



EU–INDIA FREE TRADE AGREEMENT – PEOPLE’S LIVES AND LIVELIHOODS AT THREAT

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Last chance to prevent onslaught on people's rights and livelihoods! - Civil society groups call for an immediate halt to the India-EU trade negotiations, a joint statement of EU and Indian CSOs December 2010

Wichterich C. (2009) *Trade liberalisation, gender equality, policy space: the case of the contested EU-India FTA*, Brussels: WIDE.

Sengupta, R. and Jena, N. (2009) *The current trade paradigm and women's health concerns in India*, Delhi: CENTAD.

CEO/India FDI Watch (2010) *Trade Invaders: How big business is driving the EU-India FTA negotiations*, Delhi: CEO/India FDI Watch

Powell S. (2008) *The EU-India FTA: Initial observations from a development perspective*, London: Traidcraft.

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INTRODUCTION

In June 2007 the European Union (EU) and India launched negotiations for a bilateral trade and investment agreement, covering not only the liberalisation of trade in goods but also including a far-reaching liberalisation of services and investment and government procurement as well as the strict enforcement of intellectual property rights. In December 2010 the EU and India agreed to speed up the process of negotiations with the aim of concluding the agreement by the spring of 2011. While both parties are committed to sustainable development, including economic development, poverty eradication, full and productive employment and decent work for all as well as the protection and preservation of the environment and natural resources, the lack of transparency, public debate and democratic process surrounding the ongoing negotiations and the sparse public information available fuel civil society concerns that the trade deal is not the best way for sustainable and just development.

A growing body of literature¹ draws attention to the potential detrimental impacts of the proposed free trade

¹ Polaski, S. et al. (2008) *India's trade policy choices: Managing diverse challenges*, Washington, DC: Carnegie Endowment for International Peace; Powell S. (2008) *The EU-India FTA: Initial observations from a development perspective*, London: Traidcraft.; Wichterich C. (2009) *Trade liberalisation, gender equality, policy space: the case of the contested EU-India FTA*, Brussels: WIDE; Singh, K. (2009) *India-EU FTA: Should India Open Up Banking Sector? Special Report*. Delhi: Madhyam; CEO/India FDI Watch (2010) *Trade Invaders: How big business is driving the EU-India FTA negotiations*, Delhi: CEO/India FDI Watch. And other studies.

agreement (FTA), including increasing poverty, gender and social inequality and environmental destruction. A major criticism is that the negotiating agenda mainly reflects corporate interests, while the general public's concerns, including poverty eradication and sustainable development, are not central to the negotiations. Likewise, the erosion of government policy space poses huge challenges to the ability of governments to manage trade and investment in the interest of development with socially and gender-just as well as environmentally sustainable outcomes.

While the EU insists that India and the EU are 'equal partners' in this negotiation, the reality behind India's impressive levels of growth² includes the following sober characteristics:

- India's GDP is 6% of the size of the EU. Its per capita income ranks it alongside Nicaragua, Angola and Vietnam.
- India has the largest number of poor people of any country in the world. According to Asian Development Bank estimates, 792 million people (nearly three-quarters of the population) live below the poverty line. This is equivalent to the entire population of African, Caribbean and Pacific countries combined.
- India is a country of deep-seated gender inequality. Broad-based development still remains out of reach of most of India's vulnerable population, which includes not only the poor, but the old, women and

² 2010: 7.2%; 2009: 5.4%; 2008: 7.3%; 2007: 9.4% (<http://www.economywatch.com/indianeconomy/indian-economy-overview.htm>)

children. Women's socio-economic achievement, in particular, remains a matter of concern, because, despite efforts from many sectors, it still lags far behind that of men. Women's constrained access to resources, both physical and human, in terms of land, water, capital, health and education, is evident even from a quick look at the following gender-based data:

- Women's literacy rate is 53.67% compared to 75.26% for men.
 - Women's work participation rate is 25.6% compared to 57.9% for men (2001 Census).
 - Health is an area of special concern: while gender-based health indicators have shown improvement over the past, the achievements are still far from optimal. The Infant Mortality Rate for women is 65 per 1,000 live births compared to 62 for men, and the sex ratio is still 933 females born for every 1,000 males. (2001 Census). Gender inequalities in health indicators in India are also clearly related to location, employment, education and income group status.³
- Estimates suggest that 92% of the 457 million people in the Indian workforce find work in the informal sector, the majority of them being employed in the agricultural or retail sectors. About 97% of its women workers are employed in the informal sector. Compared to men, women are often working in the traditional sectors and are – generally speaking – confined to low-skilled, low-productive, labour-intensive work associated with low salaries and low bargaining power in the workplace. By contrast, the share

³ Sengupta, R. and Jena, N. (2009) *The current trade paradigm and women's health concerns in India*, Delhi: CENTAD.

of women working in the growth-generating, well-paid sectors such as IT and financial services is only minimal: 0.3% and 1.4%, respectively.⁴ However, the feminisation of low-paid, flexible and casual labour is a present characteristic of labour-intensive, export-oriented production of developing countries, since it guarantees low production costs and, therefore, high returns and competitiveness.

- Trade with India currently makes up 1.3% of the EU's total trade, while the EU is India's largest trading partner, making up 20% of its total trade.
- The FTA is estimated to increase India's exports to the EU by 19%, while the EU's exports to India are expected to grow by 57%.⁵

Demanding reciprocal trade liberalisation and forging equal treatment between unequal partners disregards both the existing economic disparities and special development needs of individual countries. As Stiglitz and Charlton⁶ point out, the principle of reciprocity between unequal trade partners is an impediment to fair trade and just distribution of wealth, and an anti-development principle. Instead, India with its high growth rates and huge inner inequality and poverty is a good case in point, confirming that trade liberalisation is not inherently welfare producing; it can produce, re-produce and even aggravate inequality, insecurity and social disparity at the same time as it expands wealth.

⁴ Chandrasekhar, C.P. and Gosh, J. (2007) ref. Wichterich (2009) p20.

⁵ Subhan (2007) ref. WIDE Network/Wichterich (2007) p17.

⁶ Stiglitz, J. and Charlton, A. (2005) *Fair Trade for All – How Trade Can Promote Development*, Oxford: Oxford University Press.

AREAS OF CONCERN

WIDE – together with other civil society organisations – believes that the conclusion of the EU–India FTA in its present terms will be at the cost of social and economic rights, sustainable development and gender equality objectives and the fight against inequality at community, local and national level. It fails to guarantee appropriate policy space to India to choose its own strategies for development that serve the most vulnerable of its people. We, therefore, call for an immediate halt to the EU–India trade negotiations⁷ and demand the adoption of an approach that would reflect the following social and developmental concerns:

‘No’ to the extension and enforcement of intellectual property rights through provisions that go beyond what is required under World Trade Organization agreements

India is known as the ‘pharmacy of the developing world’. It would be an outrage for Europe to undermine the Indian drug industry’s capacity to provide cheap and safe medicines to poor countries through this agreement: provisions set out in Trade-Related Aspects of Intellectual Property Rights (TRIPS+), such as data exclusivity, patent extension, and border protection measures, would severely affect India’s ability to provide affordable medicines for the treatment of AIDS,

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<http://62.149.193.10/wide/download/6122010%20joint%20letter%20eu-india%20FTA.pdf?id=1322>

malaria and cancer, not only for Indian patients but worldwide. By making generic production more costly or delayed by, for example, forcing generic producers to submit their own trial data, in effect, the price of medicine is increased, in addition to the delay in supply of critical medicines at affordable rates in developing countries. And, as frequently argued, any constraints on access to medicines and public healthcare have a greater impact on women than on men. First, women are generally economically poorer than men, both across and within households. Second, in situations of constraint on access, it is most often the women who forego treatment. For example, in treatment of critical diseases like HIV or AIDS in couples, the woman often gives up the medicine if supply is limited or expensive.⁸

The reach of TRIPS+ conditions would also cover traditional medicines and forestry products, which makes it difficult for rural and indigenous communities to continue to use and protect such systems of healthcare. Women often act as main keepers of traditional knowledge, and benefit from both the sale and use of traditional medicines, thereby protecting the health of their families and communities. All over the developing world, women plant, transplant, and maintain trees, collect fruits, oils, and medicines from trees to use in the home or sell in local markets, and maintain trees, collect fruits, oils, and medicines from trees to use in the home or sell in local

⁸ Sengupta, R. and Jena, N. (2009) *The current trade paradigm and women’s health concerns in India*, Delhi: CENTAD.

markets, and maintain subsistence farms and traditional agroforestry systems.

