WORKING PAPER - 11

The EU-India FTA

Critical Considerations in a Time of Crisis

Centad

Consortium for Trade & Development

The EU - India FTA

Critical Considerations in a Time of Crisis

Shefali Sharma

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Preface

Centad works to make trade policies pro-poor with the belief that trade has potential to lift millions out of poverty. Its current programme on trade envisions International trade as a powerful process to foster development across South Asia, where a majority of the world's poor live. Its mission is to strengthen the ability of governments and to empower communities to make trade and globalisation work for development.

This working paper is part of Centad's ongoing work on Indo-EU FTA. The work on Indo-EU FTA began with a national level brain-Storming Session on Indo-EU FTA in early 2007 which culminated into an international seminar later in the same year. The international seminar drew experts and policy makers from the ASEAN and African Countries to broaden the debate on the trend of 'new regionalism' across the world. The programme was a joint effort along with Oxfam, Action Aid, Traidcraft and TWN. Furthermore, Centad collaborated in a joint effort with ECORYS and CUTS in the Trade Sustainability Impact Assessment (TSIA) of the EU-India FTA. In this exercise Centad undertook the case study on Telecommunication and Information Technology Sector especially understanding the social and economic implications of the agreement. Centad is planning to expand its work on Indo-EU FTA in different sub-sectors which includes agriculture, services, health and gender.

Centad always believed that rigorous research is central to understanding the real impact of international trade on the people of the region, and its linkages with development at the grassroots level. I take this opportunity to inform the readers that the paper has undergone critical review by experts on the issue. An extensive workshop was held in Centad's premises on 8 February 2009 for the same. The working paper of Centad are intended to share the preliminary findings of the concurrent work at the centre and we look forward to your kind support and feedback as we further expand our work on Indo-EU FTA.

Linu Mathew Philip
Acting Executive Director
Centad

Foreword

Free Trade Agreements have become prominent trade policy instruments for countries. India is in different stages of FTA negotiations with a number of countries and blocs, such as MERCOSUR (Mercado del Sur), Southern African Customs Union (SACU), China, Malaysia, Indonesia, New Zealand, Australia, and so on. India is currently engaging with 25 Regional Trading Arrangements, of which the most important is arguably with the EU, India's largest trading partner.

India and the EU have been engaged in extensive political dialogue on a comprehensive trade, investment and economic co-operation agreement for a along time now. The first India-EU Summit in Lisbon in June 2000 marked a watershed in the evolution of this relationship. Ever since, there have been five rounds of negotiations, with the sixth round held at New Delhi. In recent times, The significance of Indo-EU agreement is immense since the world's largest trading entity is engaging with the biggest democracy in the world. Even the negotiation comes at a critical point when the entire world is threatened by economic recession and financial meltdown leading to calls by world leaders to resist protectionist temptations at the least, while selectively calling for urgent conclusion of international trade agreements, principally the WTO Doha Round

This paper by Centad plays a valuable role in enhancing the understanding in a crucial policy area particularly since there are very few studies available examining critically the development aspects of trade. This paper tries to broadly examine the core trade interests of the EU and India, the content of the negotiations and outlines some key concerns of a potential deal for India in the areas of goods, services and investment, intellectual property rights and government procurement. The paper even makes an attempt to mainstream some of the major implications for policy space, livelihoods and other public interest concerns for India. The paper importantly highlights the asymmetries of the trading partners and interests which drive the agreement.

The paper through its analytical framework highlights some of the key concerns of a potential FTA that deserve urgent attention based on a wider political economy perspective. Many of the gains from the agreement is difficult to predict due to the lack of availability of comparative information but it tries to generate issues for public debate beckoning policy makers to probe elaborately from a public interest standpoint.

The FTA between EU and India hold tremendous potential in terms of increase in trade flows but the civil societies in general are not adequately aware of the implications of how the agreement is going to take shape and the implications across the region and sectors. There still remains large gap in terms of assessing the actual implication of the current mandate on the trade flows alongside associated development concerns. This paper has put forward some preliminary findings on trade policies linked to the negotiations on Indo-EU FTA.

I look forward to your valuable comments.

Samar Verma

List of Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
APMC	Agriculture Products and Marketing Committee
ASEAN	Association of Southeast Asian Nations
BDI	Federation of German Industries
BIT	Bilateral Investment Treaties
BPO	Business Process Outsourcing
BOT	Built-Operate-Transfer
Bt Cotton	Bacillus thurigiensis Cotton
CEO	Corporate Europe Observatory
CPP	Certificate of Pharmaceutical Product
DEA	Department of Economic Affairs
DRI	Differential Rate of Interest
EBF	European Banking Federation
EC	European Commission
ECE	Economic Commission for Europe
EFPIA	European Federation of Pharmaceutical Industries and Associations
EPA	Economic Partnership Agreement
ESF	European Services Forum
EU	European Union
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
GDP	Gross Domestic Product
GMO	Genetically Modified Organisms
GOI	Government of India
HIV	Human Immunodeficiency Virus
HLTG	High Level Trade Group
ICRIER	Indian Council for Research in International Economic Relations
ILO	International Labour Organisation
IMF	International Monetary Fund
IPR	Intellectual Property Rights
IIT	Indian Institute of Technology
IT	Information Technology

M&A	Mergers and Acquisitions
MAI	Multilateral Agreement on Investment
MFN	Most Favoured Nations
MRA	Mutual Recognition Agreements
MSF	Medicins' Sans Frontiers
NCEUS	National Commission for Enterprises in the Unorganized Sector
NSSO	National Sample Survey Organisation
OECD	Organisation for Economic Co-operation and Development
OPV	Open Pollinated Variety
Pvt. Ltd.	Private Limited
PSE	Public Sector Enterprises
R&D	Research and Development
RASFF	Rapid Alert System for Food and Feed
RBI	Reserve Bank of India
RRB	Regional Rural Banks
S&D	Special and Differential Treatment
SEZs	Special Economic Zones
SPS	Sanitary and Phytosanitary Measures
SME	Small and Medium Enterprises
SSM	Special Safeguard Mechanism
TBT	Technical Barriers to Trade
TNC	Transnational Corporation
TNI	Trans National International
TRIMS	Trade Related Investment Measures
TRIPS	Trade-Related aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNICEF	United Nations Children's Fund
UPOV	International Union for Protection of New Varieties of Plant
US	United States
WIR	World Investment Report
WTO	World Trade Organisation

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Executive Summary

In October 2006, the European Commission (EC) announced its new international trade strategy through *Global Europe: Competing in the World.* The strategy stressed European Union (EU) market expansion, imports of raw materials from the Global South and harmonization of EU standards through a series of free trade agreements (FTAs). The Commission prioritized India as a key strategic target due to its large market, competition from other trading partners and numerous trade and non-trade barriers against EU interests.

The paper broadly examines the core trade interests of the EU and India, the content of the negotiations and outlines some key concerns of a potential deal for India in the areas of goods, services and investment, intellectual property rights and government procurement. The final content of a free trade deal between the two holds major implications for policy space, livelihoods and other public interest concerns for India.

The objective of the paper is to highlight some key concerns of a potential FTA that deserve critical attention based on a wider political economy perspective. It is hoped that the analysis will generate more public debate and further inquiry by government officials into these and related issues from a public interest standpoint.

The Political Economy of the Negotiations

India's entire estimated GDP in 2008 amounted to roughly 6.5 Percent of the EU's, showing the immense economic might and asymmetry of power the EU brings to the negotiations. In spite of this, the EU considers India an equal partner and has pushed for reciprocal concessions in the negotiations.

The FTA agenda set by EU corporate interests includes massive tariff reductions on a reciprocal basis in return for market access to trade in goods and includes the World Trade Organization (WTO) plus issues such as an inclusive services and investment chapter, negotiations on government procurement and WTO plus intellectual property rights (IPRs). Powerful EU lobbies such as the European Services Forum (ESF), the European Banking Federation (EBF), the European Federation of Pharmaceutical Industries and Associations (EFPIA) and Business Europe are playing a key role in driving the Global Europe strategy. European Commission's DG Trade provides them with direct access to information while the bulk of European civil society remains excluded. However, Indian corporate interests also have demands in the FTA, mainly related to EU's non-tariff barriers on goods, services and investment. Details regarding the FTA are limited to select insiders and outside the public purview in India as well.

Trade in Goods

With the backdrop of financial, food and climate crises, policy space for future governments becomes an essential lens through which to assess the FTA framework. The paper argues that the

current proposals on trade in goods could significantly increase livelihood risks in both the agriculture and non-agriculture sectors. This is because the FTA demands massive reductions in tariffs and removal of export restrictions without providing adequate safeguards or special and differential treatment. FTA parties have identified no clear rationale for agreeing to a 10 Percent exclusion list. Nor are their publicly available studies that ensure that such a quota would protect Indian livelihoods and sensitivities in both sectors.

In the draft 2007 consolidated text of the negotiations, the EU seemed willing to pay lip service to the concept of special and differential (S&D) treatment in the general objectives of the agreement while insisting on the contradictory notion of "reciprocity". The EU views India as an equal partner and expects reciprocal concessions in the deal – essentially making S&D meaningless. As such, the EU continues to pressurize India into reducing its exclusion list and liberalizing faster. In contrast, the EU is not negotiating its agriculture subsidies in the FTA since they are currently being negotiated at the WTO. If such terms are accepted, then India will be opening up its agriculture sector without adequate safeguards to protect itself from negative impacts of EU subsidies, particularly if the terms of the EU mandate for the FTA with India are accepted.

