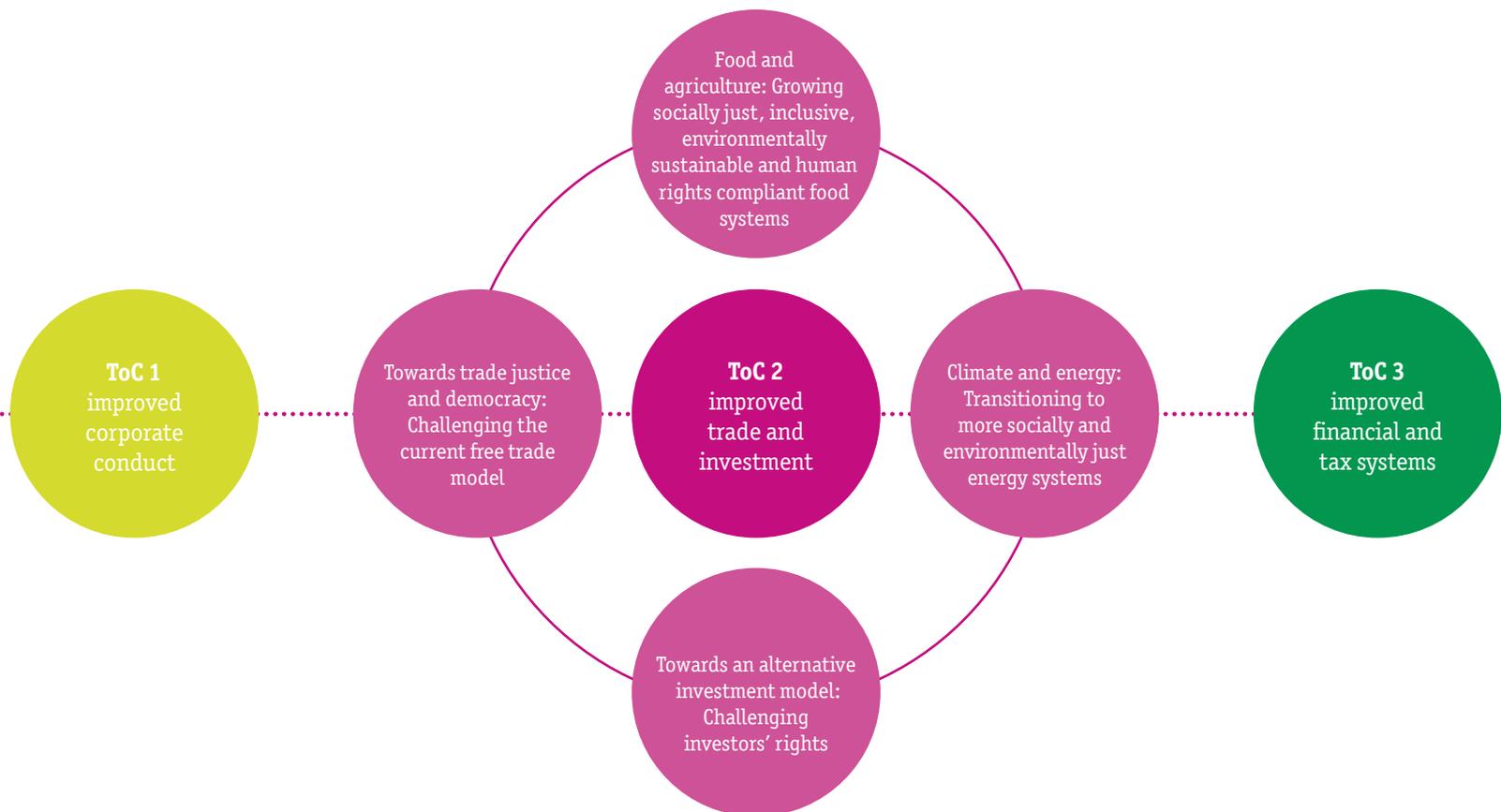


The current state of affairs on trade and investment

The Fair, Green and Global Alliance's interpretation of its
ToC2 baseline study

In January 2016, the Fair, Green and Global (FGG) Alliance (ActionAid Netherlands, Both ENDS, the Clean Clothes Campaign, Milieudefensie (Friends of the Earth Netherlands), SOMO and Transnational Institute) has entered a Strategic Partnership for Dialogue and Dissent with the Dutch Ministry of Foreign Affairs. This partnership is aimed at contributing to socially just, inclusive, environmentally sustainable societies within three interlinked leverages, or Theories of Change (ToC):



