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# FAIR PLAY IN WORLD TRADE

TOWARDS A SOCIAL DEMOCRATIC REDESIGN  
OF TRADE POLICY

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## Summary

Trade policy has an impact on the everyday lives of many people – in Germany, and indeed the world over. Trade policy must, therefore, not be an end in itself but has to serve broader objectives. It must be based on fair multilateral rules and take all aspects of sustainability into consideration. Here, the social-democratic approach differs fundamentally from that of market liberals in its belief that trade relations must follow politically defined rules.

For us, a fair and democratic trade regime is one in which the goods that are traded on our markets are produced under fair social and environmental conditions and human rights are respected; in which we strive to safeguard and improve the development prospects of our trade partners in the global South; in which trade strengthens rather than undermines rights; in which the government's capacity to provide public services, both here in Germany and in our partner countries, is not restricted; and in which we give multilateral approaches precedence. The process of negotiating trade agreements must also become more democratic and transparent.

What we need, therefore, is a new trade policy, one which can be shaped and one which rebuilds trust, strengthens democracy and the rule of law, and enforces justice.

Our objectives are therefore:

- *To strengthen democratic processes and transparency in trade policy.* This entails expanding the right of control and decision-making powers of the European Parliament, ensuring that trade policy debates also take place in national parliaments, ensuring also that trade union and civil society representatives are given an opportunity to participate in the processes of negotiation and implementation, and promoting public debate on trade policy objectives.
- *To shape global trade policy structures collectively through a solidarity-based approach.* This includes strengthening the role of the WTO as a monitoring, enforcement, and dispute settlement body, always negotiating plurilateral agreements as open agreements under the auspices of the WTO, and making it mandatory for bilateral agreements to comply with WTO rules.
- *To reinforce the rule of law and binding obligations for investors.* This comprises placing foreign and domestic investors on an equal footing, protecting specific areas like labour and social law, public services, and international obligations such as climate protection from legal action by investors, and making companies' rights more heavily contingent on the fulfilment of obligations with regards to transparency, preventing tax evasion, and conforming to standards, for instance.
- *To reduce Germany's current account surpluses.* This would mean, for example, substantially increasing investment in education, transport infrastructure, digitalisation, and the transition to renewable energies in the years ahead.
- *To promote and enforce sustainability standards.* This involves requiring all trade partners to have at least ratified all eight core labour standards before a trade agreement can enter into force, providing civil society organisations in the advisory groups set up by the EU full access to documents, establishing a new dispute settlement mechanism in which trade unions are also given an opportunity to demand compliance with the agreed standards, and granting developing countries positive trade preferences if their products are sustainably manufactured.

## Preface

Dear Readers,

Two years ago, tens of thousands of people took to the streets. Party offices were inundated with letters and calls from citizens. The SPD hosted a Party Convention on the issue. And all this activity was triggered by a widespread protest that had mobilized citizens against the Transatlantic Trade and Investment Partnership (TTIP). Supply chains and ILO core labor standards became as much a part of the vernacular as talk of chlorinated chickens and courts of arbitration. A lot of water has passed under the bridge since then. In just a short time, Donald Trump's antics have transformed the trade policy debate beyond recognition. With his »America First« policy and its focus on partitioning, Trump has intensified trade conflicts and incited new (and fueled old) antagonisms. In so doing, crises have been provoked which undermine the very existence of the rules-based system of global trade. Trump is also sending the disastrous message to the international community that it is better to tackle global challenges unilaterally and driven solely by self-interest.

Germany, on the other hand, relies more than any other country on open markets and a fully functioning global economy. However, even beyond the conflict with Washington, the international trade system is in need of reform. The latest round of major trade negotiations, the Doha Round, which commenced in 2001, has broken down. At the moment it seems impossible to reach a consensus among all 164 WTO member states. We therefore need to rethink trade policy. But what form might a progressive trade policy take? And how can progress be achieved under the auspices of the World Trade Organization?

Not only has it become more difficult to reach a consensus between trading blocs and countries. Also within Europe and within Germany, trade that exclusively follows the radical free-market paradigm is justifiably criticized. For far too long trade was viewed through rose-tinted spectacles, while the losers were forgotten in the debate. Politicians must largely take the blame for these shortcomings. Opaque negotiation processes and the influence of large corporations must be made as central to the debate as the issue of what should be included in trade agreements in terms of public services and con-

sumer standards. In the meantime, the key issues have become a lot clearer: we need more public discussion and debate on trade policy. We can only rebuild confidence that trade policy will be organized in a transparent and democratic manner if we take clear positions and hold discussions on contentious issues, both in society and in parliaments, and set binding rules for the markets. To be able to play an active role in shaping trade policy, however, Germany must also continue to build up trust beyond its borders, for example by taking seriously the criticism expressed by many of our trade partners of its enormous current account surpluses.

For us social democrats, a fair trade policy is an essential building block toward creating a fair global order. In view of the challenges I have just mentioned, we need a coherent programmatic basis for our trade on all political levels. This publication aims to provide that foundation. It was written in cooperation with experts from politics, science, industry, trade unions, and civil society. It puts into words structural objectives derived from this collaboration that can be used as a basis for social democratic trade policy; moreover, it outlines the main features of a fair and just trade policy and what priorities such a policy should set. We envisage our paper as a contribution to the discussion on how international trade policy should be shaped, but also as providing guidance to parliamentary, governmental, and civil society decision-makers. It is our intention to provide direction.

I would like to thank everyone who has made a direct contribution to this paper, as well as the many experts who supported us and enriched our knowledge with their input during our workshops. I would also like to extend my sincere thanks to the Friedrich-Ebert-Stiftung, and in particular to Jochen Steinhilber and Alexander Geiger, who, with great vigor, sound argumentation, and substantial motivation, helped this paper come to fruition.

I hope that you will enjoy reading this paper and that you will glean valuable insights from it for your own work.

*Kind regards – Thorsten Schäfer-Gümbel*

## A New Debate on Trade

As a result of the financial crisis the liberal paradigm of open international markets and the free movement of capital and goods has come under pressure to prove its legitimacy. Initially this only applied to the financial markets themselves but now the international trading regime is also under fire. In Germany and in Europe as a whole, the sheer intensity and scope of the criticism took policy makers by surprise. Social democratic policy makers were no exception to that.

