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Trade and Investment Treaties:
Implications for Agriculture & Food Security in India

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Trade and Investment Treaties: Implications for Agriculture & Food Security in India

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A. Introduction

Agriculture and food security remains a key challenge for the world today and especially so developing countries such as India. Any current discussion on trade and food security must start with the irrefutable fact that ensuring food security is about the ability to produce as much as the ability to consume. Distribution needs are impossible to meet without ensuring production potential in the long run.

India cannot depend on global markets for its food and agricultural needs, including the supply of key raw material for agro processing and other industrial products, because of its size as well the volatility in global markets. Our government, like most other developing and least developed countries, does not have the resources to buffer against that price volatility, which will hurt both poor producers as well as poor consumers. So while some countries must be dependent on imports as they cannot produce enough food, for most countries the prudent option will be to develop their domestic agriculture to sustain their food needs in the long run.

In this scenario, farmers' livelihoods and incomes becomes a crucial part of strengthening and sustaining domestic agriculture and food systems. Farmers need incomes from agriculture but are also food consumers. Producing food directly meets part of the farming family's food security as part of the production (including residual or the worse quality parts) will naturally go towards self-consumption and as feed for livestock. According to the former UN Special Rapporteur on the Right to Food Prof. Olivier De Schutter, strengthening access to food is not to make developing countries dependent on trade, but to strengthen the ability of the small farmers to produce across developing countries. This becomes more important in the light of the fact that 70% of the world food production comes from small farmers. More than 80% of farmers in India are small and marginal and agriculture is the main source livelihood for them.

In today's globalised world, the multiple frameworks of WTO, FTAs and investment agreements are creating complex and multidimensional impact on agriculture sector and challenging the ability of developing country governments to support their agriculture sectors. The Mantra of "import from the cheapest producer" is threatening the long term development objectives by creating pressures to "open up" at any cost, and often for illusory gains. In India's bilateral trade agreements for example agriculture is also getting sacrificed for superficial gains in other sectors such as services; and the real sector and basic needs are being compromised.

The situation is complicated by the lack of transparency and data, especially in the case of FTAs. These negotiations are carried out in secrecy. This also prevents parallel and alternative analyses of agreements which should back major policy changes. The documents are made public only after the agreements are signed. Limited consultation with affected communities such as farmers, small traders, fishermen, dalits and local communities often disconnects the negotiations from grass-root realities. It is not mandatory to get Parliamentary approval nor consult with state governments.

The multiple and interwoven frameworks of trade and investment liberalisation needs to be studied together to be able to understand the full implication for India's agriculture and food sector. This Brief attempts to summarise the current issues in trade and investment agreements with the objective of providing a basic but comprehensive understanding of the same.

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B. Agricultural negotiations at the WTO under the Agreement on Agriculture (AoA)

- **Reduction of agricultural tariffs:** A primary aim of the AoA was to open agricultural markets by initiating cuts on import duties on agricultural products in two stages; first notifying bound (maximum duties) and, then, capping of bound duties by agreed formulae. Under the 2008 text which was the last Chair's text on AoA, a 36% average cut with reduction on all tariff lines based on a tiered formulae was proposed. The exact formulae is still being discussed with major differences between the developed and developing countries. Quantitative Restrictions (QRs) were abolished under the WTO but Tariff Rate Quotas (TRQs)[2] are permitted.

  - ✓ **The current discussions on formulae**: Post Bali talks on agriculture had been stymied right at the beginning by the persistent USA and EU proposal that the 2008 chair's text should be done away with as a basis of negotiations. Even though developing countries have some problems with parts of the 2008 Rev.4 text, they have reiterated their demand that it be the basis for negotiations on both agriculture and NAMA. Several new proposals have been floated in the recent period, all based on the tiered formulae. According to John Adank, the Chair of agricultural negotiations, several proposals including by Argentina, Paraguay and Norway have been forwarded that include; "*a modified version of the tiered formula set out in the 2008 draft text (option A); a combination of the tiered formula plus, using the outcome of this as the starting point, a cut in the overall tariff average (option B); and the tiered formula plus, using the outcome of this as the starting point, an average cut of tariff lines (option C)".* None of this has made much headway. The current discussion suggests the USA is pushing for low level of tariff cuts but at the cost of the SP and SSM (see below), basically tying it up with lower ambition in subsidy cuts. The developing countries have insisted on a balance between AoA's three pillars; namely tariff cuts, export and domestic subsidies.