Agriculture safeguard measures are meant to increase tariffs enough to prevent import surges, which typically mean raising them 'above' the applied MFN levels. The EU mandate only speaks about 'restoring' duties to MFN levels, making a safeguard clause meaningless. Even the proposed WTO "special safeguard mechanism" (SSM) is so difficult to implement and limited in its application that it will not protect agriculture goods in the FTA. The language on safeguards also does not make it explicit whether price triggers can be used, i.e., when prices for the EU imports go so low as to create a dumping effect (the practice of selling below the cost of production plus a reasonable profit) and displace Indian products. Only volume triggers, as is suggested by the EU mandate, is not sufficient to safeguard Indian agriculture.

The FTA combined with the current proposals at the WTO would leave India's agriculture sector significantly vulnerable to price volatility and import surges. This is of paramount importance given that around 5 million people depend on the production of a single crop in at least 35 agriculture commodities. In the non-agriculture sector, the products that the Government of India (GOI) excludes will have livelihood implications for the estimated 9 million fish workers who live along India's 7,517 km coastline. Thus, deciding which tariff lines to exclude is difficult within one sector, let alone between agriculture and non-agriculture.

A negative impact on rural livelihoods also has significant food security dimensions. Soaring food prices in 2007-2008 finally convinced the UN and donors that a global food crisis was at hand and that small farmers must be supported to increase and maintain national food security. In spite of the sharp decline in commodity prices in the last quarter of 2008, global food prices will remain

volatile and higher than pre-2006 for many years to come. India will have to balance between ensuring food security at home and assuming extra-territorial responsibility in preventing food shortages internationally. However, a country with one of the largest agrarian populations on the planet and severe poverty and child malnutrition mandates that self-sufficiency in food production remain a key strategic and humanitarian goal in both the short and long term.

India's liberalization trend in the manufacturing sector shows greater casualization and retrenchment of workers – particularly for products linked to exports – as productivity per worker increases and companies try to cut costs. An estimated 700,000 temporary contract and casual laborers have lost jobs in India's export-oriented sectors such as garments, textiles, leather, jewellry, auto parts manufacturing and light engineering as well as the financial and real estate sectors because of the financial crisis. Those sectors that have been hardest hit economically are also the most competitive export-dependent ones. As a result, the trade deficit widened in November 2008 to more than 33 Percent to $10.07 billion as imports rose by 6.1 Percent and overseas sales fell by 9.9 Percent. Rather than eliminating tariffs across the board, the GOI should devise a long-term strategic plan for reviving Indian manufacturing and millions of livelihoods dependent on it. It will thus be important to disaggregate between tariff effects, declining global demand due to the financial crisis and its impacts on balance of payments. Creating a strategy to boost domestic sectors and labour-intensive value-added industry would be a good first step.

The EU currently imports more than three fourths of its iron ore, bauxite, copper ores or lead ores. The easing of export restrictions in these minerals combined with a liberalized investment regime could exacerbate struggles and increase land grabbing in mineral-rich but poor states such as Orissa, Jharkhand and Chhattisgarh, where marginalized (and most often indigenous) people are impacted. Drastic tariff reductions will also result in overall government revenue loss that could lead to a decline in social spending and an increase in domestic taxes. This is particularly relevant as India proposes to address the financial crisis through increasing domestic demand.

Preference Erosion

When the EU-Korea and EU-ASEAN agreements grant Korean and other Asian competitors preferential access into the EU markets, India will have to compete with them despite having already made concessions to the EU. Preference erosion is a key factor in determining the real economic value (and costs) of a potential deal with the EU.

Services and Investment

The EU's proposal for a combined services and investment chapter with a GATS approach significantly expands the scope of coverage to affect virtually every government measure at the state, local and central level that is in competition with at least one firm/operator in which commitments are made. Since the GATS came into force, even laws, regulations and "measures" of powerful countries with immense legal and technical power

such as the US have been challenged for unknowingly violating the agreement even where the government specifically sought to exclude services such as gambling and betting. This is because GATS services classifications are extremely detailed and complex and GATS rules apply to any "measures" that are seen to even "affect" the trade of another party. India also failed to list any MFN exemptions in the GATS and thus commitments made in the FTA could force India to provide the same treatment to all WTO members under MFN. This is relevant because the FTA will be WTO plus, and will use the GATS framework for both services and investment and will also include a dispute settlement mechanism where India's regulations can be challenged if perceived to be trade restrictive.

The GOI is ready to liberalize most modes of supply as long as other parties give access to Mode 4 – the free movement of labour in Indian white collar workers and Mode 1 – cross border supply of services relevant to the business process outsourcing (BPO) sector. However, the commercial and legal implications of the GATS remain problematic, particularly since most governments, including India are negotiating without adequate data about their services industries. Moreover, the gains in Mode 4 and Mode 1 are far from assured – given that immigration policy is not decided by DG trade, but rather by EU member-states who are resistant to further opening of EU borders and the fact that India currently attracts a tiny fraction of BPO business from the EU.

Financial, Retail, Water and Energy Services

Liberalization of financial services has led to consolidation of financial institutions, lack of transparency and extremely risky behaviour as is borne out by the current global financial crisis. In India, it would further exacerbate the financial exclusion of the poor from institutionalized credit and banking and significantly increase India's vulnerability to global financial crises. Liberalization of distribution services could also affect many ancillary services linked up and down the value chain and would threaten the livelihoods of small retailers and street vendors. Because of the economic might of the EU retail firms, it would also lead to undercutting prices for wholesale products, thus impacting the livelihoods of farmers and small-scale manufacturing firms. Over 12 million small retail outlets considered to be in the "unorganized" sector would be impacted. And this estimate does not include the large informal networks of street vendors and labourers that are associated with India's retail—often comprised of the poorest of the poor. Large retail operations such as Metro AG have already met with litigation and resistance from local groups. Finally, the EU seems likely to demand the liberalization of environmental services such as water and wastewater treatment to lock in a policy framework that favours EU corporations such as Thames Water and Violia/Vivendi. This will once again be an extremely contentious social issue within India.

Investment

A broad "asset-based" definition which the EU corporate lobbies continue to strongly advocate

would include FDI and portfolio investments and entail anything from real estate, legal rights (such as licenses to operate, mine, fish, etc.), intellectual property, trademarks, built-operate-transfer (BOT) schemes or "any other form of participation in a company (such as shares, bonds)". Portfolio investments include "equity securities, debt securities in the form of bonds and notes, money market instruments and financial derivatives". In short, some of the same types of these unregulated and opaque financial instruments led to the current financial crisis. India, like many other developing countries, has opposed such a broad definition of investment at the WTO and has maintained control over its capital accounts. Legally binding MFN and national treatment clauses could jeopardize sustainable forms of long-term investment for domestic industries and restrict necessary development policy space. And "performance requirements on employment generation, transfer of technology, export performance requirements, manufacturing requirements, training and research and development requirements" remain as important today, if not more so, than in 2002 when India referred to them at the WTO to oppose the inclusion of an investment agreement in the multilateral body.

Liberalization of trade in goods combined with investment could also jeopardize certain vulnerable sectors such as small-scale fisheries with the advent of EU trawlers entering Indian seas. Small and medium sized Indian enterprises would face the same problems with the more dominant EU firms, particularly within a liberalized establishment regime – particularly since this sector is characterized by oligopolistic anti-competitive behaviour.

FDI in India has contributed to the crowding out of domestic investment in some sectors while attracting more investment in others. Where India used performance requirements, such as "phased manufacturing programmes" in the automotive industry, the rewards paid off. However, TNCs in India have spent less on research and development (R&D) than other components of their business. Technology transfer usually results from joint ventures or certain inter-firm linkage requirements, and in all likelihood, these would not be allowed under the FTA regime. Also, many of the TNCs within India, due to economies of scale, are able to gain control of higher segments of the Indian market and thus reap much larger profit margins than local enterprises. The ability to channel FDI in desired ways requires that the state be able to regulate.

In the FTA, the EU is unfairly demanding parity in services and investment on an MFN basis with other FTAs in which India engages while exempting the EU member states from doing the same regarding their deep integration agreements with the EU accession countries. These demands exhibit the highly skewed balance of power in favour of the EU in the negotiations.

IPRs

The EU's demands for WTO plus IPR protection would lead to changes in India's IPR policy. Such changes would further undermine India's ability

to protect biodiversity and Indian plant genetic varieties to create resilient farming systems. It could lead to increased costs of commercial seed since the EU advocates for a system of plant variety protection (UPOV, 1991) that favours plant breeders' over farmers' rights to seeds. This once again has food security and livelihood implications for India and undermines the Indian Protection of Plant Variety and Farmers' Rights Act, 2001. The EU's demand for data exclusivity and other provisions would also limit India's ability to issue compulsory licenses for generic drugs and hence limit access to affordable medicines. Also, if India commits to data exclusivity in an FTA, it may have to offer the same treatment to all WTO members under TRIPS obligations. Increasingly narrow approaches to IPR protection that the EU supports would also result in over 20 years of patent protection for EU pharmaceutical corporations through "evergreening" of patents that can be claimed by making minor modifications to drugs.

Government Procurement

The EU's demands on government procurement (up to 13 Percent of India's GDP) would undermine India's policy space to be able to support small and medium enterprises (SMEs), marginalized constituencies and poorer states by prohibiting government policies that are strictly intended to procure from local firms in local regions through a variety of measures. Moreover, government procurement remains an important tool to boost domestic production during economic recessions. India has thus far resisted entering into these negotiations within the EU-India FTA.