Nowadays, free trade is increasingly under scrutiny, the reason being that it by no means benefits everyone. On the contrary, free trade produces both winners and losers. Political decisions such as wage restraint, social cuts, and tax competition, which are sold as necessary in the interest of open markets and international »locational competition« for trade and investment, fuel growing inequality. Economic and social dislocations have led to an increase in support for nationalist forces. If we fail to tackle the problems, there is a risk that (right-wing) populist parties and movements will also continue to gather momentum.

The criticism from broad sections of civil society is directed largely at the »deep« free trade agreements that have become the norm nowadays and that go well beyond the traditional dismantling of tariffs. Negotiations on the Transatlantic Trade and Investment Partnership (TTIP) agreement with the USA as well as the EU-Canada Comprehensive Economic and Trade Agreement (CETA) have been strong catalysts for mobilisation within Germany. Critics have not only taken issue with the lack of transparency in the negotiation process. They also fear significant encroachment on the democratic decision-making autonomy of nation-states – an imbalance in favour of the interests of transnational corporations at the expense of other economic, social, and environmental objectives – and thus a weakening of democracy and the rule of law as a whole. This criticism is one that social democrats and their partners, including the trade unions, also broadly share.

Not only did scandals such as the collapse of the Rana Plaza textile factory in Bangladesh in 2013 and the fires that broke out in other textile factories bring to light the

problem of inadequate corporate responsibility along global supply chains; but also, more generally, they underlined the need to reinforce labour, social, and environmental standards in international trade agreements. There has also been renewed discussion over whether and to what extent the current trading regime meets the needs and interests of developing countries. EU trade policy should not be about sacrificing development policy objectives for the sake of short-sighted commercial interests. Germany's and the EU's economic and export strength should not be to the detriment of weaker countries. Moreover, in view of growing global migration, we must also ask ourselves how the trade policy of the future has to be designed so as to help improve the situation in poorer countries, particularly in the neighbouring Africa region.

Lastly, the aforementioned controversies must also be viewed as a consequence of the fundamental changes in the working and economic world. The fragmentation of production processes along global supply chains is already at an advanced stage, and now digitalisation is driving a transformation which is also fundamentally changing the world of trade. Bearing this in mind, the current trade rules, written before the age of the Internet, have to be adapted to new developments. Especially the extremely fast-growing cross-border e-commerce market and cross-border service provision via digital platforms present a whole gamut of new challenges that require a legal framework set down in intergovernmental agreements. Determining for which issues trade agreements are the correct regulatory instruments should also be part of this debate. Another key issue is ensuring that the rules agreed upon do not further consolidate the market power of a small number of digital giants but instead promote competition and provide sufficient policy space for states to develop and expand their own digital economy, with the aim of bridging the growing digital divide. Other challenges include the fair taxation of internet companies' sales and profits and the struggle against the emergence of new precarious employment conditions in the »gig« economy. Any new trade rules for the digital economy must be discussed with a view to strengthening digital civil rights and within the framework of clear-cut data protection regulations.

Disputes over international trade imbalances also persist. At the European and the global level, Germany is being castigated for its foreign trade surpluses. This criticism is not about the exports per se but about the fact that Germany has dramatically expanded its exports without increasing imports of goods and services from its trading partners accordingly. For years, the world's fourth largest economy has thus recorded a persistently high and ever-increasing current account surplus. According to the critics, this means that, in times of crisis, Germany has been creating and securing employment at the expense of its trading partners, depriving the global economy of much needed demand, and, rather than helping deficit countries reduce their debt, it has in fact been making it more difficult for them to do so. This makes the global economy even more susceptible to crisis.

The rise of large emerging countries, especially China, radically changes not only trade flows but also the international power structure. The Trans-Pacific Partnership (TPP) trade agreement which was abandoned by US President Trump immediately after he assumed office was an attempt by his predecessor administration to secure US influence in Asia and, at the same time, to establish international standards important to the US that could not be pushed through within the WTO due to opposition from developing countries. TTIP, the negotiations over which have been on ice since the new US administration took office, had similar objectives. To the extent that Trump's trade policy is focusing on purely bilateral rather than regional and multilateral agreements and the US is abandoning its former role as the dominant force in shaping international cooperation regimes, this creates a political vacuum that will be filled by other players.

In Germany, which is more heavily integrated into the international division of labour than other similarly sized countries, many top-level and well-paid jobs depend on foreign trade. Germany therefore has a fundamental interest in open markets. Beyond this interest in maintain-

ing the openness of markets which are already largely liberalised, a progressive trade strategy must provide answers, among others, to the following issues:

a) Should sectors which do not or only partially follow market principles be opened further? What objectives and interests should such market liberalisations serve? What would the conditions for this be?

b) Agreements over the harmonisation or the (mutual) recognition of standards and regulations should serve to reduce trade costs or guarantee fair conditions for international competition. What standards and regulations – for instance in the fields of health, environmental and consumer protection – with regard to wages and employment conditions, the fight against corruption and tax avoidance, should be part of trade agreements in future and what should not be included? What forms of cooperation and type of agreements (e. g., »living agreements«) could play a role here?

c) Can we, in future, prevent growing inequality or the development of even larger groups of »losers of globalisation« among the poor, the working and the middle class as a result of greater market opening, both in rich and poor countries, and if so, how?

d) Does trade policy support the global objective of sustainable social and environmental development for all in accordance with the 2030 Agenda and the Sustainable Development Goals? How does it achieve this?

e) How can we ensure that global trade continues to adhere to multilateral rules and that the strong *and* fair trade system of the future also protects the rights of the world's weaker economies?

The current transitional situation presents social democrats with an opportunity, namely the opportunity to rethink trade policy as part of a sincere stock-taking process and to participate politically in its redesign based on a set of social democratic values and objectives.

## Conflicts and Trade-offs in International Trade Policy

### Between Liberalised Markets and Democratic Decision-making Autonomy

In trade policy, one of the major challenges is to uphold and expand democratic policy space and safeguard the primacy of politics. After several global liberalisation rounds over the last decades, the importance of tariffs has dwindled, with the average duty on finished products within the OECD now at less than three per cent. Nowadays, negotiations therefore focus primarily on reaching agreements on domestic regulations such as technical, health and employment standards, competition, or public procurement. To date, negotiation rounds have been largely opaque. In the event of conflicting goals, this carries the risk that vested interests of corporations, regarding market access, cost savings, investment protection, etc. will prevail over consumers' and workers' interests. Critics also fear substantial encroachment on the democratic decision-making autonomy of nation-states.