  - ✓ It is to be noted that the Indian government has already cut applied duties so that actual average applied tariffs at 31% are much lower than the notified bind rate of 113%. But cutting bound rate will still mean losing flexibility.

- **Historical asymmetry under WTO talks still continue**: The asymmetry in WTO agricultural negotiations has been visible in separate tracks such as; on subsidies which remains the most controversial and contested; on the use of standards as entry barriers; and on special and differential treatment for developing countries. In spite of the Doha Development Round (DDR) being launched in 2001, S&DT for developing countries has not really materialised.

  - ✓ **Subsidies**: Under the WTO, export subsidies were to be eliminated by all Member States and in spite of an Agreement in the Hong Kong Ministerial that export subsidies will be eliminated by 2013, this has not happened.

    Domestic subsidies have been the major area of contention in the WTO with different rules for developed and developing countries. Developed country subsidies have gone up or remained same by promising only 20% cut (not met) and by box shifting to Green Box. USA: 61 billion USD in 1995 to 140 Billion USD in 2012. EU: 90 billion Euro (1995) to 75 billon (2002) to 90 billion (2006), 79 billion (2009), 67 billion (2012). OECD: US$350 billion in 1996 to US$406 billion in 2011.

    Recent talks on domestic subsidies have been blocked by the USA which refused to move on domestic support unless India and China cut their domestic support. In his proposal, the DG has been asking 7 countries, the United States, the European Union, China, India, Australia, and Japan to accept a common formulae on subsidy cuts. A recent non-paper by Australia-Canada has echoed this idea.[3] The Proposal does not include commitments to cut blue box subsidies in what it calls Trade Distorting Subsidies (TDS). This is different

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[2] Differential tariff rates specified by bands of volumes of import.
[3] http://www.twn.my/title2/wto.info/2015/ti150620.htm

from the 2008 text that included blue box subsidy commitments and required the US to cut its commitments to 14.5 billion USD. Instead USA could actually be allowed to increase its subsidies by over four times under this proposal undermining 14 years of negotiations under the Uruguay Round.

Over the last few days, the USA has circulated a non paper that asks for commitments not to raise market price support, nor increase input subsidies. The paper says "each member shall, ... undertake commitment(s)" not to increase either "the applied administrative price for any agricultural product receiving market price support or the number of agricultural products" (receiving such price support) or "its budgetary outlays for, or the scope of, product-specific input subsidies for agricultural products above the (existing) level". Apparently, four areas; fertiliser, seeds, electricity and diesel fuel are given as examples where commitments to do away with market price support and input subsidies can be made. This will also have implications for India's Public Distribution System (see below under G-33 Proposal). India and China have rejected this proposal saying this is a US attempt to avoid arriving at credible outcomes in the Doha agriculture package in which the US is required to cut its farm subsidies to below $14.5 billion[4] and which it can't because of its Farm Bill 2014.

- ✓ **Standards:** According to the WTO, member countries are free to impose Sanitary and Phyto Sanitary Measures (SPSMs) that lays down food standards according to their will but these standards have to apply to all. Developed countries are allowed to maintain high standards on food and other agricultural products. Standard related barriers, referred to as Non Tariff Barriers and process related barriers, called technical barriers to trade (TBT) have increasingly become the most effective ways to block trade, especially exports from developing countries.
- ✓ **Special Safeguard Mechanism (SSM) and Special Products (SP):** As part of the DDR, the Special Safeguard Mechanism (SSM) has been offered as an instrument to raise tariffs to counter a sudden rise in imports (import surge) which can threaten domestic producers. In addition a set of Special Products (SP), deemed as important for food and livelihood security and rural development, can be protected. However developed countries have made both these tools increasingly weak by imposing severe conditions on use, making them almost unusable. In fact instruments available to the developed countries such as the Special Agricultural Safeguard (SSG)is argued to be more effective, prompting some analysts to say it is S&DT for developed countries. During the current negotiations developing countries have repeated that SSM and SP issues be addressed as part of the core DDA issues and are 'must haves' for MC10. The USA has suggested as tariff cuts being discussed are modest, the SP, SSM instruments should be limited.