Between January and July 2016, a baseline study of ToC2 was carried out by Context, international cooperation. This study, which was organised as a context analysis and stakeholder review, aimed to clarify the current state of affairs of trade and investment policies and treaties as well as policies impacting trade and investment; the status of relevant policy processes, incl. current legislation, policies and (supposed) policy intentions among relevant actors, with regard to trade and investment policies as well as policies affecting trade and investment; the space available to Civil Society Organisations (CSOs) to intervene in these policy processes; and how the main assumptions in FGG's Theory of Change on trade and investment could be tested throughout the programme.

The baseline study was developed in a participatory process, whereby FGG Alliance members were asked to write concept notes, participate in two rounds of discussions, provide additional written inputs and give feedback to the draft report. Context, international cooperation combined all inputs from the FGG Alliance members and used desk research and interviews with FGG partner organisations, academics, Northern and Southern CSOs and representatives of European governmental bodies, to triangulate, update and find references for the common understanding of the FGG Alliance. Gaps and other questions were researched further, based on desk research and interviews with external experts.

This summary contains information found by the researchers. The contents of this summary do not necessarily reflect the position of the FGG Alliance in these matters. This summary does give an overview of what we as FGG Alliance consider the most important and relevant outcomes of the study. The full reports (including lists of abbreviations), along with a management letter, which includes a response of the FGG Alliance to the study reports, can be found on the [FGG website](#).



1. The baseline on the FGG Alliance's Outcome Areas

The FGG Alliance has defined six Outcome Areas that together and in an iterative process lead to improved trade and investment. Respondents to the baseline confirmed the urgency and importance of working on each of these areas in order to achieve the FGG alliance's Theory of Change. Some major insights resulting from the baseline for each of these Outcome Areas are:

A **enabling environment**

notably through mechanisms to inform local communities of their rights, to ensure access of civil society to decision-making processes and to set the stage and rules for democratic and transparent negotiations on policies. Most respondents mention the shrinking space for policy influencing by civil society as a major challenge that must be addressed. Unequal power relations go hand-in-hand with disparity in knowledge and access to information.

C **alternatives developed**

for current trade and investment models whereby many respondents express the need for more, and more advanced research on trade models, and to have alternatives piloted and promoted by FGG member organisations and civil society actors. Respondents also indicated the need for research on innovative approaches and techniques of community controlled renewable energy systems, approaches to climate change resilience as well as sustainable food and agriculture systems.

E **policies changed**

and improved policy coherence for development can often only be achieved after long and complex processes of influencing and pressurising different actors. The complex trade treaties and investment agreements generally cover far more aspects than merely issues of trade and investment and a prolonged and detailed follow-up of such processes is required.

B **capacities strengthened**

notably of civic actors in North and South both in terms of technical subject matter as well as the process of negotiations and communications. Southern partner organisations consider this aspect the most important focus and outcome area for FGG in the years to come.

D **agendas set**

whereby mechanisms are put in place to ensure that grassroots CSOs and local communities are involved in determining the focus in policy areas and that the agenda is informed by local needs. Coordination with social movements and other NGOs is needed to set a common agenda whereby many sources refer to the example of the European movement against TTIP.

F **practice changed**

including the need to have legal and (independent) judiciary systems put in place, to set institutional arrangements, and address capacity development so as to bridge the gap between policy change and practice change.

2. Mutual capacity development for improved corporate conduct

Mutual capacity development in the FGG programme

The FGG Alliance defines mutual capacity development as a process of strengthening skills, knowledge and network contacts, involving FGG Alliance members, Alliance partner organisations (CSOs) in LLMIC and other countries, and key networks and their members as equal partners. FGG Alliance members and partner organisations are all part of the same global network contributing to a socially just, inclusive, environmentally sustainable world, by combining their complementary roles, locations, expertise and capacities, and by mutually enforcing capacities to better lobby and advocate.