The crux of the challenge is to facilitate a reasonable convergence of standards alongside regulatory cooperation with international trade partners, at the same time ensuring that democratic principles are respected, applied, and under no circumstances undermined. Trade agreements must not be excluded from the social and political debate.

### Between National Control and a Common EU Trade Policy

Trade policy – i.e. external trade relations – is one of the few EU policy fields that is almost entirely communited. This competence, which was already set out in the founding treaties, was gradually transferred to the then European Community (EC) when the customs union was completed. Since then, the authority for trade in goods resided at the European level, and this was extended to include trade in services following the Treaty of Nice of December 2000. It is therefore only within the EU that Germany can decide on trade policy measures, which are proposed by the European Commission. Consequently, national governments have to use the relevant Europe-

an Council bodies to assert their influence. The national parliaments have the task of mandating and monitoring their respective governments, for instance by way of a dedicated trade committee along the lines of the Danish Parliament's model. This democratic control of European trade policy was reinforced by the 2009 Treaty of Lisbon, which granted the European Parliament a substantially larger say in decision-making. The EP now plays an active part in the negotiations on trade agreements and has to approve them in order for them to enter into force.

In the era of »deep« trade agreements, the intertwining of national and EU competences across many policy fields brings about additional challenges for policy-making in the area of trade. One such challenge concerns the EU's capacity for action as a union of states. The European Court of Justice (ECJ) opinion of May 2017 (regarding the negotiated EU-trade deal with Singapore) on the issue of competence sharing in trade agreements provided more clarity on this. In its opinion the ECJ confirmed that the overwhelming part of the agreement falls within the EU's exclusive competence. The ECJ only acknowledged shared competences between the EU and the Member States in two areas, namely portfolio investment and investor-state-dispute settlement, the latter a topic that had become highly controversial in public debate. As a result of this, future EU-trade agreements could be routinely »split up« into two separate agreements, with the main agreement falling under exclusive EU competence and the smaller »shared part« having to be additionally ratified by all 28 EU Member States. In the meantime this has happened with the EU-Singapore agreement, where both parties agreed to have a separate investment protection agreement alongside the main trade agreement. A second option, at least in some cases, would simply be to have no agreement on investment protection at all. The clarifications brought about by the Singapore ruling should also lead to an increasing awareness of the tasks, competences, and opportunities to influence policy decisions that both the European Parliament and the German Bundestag have when it comes to trade policy.

While the European level is responsible for negotiating trade agreements, the design and the implementation of the necessary flanking policy measures fall within the

competence of the Member States. Trade policy must be supported by, for example, education and labour market policies, by structural and redistributive policies, as well as by trade promotion. Such policy measures are vital in order to prevent, or at least mitigate, the negative consequences of countries opening their markets and to be able to take full advantage of the new opportunities that arise from trade agreements.

### Between the Winners of Globalisation and Greater Prosperity for All

Unregulated economic globalisation has resulted in a growing concentration of income and wealth among capital owners and top income earners who account for a disproportionately large share of the »gains of globalisation«. This applies as much to strong export-led advanced economies, such as Germany, as to developing and emerging economies. As a consequence, over the past few decades a global elite has emerged comprising the winners of globalisation, the »one per cent« whose influence, including over political authorities and democratic institutions, is constantly increasing. It has been made a lot easier for companies to invest abroad. This has boosted their bargaining power over workers and trade unions, with the result that the threat of companies withdrawing from a country has a disciplining effect on the nation-states. In the »locational competition« for trade and investment and in their efforts to »maintain and improve international competitiveness«, governments feel constrained to follow the ruling macroeconomic policy paradigm.

Thus, in the rich countries, it is mainly the lower-skilled workers – those who are particularly vulnerable to wage competition from low-wage countries – who are the losers of globalisation. Over the past decades, real income has stagnated in many OECD countries, including Germany; in some countries even declining in absolute terms. This remains true even if we account for the benefits to consumers provided by cheaper imports. Where whole industries are affected by competition from cheap imports, frequently entire regions suffer from forced structural change, and are cut off from the economic development of the rest of the country.

In the poor and the emerging countries, too, the advantages of globalisation fail by far to benefit everyone.

The substantial absolute income gains are enjoyed predominantly by a small upper class comprising traditional but also new elites. Moreover, particularly in the larger emerging economies in East and South-East Asia, a new global middle class has recorded substantial relative income gains, albeit from a low starting point. Although there are now many countries with a growing middle class, the problem remains that so many people are forced to live on or even below the bread-line and are unable to benefit from economic liberalisation.

This underlines just how necessary it is, on the one hand, to manage the processes of globalisation more vigorously using international regulations and, on the other hand, put national policies in place to flank these rules. Policy makers must strengthen the capacity of states – and those of trade unions – to shape such processes again, both through international coordination within fora such as the ILO, UNCTAD, WTO, and G20, and in the context of trade agreements, for instance by incorporating labour standards. Ideally, and while allowing for the different levels of development of countries, policy changes must aim for a level playing field of high labour standards and workers' rights in order to move away from competition over wages and employment conditions towards competition based on innovation, quality, and productivity growth.

### Between Multilateral Rule-making and Bilateral Preferentialism

Global trade is based on the international regulatory framework governing cross-border trade in goods and services codified within the World Trade Organization (WTO). In the WTO, each of the current 164 WTO member states has a single vote, irrespective of its economic size or importance, and decision-making is consensual. The WTO is the only international organisation that has a highly respected dispute settlement mechanism which is frequently used by its members and whose arbitration rulings are for the most part observed and implemented. The process for resolving trade disputes is seen by many as the WTO's most important success to date, whereas the WTO as a negotiating forum for continued trade liberalisation and market integration has been in crisis now for many years. Since the early years of the new millennium, the dynamics of multilateral negotiations have changed completely. Before, it was mainly the EU and



the USA who dominated talks. The increasing influence of developing countries and emerging economies has brought to the fore the conflicting interests which have persisted in the WTO since it was created. The Doha Development Round, the first round of multilateral negotiations under the aegis of the WTO, officially launched in 2001, quickly stalled due to its complex negotiation agenda. Indeed, the original approach taken in negotiations – that new rules must be agreed collectively in an indivisible package («single undertaking») was de facto abandoned some time ago already. Now, an incremental approach is taken to negotiations and solutions to individual issues in the Doha mandate are sought. However, to date the only agreement with any influence that will result in substantial cross-border trade facilitation and cost savings is the Trade Facilitation Agreement, which was agreed in Bali in 2013 and entered into force at the beginning of 2017. The farther-reaching attempt to put what are referred to as «new issues» such as digital trade on the table has been unsuccessful due to resistance from many developing countries, which insist that the prerequisite is the conclusion of the Doha Round. Finally, with the new US administration under President Trump, the multilateral system has come under serious additional pressure, albeit in other, very different ways.