❖ **Domestic Subsidies & G-33 food security proposal**: A G-33 Proposal (2012/13) submitted before the Bali Ministerial of 2012 was that price support subsidies for small resource poor farmers for public food stockholding programmes should be allowed without limit, and therefore put under the Green Box[5]. This would, for example, make all price subsidies given under the National Food Security Act (NFSA) allowed under WTO rules. India's increasing subsidies on rice had already been challenged by USA, Canada etc on grounds that it was exceeding the 10% product specific subsidies allowed under WTO's Agreement on Agriculture.

- ✓ The Indian **subsidy** on food is only 44.6 USD per person while it is 170 USD per person in the EU and 448.7 USD[6] per person in the USA. This means the EU gives 3.8 times and the

4 http://www.livemint.com/Politics/3GKQiXwtCK6dWungB8UIwI/Indias-farm-subsidy-programme-may-face-fresh-challenge-at-W.html

5 Subsidies placed under the Green Box are supposed to be non trade distorting and allowed to be given without limits. The Amber box contains subsidies that are trade-distorting and are calculated in Aggregate Measure of Support (AMS) that is to be cut. The Blue Box includes product specific subsidies but that not linked directly to production so cannot generate over-production.

6 Data from Solidarite (2013)

USA gives 10 times the subsidy to be given by the Indian government on our NFSA (approximate).

- ✓ **The Peace Clause (PC)**: The PC granted at Bali offers a reprieve from legal action by other members until a permanent solution is found by the next 4 years or 2017. This complicated wording has put a question mark on the actual validity of the PC in the case a permanent solution is not found by 2017. In any case, severe conditions on its use limit the application significantly. These include; onerous notification requirements; the PC being limited to traditional staples; the use of the PC cannot "distort trade" and cannot "threaten food security of other Member States". The PC is also limited to programmes existing at the time of Bali Ministerial (Dec 2013).

- ✓ **A Permanent Solution** to the G-33 proposal was to be found by 2017. However current negotiations do not show any sign of it. The USA and the EU have both refused to take the discussion forward and have blocked talks. With no sign on movement to find a permanent solution, India had blocked the agreement on Trade facilitation in 2014 but had faced severe pressure from the developed countries. As a result, India had signed a bilateral agreement with USA in November 2014, which provided a legal certainty that the Peace Clause would be available even beyond 2017, even if a Permanent Solution is not found. A permanent solution to G-33 proposal could be either of the three; (i) Update External Reference Price (ERP) by taking 3 years average; (ii) Adjust Inflation to update ERP and (iii) Put the Minimum Support Price or subsidies on public stockholding programmes under Green Box. The last option is what the G-33 is currently pushing for since the first two will not solve the problems of all developing countries. They have agreed to certain conditions on the use of such subsidies such as; acquired stocks would not be used for exports below the price at which acquired.

  However, instead of supporting either of the three solution, USA is now questioning the S&DT in Doha for developing countries and even questioning their input subsidy under Article 6.2. If India agreed to the US proposal, it can neither increase administered prices nor increase the number of products receiving price support.

- ✓ The complexity of issues on agriculture related talks at the WTO and the very aggressive positioning by developed countries on several aspects has made uncertain the direction and status of agricultural negotiations that will be taken up at the forthcoming Ministerial which is to take place in Nairobi, Kenya, between 15th and 18th December 2015. But it is clear that agriculture must remain a key part of the negotiations for a credible outcome.