The ongoing global financial, food and climate crises starkly illustrates the pitfalls of an economically integrated world that lacks adequate checks and balances and economic policies that recklessly believe that markets will get the prices right in any circumstances.

This paper raises many concerns about the proposed FTA framework and shows how the FTA could have negative impacts on India's policy-making space, livelihoods and important goals such as small farmers' resilience, access to medicines and economic development policies. It is intended to encourage government officials to use a wider lens than "trade restrictiveness" and open the FTA debate to include important stakeholders across line ministries, parliament and civil society. Such a debate must also take place at the sub-federal level to understand the implications of a sweeping and legally binding FTA on future policy making. The FTA negotiations require a detailed examination of food and livelihood security impacts on India. The current global crises necessitate that the GOI should not proceed further with the negotiations without having done so.

1. Introduction

As the Doha trade round goes on life support, the drive to complete bilateral and regional free trade and investment agreements continues unabated. In 2007, a total of 241 free trade and economic cooperation agreements containing investment provisions were in place and almost 2,573 bilateral investment treaties had been concluded[1]. Whereas 20 regional trade agreements were notified to the GATT/WTO in 1990, by December 2008 that number had increased to 421 – out of which 230 were in force[2].

Since the Doha Round has failed to adequately meet the expectations of European corporate interests, they have sought new avenues to expand their markets. Asia has become a regional priority – particularly India, because it is projected to become the world's sixth largest economy[3]:

> It combines a sizeable market, high economic growth and substantial tariff and non-tariff barriers to trade against the EU (EU) interests. Furthermore, while India does not currently have FTAs with EU main competitors, it is in the process of negotiating or preparing FTAs with a number of trading partners[4].

In October 2006, the European Commission (EC) declared its imperative to "open markets and create new opportunities for trade" to not only increase European competitiveness in the global economy, but also to strengthen European economies at home[5]. This "Global Europe: Competing in the World" framework lays out an aggressive EU strategy to open access for the EU markets abroad through a host of WTO plus measures via regional and bilateral trade agreements[6].

The EU and India embarked on talks regarding a bilateral agreement in June 2007 with the end goal of concluding an EU-India Free Trade Agreement by December 2008. Since then, five negotiating rounds have taken place. Those aimed for the last quarter of 2008 had been cancelled. The talks have progressed steadily with both sides exchanging white papers and draft texts. However, the bulk of these documents remain outside public access in both regions. Only select government officials and commercial interests have been privy to the details.

This paper broadly examines the core trade interests of the EU and India, the content of the negotiations and outlines some key concerns of a potential deal for India in the areas of goods, services and investment, intellectual property rights and government procurement. It argues that the final content of a free trade deal between the two hold some major implications for policy space,

1 UNCTAD, 2007b:10.
2 WTO, 2009. Regional Trade Agreements Gateway. http://www.wto.org/english/tratop_e/region_e/region_e.htm.
3 European Commission, 2006a:3.
4 EU Commission, 2007:2.
5 European Commission, http://ec.europa.eu/index_en.htm.
6 European Commission 2006a and Fuchs, 2007.

livelihoods and other public interest concerns for India.

The paper is organized into six broad sections. Section 1 begins with the introdutrion and describes the evolution of the FTA. Section 2 examins the key corporate interests in the deal and the core provisions of the agreement. Section 3 touches upon the wider global scenario and India's particular socio-economic challenges that set an important context to the ongoing negotiations. This section highlights key concerns regarding potential FTA provisions, which covers trade in goods (both agriculture and non-agriculture), and various aspects of services and investment including financial services, retail, water and energy services. The Section 4 and Section 5 address intellectual property and government procurement respectively Section 6 covers the current state of play, followed by the conclusion.

This paper does not provide a quantitative analysis of India's economic gains and losses from the FTA based on modelling exercises – this has been done by several studies[7] with varying conclusions. The objective of the paper is to highlight some key concerns of a potential FTA that deserve critical attention based on a wider political economy perspective. It is hoped that the analysis will generate more public debate and further inquiry by negotiators and government officials from a public interest standpoint.

2. The Global Europe Strategy and Core Elements of the FTA

"...competitive European companies, supported by the right internal policies, must be enabled to gain access to, and to operate securely in world markets. That is our agenda".

Peter Mandelson, when serving as the EU Trade Commissioner[8]

The European Union is India's largest trading partner and accounts for nearly 20 percent of India's merchandise trade. India has a three billion euro trade deficit to the EU[9], is EU's ninth largest trading partner and accounts for 2.1 percent of its trade[10]. India's entire estimated GDP in 2008 amounted to roughly 6.5 percent of the EU's[11], showing the immense economic might and asymmetry of power the EU brings to the negotiations. In spite of this, the EU considers India an equal partner and has pushed for reciprocal concessions in the negotiations.

Articulated through the "Global Europe"[12] strategy, the European Commission (EC) is advancing a corporate agenda that seeks to reduce regulatory barriers in trade and investment and provide much easier market access to developing

7 Polaski et al., 2008. CEPII-CERIM (2007), ECORYS (2009).
8 Churchill Lecture, Federal Foreign Office, Berlin, quoted in Seattle to Brussels Network, 2006.
9 Followed by US (10.7% of India's trade) and China (9.8%) cited in European Commission website DG Trade.
10 European Commission website, Eurostat comext.
11 Compare CIA's "The World Fact Book" statistics: $18.93 trillion of the EU's to $1.23 trillion of India's in 2008 as per official exchange rates.
12 European Commission, 2006a.

countries and the European internal market. Deregulation is sought in areas as diverse as food, cosmetics, pharmaceuticals, building materials, electronic communications, medical devices, motor vehicles, chemicals, textiles, tires, and electric and mechanical engineering services[13]. Through ambitious liberalization in FTAs, European companies would gain the right to exploit developing country resources to boost their own value-added trade[14]. For example, a German government position paper stated that a key goal was "an unimpeded raw material trade and transit, and the improvement of investment conditions in the producer countries... especially for Germany as a country poor in raw materials"[15].

The FTA negotiation process also pushes the EU member states to liberalize their own trade and investment policies and deregulate the EU measures that make the EU corporations more internationally competitive – including social and environmental measures that restrict trade[16]. Moreover, harmonized European standards on goods and services across the 27 member-states would allow FTA partners to trade without facing different barriers across the EU.

Large corporate interests within India are also demanding market access for services and investment. According to some government and industry insiders, the deal is an opportunity to attract greater foreign direct investment (FDI) opportunities for Indian business and services contracts for Indian professionals in the EU through services Mode 4[17]. Understanding the main corporate agendas of both countries helps us to identify the key elements that will form an eventual FTA between the two.

2.1 EU Business Interests

European corporations want a comprehensive FTA that includes services and investment as well as other aspects now common in FTAs worldwide. They seek both raw materials for their own products as well as direct access to the Indian market. They want the elimination of Indian tariffs in goods and legislative and regulatory barriers that disadvantage their exports. However, for importing raw materials, they also need India to dismantle export restrictions such as customs duties, taxes or other fees related to exports:

Any obstacle to global supply chains could be damaging to our industry since raising the cost of intermediary goods and raw materials would make the EU industry less competitive. More than ever, we need to import to export[18].

The EU biotech and pharmaceutical industries (Germany in particular) demand WTO plus intellectual property rights (IPRs). Moreover, the right to bid for public contracts through government procurement remains a major thrust (see Box 1 for an example of specific German corporate interests).

13 European Commission, 2006a:8.
14 European Commission, 2006a and Government of Germany, 2006.
15 Government of Germany, 2006:7.
16 CEO, 2008:2.
17 Personal Communication, members of Indian Industry Associations and government officials, August-September, 2008.
18 European Commission, 2006a:6.

Box 1:

Corporate Germany's Core Demands for an EU-India FTA

Stringent WTO Plus Intellectual Property Rights (IPR) Enforcement

- All obligatory tests on Indian patents and the Certificate of Pharmaceutical Product (CPP) should be dismantled.
- Indian Patent Law must change to fully implement the WTO-TRIPS agreement.
- India needs an effective "data protection" system (minimum 10 years to protect clinical trials' data) for the registration and authorization procedures for new drugs entering the Indian market.
- Bilateral cooperation to combat product and brand piracy.

Zero Tariffs with Limited Exceptions Across All Sectors (Agriculture and Industry)

- Mutual zero-tariff reductions between both parties on all goods; no exceptions to tariff elimination of industrial goods.
- Few exceptions to elimination of tariffs in agriculture goods.
- Elimination of tariffs in goods that India can export at zero duty to Europe (i.e. steel).
- Transition periods for arriving at zero tariffs only in exceptional cases; longer transition periods for limited sensitive products.
- Removal of all additional duties that effectively serve as tariffs.

Major Emphasis on Elimination of Non-Tariff Barriers

- The EU conditionalities should be imposed on India for removing the EU regulatory barriers.
- Notification of any new EU or Indian technical standards or regulations, including "consultation mechanisms" on such standards; all of these must be aligned with international standards.
- All manufacturing products should have the same time period set for authorization, and discrimination across different sectors should not exist (i.e. treat biological products and chemical products as same).
- Automotives: India must dismantle taxes, fees and other duties that obstruct import of certain automotive models; India must adopt international UN/ECE standards.
- Chemicals: Barriers to authorizing chemical products must be dismantled (set a limited time period for authorization).
- Textiles: the number of samples required to test presence of certain dyes should be abolished as well as detailed labelling requirements that pose a barrier to the EU exports of textiles.
- Simplification of customs clearing procedures (i.e. for textile and clothing).