The TRIPS+ provisions on intellectual property rights affect not only access to medicines but to food as well. Imposing stringent intellectual property rights and commercial control on a wide variety of natural resources and products⁹ affects access to seeds, plants and production materials and, therefore, threatens people's basic rights to livelihoods. The combined restrictions on the use and exchange of seeds and genetic resources undermines women's role as seed keepers, users of traditional seeds and propagators of biodiversity; they harm women's genetic heritage and their natural right to use it. It obviously reduces their ability to engage in agricultural production, maintain livelihoods and food security. In fact, given women's generally more limited access to knowledge, resources and skills, their ability to register and access patents is much lower than even that of the ordinary farmer. Simultaneously, since women often produce for subsistence rather than the market, the higher costs resulting from such control of knowledge and technology in general and of products in particular can weigh heavier on women's access to food and, therefore, to nutrition and health.

⁹ For example, recognising the seed breeders' rights under UPOV 1991 (Act of the International Convention for the Protection of New Varieties of Plants) as opposed to the farmers' rights.

'No' to a further liberalisation and deregulation of financial services

The EU is likely to demand the opening of the Indian market for risky financial products and the removal of certain regulations that limit the foreign ownership or size of a bank. This could not only further destabilise the financial system, but also reduces access to banking services and lending in rural areas for the poor, socially disadvantaged sectors and for agricultural production. Unlike their domestic counterparts, foreign banks are not required to open offices in rural areas nor provide agricultural loans nor lend to people below the poverty line. Given the constraints women already face in relation to access to and control of resources, including credit and loans, this would further disadvantage them. Under the FTA, European banks would most likely continue to focus on 'class banking' instead of 'mass banking'. According to the EU's own FTA impact assessment, this could increase the pressure on domestic banks to also "concentrate more on profitable segment of urban and semi-urban markets".

Moreover, liberalisation of the financial sector would reduce government policy space to respond to financial crises. As experienced in the current crisis, liberalisation of financial services generates huge risks: it has brought deregulation and allowed the financial industry to create financial products such as credit default swaps¹⁰ and other

¹⁰ InvestorWords.com (2009) defines the credit default swap as: "A specific kind of counterparty agreement which allows the transfer of third party credit risk from one party to the other. One party in

repacked and non-transparent debt that are difficult to supervise and lack transparency. These are thus a great risk for consumers and authorities alike.

Trade in goods: include adequate means to protect livelihoods and safeguard sensitivities in both agriculture and non-agriculture sectors

The abolition of protective tariffs might trigger surges of cheap imports from the EU, with negative impacts on employment and working conditions in India. There are no adequate safeguards foreseen to protect vulnerable sectors in case of import surges; even so India has fought hard for these at the World Trade Organization (WTO). This is particularly worrying for the 92% of India's 457 million workforce who are in the informal sector, with no job security and little income. The fisheries sector, for example, a powerful income and employment generator for a large section of economically marginal population in the country, might suffer from the import of cheap EU fish products.

The consequences for the agricultural sector seem equally disturbing, as Indian

farmers will be forced to compete with EU products such as dairy products, poultry, coffee, tea, sugar, cereals, fruits and vegetables, some of them heavily subsidised. Agriculture supports a large number of India's population, especially poor and vulnerable people. The envisaged provisions will hit poor women agricultural farmers – who account for about 84% of the total female workforce in rural areas – especially hard. In India women are particularly dependent on agriculture, as they are unskilled, have limited access to productive resources and are willing to be in the informal economy and earn no or low wages that this sector offers.

Temporary quantitative restrictions on harmful import surges, as currently proposed in the 2009 Foreign Trade (Development and Regulation) Amendment Bill, would no longer be an option. Not only would tariffs and other trade barriers have to be eliminated on at least 90% of all trade – across both agricultural and industrial sectors – but the scope to raise them in the future would be removed.

