a new Recommendation on Competitive Neutrality. Its aim is "to ensure a level-playing field both between state-owned and privately-owned enterprises, and between different privately-owned enterprises." [vi] It recommends adopting and maintaining neutral market rules, so that adhering governments ensure that the legal framework is neutral and that competition is not unduly prevented, restricted or distorted. It also recommends avoiding selective advantages and measures that may unduly enhance an enterprise's market performance and distort competition.

Yet governments should be able to enhance defence mechanisms and differentiate based on the social impact of competing businesses, including the level and quality of jobs provided. In the absence of strong mechanisms in trade agreements, trade defence instruments can protect economies and jobs from unfair competition and prevent exploitation. Safeguard mechanisms should be available to protect against unfair trade practices, such as subsidies to exports and overcapacity in some sectors, but also social dumping, while recognising the special needs of small and developing economies in building their national industries.

Fairness in international trade is pivotal in order to build trust. Friction in specific sectors, such as steel, where global overcapacity risks further weakening global markets and jobs, undermines workers' confidence in the capacity for international trade to deliver jobs for all. The same goes for environmental and climate concerns. Further to ensuring labour standards, international trade needs strong mechanisms to enforce environmental and climate standards in order to address environmental degradation, global loss of biodiversity and climate change whilst promoting a Just Transition to a low-carbon economy. Urgent action is needed to ensure a global level playing field that protects workers from unfair practices such as raising illegal capacity or competing on health, safety and environmental standards.

Finally, taxation represents a key policy instrument that, if adequately used, can help governments drive firms' trade and investment decisions. For example, the recent agreement at the G20 to introduce a global minimum tax rate of 15% constitutes a move towards restricting tax competition between countries and the eradication of tax havens, albeit the ultimate rate agreed is still too low. Similar to tax avoidance, countries and firms should not compete on social contributions as a way to reduce labour costs, since this is detrimental to both fiscal sustainability and the quality of workers' lives.

[i] TUAC Statement to the OECD Ministerial Council Meeting 2018, https://tuac.org/wp-content/uploads/2018/05/140PS_E_7i_TUACMCM.pdf.
[ii] Bacchetta, M. and M. Jansen (ed.) (2011), *Making Globalization Socially Sustainable*, The International Labour Office and the World Trade Organization. https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_144904/lang--en/index.htm.
[iii] OECD (2012), *Policy Priorities for International Trade and Jobs*, https://www.oecd.org/site/tadicite/policyprioritiesforinternationaltradeandjobs.htm.
[iv] OECD (2017), "How to make trade work for all" in *OECD Economic Outlook*, Volume 2017 Issue 1 , https://www.oecd-ilibrary.org/economics/oecd-economic-outlook-volume-2017-issue-1/how-to-make-trade-work-for-all_eco_outlook-v2017-1-3-en.
[v] ITUC (2020), e-Commerce Free Trade Agreements, Digital Chapters and the impact on Labour - A comparative analysis of treaty texts and their potential practical implications, https://www.ituc-csi.org/IMG/pdf/digital_chapters_and_the_impact_on_labour_en.pdf; also discussed at the ITUC-TUAC-NEF webinar "Capturing Our Future: How WTO is helping Big Tech Corporations to Take Over the World of Work" (2 July 2020).
[vi] OECD (2021), Recommendation of the Council on Competitive Neutrality, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462.