Due to the deadlock in the WTO and pressure from strong trading powers, the trend toward bilateral and regional trade agreements, or preferential agreements, has become more pronounced. Almost 300 WTO-registered agreements of this kind are currently in force. There are quite pragmatic reasons for this: it is much easier to achieve results as well as to draw up innovative trade policy regulations in a bilateral context or among a small group of states with common interests than in a multilateral context. In particular, regulations which are technically complicated, affect other policy fields, and at the same time seriously impinge on countries' sovereign rights require a certain level of mutual trust that simply does not exist on a multilateral level. Essentially, however, all exclusive regulations, where negotiations have only involved a small number of countries, carry the risk of disadvantaging those countries which have not participated but which may as well be directly or indirectly affected. On the other hand, trade rules and market openings negotiated on a regional or «plurilateral» level can also benefit third parties provided that, based on the most-favoured-nation (MFN) principle, the signatories also unilaterally extend the agreed trade con-

cessions to third countries without the latter having to reciprocate, or at least keep the option of subsequent accession open.

Although the trend towards new bilateral and regional agreements is likely to continue apace, if only for reasons of geo-economics and power politics, one of the key trade policy objectives is still to maintain and strengthen a rules-based, multilateral trading system that does more to counteract power asymmetries. This is certainly in the interests of the many smaller countries and developing countries in particular which, thanks to the consensus principle, are in an infinitely better negotiating position in a multilateral context. This is also necessary to prevent a new fragmentation in today's globally interconnected economic areas and ensure that trade disputes continue to be settled in a fundamentally fair and objectively sound manner. However, given the current ongoing deadlocks, it is becoming clear that new issues will be driven predominantly by coalitions of like-minded states and will generally culminate in agreements which (at least initially) not all WTO member states will be part of. Difficulties and challenges will be encountered when trying to design these agreements in such a way that they adhere to the WTO regulatory framework, do not place other countries at a disadvantage, enable subsequent accession, and can thus act as a basis for subsequent multilateral rules.

### Between Economic Objectives and Sustainability

To date, issues of social justice, environmental sustainability, or cultural diversity have either not featured at all or only played a marginal role in the actual design of trade policy. The strong emphasis on purely economic criteria is not consistent with and indeed undermines other social objectives.

In New York in 2015, the United Nations adopted 17 Sustainable Development Goals (SDGs), thus creating a common overarching framework. The SDGs represent a commitment by all actors – states, institutions, and individuals – to develop coherent policies to contribute to economic, social, and environmental sustainability. The purpose of trade policy should be to further these goals.

The Sustainable Development Goals seek to strike a balance between the different dimensions of development

and ensure that they are ranked equally. This includes ensuring that gender equality is factored in to every policy field and a gender-sensitive approach is taken to political decisions. For EU trade policy this means that existing instruments must be applied more effectively or redefined entirely. For instance, although Sustainability Impact Assessments (SIAs) are carried out for all EU trade agreements, in political terms they currently play only a minor role. Even within the framework of the General Scheme of Preferences (GSP) for developing countries, too few incentives are provided for countries to develop socially and environmentally sustainable as well as gender-just policies.

The relationships between trade policy and migration are very complex and there are generally no simple explanations for migration movements. However, it is important to identify approaches that could enable us, in future, to prevent potential negative effects of trade liberalization that may force people to migrate. At the same time, we must use opportunities to reinforce the positive effects of trade agreements more effectively so as to increase employment in partner countries.

If we were to resolutely pursue the SDGs, this would help overall at least to reduce the existing contradictions in the development cooperation between industrial and developing countries. This applies, for instance, to the EU's fishery and agricultural subsidies. The SDGs also call for more freedom in defining and pursuing national policy objectives such as the development of domestic industries or the implementation of standards. For poorer countries, this should mean, for example, that they would be allowed – within the framework of WTO rules – to use subsidies or targeted import and export restrictions as industrial policy tools. Moreover, their policy space should not be overly restricted by bilateral free trade agreements. What has to be tackled as a matter of urgency is the imbalance in world trade to the detriment of the poorest countries. This was already acknowledged in the WTO Ministerial Declaration in 2001.

Sustainability must become the most important guiding principle not only in cross-border trade in finished goods. Supply chains and value chains within transnational company and production networks are increasingly defining the global economy and thus also global trade flows. However, the regulations needed to establish a framework for social and environmental sustainability in global production processes have, so far, not been able to keep pace with changing forms of production. The fact that a country is integrated into a global supply chain, in other words that it manufactures one or several parts of a particular good, does not reveal anything about either the quality of the added value or the contribution to sustainable development. Although Asian countries are most likely to benefit from being integrated into international trade, even they are frequently involved in production processes which barely allow them to add value. Contract manufacturers in developing countries are often faced with strong competitive pressure from within their own country but also from neighbouring countries; low wages and inhumane working conditions are frequently the consequence of this. This situation is caused, on the one hand, by tough competition between international corporations, brand manufacturers, and major retail chains which act as lead firms in global supply chains, and, on the other hand, by the massive power disparity within value chains that allows them to dictate prices to their suppliers. The suppliers, in turn, are forced to continuously lower the costs of production, for example by lowering employment standards in their production plants. Ultimately, it is the workers who have to pay the price. Also, the integration of developing countries in such global supply or value chains remains highly uneven. Sub-Saharan African countries in particular barely participate in industrial value chains at all.

A sustainable trade policy must contribute to improving the life chances, particularly of young people, in developing countries and emerging economies and much less so to increasing the power and wealth of already rich and influential elites.