Services Liberalization

- Access to Indian market for financial, transport and logistics services; in return India can have access to German markets for call centres, accounting services, etc.; all sectors should be negotiated unless specifically excluded (negative list).
- In construction, India should align itself to international standards, i.e., on fire protection and emergency exits. German firms would like contracts for such services.

(Box 1 Contd.)

(Box 1 Contd.)

EU Investor Rights

- Liberalization of Indian FDI rules particularly in financial and retail sectors.
- Liberalize authorization processes make them transparent.
- Free transfer of profits from foreign subsidiaries to parent group and residence permits for key personnel to operate subsidiaries (Mode 4).

Access to Government Services and Goods (Government Procurement)

- Non-discriminatory access to public contracts, i.e., for transport, energy infrastructure, healthcare, and construction.

Rules of Negotiations

- Strong dispute settlement mechanism (independent panels, clear time limits for proceedings, revoking concessions) where companies have direct access to the mechanism (investor to state).
- Both countries are to keep their own rules on anti-dumping and anti-subsidy proceedings.

Source : Reproduced and edited from BDI, 2008.

Powerful German and EU lobbies such as Federation of German Industries (BDI), the European Services Forum (ESF), the European Banking Federation (EBF), the European Federation of Pharmaceutical Industries and Associations (EFPIA) and Business Europe are playing a key role in driving the Global Europe strategy. The European Commission's (EC) DG Trade provides them with direct access to information while the bulk of the European civil society remains excluded. The mere muscle, both economic and in numbers, of the European corporate lobby creates a tremendous imbalance of power with India in most areas of negotiations. Yet, the EU corporations insist on reciprocity.

Echoing industry demands, the German government's directive to the EC has been to formulate European trade policy that improves market access to services and addresses hindrances to European companies in the host country: "such practices damage European companies and jobs to a high degree, not only in terms of the market opportunities in the involved countries but also in other third countries and on the domestic market"[19]. Hindrances include double pricing in the energy sector, export tariffs on raw materials, violation of intellectual property rights, forced technology transfer and currency controls. The measures targeted by Germany are either meant to strengthen domestic sectors or protect the public good, but either way they thwart market access into India.

2.2 Indian Commercial Interests in Removing EU Non-Tariff Barriers

Because the EU's tariffs are generally low and are much lower than India's (India's average tariff is 17 percent compared to the EU's 2 percent), Indians have relatively little to gain from EU tariff reductions alone. India thus seeks to dismantle the EU's numerous "non-tariff barriers" in the form of standards, directives and regulations for imported goods. It also seeks internal harmonization of European rules on investment and services so that it is no longer forced to negotiate with 27 different member states after having made large concessions through an FTA with the EU (also see Box 2).

19 Government of Germany, 2006:5-6.

Box 2:
Some Demands Regarding the EU's non-Tariff Barriers

- Harmonization of licensing requirements and mutual recognition agreements (MRAs) across the EU states for services trade.
- Making visa granting practices less restrictive; simplifying procedures and criteria for approving work and residence permits; reducing stringent qualification standards and work requirements for Indian professionals (Mode 4).
- Raising minimum residue levels on herbal medicines[i].
- Removal of the EU's Rapid Alert System for Food and Feed (RASFF) and a similar system called RAPEX for non-food consumer products – both are food and consumer safety standards.
- A joint appeal system incorporated into the FTA, whereby affected exporters can file an appeal against a laboratory report given by either the EU or India on the basis of which consignments are rejected.
- Harmonization of microbiological standards across the European countries.
- Removal of tough fruit export norms, aflatoxin limits in groundnuts; less stringent quality control standards in products of export interest to India (petro-chemicals, plastics and automotives).
- Removal of value-added tax on Indian export interests.
- Less stringent registration standards for poultry and eggs.
- Less stringent health safety standards.
- Removal of EU conditions on animal welfare and other environmental standards that serve as trade barriers.

i. A 2004 EU directive states that companies exporting traditional herbal medicines to the EU must submit evidence to prove that the product has been in medicinal use for at least 30 years preceding the date of application, including 15 years within Europe.
Source : Economic Times, 2008a, 2008b; Financial Express, 2008; The Telegraph, 2008.

In services, the Indian industry still faces massive barriers such as mutual recognition agreements (MRAs) and other certification and licensing requirements[20]. Such barriers limit the possibility of Indian professionals working in the EU, even on a temporary basis. They also hinder the ability of Indian investors in the EU to employ Indian professionals that may be needed for operations. Hence, one of India's major demands is removal of barriers in Mode 4 of the General Agreement in Trade in Services (GATS), allowing for the free movement of labour across national borders. India will continue to demand this in the FTA services chapter as well.

As mentioned above, a major hurdle for India is the lack of harmonization of the EU standards on trade in services and investment. Because each EU member state has its own rules on investment, the EU member states' bilateral investment treaties (BITs) currently cover most aspects of investment protection. This means that India currently has to negotiate country by country to achieve market access. Given these restrictions, Indian corporations would like to see tangible results in the EU's internal services liberalization and to see investor establishment requirements eased in areas such as banking and health (i.e., establishment of medical laboratories).

20 Government of India, 2008.

2.3 Core Elements of the EU-India FTA

The High Level Trade Group (HLTG), commissioned at the EU-India Summit in 2005, outlined the core elements of the FTA with an ambitious agenda:

- Liberalization of "substantially all trade" with a starting point of reduction in 90 percent of tariffs in all goods over seven years, with cuts in the remaining 10 percent of tariffs to be negotiated as sensitive products or completely excluded[21].
- WTO Plus liberalization of services that includes "substantial sectoral coverage measured in terms of number of sectors, volume of trade" and "all four modes of supply"[22].
- Current levels of market opening in services as a starting point for negotiations, rather than WTO bound rates and elimination of "substantially all discrimination between the parties"[23].
- Negotiations on investment, trade facilitation, competition and public procurement, intellectual property, sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) and dispute settlement.

The broad contours of HLTG's proposals were similar to the leaked draft EU mandate for negotiations with India[24]. Much more has been learned since the EC's approach to the FTA through the leaked internal "minimal platform" on services and investment[25]. The EC is pushing for a combined services, investment and e-commerce chapter.

The consolidated EU-India October, 2007, draft text on the goods chapter (market access and national treatment)[26] and EU-FTA negotiations with ASEAN, Korea and the Economic Partnership Agreement (EPA) negotiations with the association of Caribbean countries called CARRIFORUM also provide us insight into the possible final texts of the EU-India FTA.

2.4 A Note on Sustainable Development and the Social Clause

Under the term "sustainable development", the EU is discussing the insertion of social and environmental clauses that address labour and environmental considerations. These clauses are typically cosmetic in a free trade agreement where the primacy of trade exceeds all other considerations. In a 2007 draft, the EU had assured India that there would be "no harmonization of standards, no protectionism and no sanctions" with regards to these issues[27]. However, these clauses remain extremely contentious for the Indian government and are seen as barriers to trade.

Indian trade unions opposed the entry of a social clause in the WTO in the 1990s because they saw the International Labour Organization (ILO) – rather than the WTO – as the appropriate forum to discuss labour laws. They continue to remain skeptical on any such clause that inhibits trade and imposes sanctions on the government. They are also concerned about other international parties – apart from the ILO – intervening in domestic labour laws. Though there is no unified position amongst India's various trade unions on the issue of the social clause, they are now keen to discuss the impacts of bilateral FTAs on "decent work". Some among trade unionists would much rather see such provisions binding on corporations rather than governments through an FTA[28].

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21 HLTG, 2006.
22 HLTG, 2006:6.
23 Ibid.
24 Draft mandate refers to the European Commission, 2007.
25 European Commission, 2006b.
26 Publicly unavailable.
27 Consolidated Text EU and India, 2007.
28 Personal Communication, meeting with trade unions organized by Centre for Education and Communication, September, 2008.

3. Critical Concerns about a Possible EU-India FTA

Free trade agreements hold significant implications for the types of policies successive governments will have at their disposal. This becomes particularly relevant as nations try to grapple with the current global financial, food and climate crises in a much more integrated global economy. Pressures brought on at first by soaring global oil and food prices in the last few years – and now the general crisis in credit and liquidity – will continue to create volatile global markets in trade, commodities and finance for some time to come as the global economy enters a recession[29]. The FTA negotiations must be seen in this context.

India's profile as an emerging economic power with high economic growth obscures the major economic and social challenges the country faces. Currently, the majority of Indians remain spectators of this growth, and the growth projections are changing downwards due to the global economic recession. With a population of 1.1 billion people, India still has more poor people than any other country in the world and close to half of its children under the age of 5 remain malnourished according to UNICEF[30]. India ranks 128th out of 177 countries in the Human Development Index[31], while the International Monetary Fund (IMF) ranks India 134th out of 185 countries in terms of wealth on a per capita basis[32].

The financial crisis has increased labour concerns and exacerbated job-losses. However, India's precarious employment scenario pre-dates the crisis. In 2007, 92 percent of India's 457 million-strong workforce remained in the informal economy according to the National Commission for Enterprises in the Unorganized Sector (NCEUS)[33]. A large majority, therefore, struggles to acquire decent work and lacks any social protection or job security[34]. According to NCEUS, 836 million people – or 77 percent of the country's population – in 2005, were earning less than Rs.20 per day (roughly 30 euro cents a day)[35]. The Asian Development Bank's estimates cite 73 percent of the population as living on less than a dollar a day[36].

