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Impact of Trade and Investment Agreements

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During its II UPR cycle in 2012, India received several recommendations on economic, social and cultural rights related to food security, public health care system, livelihood sources and poverty eradication but it did not receive any recommendation specifically addressing the potentially detrimental impacts of free trade and investment agreements on the protection and promotion of human rights. Emerging trade regime under FTA regime has been termed as biased by Indian civil society groups and their criticism has centered on the critical social areas affected by the business interests such as right to life, food security, labour and work standards and public health care system. These concerns are within the context of articles contained in the United Nations Human Rights Council's resolution, dated 16 June 2011.This resolution calls on that States to ensure that trade and investment agreements do not constrain their ability to meet their human rights obligations (Guiding Principle 9).

INDIA'S TRADE AND INVESTMENT AGREEMENTS

India's engagement in trade and investment agreements has gone up rapidly since 1990s. In addition to its engagement with multilateral institutions like World Trade Organisation (WTO), India has signed a number of bilateral and regional free trade and investment agreements (FTAs) which include liberalization of trade in goods & services, of investment and in addition several non-trade issues such as intellectual property rights (IPRs), government procurement, competition policy, and so on. These agreements operate at multiple levels and make impacts on human rights, especially those of economically or socially weaker sections who bear a disproportionate cost of such agreements. Such agreements also result in the loss of governments' policy space to regulate and implement the welfare measures.

India's Trade Agreements: India signed WTO Agreement in 1995 including 15 other bilateral trade agreements and is currently negotiating 15 more, bringing the total to 30. These include agreements with Sri Lanka, South Asian Free Trade Agreement (SAFTA), Singapore, ASEAN, South Korea, Malaysia and Japan. While the early FTAs were in goods-only but India's recent FTAs are more comprehensive, often referred as Comprehensive Economic Partnership Agreements (CEPA), or Comprehensive Economic Cooperation Agreements (CECA) or Bilateral Trade & Investment Agreements (BTIA).These include goods plus services, investment, IPRs, with standards of liberalization set beyond commitments at the WTO (WTO-plus).

North-South FTAs: Till recently India had signed FTA mainly with partners in developing countries but soon after a shift in trade policy, it started to negotiate and sign agreements with developed countries, known as North-South FTAs. Japan is the one partner country so far while India is also negotiating with the European Union (EU), EFTA, Canada, New Zealand, and Australia.

Mega FTAs: India has also joined negotiations on a mega FTA called the Regional Comprehensive Economic Partnership (RCEP) which also includes the ASEAN bloc of 12 countries, along with China, Japan, South Korea, New Zealand and Australia. This agreement attempts to emulate its more famous but now likely demised predecessor, the Trans-Pacific Partnership (TPP) signed (but not ratified by all) between USA and some of the Asia Pacific countries including 6 RCEP members.

Investment Agreements: India has also signed 83 Bilateral Investment Treaties (BITs) that offer foreign investors strong protection and rights, much above the domestic investors. Most of these include an expansive definition of "investment" and the famous investor-state-dispute-settlement (ISDS) clause that allows foreign investors to sue the government in secret international arbitration cases for any "expropriation" of their (even expected) profits. This covers decisions made by state governments, the legislature and the judiciary and can even include changes in policy regulation such as on environment, public health, taxes, natural resource use, rights of specific constituencies and human rights in general. India is currently trying to renegotiate its BITs based on a new model text that puts in some safeguards and has not automatically renewed 56 of its 83 BITs.

CHALLENGES	ISSUES AND IMPACTS
The Right to Livelihood: Goods Trade Provision: Reduction of import duty, restriction on export measures.	While under WTO, India is allowed to retain import duties up to 113.5% on agricultural products and 34.5% on non-agricultural products but it reduced average duties to 32.7% and 10.1% in agriculture and non-agriculture respectively. India has agreed to cut duties to zero under signed FTAs on 60% to nearly 80% (ASEAN) of its products and is known to be negotiating coverage of 85-95% products to the EU. In RCEP it is expected to open 80% or more of its products to duty free imports from partners, while it may try to offer a bit less to China. An increasing trade deficit in goods shows a threat to its industrialization and job creation. A challenge to agricultural livelihoods is also evident from India's import duty reductions in agricultural products under the WTO, ASEAN-FTA, Malaysia-FTA. India's engagement in global value chains (GVCs), supposedly promoted through its trade agreements, has encouraged lax labour laws in SEZs and export oriented industries such as garments, with increased informalisation, casualisation, gender-based wage disparity, volatility of employments and worsening conditions of work. Weaker and unorganized workers, for example, women, have borne the brunt of such production systems. Recent FTA partners such as the EU is insisting on removal of export restrictions (including quotas and export taxes) on raw material such as minerals and raw products. This will prevent domestic value addition and job creation, by threatening the access to raw material.
The Right to Food : Goods, Investment, Services, IPRs Provisions: Import duty cuts (Goods), Export Measures (Goods), subsidies (Agreement on Agriculture, WTO), standards (Sanitary and Phyto Sanitary Measures) protection of FDI in	India's commitment in its agriculture sector under the WTO is expected to limit and reduce import duties based on set formulae to some maximum level. This will affect policy flexibility to develop key agricultural products and protect farmers' livelihoods. Recently, India faces pressure to open up its agriculture sector (reducing or eliminating duties) under the FTAs with EU, New Zealand and Australia. This will not only threaten domestic production of food but will prevent long term value addition in the agriculture sector. Projections for the EU-India FTA shows huge gains in absolute value and market share for the EU, while India gains marginal value but no increase in EU market share. Being a food-insecure country India can only ensure food security and the RTF if it ensures sufficient domestic production from its 8.2 million farmers.