India's average tariff levels are significantly higher than the EU's. This means India will have to reduce its tariffs far more than the EU and will face a major loss of tax revenue. To compensate for the loss in revenue, the Indian government is likely to increase domestic taxes and reduce its expenditure in sectors such as water, energy, health and education. Women will be affected most due to their weak rights in society as well as the contemporary gender division of labour. Women are still the main providers of unpaid care and reproductive work and, consequently, have to carry the burden if governments reduce

the swap is a lender and faces credit risk from a third party, and the counterparty in the credit default swap agrees to insure this risk in exchange of regular periodic payments (essentially an insurance premium). If the third party defaults, the party providing insurance will have to purchase from the insured party the defaulted asset. In turn, the insurer pays the insured the remaining interest on the debt, as well as the principal."

spending on basic services. It is predictable that the already existing enormous inequality between women and men, boys and girls related to the state of health, nutrition and education will be increasing due to a decrease in public spending on those sectors.

'No' to an acceleration of the entry of major European retail chains

An acceleration of the entry of major European retail chains will drive concentration within this sector. This is likely to exacerbate the already negative impacts for the informal sector, which includes millions of India's poorest people, while also tying farmers into greater dependency and vulnerability. Massive job and livelihood losses can be expected. Several studies have shown that they are adversely affected by the market entry of corporate retailers. Street vendors, in particular women, Muslims and those selling fruits and vegetables, name the competition with 'Big Retail' as the number one reason for declines in their income.

Reclaiming public interests in investment policy

Further liberalisation of investment would remove important government policy tools that protect local industries against foreign investors and help to build domestic industries, that foster domestic value-addition and shield vulnerable sectors of society specifically in times of crisis. Lifting foreign direct investment restrictions on

performance standards and dismantling capital control limits the policy space of the Indian government to use regulation as a tool for its development priorities or for affirmative action.

Provisions on investor protection and on investor-state dispute settlement would grant corporations the right to challenge the Indian government and the EU over any regulatory measures that diminish their returns. This would grant corporations the right to directly challenge the Indian government and the EU at international tribunals in case of a loss of predicted profits. Across the world, business has used these provisions to gain dizzying sums in compensation for regulatory measures that diminished the value of their investments. Resource-rich countries have been sued for denying mining permits on environmental and public health grounds and for taxing extractive industries to increase the benefits for their own people. For example, in the infamous arbitration about the Dabhol power plant, US multinationals Bechtel and General Electric successfully claimed millions of dollars from India and the State of Maharashtra. The EU-India FTA could trigger lawsuits with a similarly dramatic economic impact and could prevent the EU and India from regulating in the public interest because of the danger of an investment dispute. Moreover, liberalising foreign direct investment in land, fisheries and other natural resources will deprive millions of people of access to the resources they depend on for their livelihoods.

'No' to liberalising government procurement

Government procurement in India constitutes nearly 13% of India's GDP and was, therefore, identified as a priority for the EU. The EU has long been an advocate of the liberalisation of government procurement in the WTO; however, developing countries have rejected this, and consequently the WTO only covers procurement through a voluntary (plurilateral) agreement, to which few developing countries – not including India – are signatories. Government procurement in India is carried out across a wide range of ministries, departments, municipalities and other local bodies, statutory corporations and public undertakings at both federal and state level. It involves the purchase of a vast range of goods and services from paper products for schools to the supply of small components for various forms of infrastructure (e.g. railways) to the delivery of major infrastructure projects. The EU perceives India's procurement market as too closed to bids from foreigners and is, therefore, seeking the fullest access to the Indian government procurement market "through progressive liberalisation at all levels of government". However, this would seriously undermine India's policy space to channel public spending to small and medium-sized enterprises, marginalised groups such as women and to poorer regions to reduce social and economic inequality. In the current economic crisis, countries have widely used this policy space to stimulate domestic economies. In addition, European trade unions have warned that the liberalisation of public procurement

markets can lead to a bias in favour of low-wage, lost-cost producers, including in the delivery of essential services.