In 2005, the Planning Commission estimated that India will need to create 200 million new jobs by 2020 to accommodate new entrants into the work force and deal with the currently unemployed[37]. The most recent national employment statistics (2005) reveal that only about 42 percent of the "working-age" population is "usually employed". About 35 million people (roughly half of the German population) remained under- or unemployed as of 2002. And despite growing at 8-10 percent a year, there has been "little change in India's overall unemployment" between 1999-2000 and 2004-2005. Both inclusive and

29 FAO, 2008.
30 Polaski et al., 2008:9.
31 http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_IND.html.
32 Polaski et al., 2008:3.
33 NCEUS, 2007:1.
34 Ibid.
35 Ibid.
36 ADB, 2007.
37 Polaski et al., 2008:12.

employment generating growth continue to remain a major challenge for the Government of India (GOI). The financial crisis significantly amplifies these concerns.

FTAs force "equal" competition (in the case of North-South FTAs) between highly unequal partners accelerate the pace and scale at which countries enact economic reforms. India has carried out economic reforms for nearly two decades and this experience offers us insight into various concerns that arise from a potential EU trade deal that leads to further liberalization. The next sections look at goods, services and investment, intellectual property rights and government procurement from a livelihood and a public interest perspective. They examine areas of the potential agreement and highlight some key concerns.

3.1: Concerns about Free Trade in Agriculture and Non-Agriculture Goods

3.1.1 The Agriculture Context

India's relatively rapid transformation from a primarily agrarian nation to a services-led economy has dramatically impacted nearly two-thirds of rural Indians who still depend on farming. The agriculture sector has suffered the greatest decline due to a number of factors, including chronic under-investment, deteriorating extension services and rural credit systems and diminishing ecological returns from the Green Revolution.

On top of these setbacks, the government's economic policy choices have allowed small and marginal farmers to become much more exposed to price volatility and risk, particularly when production has been linked to exports and trade in non-food grains. This is happening while India faces decelerating agriculture output. The greater exposure to risk, a shift to cash crops, lack of safety nets and affordable credit have been dramatically exhibited through the estimated 182,936 farmer suicides since 1997[38].

Farmers considered to be "self employed" declined during 1993-2000 with overall employment growth in rural areas decreasing from 2.04 percent during 1983-94 to 0.98 percent during that period[39]. Women have been particularly affected because their migration to urban areas in search of non-agricultural livelihoods is hindered by social obligations and their traditional role as caregivers at the household level. They have suffered from deteriorating rural incomes and a greater "feminization of agriculture"[40]. In 2005, 72 percent of women in rural areas were working as agriculture workers. They are one of the lowest paid categories of workers in India.

In addition, the state's economic policies have also led to land and livelihood displacement of the rural poor. Special Economic Zones (SEZs) are taking people off agricultural lands without an assured form of income in the long run and have sparked a series of land-based struggles across the country[41]. Other forms of land-based (both foreign and domestic) investments are also leading to displacement of the rural poor, land tenure insecurity and agitation[42].

Trade policies that lead to further liberalization of the goods sector must take this context into account to assess the vulnerability of small farmers and land-based rural workers.

38 Sainath, P., 2008:1.
39 Dev, M., 2004:4418-4419.
40 NCEUS, 2007:110.
41 Banerjee-Guha, 2008; Shrivastava, 2008; Balagopal, 2007; Asher, 2007; Wichterich, 2007.
42 Some examples include agitation by local communities against land acquisition by Korean Company Posco for a steel plant and conversion of forest land for bauxite mining in the Niyamgiri Hills by a subsidiary of the UK-based mining company, Vedanta (both in Orissa).

3.1.2. FTA-Specific Concerns

The FTA would require India to treat the EU firms equally or 'more favourably' than its domestic counterparts under the principle of national treatment. Moreover, MFN clauses would require that India provide the EU with more favourable terms than it provides its other trading partners, irrespective of the impact that the volume of trade on these terms would have on the Indian economy. The FTA will mandate that both India and the EU cut all tariffs to zero or close to zero with India allowed to exclude up to 10 percent of its tariff lines from any liberalization. Because India removed quantitative restrictions in 2001 as per the WTO obligations, the only practical means available to protect farmers from EU dumping are tariffs.

India has large crop constituencies, meaning around five million people depend on the production of a single crop in at least 35 agriculture commodities[43]. Thus, "trade-offs" in the negotiations between one sector and another and having to choose which agriculture tariff lines to exclude becomes extremely problematic. From a public policy perspective, choosing between non-agricultural and agricultural goods to fulfill a pre-determined quota makes little sense if an exclusion of more than 10 percent of tariff lines is necessary to protect food security and livelihoods in both sectors. The government has agreed to an exclusion list of 10 percent, but has not proven that this percentage will be adequate to protect livelihoods and safeguard the sensitivities in both agriculture and non-agriculture sectors.

At the same time, just because one product is in the exclusion list does not guarantee that other like products from the EU will not displace them. For instance, fisherfolk fear that even when some of their products have been listed in the "exclusion" list, their livelihoods may not be protected given that cheap substitutes from the EU can enter and flood the local market[44]. They want at least 40 species of fish to be excluded from the list[45]. Which products the GOI excludes will have livelihood implications for the estimated nine million fish workers who live along India's 7,517 km coastline[46].

In addition to tariff reductions on a large number of agriculture goods, the EU will focus on removing India's export restrictions to enable the trade of raw agriculture produce for European value-added products. In summer 2008, India increased export restrictions on wheat and rice to ward off a major food crisis situation and to stabilize prices of staple grains. It also stopped futures trade in certain commodities. The FTA deal could severely handicap India's right to use various policy tools that may be perceived to be barriers to trade or make it extremely cumbersome to utilize public interest clauses for tools such as export restrictions. This has been borne out by attempts to quantify when and how developing countries can use special safeguards in the WTO agriculture negotiations. The global food price rise in 2008, particularly considering the size and poverty demographics of India, underscores the strategic importance of maintaining a vast array of government tools and policy space for the short and long term.

3.1.3 Special and Differential Treatment and Safeguards

The WTO principle of special and differential treatment (S&D) that acknowledges the asymmetry of economic power between developing and developed countries and accords more favourable treatment in a trade deal to developing countries has not been mentioned in the EU mandate of the negotiations for India[47]. In the draft 2007 consolidated text of the

43 Sharma, 2007.
44 Debnath, 2008.
45 ActionAid, 2008:7.
46 Asher, 2007.
47 European Commission, 2007.

negotiations, the EU seemed willing to pay lip service to the concept in the general objectives of the agreement while insisting on the contradictory notion of "reciprocity"[48]. The EU views India as an equal partner and expects reciprocal concessions in the deal – essentially making S&D meaningless. As such, the EU continues to pressurize India into reducing its exclusion list and liberalizing faster. In contrast, the EU is not negotiating its subsidies in the FTA since they are currently being negotiated at the WTO. Much has been written about the large quantities of EU agriculture subsidies and their associated problems in displacing local production in the South and therefore this topic will not be elaborated further here. But it is important to underpin that while the EU expects India to make significant tariff concessions, it is offering little protection against its own subsidy regime.

The language on agriculture safeguard measures in the leaked EU mandate is also glaringly inadequate in protecting Indian agriculture in the current climate of volatile commodity prices:

> "…the Agreement will contain a bilateral agricultural safeguard clause by which either party may restore Most Favoured Nation (MFN) duties where a rise in imports of a product from the other party is causing or threatening to cause serious injury to its domestic industry[49].

Safeguard measures are meant to increase tariffs enough to prevent import surges, which typically mean raising them 'above' the applied MFN levels. The mandate only speaks about 'restoring' duties to MFN levels, making the clause meaningless. Even the proposed WTO "special safeguard mechanism" (SSM) is so difficult to implement and limited in its application that it will not protect agriculture goods in the FTA[50]. The above language on safeguards also does not make it explicit whether price triggers can be used, i.e., when prices for the EU imports go so low as to create a dumping effect (the practice of selling below the cost of production plus a reasonable profit) and displace Indian products. Only volume triggers, as is suggested by the language of the proposal, is not sufficient to safeguard Indian agriculture.

The tariff cuts and conditions required at the WTO[51] combined with those that India will commit to within an FTA will leave the agriculture sector with little room to use border measures to protect small farmers against price volatility and dumping – particularly since the agreement will do nothing to curb the EU subsidies. The FTA will further expose India to price and volume-related risks, especially given the significant tariff cuts that India will have to make on a large number of products.

3.1.4 Standstill Clause

Another concern is the EU's insistence of a "standstill" clause. In the 2007 draft consolidated text, the EU had inserted a "standstill" clause that would prevent India from raising its MFN duty against the EU if needed. The standstill clause would bind India to keep the customs duty towards the EU at the level agreed upon signing the agreement. Though India has the right to raise duties up to WTO bound levels, such a clause would forfeit those rights to the EU. India had opposed the inclusion of such a clause in 2007.

These various clauses put millions of rural

48 Consolidated Text EU India, 2007:Art. X:1.

49 European Commission, 2007:Para 18.

50 Latest WTO SSM proposal: 1) cannot be invoked for products covered under bilateral or regional trade agreements; 2) only allows for protection of 3-8 products a year; 3) requires that the price fall by at least 30% or volume expand by at least 35% to be applicable (Goswami, 2008).