Capacities are strengthened through:

- Direct capacity development: trainings, workshops, et cetera, contributing to knowledge and organizational capacity;
- Indirect capacity development: mutual learning, skills development and strengthened network contacts through joint research, lobby and advocacy processes and collaboration;
- Capacity development as a result of lobby and advocacy efforts and results: capacity development can be a result of changes achieved through the FGG programme, or in general efforts made to influence policies. Programme results regarding, for example, an enabling environment for civil society might contribute to increased legitimacy and credibility of FGG partner organisations; or policy shifts achieved in the North might open new opportunities for Southern partners to influence international policy or their own governments.

Mutual capacity development is an integral component of the FGG programme in general and ToC2 specifically. Mutual capacity development in the FGG programme is geared towards contributing to the advocacy, research and networking capacity of FGG Alliance members and their partners. A separate baseline study has been carried out of mutual capacity development, between March and July 2016. This study shows that, when it comes to Improved Trade and Investment, the current state of capacity is as follows:

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FGG Alliance members and their partner organisations are strong at lobby and advocacy, locally, nationally and internationally. Whilst FGG Alliance members have ample expertise in lobby in the Netherlands and EU, their partner organisations have lobbied extensively at national level, and engaged successfully in lobby at international level. Their efforts have resulted in amongst others great attention for TTIP and free trade agreements in general. The FGG Alliance's success is partially derived from its strong ability to adapt to changing circumstances and capacity to connect and mobilise actors working on trade and investment.

Research capacity and thematic expertise in the FGG Alliance is high, especially among those FGG Alliance members and partner organisations that take on a research role in the FGG Alliance. They have ample experience in conducting sound research and bringing their cases to (international) attention.

Access to, and good contacts with, both lobby targets and allies are considered of major importance for the success of the FGG programme, and also one of its main strengths. FGG Alliance members and partner organisations have a foot in the door at government levels, access to decision-makers at several levels, and to the media, and can tap into the resources of and generate support from networks of committed individuals and groups at local level, in the global North and South.

Advocacy capacity

Room for improvement relates to developing effective lobby and advocacy strategies; public campaigning; adequate planning; using effective and innovative methodologies and tools; and building a critical mass (movement building and networking). Awareness-raising, amongst others on complex issues such as trade and investment, is an area of improvement. Opportunities are seen in enhancing North-South linkages, addressing issues at national level in various partner countries, and finding local cases to serve as evidence for the adverse international policies and bilateral negotiations the FGG Alliance wants to address.

Research capacity

Different types of research capacity (e.g. participatory research, policy analysis and gender analysis) could be strengthened among several FGG Alliance members and partners. With regard to expertise, specific needs include knowledge about policy processes and internal dynamics of governments and local communities.

Networking capacity

Despite their already extensive networks, FGG Alliance members and partner organisations still aim to increase their networking contacts, e.g. to increase collaboration among like-minded organisations on trade agreements. Also increased access to decision-makers at government level could help to better deal with or address a lack of transparency in decision-making at government level.

3. The current situation on trade and investment

In addition to the baseline on the FGG Alliance's Outcome Areas and mutual capacity development, a descriptive analysis has been made of the current state of affairs on trade and investment, researched and documented as per the FGG Alliance's thematic working areas:

1. Towards trade justice and democracy; challenging the current trade model

Each and every country as well as each and every regional inter-governmental organisation (EU, AU and the like) is involved in a substantial number of trade and investment processes (BITs, FTAs, IIAs, and so on) that have huge impacts on their societies. Respondents from southern partner organisations argue that the discourse driving these processes is dominated by global (free) trade model thinking; the outcomes often favouring corporate interests over people and the environment. They indicate that (Southern) government bodies are often too weak to resist the corporate sector, at the cost of the environment, labour rights, food sovereignty, social justice, et cetera. As explained by Stop TTIP, an alliance to which several FGG Alliance members belong, the overall priority of negotiating parties to reduce barriers to trade and investment for transnational corporations often overrules the right of states to regulate public policy such as food and consumer product safety, environmental protection, biotechnology and toxic chemical management, investors' protection, financial services and banking, domestic regulation of services, patent terms, and more.