C. FTA Provisions and Implications

- ❖ **Tariffs:** In FTAs, there is no concept of bound or maximum tariffs (or duties) and FTAs target actual applied tariff cuts. Tariffs can be cut to as low as 0% on more than 95 percent of total[7] tariff lines which will necessitate a large coverage of agricultural products as well. With increasing overall coverage under FTAs, an increasing share of India's agriculture sector is being included. However, while overall tariff levels in developed countries is lower, tariff bands can be used in the form of tariff rate quotas (TRQs) and tariff peaks to protect their markets.

- ❖ **Subsidies:** In bilateral trade agreements, e.g. with EU, agricultural subsidies are non-negotiable. Subsidies cannot be negotiated here as these can be negotiated only in a multilateral platform such as the WTO.

- ❖ **Import Surges:** There is generally no option of increasing tariff in case of dumping or import surges above the levels scheduled in the FTA agreement despite using safeguard provisions, which may be those permitted by the WTO or stricter.

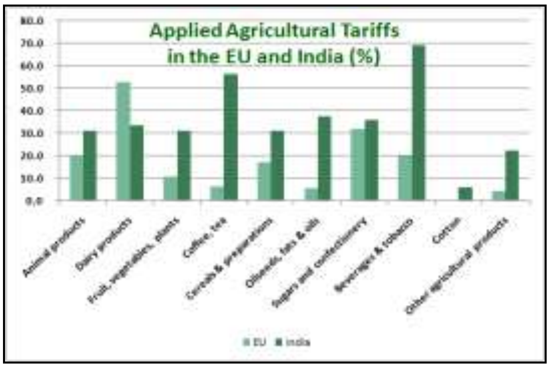
- ❖ **Non Tariff Barriers (NTB) and Technical Barriers to Trade (TBT)**: reduction in tariff is not the guarantee for market access in the developed countries. In FTAs, developed countries often restrict market access with several import restriction instruments even apart from

[7] India has apparently included 97% of its tariff lines (agriculture plus industrial products) under the proposed EU-India FTA.

their domestic and export subsidies. These include; non-tariff barriers (NTB) such as Sanitary and Phyto-sanitary (SPSMs) measures and differences in standardization across partner countries. In some cases, e.g. EU India FTA, each 28 EU member countries have their own standards and can act as barrier for Indian exports. Mutual Recognition Agreements (MRAs) can be negotiated to cover process barriers. However standards themselves cannot be negotiated under MRAs and could prove to be the main barriers.

- **Export measures removed**: India imposes bans on food products such as rice, wheat, sugar etc for maintaining domestic food security. The EU has been requesting for removal of all export restrictions. While the main target is likely to be India's raw material, whether this will also target food bans is not clear.
- **Service sectors:** Another key issue in FTAs is developed countries' push for entry of corporate retail giants and a demand for national treatment which would seriously threaten livelihoods of small retailers and street vendors and create challenges both for employment and access to food for poorer segments of the population.
- **Intellectual Property Rights (GIs, UPOV 1991):** FTAs, especially mega FTAs like RECP has TRIPS plus provisions which intensify monopolies over seed, pesticides, fertilisers and animal vaccines and encourages proprietary agriculture technologies – such as GM crops. Such measures have an adverse impact not only on the cost of commercial seeds but also on biodiversity.
- **Long Term Perspective**: India has opened up agriculture with several partners including ASEAN and the latter has already had a visible impact. However opening up of agriculture had been limited until now, but seems set to change with the proposed agreements such as with EU (see below), EFTA (with impact on fisheries, though technically under NAMA), RCEP, Australia, New Zealand (dairy), etc. Even South-South FTAs are increasingly based on competition rather than co-operation and involve adverse impacts on both sides, and a stronger impact on the weaker partner.
- ***An Example: The Proposed EU India FTA***
  - ✓ India has to reduce much more in terms of tariffs, on 97% of goods, whereas EU's tariffs are already lower so they do not have to reduce much (see fig.1). Moreover, India already enjoys significant duty free access to EU markets, so additional gain is limited.