51 Latest proposal on "Special Products" (SP) (sensitive products that require lesser tariff cuts in developing countries) demands that developing countries only carve out 12% of their tariff lines as SP, out of which only 5% will be exempt from any cuts. This means that the Indian agriculture will only be able to protect around 35 tariff lines out of 700 from any cuts (Goswami, 2008).

livelihoods at risk because they expose small farmers, agrarian workers and fisherfolk to unfair competition without adequate safeguards against a heavily subsidized and well-funded EU agriculture sector. These constituencies have no capital with which to upgrade and diversify their crops and even fewer safety nets to manage risks, be they weather-related or associated with markets[52]. The livelihood implications of FTA commitments in agriculture must therefore be examined extremely cautiously.

3.1.5 Food Crisis, Food Security and the Need for Policy Space

A negative impact on rural livelihoods also has significant food security dimensions. Soaring food prices in 2007-2008 finally convinced the UN and donors that a global food crisis was at hand and that small farmers must be supported to increase and maintain national food security. High prices meant that an over-dependence on food imports could lead to balance of payment problems for poor countries and food shortages as global supplies dwindle. The FAO predicts that 2009 and 2010 will once again be characterized by high and/or volatile global food prices and food shortages. And in spite of the sharp decline in commodity prices in the last quarter of 2008, global food prices will remain volatile and higher than pre-2006 for many years to come[53]. Though India may not have the same balance of payment problems as other countries, India will have to balance between ensuring food security at home and assuming extra-territorial responsibility in preventing food shortages internationally. However, a country with one of the largest agrarian populations on the planet and severe poverty and child malnutrition, mandates that self-sufficiency in food production remain a key strategic and humanitarian goal in both the short and long term.

For this to happen, the government must retain its ability to enact and uphold laws that do not disadvantage domestic production in both primary agriculture and value-added agro-based industries. The government at all levels needs policy-making space to be able to revive agriculture, provide food security and strengthen industries that can generate employment so that the poor can afford food. This means retaining the right to design policies that are biased towards domestic sectors.

3.1.6 Implications for Manufacturing: Current Context and the Negotiations

While European manufacturing has maintained its share of GDP in volume, its output has increased by 40 percent in the last two decades[54]. *Global Europe* states:

> Despite rapid economic change and the emergence of a new range of competitors in particular China, Brazil and India, the EU's position on world markets remains almost unchanged, while the US and Japan have lost ground.

On the other hand, India's manufacturing sector has suffered massive job losses and casualization during the reform period. Despite this, the manufacturing sector has witnessed a growth of

52 Sen et al., 2006.
53 OECD-FAO: Agriculture Outlook 2008-2017; http://www.fao.org/es/esc/common/ecg/550/en/AgOut2017E.pdf.
54 European Commission, 2006a:5.

roughly 5-8 percent in the last eight years, but at a cost to the poor.

Real wages of those employed have remained stagnant and greater productivity per worker has led to retrenchment. Those who have lost jobs have shifted to the informal sector. A large majority of these people are women who have had to resort to petty trade and domestic work. In the organized sector, close to 1.3 million people lost employment in 1995-2002 when India privatized many of its public sector enterprises (PSEs)[55]. Out of 15 major manufacturing industries, 80 percent of the workforce faced a fall in jobs.

An increased dependence on exports has also increased casualization of workers in the formal manufacturing sector. Even in areas of export competitiveness such as textiles, India has witnessed a much greater casualization of jobs and reduction in wages. And this loss of employment is occurring amongst some of the poorest of the poor (see Box 3).

Box 3:
Worsening Livelihoods of Women workers in India's Textile Sector

We used to have a government body that used to purchase cotton and then the processing was given to private entities. The cotton processing was done by 5,000 women and the ginning was done by 15,000 women in very small cooperatives and private units. In 2002, the state monopoly was dismantled after the phase out of the WTO's Mulitfiber Agreement. Now people are coming in from out of state and the 5,000 women have lost their jobs. The ginning cooperatives have also collapsed. Before, the government used to purchase the cotton and give to the ginning cooperatives, now these groups do not have the capital to buy the cotton. The people who work in the processing and ginning units are mainly *Dalits* and 80 percent of them are from the "backward" castes. Hundred per cent of them are women. And they are not finding other jobs. The private companies that are coming in from out of state are monopolies too and they have drastically reduced wages. Before the daily wage for such work was Rs125 per day, now they earn Rs50-60 per day. They bring people from even poorer areas that will work for these wages. And these people have no bargaining power since they are migrants. And these are export companies.

Source : As told by a dalit activist working with women workers based on experiences with the Maharashtra Cooperative Cotton Growers Marketing Federation Limited, Marathwada region, State of Maharashtra.

3.1.7 Financial Crisis, Exports and the FTA

The global financial crisis is also creating uncertainty in the market, depressing the real economy and creating economic losses and massive job cuts in both the services and manufacturing sectors. Tragically, temporary and casual workers in India have been one of the first victims of the global economic recession as firms begin to lay off workers to cut losses. An estimated 700,000 temporary contract and casual labourers have lost jobs in India's export-oriented sectors such as garments, textiles, leather, jewellry, auto parts manufacturing and light engineering as well as the financial and real estate sectors[56]. Those sectors

55 Nagaraj, R., 2004:3387.
56 Mohandas, 2008.

that have been hardest hit economically are also the most competitive export-dependent sectors such as leather, textile, gems and jewellry. As a result, the trade deficit widened in November 2008 to more than 33 percent to $10.07 billion as imports rose by 6.1 percent and overseas sales fell by 9.9 percent[57].

Before the GOI turns to massive liberalization of goods through the FTA, it should carefully examine whether the cost of forcing other manufacturing sectors and SMEs to compete with European goods will be outweighed by the benefits of lowered tariffs in already competitive sectors such as textiles, gems, jewellry and leather. The FTA could lead to further casualization, deterioration of working conditions and job loss, particularly since SMEs would find it difficult to compete with European firms. Rather eliminating tariffs across the board, the GOI must devise a long-term strategic plan for reviving Indian manufacturing and millions of livelihoods dependent on it. It will thus be important to disaggregate between tariff effects, declining global demand due to the financial crisis and its impacts on balance of payments. Creating a strategy to boost domestic sectors and labour-intensive value-added industry would be a good first step.

3.1.8 Unsustainable Exploitation of Natural Resources

An FTA in non-agriculture goods with the EU may also lead to further exploitation of natural resources because of the removal of export restrictions in raw materials. The EU currently imports more than three fourths of its iron ore, bauxite, copper ores or lead ores[71]. The easing of export restrictions in these minerals combined with a liberalized investment regime could exacerbate struggles and increase land grabbing in mineral-rich but poor states such as Orissa, Jharkhand and Chhattisgarh, where marginalized (and most often indigenous) people are impacted[58].

3.1.9 Loss of Revenue through Tariff Liberalization

The liberalization of goods will also impact India in terms of overall tariff revenue loss and hence public spending. The year before India launched its economic reforms, fiscal year 1990-1991, trade taxes accounted for 48 percent of the total tax revenue. By 2007-2008, trade taxes accounted for 17.4 percent of total tax revenue[59]. Polaski et al., 2008 predict that an FTA will lead to further loss in revenue which will be made up by increasing taxes at the household level. This scenario actually played out in the 1990s when customs revenue fell from 3.6 percent of the GDP to 1.8 percent between 1990 and 2002[60]. As a result, the government increased direct taxes on Indian citizens from 1.9 percent to 3 percent of the GDP. Households suffered, especially those of the poor, given that total government expenditure during this time also fell from 17.2 percent to 15.8 percent.

Given the fact that India is entering a recession period, projected government revenue losses from the EU-India FTA should be taken extremely seriously. Particularly since the GOIs proposed solution to the financial crisis is to increase public demand through (among other things) increased government spending. In the past, the poor have been hardest hit by budget cuts since they rely the most on public funds. In a year where the poor will have to compete with powerful industries demanding bailouts, the government can ill-afford to justify further revenue losses.

57 Economic Bureau, 2009.
58 One such struggle is ongoing against a subsidiary of the UK-based mining company, Vedanta, which has been given the right to mine on indigenous land despite opposition from the communities living there.
59 IndiaStat.
60 Powell, S., 2008:16.

3.1.10 How Preferential Would the Treaty Be?

Finally, the EU is also negotiating FTAs with India's competitors such as ASEAN. Thus, any preferential arrangement India gains from the EU in exchange for liberalizing its own economy will only benefit India until other EU FTAs come into force. For example, if the EU-Korea and EU-ASEAN agreements grant Korean and other Asian competitors preferential access into the EU markets, India will have to compete with them despite having already made concessions to the EU. Preference erosion is a key factor in determining the real economic value (and costs) of a potential deal with the EU. The GOI should carefully assess how meaningful the FTA would be, given costs of the concessions made to the EU after other EU FTAs come into force.

3.2. Concerns about Services and Investment

3.2.1 A GATS Approach for a Combined Services and Investment Chapter

Services Negotiations – A Legal Liability

Services negotiations were vehemently opposed by developing countries during the Uruguay Round because of their nascent services industries, lack of policy expertise in the subject and effective regulatory mechanisms to ensure the public interest. The European and American financial services lobbies designed a large portion of the architecture of the General Agreement on Trade in Services (GATS). When the WTO agreement was signed, most governments, including India, did not fully understand the legal implications of the agreement.

This is because the scope of the GATS is extremely broad and covers the liberalization of all services that are in competition with at least one private operator. Once a country commits to liberalizing such a service in the WTO, any national, state or local rules that restrict such trade can be subject to challenge by another country. Since the GATS came into force, even laws, regulations and "measures" of powerful countries such as the US have been challenged for unknowingly violating the agreement even where the government specifically sought to exclude services such as gambling and betting. This is because GATS services classifications are extremely detailed and complex and GATS rules apply to any "measures" that are seen to even "affect" the trade of another party (see *United States – measures affecting the cross-border supply of gambling and betting services: Report of the Panel, WTO Document:* WT/DS285/R).

