Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Resolution 2496 (2023)**[1]

# Safeguarding democracy, rights and the environment in international trade

Parliamentary Assembly

1. Our shared values – human rights, democracy and the rule of law – are becoming more and more recognised as critical in the context of global trade. International trade and investment agreements take precedence over domestic law and can have a long-lasting legacy. A wave of new-generation, sometimes bilateral, trade agreements is increasingly shaping norms and influencing policies of sovereign States, while the multilateral trading system embodied by the World Trade Organization (WTO) is being weakened. Because trade arrangements evolve with society and its increased attention to sustainability issues and human dignity, individual countries and trading blocs should make every effort to develop trade in ways that help support our shared values and progress in society, such as through targeted co-operation, capacity building, pursuit of sustainable development and enhanced commitments to preserve and improve our fundamental rights and our quality of life. Purely economic trade agreements do not automatically protect or promote these values and can, in practice, undermine them. Therefore, rights, obligations and enforcement of these values should be incorporated into trade agreements at the outset, so that they are not systematically supplanted by investors' interests, for the benefit of future generations.

2. The Parliamentary Assembly views trade and investment agreements as powerful tools for advancing progress and believes that trade policies should be constantly adapted to societal realities and priorities. Seeing a sustained increase in both the volume and the geopolitical significance of trade and investment agreements in the last decade, the Assembly reiterates its concern over the use of narrow-focus arbitration courts to resolve disputes between States and private investors in a way that hampers the ability of States to defend the public interest, including as regards public health and human rights, and to honour their international commitments to sustainable development. The Assembly strongly supports proposals to replace the outdated investor–State dispute settlement system with a new multilateral investment court based on the outcomes of current negotiations under the auspices of the United Nations Commission on International Trade Law.

3. The Assembly considers the multilateral rules-based system supported by the WTO as the most inclusive and balanced mechanism on a global scale, especially when it comes to ensuring a level playing field among small and large countries in trade matters. To this end, WTO rules and its dispute settlement system play a crucial role. The Assembly is concerned by the fact that this system has been blocked since December 2019 because the WTO's Appellate Body can no longer deliver binding decisions on interstate trade disputes. The Assembly therefore appreciates that, pending a solution to this situation, the European Union and other WTO members have put in place a multiparty interim appeal arbitration arrangement and continue to work together on the reform of the WTO's dispute settlement system to enhance its effectiveness. The Assembly urges WTO member States to offer and to negotiate, in good faith, solutions to permit the WTO's Appellate Body to resume its normal operation.

1. *Assembly debate* on 27 April 2023 (13th sitting) (see Doc. 15739, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Geraint Davies). *Text adopted by the Assembly* on 27 April 2023 (13th sitting).
See also Recommendation 2254 (2023).

4. The Assembly welcomes recent positive developments, notably the inclusion of sustainable development provisions in new trade treaties and the framing of corporate due-diligence requirements by European countries, so as to support fundamental rights and environmental objectives through trade policies. It underscores the need to realise the potential of trade treaties and the related dispute settlement mechanisms to ensure the more ambitious implementation of global environmental treaties and the United Nations Sustainable Development Goals.

5. The Assembly underlines that trade treaties can be a means to enhance the protection of the environment and fundamental rights. It notes that investment protection provisions have been highly effective in shielding the interests of private enterprises rather than fundamental rights and the public interest, because they provide a powerful mechanism to enforce the rights guaranteed by the treaties against States. While trade and investment treaties often contain provisions on fundamental rights, labour rights, public health and environmental standards (collectively constituting "democracy-enhancing provisions"), these provisions do not benefit from the same powerful enforcement mechanisms as the provisions which benefit investors. States should thus consider how to enhance the potential for citizens to enforce compliance with those provisions as well as continuing their efforts to reform these enforcement mechanisms and render them better adapted to new realities. This would empower individuals in a field uniquely suited to judicialisation – rights protection – while at the same time making the treaties themselves more effective.

6. The Assembly acknowledges that lawful unilateral measures in international trade (in particular the European Union's carbon border adjustment mechanism) may be necessary for States to pursue their ambition of advancing more rapidly towards sustainable and inclusive development. These could encourage similar initiatives worldwide, which would help to ensure policy coherence and compatibility with the WTO rules. States should continue to take advantage of all lawful possibilities offered by international trade and investment law to act unilaterally, including through the adoption of measures under Article XX of the General Agreement on Tariffs and Trade (GATT) and the WTO Agreements on Safeguards, on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures.

7. The Assembly believes that "old generation" trade agreements should be interpreted and adapted in the light of new imperatives to promote sustainable development and fundamental rights. It notes unexpected legal complications in the process of the modernisation of certain treaties, notably the Energy Charter Treaty (ECT), whose sunset clauses or narrow interpretation of which by private arbitration tribunals in the framework of the investor–State dispute settlement system expose States to expensive litigation, the lowering of standards aimed at protecting public health and the environment and reducing climate change, and even policy reversals under pressure from influential enterprises.

8. Regarding the specific issues linked to the ECT, the Assembly urges States to close the gap between the protection of investment in fossil fuels and the mainstreaming of climate goals by concluding an *inter se* agreement on the modification of the sunset clause of this treaty, as permitted by international law according to Articles 41 and 64 of the Vienna Convention on the Law of Treaties (1969). This would send a clear message to other States Parties, national courts and arbitrators that such a long-lasting sunset clause is incompatible with those States' commitments under the Paris Agreement and the ECT's preamble which refers to the United Nations Framework Convention on Climate Change under the auspices of which the Paris Agreement was signed. The Assembly strongly supports the ultimate goal of a co-ordinated revision of the ECT with a view to reducing or suppressing the sunset clause in relation to investment in fossil fuels and taking into account the environmental benefits of doing so.

9. In the light of the above considerations, the Assembly asks member States to:

9.1. support multilateral negotiations for the reform of the WTO's dispute settlement system for interstate trade disputes, on the one hand, and the establishment of a multilateral investment court under the auspices of the United Nations for enterprise versus State disputes, on the other hand;

9.2. ensure that all their new trade and investment agreements contain comprehensive provisions on sustainable development and protection of fundamental rights, and strengthen enforcement mechanisms for these provisions, commensurate with those protecting investors;

9.3. assess their existing trade and investment commitments under the "old generation" treaties and, where necessary, launch their revision with a view to upgrading them with provisions on sustainable development and protection of fundamental rights, so as to ensure that they contribute to and are compliant with the implementation of global environmental treaties and the United Nations Sustainable Development Goals;

9.4. use trade and investment agreements as tools to promote democratic norms and human rights, including social rights, on a global scale;

9.5. systematically involve parliaments in negotiations for the conclusion or reform of any trade and investment treaties in order to enhance democratic scrutiny and transparency of the process before the final ratification of such agreements;

9.6. where necessary, consider taking lawful unilateral measures in international trade to enforce domestic environmental standards at the border, based on the European Union's carbon border adjustment mechanism, and consider extending such measures to cover fundamental rights, including labour rights, and public health;

9.7. promote corporate due-diligence obligations through trade with regard to the protection of the environment, fundamental rights and public health, and mitigating climate change.

10. The Assembly calls on national parliaments to hold governments to account in relation to the negotiation of any new trade treaties, the reform of existing trade arrangements and investment protection agreements and the pursuit of more ambitious implementation of global environmental treaties and the United Nations Sustainable Development Goals at national level.