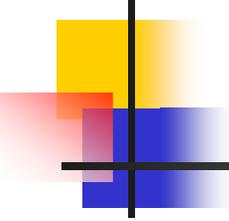


# The Impact of Regional and Bilateral Agreements on Trade and Investment on Sustainable Development

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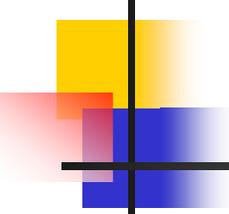
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# Content

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- Free trade is good for the strong
- The relationship between free trade and the environment
- The new trade agenda – approved by regional and bilateral agreements
- The „hard rules“ of the WTO
- US-PTAs: (re)articulation trade policy as „securitization of globalization“ (R. Higgot)
- Free trade agreements as a „privilege“
- The FTAA agenda: a template for all new US-PTAs ....
- ....which will have significant environmental and social impacts
- The European alternative: a „cosmopolitan empire“ (U. Beck)
- The „second generation“ of EU-PTAs (since 1997) ...
- ...fits into the aggressive trade agenda of the EU
- The example of „Economic Partnership Agreements“ (EPA) with Acp countries
- ... and its impact on ACP countries
- Summary: global regulation by deregulation



# Free trade is good for the strong

## 1. The developed countries became rich with the help of

- high tariffs
- selective industrial, trade, and technology policies to promote economic development
- without a patent law protecting innovations (in medicines)

practices that are actively banned by the WTO

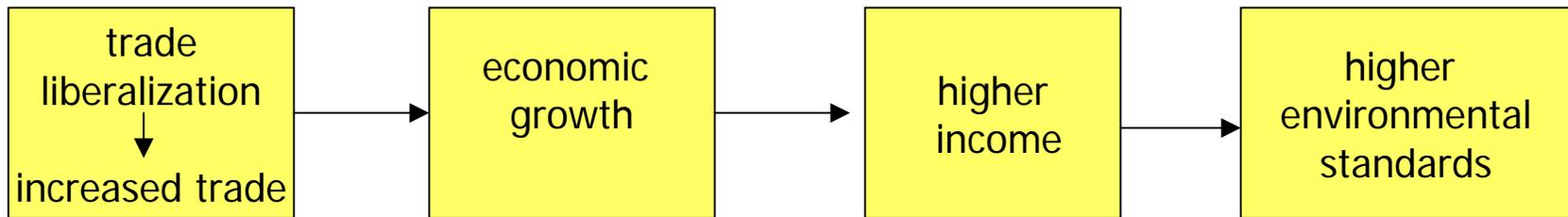
## 2. Free trade is beneficial

- for big companies, but not for SME and subsistence agriculture
- for big economies, but not for small and weak economies
- for countries on a similar level of industrial development, but not for those on different levels of development

*Nevertheless, the economically strong countries from the North urge poorer developing countries (DCs) to open their markets - by WTO agreements and interregional and bilateral FTA (including BITs)*

# The relationship between free trade and the environment

## The liberal view: trade is good for the environment



➔ free trade will result in a progressive internalizing of externalities



## The critical perspective: free trade causes further environmental degradation

1. increases the scale of economic activity

- increased use of scarce natural resources
- more waste and pollution

2. involves increases in certain types of environmental problems

- increased pollution and resource use from transporting goods
- increased damages from invasive species

3. may reduce the policy space within which national governments attempt environmental management

- by way of prohibition on certain types of regulations
- by way of pressure from industries faced with foreign competition
- **by deregulation imposed by trading partners**

# The new trade agenda – approved by regional and bilateral agreements

- With the failure of WTO ministerial in Cancun 2003 free trade negotiations at multilateral level came to a halt
- But since the mid 1990s the numbers of Preferential Trade Agreements (PTA) increase
- In particular, US and EU corporate lobbies push for PTA outside the WTO