Since the Uruguay Round and particularly in the last five years, India has taken a massive about turn in its approach to the GATS. The GOI appears willing to liberalize most modes of supply as long as other parties give access to Mode 4 of the GATS – the free movement of labuor of Indian white collar workers and Mode 1 – cross border supply of services relevant to the business process outsourcing (BPO) sector. However, the commercial and legal implications of the GATS remain equally problematic today, particularly since most governments, including India are negotiating without adequate data about their services industries. Moreover, the gains in Mode 4 and Mode 1 are far from assured – given that immigration policy is not decided by DG trade, but rather by the EU member-states who are resistant to further opening of the EU borders and the fact that India currently attracts a tiny fraction of the BPO business from the EU[61].

The GATS also requires a significant amount of legal and technical knowledge to ensure that public interests are not undermined in case another party challenges domestic regulations in the WTO's dispute settlement mechanism. However, as previous WTO dispute settlement cases have proven, GATS is meant to be interpreted broadly

61 Eurostat, 2009.

and legal and technical expertise does not prevent national regulations or practices from being challenged and overturned. The WTO appellate body, in the EU Bananas case stated that the GATS is interpreted to have a "broad reach" and there is "no legal basis for an 'a priori' exclusion of measures... from the scope of the GATS"[62]. This is relevant for the FTA because the FTA will be WTO plus, use the GATS framework for both services and investment and include a dispute settlement mechanism where India's regulations can be challenged if perceived to be trade restrictive.

Another India-specific concern in the FTA is that India did not list any exemptions to MFN in its GATS schedule in the WTO. According to a 2008 WTO study[63], those countries that did not list exemptions under the MFN clause[64] of the GATS could be obliged to mulitlateralize any commitments they make through regional or bilateral treaties that include trade in services. This may mean that any services commitments India makes under the FTA to the EU may have to be offered to all 153 WTO member states on an MFN basis. Such MFN obligations would also apply to any "transparency" requirements within the purview of the services negotiations within the FTA. India's legal implications of not having listed GATS MFN exemptions needs much more public debate and analysis before the Indian government makes services commitments in the FTA. In fact, if India cannot exempt MFN from regional and bilaeral concessions in services because of prior WTO commitments, then India's services commitments in other FTAs also becomes relevant; since presumably, India would have to provide the EU the most favourable concessions it made to other FTA parties.

Adding Investment into the Mix

Given the above complexities of GATS, the EU's proposal to create a joint services and investment chapter is even more problematic. The FTA chapter as proposed by the EU would require that India set out a single schedule of commitments for services and investment. This would benefit European Transnational Corporations (TNCs) and meet the demands of the European Services Forum (ESF) because of the "seamless" predictability of rules that would cover their supply chain of both services and goods[65]. Given the complexity of preparing services schedules that cover four modes, exceptions and horizontal commitments[66], this new combined format will become even more challenging with a far greater margin for legal error. This could prove costly for balancing trade with governance and ensuring that public interests at the central, state and local levels are protected. In simple terms, the legal complexity of such a sweeping chapter could put local, state and national laws, rules or measures at risk of being challenged by the EU through the FTAs dispute settlement mechanism if they were seen to restrict the EU trade. This would apply to any sectors that India commits in the chapter.

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62 "A Civil Society Response to the WTO's Publication 'GATS – Fact and Fiction'", 25 May, 2001, www.gatswatch.org; see also, Scott Sinclair's book: "Facing the Facts: A Guide to the GATS Debate".

63 Adlung et al., 2008.

64 MFN and national treatment are the two central principles of non-discrimination in the multilateral trading system. MFN means that a country cannot discriminate against one country over another and therefore, if it provides a special trade concession to one country, it must also provide this concession to all other WTO members. See also, http://www.wto.org/english/theWTO_e/whatis_e/tif_e/fact2_e.htm

65 Kelsey, 2008.

66 GATS specifies four modes (methods) of supply of services; exceptions to liberalization are specified by negotiating parties as per the rules of the agreement and horizontal commitments are those that apply to all services sectors being negotiated. This same model is being used for the FTA.

Kelsey points out that, in such a format, commitments in "services related to" forestry, mining, energy, fisheries, agriculture or manufacturing, along with those on transport, distribution, engineering services will complement foreign investments in mining and logging operations or fish canning factories. Governments would be left with very limited power to regulate the activities of powerful European corporations. Moreover, the sample texts of other EU negotiations such as the CARRIFORUM EPA are apparently similar to those of the India FTA. These texts do not have any mechanisms to withdraw commitments in case negative impacts or constitutional violations occur at a later date.

Box 4:
The Broad Scope of a Combined Chapter on Services and Investment

EC internal documents show that the EU wants services, "establishment" rules for investment and e-commerce in one FTA chapter. Rules on establishment would apply not only at the moment of establishing (acquisition, constitution or creation) a presence in the host country, but also thereafter in order to not lose acquired privileges[i].

Combining services and investment into one chapter signficantly increases the coverage and scope of commitments for both investment and services since the coverage and modes of supply are similar to that of WTO's GATS agreement. For instance, according to the EU sample texts, negotiations would apply to any "form of law, regulation, rule, procedure, decision, administrative action or any other form" taken by "central, regional, or local governments and authorities" that serve as a barrier to trade[ii]. Exceptions would only be made for services strictly under the purview of the government and not in competition with any other operators.

As the bulk of government services are generally in competition with more than one operator, commitments in the FTA would implicate an incredibly broad range of laws, regulations and measures that could be challenged because they could be seen as barriers to trade with the EU. Moreover, WTO rules on preferential trade agreements mandate that both parties siginficantly increase their commitments beyond those bound at the WTO. Thus, the FTA would have to cover many more services than what India commited under the WTO.

i European Commission, 2006b:2.
ii European Commission, 2006c:1.

3.2.2 Servicing India or the EUs Needs?

Sixty per cent of world foreign investment stocks are covered by Mode 3 (commercial presence)[67] of the GATS. Services constitute roughly 55 percent of India's GDP and 70 percent of EUs[68]. While the EU is demanding many more services commitments from India, it has protected its own sensitive sectors by not negotiating on audio-visual, cultural, air transport or maritime services. It also proposes special clauses on sensitive EU modes and sectors. For instance, Mode 4 is limited to "business professionals" and existing WTO commitments. Thus, the large majority of those considered "unskilled" have no consideration in the Mode 4 negotiations. Meanwhile, highly sensitive and important sectors for development

67 "Any type of business or professional establishment, including through the constitution, acquisition or maintenance of a juridical person, or the creation or maintenance of a branch or representative office within the territory of a Member for the purpose of supplying a service" (Article XXVIII(d) of the GATS).

68 BDI, 2008.

such as environmental services (i.e., water), health and education are not excluded[69]. Nor is there any reference to special and differential treatment for India (like for ASEAN countries) in the EU mandate for India[70].

According to Kelsey, sections of the CARRIFORUM-EU EPA imposes stricter restrictions in EU priority areas such as courier, telecommunications, financial services and e-commerce that mirror "often word for word, the EC's sectoral proposals in the GATS 2000 negotiations". These call for a drastic form of deregulation and liberalization in identified sectors and developing countries have been opposing this approach in the WTO. Moreover, the EU's financial services section in the EPA is similar to the GATS Annex on financial services. This was largely drawn up by OECD countries and their financial services industries and mandates an aggressive form of financial liberalization. It is highly likely that the same approach is proposed for India. The next sub-sections address financial services, retail and energy and water services.

Financial Services Liberalization: Can we bank on it?

Let me assure everyone there is no cause for any alarm that any Indian bank is exposed or vulnerable like a couple of banks that have failed in the United States.

Former Indian Finance Minister, P. Chindambaram[71], September, 2008

Given the precarious state of today's financial markets, and their vital importance to the daily lives of the American people, government intervention is not only warranted, it is essential.

Former US President, George Bush[72], September, 2008

In September 2008, the US government used public money to save two of the biggest US-based mortgage finance companies, Freddie Mac and Fannie Mae, and global insurance giant AIG from bankruptcy while a major investment firm, Lehman Brothers, was forced to go out of business. Because of actual investor losses around the world caused by these failures and the ensuing fear and panic in the finance sector, stocks plummeted in several countries and continue to do so. European governments in Great Britain, Switzerland and Ireland "temporarily" banned the short selling of shares in financial companies to prevent further crises in their own markets. The UK pledged to inject as much as $87 billion to recapitalize its banks[73] while German Chancellor Angela Merckel pledged to guarantee all German retail deposits and savings (worth €1 trillion).

While this global meltdown is leading European and US governments to intervene into the market with more and more monetary bailouts of corporations, aggressive financial sector liberalization is still being promoted in EU FTAs. The European financial services lobby, represented by the European Banking Federation, represents the interests of over 5,000 European banks, large and small, from 29 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees. These banks are vying for much greater access to India's banking market which, as of 2007, consists of 27 public sector banks and 29 private banks that represent 70 percent of the market share in the Indian economy[74].

Financial risk is one of the primary concerns of financial liberalization in an EU-India FTA. The

69 Maes, M., 2007:17.
70 Ibid:16.
71 The Hindu, 2008a.
72 The Hindu, 2008b.
73 Economist, 2008:75.
74 RBI Monthly Bulletin, 2008:1502.