Fig. 1: Applied Agricultural Tariffs in India and EU



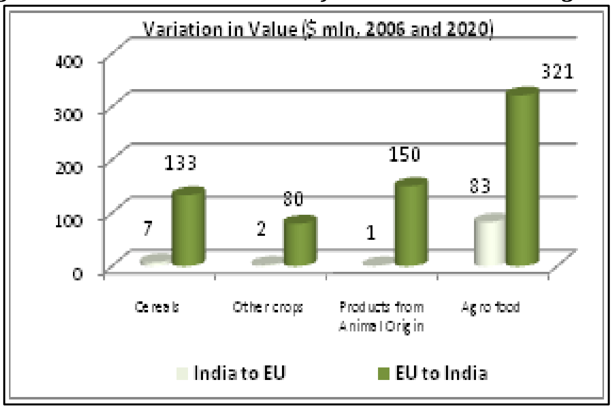
Source: WTO Tariff Profile (2014)

  - ✓ EU's high food standards remain in place, and the scope of MRAs remains limited. There are differences in standards between 27 EU member countries, and each EU member has their own phyto-sanitary provisions. Indian exports have to deal with 27 separate markets which make harmonization a greater challenge for our exports to EU.
  - ✓ EU subsidies cannot be negotiated under an FTA. EU's subsidy was 67 billion Euros in 2012 (Solidarite, 2013) including an export subsidy of 146 million Euros.
  - ✓ On intellectual property, the EU wants TRIPS plus provisions. The EU wants preferential treatment of 125 (5 already done) Geographical Indications (GI) of EU agricultural

products like cheese, wines and spirits, meat and poultry products etc. The EU had wanted control over seeds to be strengthened by asking that India join UPOV 1991 Agreement but India has not agreed to this. The EU has also been adamant on data exclusivity (DE) for agrochemicals which will raise the price of these inputs.

- ✓ Several projections for the FTA show loss for India in all segments of agriculture. According to a study conducted by CEPII-CIREM (2007) trade gain by EU between 2007 and 2020 exceeds that by India by huge margins in all segments (Fig.2). Projections also show that EU's shares in Indian markets will increase significantly while India's shares in EU markets will remain unchanged.

Fig. 2: Changes in trade value as a result of the EU-India FTA in agriculture



Source: Generated on basis of data from CEPII-CIREM (2007)

D. Investment provisions in international agreements

- ❖ **Increasing FDI in agriculture**: Direct FDI in agricultural cultivation is not permitted until now. However FDI in allied activities such as dairy fisheries, livestock is permitted which has led to the gradual ousting of smaller players from these areas.
- ❖ **Investments and land:** Though FDI is not permitted in cultivation, FDI is allowed in all other areas such as industry, real estate, mining etc, and therefore puts direct pressure on agricultural land. Land grab all over the world, especially by foreign companies,has been increasing and now instances of consolidating such land grab with the help of investment treaties is coming to the fore. In Zimbabwe for example, several BITs cases over land grab
- ❖ **Other natural resources**: Globally control of water, forests, even air is being visibly strengthened with the operation of investment treaties. Cases of water pollution are on the rise. This leads to not only a constraint on supply of productive resources for agriculture but affects the direct supply of food and water.

E. Implications and Recommendations for Agriculture and Food Security

- ❖ What is not covered by the WTO is increasingly coming in with FTAs and BITs through WTO plus provisions (refer to Annex 1) with multilayered impact on agriculture and food security.
- ❖ India's stance at WTO is often in conflict with its position in FTAs, which potentially weakens its negotiating strength in both.
- ❖ The current global situation in agriculture does not place Indian farmers at par with that of developed country counterparts, given the absence of a level playing field.

Key Recommendations:

- ✓ Agriculture needs to be looked at not as a redundant, loss making and inefficient sector but as one which is crucial for generating livelihoods, food, and raw material, currently hampered by the absence of access to resources, skill and education. India's trade and investment policy must continue to reflect this recognition.