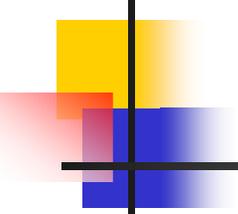
## US/ EU expectations: PTA

- expand export markets for their domestic companies
- ensure new sales markets for high technologies and services
- facilitate take over privatized companies
- strive for investment in extractive industries
- establish precedents for an expanded WTO agenda

## developing countries expectations: PTA

- more transparent
- might help to achieve a more development-friendly „different treatment“
- and a loosening of unwanted investment rules
- better position their interests than with the WTO (esp.with TRIMs, GATS, TRIPs or an „new“ MIA)





# The „hard rules“ of the WTO

GATT, Art. XX:

Global trade rules do allow for the adaption/enforcement of measures „necessary to protect human, animal or plant life or health“

„relating to the conservation of exhaustible natural resources“

But environmental standards set up by government must avoid being classified as NTB to trade ↓

extremely narrow interpretation to provision that might erase space for environment exceptions to free trade

➡ **race to the bottom**

which is especially the purpose of

- TBT and SPS
- negotiations on **NAMA**

- (1) With NAMA even more environmentally and socially sensitive sectors will be liberalized – NAMA can include all natural resources for either partial or complete liberalization – with a particular focus on:  
fish and fishery products, gems, minerals (gold, diamonds, aluminium)
- (2) NAMA is targeting trade restrictions/NTBs which include measures designed to protect environment and social welfare:  
certification of wood products, restriction on trade in chemicals and viruses, tracing and labelling for environmental purposes, packing, marketing and labelling requirements

# US-PTAs: (re)articulating trade policy as „securitization of globalization“ (R. Higgot 2004)

## US foreign economic policy is

- characterized by unilateral rhetoric and behaviour
  - close integration of economic and security policy since the mid 1990s
- with a subordination of security policy to economic policy in the 1980s and 1990s  
↓  
a change to subordination of economic policy to security policy since the late 1990s

„new („post-sovereign“)  
imperialism“

(E. Rhodes 2003)

- underwritten by military power
- with its fullest articulation in contemporary policy in Iraq



economic globalization is not seen only as an benefit, but also as a security „problem“



economic policy becomes an explicit arm of security policy → ambivalent attitude towards the international economic institutions (esp. WTO)



**increasing recourse to PTA** (Bhagwati 2003)

# Free trade agreements as a „privilege“

PTA since the late 1990s:

- ❖ to build a „coalition of liberalizers placing the US at the heart of a network of initiatives to open markets“ (Robert Zoellick, 2003)
- ❖ to reward „good partners“ for co-operation on foreign policy and security issues

**„competitive liberalization“**

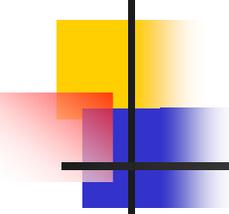
**Singapore  
Australia  
Chile  
Morocco**

**MEFTA (Bahrein,  
Kuwait, Qatar ect.)  
CEFTA  
US-Andian region**

in all cases an FTA is regarded as a political reward for US-favoured policies: from military basing rights to cordial relations with Israel

**Iraq:** „getting a free trade agreement minus the negotiations“ (Lou Malig 2004)

The „Bremer Orders“ of september 19,2003 covered in order 39 foreign investment which reads like all the bilateral agreements involving the US in recent years



# The FTAA agenda: a template for all new US-PTA...

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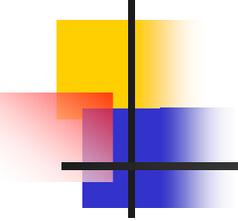
While the US did not succeed in its effort to expand a „NAFTA-plus“-agenda to the entire hemisphere, it negotiated PTAs containing exactly the proposals for a FTAA - on:

- **market access** (see CEFTA negotiations)
- **IPRs** (see Morocco-FTA: IPRs are extended to 30 years)
- **services** (using a „negative list approach“)
- **government procurement, competition policies, customs procedures**
- **dispute settlement**

arbitration of investor-to-state disputes under BITs, which make it possible for investors to sue states by the law of the home country of the investor, or international law – over: revocation of licenses, alleged expropriations, environmental disputes, privatization