There is increasing attention, not only in the Netherlands, for policy coherence for development (PCD), aiming to address inconsistencies between trade and investment agreements, and social, environmental and governance obligations of countries. Unfortunately governments still fail to achieve PCD, especially (but not only) in aligning outcomes of trade negotiations and FDI policy developments with human rights principles and with countries' specific social and environmental policy objectives. Meanwhile, despite rhetoric about human rights, participation and transparency, space for civil society in these processes is shrinking: unequal power relations go hand-in-hand with disparities in access to information and knowledge.

Despite the complexity of the matter, over the past decade, important issues related to trade and investment have been brought to the spotlight by CSOs. However, most people still have limited information about these policies and their implications for the local economic and social situation. UN sources point to the urgency of working on TTIP and ISDS because of their critical relevance in shaping future standards for such treaties and agreements, as well as processes within the UN in attempts to integrate the SDG agenda into trade and investment policies.

2. Towards an alternative investment model; challenging investors' rights

CSOs increasingly problematize the lack of transparency around trade and investment negotiations. The system, its unequal access and lack of transparency, all favour transnational corporations (both domestic and foreign) over local enterprises.

Both political and public attention for investment policies has grown over the last few years, both in the North and South, particularly focused on ISDS (in TTIP, CETA, et cetera) and the EU's ICS scenario. Particularly non-NGO related respondents indicate that there is a widely shared conviction that the development and implementation of international investment agreements and policies should be reformed. Efforts are made, e.g. by the UN, to promote and endorse more sustainable and fair investment policies and models, though these efforts are diffuse and opinions differ on the way forward. The Dutch government is also reassessing its 'model BIT'.

3. Climate and energy; transitioning to more socially and environmentally just energy systems¹

Transition to socially and environmentally just energy systems implies the further development and promotion of community-controlled renewable energy systems as well as the necessity to phase out dirty fuels. However, developments in trade and investment agreements, and particularly the ISDS clauses therein, severely limit state control over mining and dirty energy extraction and use by corporations.

¹ NB for some of the statements in this paragraph, it is unclear from the baseline studies which stakeholders mainly put forward these perspectives.

Even promising trends of upcoming renewable energy systems display similar characteristics of exclusion and concentration of power and resources, according to an energy expert from Latin America. CSOs see that their space for intervening is curtailed also in new arenas such as the Green Climate Fund.

The link to trade and investment is insufficiently embedded in key energy mechanisms such as the UNFCCC Paris Agreement. In fact, the inherent drive within such agreements to intensify trade only increases demand for (fossil) fuels and extraction, pushing (inter)national policies to facilitate this. Environment- and climate-related risks and impacts of trade and investment policies and agreements are not systematically assessed, let alone taken into account in the actual negotiations. There is a strong need for research and evidence – e.g. on the impact of energy subsidies, articulation of appropriate alternatives and local policies for energy.

4. Food and agriculture; socially just, inclusive, environmentally sustainable and human rights compliant food systems

In many areas in the global South, the position and livelihood of smallholder farmers is under threat by (global) developments in trade and investment, by policy failures to invest in sustainable rural economies and to regulate and transform the agribusiness sector. The human rights perspective is insufficiently mainstreamed in the debate on food systems and food security. In particular, the Right to Food is thought to be an appropriate reference framework for many respondents and partners. The Right to Food framework has also led to new (or revisited) concepts of food sovereignty such as rebuilding local food systems, public stockholding, and local food policy councils in multi-stakeholder settings, thus ensuring that food systems are owned by the people who depend on them.

Many countries in the global South face challenges in land (users') rights and land regulation, including land lease / land grabbing by foreign investors. A worrying new trend being commodification of land whereby land becomes a financial asset; another is that corporations increasingly claim patents on natural resources, challenging communal users' rights to land. All of these are pushing smallholders off their land as well as limiting both access to and diversity of food in the domestic market, according to experts from countries in the global South. Despite the existence of regulatory frameworks and guidelines, implementation and compliance is poor in many areas.