- ✓ India needs to protect agriculture related interests in global negotiations and not compromise crucial agricultural interests for gains in the service and other sectors, even if they real, which they are most often not.
- ✓ Agricultural tariffs and policy flexibility to change tariffs depending on situation should be protected.
- ✓ India needs to take a strong negotiating stance on subsidies and ask for full policy flexibility to protect small and poor farmers at the WTO (for example on the permanent solution on the food security proposal at the WTO), otherwise its negotiating position and interests in FTAs is also hurt.
- ✓ We need public, transparent and multi-stakeholder level impact assessment of agreements, both before and after negotiations and their conclusion. All trade negotiations must be preceded by consultations with affected groups. The signing of such agreements must also be brought under parliamentary oversight by parliamentary ratification as is followed by most countries and consultation with state governments must be made mandatory.
- ✓ There is a need to spread greater awareness on agriculture and trade issues among political parties, media, as well as farming and food groups.

Annex 1: Comparative Provisions in WTO and FTAs (and in BITs on investment) with Implications for Agriculture & Food Security

Area/ Provision	WTO	FTAs (and in BITs for Investment)	Implications for Agriculture/Food Security
Commodity Trade: Import Duties	Commitment on Bound Rates, loss of flexibility	Actual Applied duties move to zero, loss of full protection	Producers face more competition in home market Small producers must remain competitive Limited increase in access to developed country markets as tariffs already low Can India benefit from other developing country markets?
Export Measures: Export duties, quantitative restrictions (QR)	Currently export duties are not included, suggestion by EU to bind maximum. Quantitative bans not allowed unless imposed for specific	Countries such as EU wants total removal of export taxes. Quantitative restrictions as per WTO	Govt ban on exports during food crisis cannot be imposed Challenges to raw material supply for domestic food and other industry
Subsidies	Unfair and different rules, Developed countries continue to give high subsidies	Cannot be addressed	India is facing unfair and archaic subsidy rules at the WTO that challenges our PDS system India ends up cutting tariffs but Indian producers face unfair competition from subsidies given by developed countries if N-S FTAs.
Non Tariff Barriers (NTBs) and Technical Barriers to Trade (TBTs)	Agreement under WTO. Standards aplicable to all members can be laid down.	Affirmation of WTO levels of standard or often more, process may be eased in some cases through Mutual recognition Agreement (MRA).	Difficult for Indian producers to meet high standards and process requirements, actual standards hardly ever come down under FTAs India also uses NTBs as a defensive instrument but Indian producers also have to be compliant
Intellectual Property	Yes (The TRIPS Agreement lays down standards for IP protection through patents, but is relatively flexible on agriculture by allowing sui generis plant variety protection, and does not yet acknowledge multilateral recognition of GIs)	TRIPs Plus provisions such as data exclusivity, patent term extension, pressure to join global Seed Conventions such as UPOV 1991	Farmers could lose access to seeds, where right to freely exchange and reuse seeds may be challenged Price of agrochemicals could go up The recognition of EU GIs, for example, can threaten processing sectors such as dairy
Public Procurement	Out (may come in under new issues in next round)	In (esp under EU FTAs)	Can include PDS etc but unlikely to be included by India in the near future
Investment	Included but not very strong (only under Trade Related Investment Measures)	In	Has led to control and misuse of natural resources for foreign companies. Land grab has been a major issue, esp from mining activities.
		Investment protection included under BITs	Loss of control of commnities over land, water, forests.
		Foreign Investor can take govt to international arbitration	Environmental degradation etc more difficult to address.
			Even protests over land grab can be seen as threats to corporations profits and governments can be sued for failing to stop protests.
Process Concerns	Relatively transparent, documents are mostly public, though some documents are not, and the famous "green room" process involves major decisions being taken in small room discussion with powerful member states.	Secret negotiations, negotiating documents totally secret, often very limited consultations with interested aqnd affected groups. In India no parliamentary oversight, no discussion with state governments.	Interests of agriculture and farming groups not taken on board, consultations often very limited (visibly higher level of consultation with big industry), sectoral balance of interests not clearly protected, no political redress mechanism.