## Guiding Principles for a Social Democratic Trade Policy

For German social democracy trade policy is a key instrument for shaping globalisation. Trade policy must be based on fair multilateral rules and incorporate all aspects of sustainability, particularly social and environmental sustainability. Economic aspects have taken priority for far too long. Germany relies, more than almost any other country, on open markets and a well-functioning global economy, in recent years deriving particular benefit from the further integration of global markets. However, parliaments and governments must impose rules on the markets and, in order to be able to do so, they need to secure political room for manoeuvre and opportunities for democratic participation.

Trade policy has an impact on the everyday lives of many people – in Germany, and indeed the world over. Social democratic trade policy is, therefore, not an end in itself but serves broader objectives. Our trade policy is geared towards the United Nation's universal Sustainable Development Agenda (2030 Agenda) and seeks to contribute to achieving the agenda's goals (SDGs) as well as those of the Paris Agreement on climate change. Trade policy therefore cannot stand alone but must be embedded in a comprehensive strategy that also includes policy changes in, among others, the following areas: regulation of financial markets; agricultural policy reform; industrial, labour market, and structural policy approaches; and education, environmental, and development policy. Trade policy is within the exclusive competence of the EU. The European level and European policies are therefore of particular significance. Here, the foundation of all policy changes must be the further social integration of Europe, something social democratic parties all over Europe are fighting for.

Social democratic approaches differ fundamentally from that of free-market liberals: we believe that trade rela-

tions must follow politically defined rules. We want a fair and democratic trade regime. For us, this means a trade regime in which the goods that are traded on our markets are produced under fair social and environmental conditions and human rights are respected; in which we strive to safeguard and improve the development prospects of our trade partners in the global South; in which trade strengthens rather than undermines rights; in which the government's capacity to provide public services both here in Germany and in our partner countries is not restricted; and in which we give multilateral approaches precedence.

However, an equitable trade regime cannot develop behind closed doors: secret negotiations have damaged the public's trust in political processes and the acceptability of trade. Thus, it is not only the content of trade agreements that has to change but the whole negotiating process. Social democratic trade policy therefore also comprises transparency in terms of content and the people involved in a trade negotiation. On this basis, it includes public debate on trade policy objectives as well as a strong involvement of parliaments in the negotiating process.

What we need, therefore, is a new trade policy, one which rebuilds trust, strengthens democracy and the rule of law, and enforces justice. This will not necessarily be a straightforward task or one without contradictions. However, social democracy was often successful in the past when it was active at the interface between different forms of political, social and economic logic. This ability to think and act together is now in need of renewal, also with regard to international trade policy. And this challenge can only be met in alliance with others, with our partners in Europe and in international institutions, with trade unions and NGOs.

## A Social Democratic Reform Agenda

### 1. An Inclusive and Solidarity-based Approach to Redesigning the Trade Architecture

#### *Multilateral and Plurilateral*

The WTO must retain its central role in the international trading system as a monitoring, enforcement, and dispute settlement body. Owing to its multilateral structure, the WTO also ensures equality between poorer and richer countries at the negotiating table. Trade policy must not be power-based but instead rules-based. A strong WTO is needed to ensure this.

However, this does not answer the question of whether rules that have been agreed on are always expedient and fair, or at least up to date. For example, the extent to which countries, particularly from the developing world, should be granted some wiggle room to interpret rules and the space for defining and applying their own policies («flexibilities») is one of the key questions and bones of contention. In this context, despite the sustained criticism of many of the existing WTO rules, its two-stage dispute settlement mechanism has, on the whole, proven to be an accepted authority in regulating trade disputes. This mechanism plays an important role in ensuring that markets remain open and cross-border trade adheres to the mutually agreed rules. At the same time, the dispute settlement mechanism prevents the fragmentation of the international trade system. Having said that, ever since the US administration began to systematically block the regular appointment of judges to vacant positions in the WTO Appellate Body, it has been less and less capable of pursuing cases. Resolving this stalemate is at present the most pressing challenge facing WTO member countries.

Against the backdrop of the deadlocked trade negotiations and in parallel with the ongoing multilateral negotiations on the traditional Doha themes, coalitions of states with the involvement of the EU are now also increasingly initiating talks on new topics that not all WTO member states are interested in pursuing. In recent years, many countries have shown an interest in WTO negotiations being conducted on new areas of regulation such as investment or digitally-enabled trade.

So-called «plurilateral agreements» could supplement the tough multilateral negotiations in some fields or, in some cases, even replace them. Two recent precedents are the Information Technology Agreement (ITA-2) concluded in 2015 at the WTO Ministerial Conference and the planned Environmental Goods Agreement (EGA) under negotiation until talks were suspended in December 2016.

An important point here is that plurilateral agreements with EU participation must always be negotiated as «open» plurilateral agreements, in other words on the basis of the most-favoured nation principle and under the auspices of the WTO. Where issues of market access are regulated, agreements of this type would generally only come into force once a «critical mass» (80 to 90 per cent of global trade in the goods or services covered by the agreement) has been reached. This prevents important market participants from profiting from the agreed trade facilitations as «free riders» without having to make any trade concessions themselves as contracting parties.

From a development policy perspective we should seek to involve as broad and as representative a group of developing countries as possible in such plurilateral negotiations. In addition, the available expertise in international organisations should be harnessed much more systematically. Organisations such as the WTO, UNCTAD, ITC, ILO and possibly other international organisations should cooperate more closely. For example, it could become mandatory to have representatives of the ILO and UNCTAD participate in multilateral (and plurilateral) trade negotiations in a consultative capacity.

In contrast, «exclusive» agreements which are not open to all WTO member states and thus contribute to the fragmentation of the international trade system should, in principle, be rejected. One such exclusive agreement would be the Trade in Services Agreement (TiSA), at least as it had been conceived so far. Until they were suspended towards the end of 2016, the TiSA negotiations had been held largely in secret and outside the context of the WTO.

*Bilateral/Regional and Unilateral*

A major challenge related to negotiations for bilateral and regional agreements is how to achieve a better balance between the benefits for member states and the risks for third parties and the multilateral trading system as a whole. For the EU, this means making sure that such preferential agreements are open and accessible to third countries, as the only way to reduce such risks. Important tools for this are, for instance, accession clauses for third countries and transparent regulatory cooperation. Only where no progress can be made within a multilateral framework should EU trade policy be able to switch to bilateral and regional agreements. Here, the basic principle must be, firstly, that the respective trading partners commit to high standards and, secondly, that joint efforts to improve labour law and environmental and consumer protection standards are clearly set out in the agreement. Also, it must be ensured that the EU's precautionary principle will not be restricted in any way by such bilateral or regional trade agreements.