4. Policy processes relevant for the FGG Alliance

The above, far from exhaustive summary of the current state of affairs on trade and investment reveals the diversity of issues covered by ToC2. Given this diversity, also a large number of policy processes are perceived to be relevant for the FGG Alliance and which may inform strategic decision-making in the FGG programme. In order of importance, respondents argue that there are several levels of work on which the FGG Alliance can contribute or influence policy:

1

All respondents refer to various international trade treaties and investment policies that are being negotiated or revisited at country or regional levels. This immediately confirms the importance of supporting **local and national level** policy debates and decision-making processes in countries in the global South. Emphasis was also put on domestic policies related to food and energy systems like policies on agricultural development, biofuels, climate change adaptation & mitigation (INDCs), land use and land users' rights, greenhouse gas emissions, extractive industry, and many more.

Concrete examples of local – national level policies to work on include: GSP, EPAs, countries revisiting IIAs (SA, Indonesia, Brazil, Bolivia, etc.) and various other domestic policies (agriculture, FDI, biofuels, climate change, land users' rights, greenhouse gas emissions, extractive industry, etc.)

2

Strong **local-global linkages**, whereby issues arising at local levels are highlighted and eventually feature on international agendas and vice versa. Particularly Southern respondents emphasise the critical need to develop such linkages and transpose the global agenda to national and local policy settings.

Concrete examples of Civil Society Fora and Networks to work with include: ATM, GMCC, S2B, OECD Watch, IPC, World Social Forum.

3

Policy influencing at **Dutch government** level. Given the direct access of the alliance to this space as well as the relatively important role that the Netherlands plays in international fora and debates on trade and investment, notably within EU, this is deemed critical and relevant. Many also point to the need to focus on implications of Trade & Aid policy frameworks of the Dutch Government that find resonance in areas like public-private-partnerships, top sectors, global value chains and so on.

Concrete examples of Dutch government level policies to work on include: PPP, DGGE, Dutch Trade & Aid agenda, Netherlands positioning in international fora.

4

Trade and investments policy development and the negotiations of trade agreements at the **EU level**. The much debated investor protection policies and mechanisms such as ISDS or the new EU alternative of ICS are deemed to be key targets for civil society action, but equally so are EU's policy developments in many related areas of energy, food, climate change et cetera.

Concrete examples of EU policies to work on include: Trade for All, various EU and FTA individual states, CAP, EU Energy Charter Treaty, EU 2030 Climate Package, Everything but Arms, ICS, TTIP (US), CETA (Canada), EUSFTA (Singapore), BTIA (India), and others.

5

In the **international and global policy arena**, various actors, such as the WTO and the FAO's Committee on World Food Security have a strong influence on how international trade and investment are organised. They strongly determine international trade relations and foreign direct investment policies, and have an impact also on related matters such as climate change, fair and just food systems, global value chains, community controlled renewable energy systems, land grabbing and so on.

Concrete examples of international level policies to work on include: EU-Asian FTA, EPAs, TiSA, CAADP, NAFTSN, ISDS, ASEAN Regional Comprehensive Economic Partnership, Environmental Goods Agreement, NTBs.

Concrete examples of global level policies to work on include: UNCTAD on IIAs, WTO - Doha, GACSA, GVCs, FAO's Global Strategic Framework FSN, CFS, Principles for Responsible Investment in Agriculture and Food Systems, UNFCCC & GCF.

Finally, attention was drawn to a number of **key mechanisms** or themes that are considered to be critical in developing and implementing improved policy frameworks, such as the *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests* or the *Free, Prior and Informed Consent* mechanisms. There is still a long way to go to make these mechanisms work effectively, but they hold potential for adopting principles and internationally accepted standards on how resources should be governed, and can be used as reference in advocacy work on abovementioned policies.

Concrete examples of Mechanisms / Guidelines / Themes to work on include: VGGT, FPIC, RtF, Biofuels, Market based mechanisms for climate mitigation (Blue Carbon, REDD Renewable energy, emission trading, etc.), Sustainable Impact Assessments.