Regulate exports of raw materials in favour of sustainable domestic development

Through the FTA, the EU also aims to ban India's export restrictions, including export taxes on raw materials, to secure reliable and undistorted access to cheap manufacturing inputs for European industry. India is among the world's largest producers of minerals such as iron ore, chromium, rare earth, graphite and barite. The country has regularly limited the export of raw materials such as rice, cotton, leather, iron ore and iron products to raise government revenue during commodity booms, encourage value-added sectors, protect natural resources, or for reasons of price stability and food security. Denying India the right to restrict its exports would deprive the country of important policy space as well as contribute to strengthening an impoverishing trade pattern between India and the EU, according to which India exports raw products to the EU and imports processed value-added products. Moreover, it would undermine governments' rights to regulate the use of raw materials in favour of domestic development; it would exacerbate ongoing land displacement struggles and undermine people's rights to their habitats and produce.

Sustainable development chapter: the EU's conflicting aims and the prioritisation of trade liberalisation to achieve sustainable development outcomes

The European Commission repeatedly stated that “an ambitious chapter on sustainable development is an important objective of the EU in bilateral trade negotiations”; and promotion of the four core labour standards (1) elimination of all forms of forced or compulsory labour; 2) effective abolishment of child labour; 3) elimination of discrimination in respect of employment and occupation; and 4) ensuring the freedom of association and the right to collective bargaining) is a “key objective”.

It is clear that India is not interested in a sustainable development chapter; there is almost unanimous agreement in India in saying that in no circumstances do they want to integrate such a chapter in the FTA. Economic arguments against the inclusion generally involve concerns that linking trade and labour standards will have the effect of protecting domestic markets in the EU from cheap goods, thereby adversely impacting trade and employment in India.

Transparency and participation

The lack of transparency, public debate and democratic process surrounding the negotiations and the privileged access granted to business interests must be resolved. Up until now, the trade talks have been conducted behind closed doors, with no negotiating text or positions made

available to the public. Requests for access to meaningful information by parliamentarians, state governments and civil society both in India and the EU have repeatedly been turned down. Instead, business interests have been granted privileged access to policymakers on both sides, allowing them to effectively set the FTA agenda.

CONCLUSIONS

In order to transform the current EU–India FTA provisions into an agreement that promotes the interest of development with socially and gender-just as well as environmentally sustainable outcomes, the following principles need to be respected:

- 1) The EU–India FTA must **recognise the policy space and regulatory capacities of Indian government** to shape its policies for economic and social development that serve the most vulnerable of its people, including trade measures to protect weak economic actors and groups such as poor and single women, *dalits*, *adivasis*, the elderly, small- and medium-scale farmers and producers, petty traders and hawkers, unemployed people etc. through affirmative action.
- 2) **Intellectual property rights with regard to health and agriculture must be taken out** of FTAs. Knowledge and planting material in agriculture must not be patented.
- 3) The EU must **not demand reciprocal trade liberalisation** from developing countries and must **exclude the Singapore issues** (government procurement, trade facilitations, competition and investment).
- 4) The EU–India FTA must **protect and allow the use of policy tools to guarantee food security** and the livelihood of its small- and

medium-scale farmers and fishers. India must have a right to protect itself from subsidised EU agricultural import dumping.

- 5) The **liberalisation and privatisation of public services** such as water, energy, health and education, access to which is important for human development and women's empowerment, **must be excluded** from the FTA negotiations. Essential services of general interest must not be subordinated to profit.
- 6) The EU–India FTA **must not undermine human and women's rights, development, social and environmental goals**. Protecting and improving social rights, meeting basic needs and protecting the environment, biodiversity and the ecosystem are essential to achieve sustainable development.
- 7) The EU–India FTA negotiations must be **transparent and participatory**. They must involve democratically elected institutions at national and sub-national level, as well as civil society – in particular representatives of vulnerable groups such as poor women. **Corporate relationships** that privilege commercial interests of companies **should be ended** to ensure that FTA policies serve the interests of the wider public and marginalised sections of the society.
- 8) EU trade and investment policies **must allow space for alternative, heterodox and feminist economic and development approaches** which do not follow the neoliberal market logic but put people's needs at their core.