- **investment rules**

modelled on those in NAFTA´s chap. 11: „national treatment“ even for „pre-establishment“ and for portfolio investments



## ...which will have significant environmental and social impacts

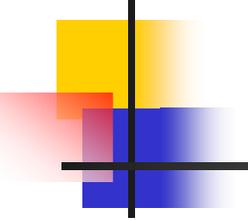
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PTAs (including BITs) will

- will allow private foreign investors to sue governments for compensation for any profits lost due to government actions to protect the environment
- will give investors far greater rights than those found in domestic law in the US or other countries
- grant TNCs far-reaching rights to challenge domestic environmental laws and regulations before international tribunals
  - that meet in secret sessions behind closed doors and are not accountable to any appeals process



**limitation on the ability of governments to regulate in the public interest:  
a loss of policy space**



# The European alternative: a „cosmopolitan empire“ (U. Beck 2005)

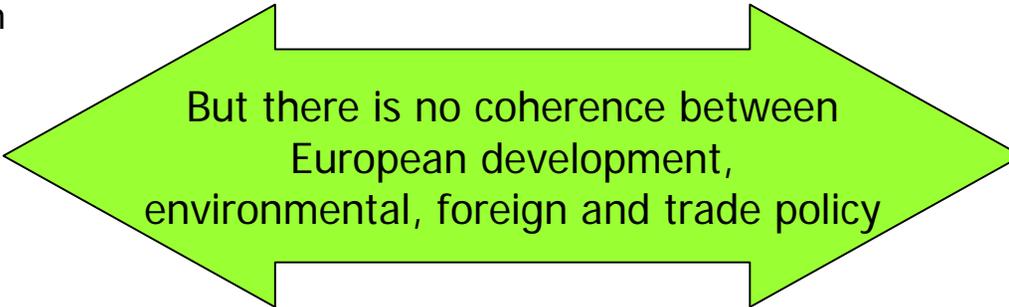
a „war on poverty“ is less expensive and more effective than a „war on terrorism“

- ✓ focus on multilateralism and rule-based policy
- ✓ „soft geopolitics“ oriented towards co-operation and consensus
- ✓ emphasis on development policy
- ✓ taking a lead in calling for fundamental change to the world trading system in line with its own sustainable development and human right objectives

„liberal imperialism“  
(R. Cooper)