Within the framework of its General Scheme of Preferences (GSP), the EU grants poorer developing countries (»low« and »lower middle-income countries«) unilateral tariff preferences for certain goods, going as far as to grant duty and quota free access for Least Developed Countries (LDCs) to the EU markets for everything apart from weapons within the framework of the »Everything But Arms« (EBA) initiative. To make it easier for countries to take advantage of the market access offered, various steps should be taken, including further simplifying the rules of origin and extending the cumulation of origin to components from developing countries.

Under the current administration, the US no longer plays its traditional key role in shaping international cooperation and governance regimes. Other actors will fill the resultant gap. This presents both risks and opportunities. It means that the EU will have to play a more active role in shaping the international trading regime, in particular on a multilateral level. From a social democratic perspective this must include a further reform of EU trade policy along the lines of the guiding principles outlined here. In connection with this, if Germany and the EU are to be able to achieve their newly defined trade and global policy goals, they must also be open towards new, reliable cooperation partners.

## 2. Strengthening Democratic Processes and Transparency in Trade Policy

Democratic participation in trade policy is vital for the future of trade agreements: if the latter are to win acceptance and achieve democratic participation, who should be involved and how much say should they have? Debate over how we want to live in the future should not be left to executive bodies and authorities; parliaments with the directly elected representatives of the people are the place where these discussions have to be led and decisions taken.

Parliaments should therefore make full and active use of the opportunities for democratic control of the EU Commission and the Council of Ministers provided within the framework of the 2009 Treaty of Lisbon. On the one hand, this requires the European Parliament's rights of control and participation to be further reinforced and, on the other hand, it requires the national parliaments to be fully informed and participate actively. In addition, we need to ensure that the public receives far more in-depth information and has better participation opportunities and rights.

This includes the timely publication of all the EU Commission's fundamental negotiating positions during ongoing negotiations – and, in the spirit of transparency, ideally the positions of the relevant trade partners, too. In addition, it includes greater participation by the European Parliament's elected representatives already ahead of negotiations. The European Parliament's transparency initiative has already begun to pave the way for this: in future, the EU Commission will be publishing all the drafts of its negotiation mandates. Increased participation should entail Member States, in future, being obliged to wait for the European Parliament to adopt a formal position before deciding on a negotiating mandate. The European Parliament should then also have access to this mandate. One proposal that goes beyond this is that, rather like in the co-decision procedure, the European Council and the Parliament should decide jointly on the granting of mandates, with the mandate being published promptly after adoption.

It must also be ensured that, during negotiations, the European Parliament is granted full access to all negotiation documents and a regular exchange of information takes place with the Member States and European Com-

mission. These are the prerequisites for the European Parliament to be able to critically monitor and effectively influence ongoing negotiations, as is necessary.

Nevertheless, for trade policy measures to be acceptable in an age of »deep trade agreements« and greater Euroscepticism, active participation by Member State parliaments is more pressing than ever before. The German Bundestag committees should therefore make more active use of the opportunities for participation set out in the EU treaties and regularly request information from the German government on the status of ongoing EU trade negotiations and adopt a position on them. Particularly in a policy field where the EU holds exclusive competence, it is important that the Bundestag properly fulfils its oversight function by laying down guidelines for the Federal Government which can then be presented via the EU Council of Ministers as the German position in the negotiations. The Bundestag should therefore already become involved even before a negotiating mandate is issued and should give the German government specific instructions regarding the German position.

However, in this day and age, the parliamentary process alone – whether at the EU or at the national level – will, in all likelihood, not be enough to generate the necessary acceptance for trade agreements that are contentious both in terms of their content and their effects. The debate on the TTIP and CETA bears witness to this.

In future, therefore, not just economic interests but also other social interests and views must be adequately taken into account in the negotiation process. The EU Commission must ensure balanced participation of stakeholders, both prior to the opening of negotiations and during them, as well as in the implementation of agreements.

### 3. Promoting and Enforcing High Labour Standards

To prevent a locational competition among countries for trade and investment that is to the detriment of the workers, high labour law standards are an essential element of fair globalisation.

The standards established by the ILO – in particular, the eight core labour standards – represent a glob-

al frame of reference for labour legislation. However, these standards are not yet part of the WTO's regulatory framework. Nevertheless, labour standards are increasingly being included in bilateral and regional trade agreements negotiated by the EU, the USA, and a number of other countries, frequently with reference to the ILO core labour standards. For all future EU agreements, not only will ILO standards always have to be accepted as universal worker rights by the respective trading partners; more importantly, all eight core labour standards will also have to have been ratified before an agreement can come into effect. Beyond that, there is often an absence of regulations on how to sanction violations of these standards. Given that the ILO itself has no binding and effective sanction mechanisms, it is essential from a social democratic perspective to, firstly, incorporate provisions for the comprehensive protection and effective implementation of substantive labour rights in bilateral and regional trade agreements, and, secondly, to provide for the possibility of financial compensation for certain serious violations of the agreed standards, with funds being used for the benefit of workers in the country, where the violations have occurred. Moreover, protected labour standards should go beyond the ILO core labour standards and also include standards for occupational health and safety, living wages, and reasonable working hours, all of which have been frequently neglected to date.

#### *Participation of Trade Unions and Civil Society*

In the area of labour standards, the EU's dialogue-based, consensual approach to partner countries in bilateral trade agreements, introduced in 2007, has yet to satisfactorily improve the situation for workers. Thus, in future, it must be mandatory to involve trade unions and other civil society organisations in the implementation of agreements. Future agreements must therefore provide for substantially better opportunities for participation. In many countries, trade unions enjoy no or insufficient protection, let alone rights of co-determination or the opportunity to defend their rights before an independent court of law. Promoting strong representative structures of workers at company levels and free trade unions, as well as ensuring sufficient legal, policy and participatory space for civil society must be key components of a progressive trade policy. The permanent expert group comprising representatives of civil society organisations and

the social partners that was recently established by the EU is a step in the right direction. It has to be ensured, however, that the members of this expert group have full access to all of the negotiating documents and that objections and opinions are in fact incorporated into the positions and specific decisions taken during negotiations. This participation must also continue as part of the implementation process once the agreement has come into effect. However, only if genuine social partners and independent NGOs are represented in advisory bodies created by an agreement (such as the Domestic Advisory Groups; DAGs), and only if they also have the tools to trigger action against treaty violations (e.g. violations of agreed labour standards), will trade agreements be able to help improve the situation.