CHALLENGES	ISSUES AND IMPACTS
land non-agricultural investment), liberalising government procurement of food under PDS (GP) (if India opens up GP)	Indian export potentials are blocked off by high non-tariff (standards) and technical barriers through the SPSM agreement of the WTO. Whereas developed countries like the USA, EU, New Zealand, Australia, and Japan have heavily subsidized their agricultural producers mainly the big agribusiness companies. India's subsidies given through the administered price support of the PDS are being challenged by the developed countries. Despite India attempt to defend essential subsidies for public food programmes, very onerous conditionalities might bring challenges at the WTO. The EU is also asking India to eliminate restrictions on export measures in the WTO and in the FTA. This could mean India has to eliminate export restrictions on food items in years of shortage which could threaten food security and RTF at home.
Right to Health: Intellectual Property Rights (IPRs), Services, others Provisions: Data exclusivity, patent term extension, patent linkage, enforcement measures (IPR) Services Mode 3 or commercial presence (investment)	The TRIPS agreement under the WTO has already made patenting of medicines mandatory in India. This is beginning to raise prices and threatening the existence of the generic medicine industry. The generic medicine industry had developed from a flexible and friendly patent regime in India. The New Patents Act 2005 has changed this. However the Doha Declaration on Public Health still offered TRIPs-flexibilities to protect public health in developing countries. Now the FTAs are being used by negotiating partners such as EU, EFTA, Japan, Australia (in RCEP) to push for high IPR standards through provisions such as Data Exclusivity, patent term extension, patent linkage, and strict enforcement measures that will force smaller medicine producers to unnecessarily repeat and bear the cost for clinical trials, and pay for patent monopolies for longer years. Though India has so far refused to agree to TRIPs-plus measures in its FTAs, it is under severe pressure to agree to the same in some of the FTAs mentioned here. In addition, increased FDI through services trade liberalisation (for example in diagnostics and hospitals) is leading to a severe threat to access to healthcare and treatment; by raising user fee levels, shrinking of access from rural areas (by crowding out public investment), promoting unnecessary and expensive treatment options (e.g. stents).

RECOMMENDATIONS

Conduct ex-ante and ex-post Human Rights Impact assessment of trade & investment agreements by independent commission with participation of civil society experts.

Ensure provisions agreed to are in compliance with recommendations of the HR Impact Assessment and do not violate key Human Rights.

India must not include agricultural products under FTAs where the partner country gives high domestic subsidies on agriculture such as the EU.

Introduce parliamentary oversight.

Conduct consultations with state governments and affected constituencies.

Make public negotiating texts and HR Impact Assessments.

Retain policy (economic, social and environmental) flexibility in trade and investment agreements, especially public policy objectives.

Build process for evaluation of impacts (by independent multi-stakeholder bodies) and to assess & disburse compensation to affected constituencies.

The government should enforce HRs on behalf of affected constituencies, including assisting in judicial processes and using FTA dispute settlement mechanisms on violators including foreign investors and foreign corporations that use trade agreements to do so.

REFERENCES

Sengupta, Ranja (2011): "India's FTA Choices Get More Ambitious", Economic and Political Weekly, Vol. 46, Issue No. 26-27, 25 June
http://commerce.gov.in/international_WTO.aspx?LinkID=31&SectorID=5&Id=32

Singh, Kavaljit (2013): Whither India's Bilateral Investment Treaty Framework? Briefing Paper # 15, December, http://www.madhyam.org.in/whither-indias-bilateral-investment-treaty-framework-2/

Misereor, HBF, Third World Network, Anthra & Glopolis (2011): The Right to Food Impact Assessment of the EU-India FTA, http://www.ecofair-trade.org/sites/ecofair-trade.org/files/downloads/12/02/right_to_food_-_impact_assessment_of_the_eu-india_trade_agreement_web.pdf

CEPII-CIREM (2007) "Economic Impact of A Potential Free Trade Agreement (FTA) Between The European Union And India"

Bhutani Shalini (2016): The RCEP, IPRs and the threat to traditional farming, Third World Resurgence Issue # 314/315 (Oct/Nov 2016), http://www.twn.my/title2/resurgence/2016/314-315/cover05.htm

Belinda Townsend, Shailly Gupta, Patricia Ranald and Leena Menghaney (2016): Civil society opposes stricter medicine monopolies at RCEP negotiations, in Third World Resurgence Issue # 314/315 (Oct/Nov 2016), http://www.twn.my/title2/resurgence/2016/314-315/cover04.htm