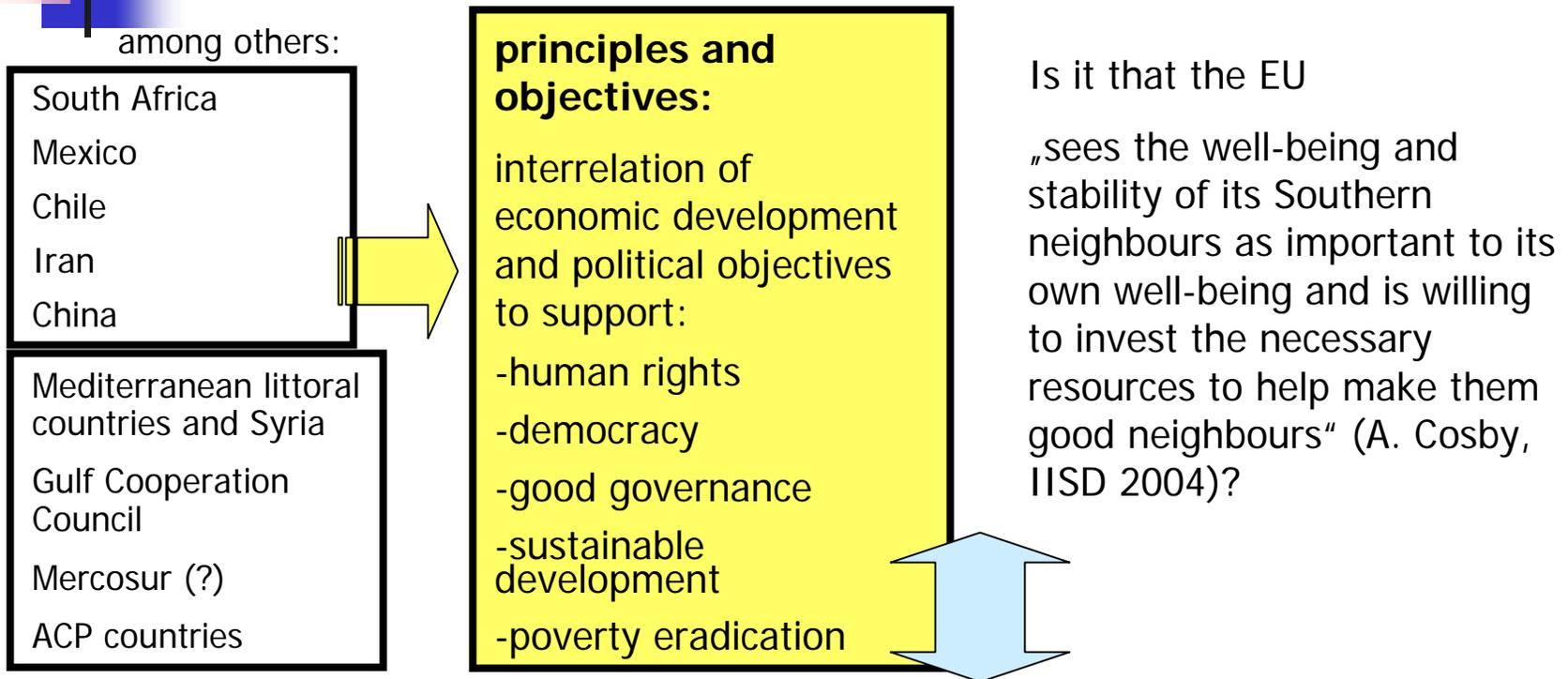
which would mean:

- strengthening MEAs
- supporting the upgrading of UNEP to an UN-EO
- giving a mandate to UNEP and its Governing Council to take the lead in trade and environment discussions

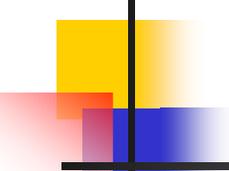


But there is no coherence between European development, environmental, foreign and trade policy

# The „second generation“ of EU-PTAs (since 1997)...



- no real control or monitoring mechanism is installed
- the funding of „sustainable impact assessment“ is not included
- no binding institutional structures of co-operation
- consultation with dialogue partners from civil society is mentioned only in the EU-Chile-FTA (and a recently negotiated contract with Bangladesh)



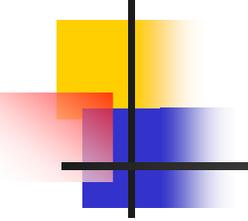
## ...fits into the aggressive trade agenda of the EU

- Its aggressive pursuit of corporate interests contributed the collapse of the WTO´s last ministerial summit in Cancun
- The EU commission decide its lists of request to more than 50 Southern governments in the WTO´s services negotiations which includes market-openings and, in effect, privatization of water delivery and other essential public services
- Although in the last 5 years the EU added heavy doses of greenwash and poorwash to sell its WTO politics the neoliberal fundamentals of EU trade policy did not change:

### **The European Commission as the power centre of EU trade policy pushes bilateral negotiations which almost always include:**

- that developing countries have to open their markets within a short period of time (10/12 years) to EU exports - while the EU is not forced to lower tariffs for agricultural exports from DCs
- no protective clauses for newly built up industries and sensitive sectors
- unlimited trade in capital
- investor-friendly BITs and dispute settlement mechanism
- slight trade liberalization within the GTAS
- liberalization of public procurement