#### *Enforcing Standards via Dispute Settlement*

Consultation and participation will not suffice if there is no further process to penalise violations of workers' rights. In future, effective dispute settlement mechanisms must be put in place alongside existing cooperative approaches. Moreover, procedures for breach of contract regarding the violation of agreed labour standards that can be initiated by trade unions must also be put in place.

For this purpose, two procedures must be integrated into all new EU trade agreements:

First, in addition to the customary intergovernmental dispute settlement procedure in bilateral and regional trade agreements, an additional independent panel of experts, specialising in labour standards, must be created. This panel of experts will be invoked by the signatories in the event of suspected breaches of contract and will have the authority to make legally binding decisions which, on a case-by-case basis, could go as far as imposing trade sanctions as a means of bringing pressure to bear on the wrongdoers to implement the changes called for by the arbitrators. Sanctions could take various forms, depending on the partner country in question, and could even go as far as suspending agreed trade preferences, for instance by temporarily suspending customs duty exemptions for certain goods.

Second, there should be a collective complaints procedure to give trade unions the opportunity to demand

compliance with the labour standards incorporated in the trade agreement and to claim compensation for the workers they represent. After exhausting all national judicial remedies, the trade unions should be able to invoke a legal review of breaches of the agreement by the panel of experts. This panel could award the complainant – or, in other words, the workers represented by the complainant – fair monetary compensation, which could be directly enforced by the courts of both contractual parties. This process would provide workers with the necessary tools to proactively enforce their rights in the framework of bilateral and regional agreements.

Both of these procedures should be structured such that they assist the cooperative implementation of the labour chapter of the agreement where relevant and, should there be insufficient willingness to cooperate, they could ensure that the labour standards in the agreement were adhered to.

Within the WTO, developing countries have prevented the matter of labour standards from being put on the agenda. The concerns of poorer countries that high standards will make their access to foreign markets more difficult must be taken seriously. Adhering to and raising standards is often difficult, especially for poorer countries because the existing financial, institutional, and personnel capacities are frequently insufficient. On the other hand, the ILO core labour standards must be seen as universal workers' rights that are globally recognized and must be implemented. This means that in the labour chapter of EU trade agreements with developing countries, substantial country-specific obligations must be tied to firm commitments to support the development of local capacities to enforce and implement labour standards.

Last but not least, promoting the improvement of and adherence to labour standards must also be a priority where EU trade relations with a developing country are not regulated by a trade agreement but where the EU has granted its trade partner nonreciprocal tariff exemptions within the framework of its General Scheme of Preferences (GSP). These exemptions are granted under the proviso that human and workers' rights are respected and solid enforcement mechanisms are in place in the event of serious violations. What is important, however, is that the European Commission finally makes use of these mechanisms. This applies in particu-

lar to those countries which have joined the »GPS+« regime. Since 2006, under a special regulation, the EU has also granted non-LDC developing countries tariff exemptions for approximately two-thirds of all tariff lines, provided that, in return, these countries commit to ratifying and implementing a total of 27 international conventions in the areas of human rights, labour and environmental standards, climate change, and good governance. Here, too, partner countries need more assistance in implementing and monitoring the fulfilment of these obligations.

In December 2017, the European Parliament adopted an updated anti-dumping methodology, among other things to protect the compliance with labour and environmental standards against cut-throat competition based on the violation of such standards. An important novelty here was that, when calculating the damages suffered by European industry, any costs incurred for compliance with labour and social standards that are higher than those of the exporting country will be factored into the damage calculation. The ratification of basic labour and environmental protection standards by a country is now also a criterion for the acceptance of undertakings by exporters from this country, once the existence of dumping has been established, henceforth to export to the EU at agreed minimum prices instead of being saddled with punitive tariffs.

Although it remains to be seen what the practical effects of this will be, it does send quite an important signal against a trade policy »race to the bottom« in labour and environmental standards.

#### 4. Protecting the Rule of Law by Balancing Investor Rights with Investor Obligations

Economic actors want legal certainty. In countries with weak legal systems, investors have an understandable interest in basic protective rights for their investments being created through intergovernmental agreements. Conversely, in states with a functioning rule of law, such as EU Member States, there is no justification for giving foreign investors special rights that completely bypass the national legal system. Investors have been increasingly using these clauses to interfere in legislative processes and other due processes if they perceive their interests as being jeopardised by government regula-

tions. Companies around the world are now filing 60 new claims against states in private arbitration tribunals every year. A number of countries have announced that they will withdraw from existing investment protection agreements or will not conclude new investment agreements if they contain an investor-state dispute settlement mechanism. Political decisions made by democratically legitimate actors should not be allowed to be undermined by foreign investors being granted special privileges to sue governments.

European social democracy demands that the old arbitration system be removed from EU Member States' existing bilateral investment agreements as well as from the EU Energy Charter, and that these agreements be overhauled accordingly. The ECJ Achmea ruling, which stated that the bilateral agreements between individual EU states were incompatible with EU law, confirms this position. The Investment Court System (ICS) proposed in the CETA trade agreement is a step in the right direction: publicly appointed judges should provide for more independence, legal proceedings must be conducted transparently, and there should be the option of reviewing a decision. Here, however, it is important to ensure that this system does not infringe the authority of the ECJ to deliver judgments as a final court of appeal and to interpret EU law. Moreover, the ICS should contribute to better protection of a government's right to regulate in order to guarantee not only the protection of investment and property but also public interest regulations.

However, a reform of international investment protection must go further than this. As well as procedural improvements, which is primarily what the ICS proposal is offering, the substantive protection standards also need to be overhauled. This should ensure that the level of protection does not exceed that of domestic investors. Moreover, specific areas such as labour and social law as well as public services must be permanently exempt. In general, national improvements in social and environmental standards, but also measures to comply with international obligations, such as towards climate protection, must be exempted from any legal action from investors. Also, cultural markets, which are often very small and in many cases linked to a local language, require special protection.