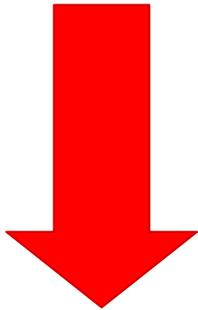
**but no environmental regulations!**



# The example of „Economic Partnership Agreements“ (EPA) with ACP countries

The „Cotonou Agreement“ (2000)

is supposed to be replaced by EPAs which:

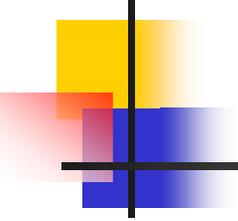


## objectives:

- reducing and eliminating poverty
- sustainable development
- integration of ACP countries in the global economy



1. will bring trade **preferences to end**
2. will be based on FTAs which imply the elimination off duties and other restrictive regulation of commerce on „**essentially all trade**“ (which could mean: “more than 90 per cent)
3. include ambitious negotiations on trade in **all services (GATS plus)**
4. include **more restrict TRIPs** provisions than in the WTO Doha round granted to developing countries
5. will include liberalization of investment, co-operation on competition, trade facilitation, data protection, government procurement (“**Singapore issues**”)



## ...and its impact on ACP countries

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- **FTAs will expose ACP countries to devastating EU competition**
  - ACP countries will struggle to compete with import surges of duty free and often heavily subsidised EU goods in areas where they already compete
  - There will be little incentive to diversify into more „value-added“ products, given uncertain domestic and regional markets for products competing with EU imports
  - This will increase dependence on the productions and export of primary products  
→ increased deindustrialization → job losses → migration
- **Loss of government revenues will severely compromise governments spending abilities and institutional capacity**
- **ACP countries will face substantial adjustment costs when opening up to EU exports**
- **Indiscriminate opening of ACP economies jeopardizes regional ACP integration initiatives**

# Summary: global regulation by deregulation

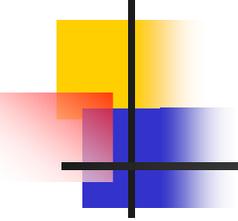
deregulation of the national market by  
comprehensive regulation of trade by use of multiply secured and cross-binding international treaties

## private actors/foreign investors

- are given extended rights which are not accompanied by obligations
- can realize their interests in a gray area where factually no democratic participation or control exists
- become almost independent from national legislation and thus are not responsible for damages they inflict on people, environment and goods of the host country

- strengthening of asymmetry of power between strong and weak economies
- lack for democratic action
  - since civil rights of people remain unconsidered
  - governments remain without macroeconomic instruments
- a further destabilization of politically weak states

- „room for political action“ will be narrowed
- in a way that opportunities for civil society and governmental policies may be permanently limited
  - because any type of restriction can be interpreted as a „measure similar to expropriation“ which affects payment of compensation

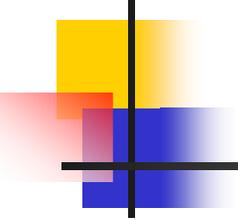


## Conclusion 1:

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### How to preserve policy space for development?

- The notion of „national treatment“ is basically to be refused
  - at least „non-discrimination“ between domestic and foreign investors should be clearly defined and according to national regulations
- Developing countries have to use extensive restrictions on foreign investors
- No international rules on investment should be established
  - investment protection should not include „pre-establishment rights“ and portofolliio investments
  - the fact of „expropriation“ should be defined narrowly
  - the rights of investors should be accompanied with obligations
- Any dispute settlement mechanism should be only state-to-state



## Conclusion 2:

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### How to protect the environment and the social from global trade?

- As far as the environment is concerned there is no way of protecting the environment within the context of global free trade economy (and global competition)
- Therefore, we must reverse our course and seek to emphasize local production for local consumption
- Global trade has to be reduced, in particular unnecessary transport has to be reduced
- A greater degree of self-reliance in the North would benefit both North and South