Moreover, a redesign of trade policy must also be used to tie investor protection rights to binding investor obli-



gations both when reforming existing investment agreements and when concluding new ones (or investment chapters in new trade agreements). Apart from the obligation of foreign investors to comply with the laws and regulations of the host country when implementing an investment project, something which is already part of many agreements, there are further obligations that should be incorporated into future agreements. These relate to a variety of issues and should include: an explicit ban on bribery payments and the fulfilment of certain transparency requirements (especially in the extractive sector); duties to comply with tax laws and to desist from certain tax avoidance practices as well as from illegal tax fraud, as the most important duties in the field of Corporate Social Responsibility; and, last but not least, the duty to respect labour and environmental standards (including the core labour standards and other ILO conventions), as well as human rights.

Agreements to date have not provided for a reciprocal right of action on the part of the state against a foreign investor. The collective complaints procedure for social partners described earlier would at least give employees of foreign companies the option of filing legal action before a specialised international arbitration panel (panel of experts). Consideration would have to be given to incorporating an independent right of action for affected third parties into investment agreements, should it prove impossible to provide victims of transnational investment projects with adequate access to an international court or the courts in the investor's home state as well as other corrective measures, either by concluding an international treaty on »transnational corporations and other business enterprises with respect to human rights,« as is currently being negotiated at the UN Human Rights Council, or by other means.

## 5. Reducing Current Account Surpluses and Supporting the Losers of Globalisation

Germany has committed to reducing its current account surpluses, both within the framework of the EU and the G20, and its trading partners as well as international organisations regularly remind it of its promise. Inaction on this issue is having a negative impact on Germany's trade relations, provoking counter-reactions, prolonging the Eurozone crisis, and, last but not least, contributing to jeopardising the stability of the global economy.

Since the introduction of the Euro in 2002, every single year, the growth in Germany's exports has outstripped imports, and households, companies, and the government together earned more than they spend (on consumption and investment). This has resulted in a major surplus in Germany's current account which, for many years now, has regularly been far in excess of the permissible EU limit of six per cent of GDP. Such a surplus makes no economic sense and is politically unsustainable.

These surpluses must be reduced. In future, imports must grow more than exports and domestic demand (consumption and investment) must show stronger increases than domestic production. In order to boost demand in Germany and thus also import growth, there must be stronger wage increases. Here, even without impinging on the bargaining autonomy of the social partners, the state could make a positive contribution by increasing the legal minimum wage. A more expansionary fiscal policy would also be one of the most direct measures that would help to reduce Germany's current account surpluses. More public investment in, for instance, infrastructure and education, for which there is currently plenty of fiscal scope, would also contribute to increasing imports.

Private investment is another important instrument with which Germany's export surpluses could be reduced, provided that it is possible to create a new investment dynamic which, in turn, requires more dynamic domestic demand. As part of the imminent transformation towards more environmentally friendly production methods, greater consideration should be given to investment in equipment and machinery, which, at 36 per cent, accounts for a high proportion of imports. A carrot and stick approach could also help to make it more attractive for companies to invest in the renewal and modernisation of the capital stock in line with environmental sustainability criteria.

From a trade policy perspective, the consistently high duties and European subsidies in the agricultural sector should be reduced and non-tariff barriers adjusted. Foreign producers from emerging economies and developing countries should receive support in introducing their agricultural products to the German market. This would not only help reduce the current account surplus. A greater willingness to compromise in the agricultural sector would also improve the EU's position in future

trade negotiations and would lend fresh momentum to negotiations at the WTO or to bilateral negotiations with emerging economies.

## 6. Achieving Social and Environmental Sustainability through a Coherent Trade Policy

The Sustainable Development Goals are committing trade and other policies to contribute to reducing inequality within countries. To ensure that trade liberalisation benefits all people and all groups, free trade agreements and multilateral market opening must be accompanied by instruments in other policy fields. The important areas here are, in particular, education, labour market, economic, and distribution policies. The Sustainability Impact Assessments (SIAs), which are now conducted in the EU for all free trade agreements, are an effective instrument for highlighting risks and potentially conflicting goals. The actual political significance of the SIAs is, however, still only marginal. These analyses should be factored into the design of the agreements. In the event of conflicting goals, it is important to ensure that trade rules are compatible with social and environmental sustainability. For this, binding regulations are required.

This must all be supplemented by positive incentives, e.g., as part of nonreciprocal trade preferences granted to developing countries by the EU. Here, the proposal by the European Parliament to use the revised General Scheme of Preferences (GSP) to grant additional trade preferences, if, for instance, textiles are manufactured in a sustainable manner, should be explored further. This could also be extended to other products if their production methods meet social and environmental sustainability criteria.

## 7. Placing a Stronger Focus on Global Value Chains

Since the late 1970s, the international community has been trying to develop suitable rules to address the challenges resulting from the transnationalisation of production networks. The declaration on the OECD Guidelines for Multinational Enterprises (first adopted in 1976) can be considered the first extensive instrument calling on OECD member states to ensure that enterprises assume

more responsibility. The development of the process at the UN level was more complex, however. Only after several attempts and various initiatives such as the Global Compact (1992) was the UN able to agree on a comprehensive document – the UN Guiding Principles for Business and Human Rights – endorsed in 2011. The document states that advancing human rights in the context of a growing global economy is not a duty that should be ascribed solely to national governments (responsibility to protect) but should also be the responsibility of businesses (responsibility to respect). However, its provisions are not legally binding, a fact that can have dire consequences for those impacted by human rights violations linked to business activities.

Political pressure must be increased to push for rules to be made binding and for rights to become legally enforceable. France has led the way with a human rights due diligence law. The European Parliament too – responding to pressure from the social democrats – passed a Conflict Minerals Regulation in April 2017, thus expressing its belief that global economic activity can only lead to sustainable development if there are legally binding regulations.

The EU and its Member States must also strongly support the continuation of what is referred to as the UN Treaty Process, which calls for a binding instrument at UN level, so that it can ultimately lead to binding rules. The EU and its Member States must therefore jettison their previous obstructive attitude in the UN Human Rights Council and contribute constructively to the establishment of an international legally binding instrument for »transnational corporations and other business enterprises with respect to human rights«. These rules must of course also apply to national enterprises.

In order to tackle the imbalance of power in global supply chains, the EU must strongly advocate trilateral talks between trade unions, multinational corporations, and local producers/suppliers. In this context, based on its experience with multi-stakeholder dialogue in the field of sustainability standards, Germany is in a good position to add valuable momentum to the process. Ultimately, it must be made crystal clear that products manufactured under conditions of irresponsible corporate behaviour and exploitation of labour will be banned from sale – on both the European market and everywhere else.

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