EU and US experience of financial liberalization shows that retail and commercial banks tend to make their profits from as many as 20 percent of their "high profit" clients while the remaining customers actually undercut profits[75]. Standard and Poor also rate European banks as risky since they do not diversify their portfolios enough to manage risk of default, concentrating only on a handful of big clients.

Liberalization of this sector has brought deregulation and enabled the industry to create new and more complex financial products that are increasingly difficult to monitor and lacking in transparency. These speculative services increase risk for both consumers and authorities because of their unpredictability. In fact, it is precisely these types of instruments such as credit-default swaps and other forms of repackaged and non-transparent debt that has led to the current global crisis. When financial crises occur, the state is brought in as "insurer of last resort" forcing taxpayers to cover the private sector's "toxic" debt. Thus, losses are essentially socialized where profits had been privatized previously[76].

Global experience has also shown that liberalization in financial trade and investment leads to national banks being unable to compete with international banks, thereby leading to further consolidation of the industry into a few large banks. In the OECD countries, consolidation has resulted in mergers and acquisitions of medium-sized financial companies being absorbed by mega conglomerates. Netherlands' and Belgium's consolidation has led to the market being dominated by five financial groups[105]. India's own forays into financial sector liberalization have reduced constitutionally "scheduled" commercial banks from 300 at the end of the 1990s to 82 by 2006-2007[77]. Further consolidation is occurring.

This kind of consolidation results in greater political power for and dependency on large corporate banks as evident by the urgency with which powerful governments such as the US have been forced to bail out Wall Street. This is because greater monopolies create government dependencies on such institutions for loans and bond underwriting – and critically – for issuing credit to small businesses and individuals. Hence, governments are now finding that their over-dependence on large financial monopolies has handicapped their ability to revive the real economy and protect working class families. An EU-India FTA would promote this type of consolidation and import financial risk by liberalizing this sector and allowing much more access to the Indian market by EU financial firms.

This consolidation also occurs at the expense of the poor. Studies show that financial liberalization has resulted in reduction and marginalization of services to the poor and small and medium-sized enterprises (SMEs)[78]. This scenario has been borne out in Mexico, where 80 percent of the banking sector has come under the control of foreign banks since the country liberalized the sector[79]. It has led to the closure of banks in poorer and less profitable areas. Moreover, households and SMEs now have a difficult time getting loans from these banks because they get less favourable rates than larger clients.

Financial Exclusion in India

India's own experience with financial liberalization has led to further financial exclusion of the poor. The Reserve Bank of India (RBI) admits that one of the biggest challenges facing agriculture and

75 Vander Stichele, M., 2005:14.
76 see also Krugman, P., 2008.
77 RBI, 2007:5.
78 Powell, S., 2008; Singh, K., 2008a; Vander Stichele, 2008; Social Watch Report, 2003, Baindur et al., Forthcoming.
79 Schulz, H., 2006.

growth of small-scale industry and the poor is "financial inclusion". The RBI defines this as "the provision of the full range of affordable financial services, viz., access to payments and remittance facilities, savings, loans and insurance services by the formal financial system to those who tend to be excluded from these services.

The experience from Indian financial sector liberalization that started in the 1990s shows that access to rural credit by the poor has diminished. India currently has a system of large state banks, private Indian banks, foreign banks and cooperative banks. In 1992-1993 when India launched its economic reforms, the share of cooperative banks declined from 62 to 33 percent in the banking sector, while the inverse happened to the share of commercial banks which went from 33 to 68 percent[80]. Regional rural banks (RRBs) have been consolidated and their operations reduced drastically. Yet, RRBs were set up to provide financial assistance to small and marginal farmers, small entrepreneurs and agricultural labourers. Policies that required establishment of branches in "under-banked" areas were removed during the reform process. Currently, 391 Indian districts out of 602 have inadequate banking coverage, and while 933 bank branches opened between 2005-2006, only two opened in under-banked areas[81].

Priority sector lending in India covers loans to students, small retail traders, farmers, agro industries and exports at concessional rates. This concept evolved to promote inclusivity when Indian banks were first nationalized. Currently, foreign banks are required to lend 10 percent to small-scale industries and 12 percent to export credit, but no targets are prescribed to lend to more marginalized sectors of the economy such as agriculture. Thus far, India allows 12 foreign bank branches to open up per fiscal year. The EU is likely to push for much greater quotas for its banks and to reduce restrictions on how such banks can operate. This means that lending requirements such as those for small-scale industries could also be targeted.

Foreign banks are also currently exempt from providing a differential rate of interest (DRI) for concessional loans to people below the poverty line and marginalized populations. In contrast, domestic banks (both state and private) are required to meet these DRI requirements and contribute 18 percent to agriculture and 10 percent to marginalized populations. Without these minimal requirements for the public sector, the rural poor would have even less credit than is available today. After an FTA, while more EU firms would be allowed entry and be exempt from many of these requirements, domestic banks would be forced to compete with them while spending a portion of their earnings to serve priority sectors. This gives already powerful foreign banks a competitive edge over domestic ones and could eventually lead to the dismantling of services meant for the poor if domestic banks were unable to sustain the competition. The poor would be the main losers in such a scenario.

Banking sector liberalization, which the FTA would accelerate, has had negative impacts on the poor. Fewer banks are opening in under-banked areas, going from 15 new ones in 2004-2005 to just two in 2005-2006. New branch licensing policies are resulting in more rural bank closures.

80 Singh, K., 2008a:3.
81 Singh, K., 2008b. Letter to the Financial Times, 29 July.

Rural banks increased from 23 percent in 1969 to 58.5 percent by 1991. After economic reforms, they decreased to 42.7 percent by 2007, with only urban bank branches increasing[82]. This has obviously led to a decline in rural lending, going from 15.7 percent credit to rural India in 1992 to 11.6 percent by 2006, and points to a further crunch in the institutionalized credit available to debt-ridden farmers[83].

SMEs also contribute to 40 percent of India's total production, 34 percent of exports and are the second largest employer after agriculture. They have also faced a decline in lending from 15 percent in 1991 to 11 percent by 2003. Only 14 percent of total investments made by SMEs in 2007 were contributed through the formal banking sector. As grim as this picture is, state-owned banks lend more money to SMEs than any other sources.

Financial liberalization through the EU-India FTA would push domestic state-owned and private banks to compete with powerful European banks. It would further accelerate consolidation and will likely lead to further exclusion of marginalized sectors rather than providing them access to affordable and institutionalized credit.

EU's Demands in Retail Trade

Many services are linked to GATS "distribution services," in the retail trade of fresh fruit and vegetables. For instance, such services entail retailers, distributors, importers, suppliers; transporters and cold chain operators; "services incidental to agriculture" such as agriculture extension, credit facilities, environmental advisory services; insurance of transport; and insurance of goods under financial services. Hence, India's possible commitments in distribution services have impacts on a wide variety of livelihoods tied to the Indian supply chain of retail goods and services. As pointed out earlier in this paper, the GATS approach is broad in scope and thus binding commitments can implicate numerous legislative and regulatory measures at national and local levels and can prohibit the government from enacting new measures that may be seen as "trade restrictive". The EU could demand liberalization of all or many of the services linked to retail in the services and investment chapter of the FTA. It could ask for deregulation of any numerical quotas of retail suppliers and supplies, limitations on purchase of real estate, percentage of company shares, provisions of taxes equal or better than domestic counterparts or loosening of regulations on the types of goods that could be distributed.

Depending on domestic regulation and transparency requirements agreed in the FTA, the EU may also be allowed to play a significant role in commenting on any new or proposed legislation, notification or regulatory measures that India enacts in this area or any other area it commits within the FTA. The next section looks at potential impacts based on the Indian retail scenario.

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82 Singh, K., 2008a:13.
83 Assocham in Singh, K., 2008a:14.

India's Lucrative Retail Market: Survival of the Fittest

Retail trade in India is currently on precarious ground and opening up this sector to the EU in the FTA would have significant negative impact on the livelihoods associated with retail trade. This is because European retail corporations have enormous economic power compared to even the largest Indian corporations involved in retail.

According to projections prior to the economic recession, the Indian retail sector showed enormous potential for economic gains. (At the time of writing, this scenario was rapidly changing with several Indian retailers in financial trouble due to the recession.) The organized retail sector was supposed to grow at a compounded annual rate of 40 percent a year in the next three years, from $8 billion in 2007 to $22 billion by 2010. The entire sector was projected to grow from $350 billion in 2007 to $427 billion by 2010 and $635 billion by 2015[84].

The Indian retail sector is comprised of both the "organized" and the "unorganized" sectors. Large Indian and foreign corporate houses, only about 2-4 percent of the sector, are classified as "organized."[85] The other 96-97 percent, or over 12 million small scale businesses, are considered "unorganized." This paper refers to them as "self employed".

These small-scale traders, street vendors (also known as "hawkers") and those linked to them down the value-chain (logistics and transport labourers, whole-sale traders, fruit and vegetable sellers, farmers, manufacturers) are all directly impacted by the way India deals with the re-organization of its retail sector.

This sector is feeling increasing competition from Indian corporate houses entering the retail trade and from giant international corporations like Walmart, Metro AG and Carrefour. Currently, the domestic corporate competition consists of about 20 retail outfits, but the economic might of the European retailers seeking to enter the market dwarfs all domestic competition. For instance, Metro AG, Carrefour, Tesco and Royal Ahold generate 13 percent more revenue than the entire retail sector in India and 50 times that of the domestic corporations combined. Walmart's 2007 revenue was larger than that of the entire retail sector in India. With this much economic might, the family run businesses and street vendors have little scope for competition and survival.

Abuse of Loopholes in India's Regulatory Regime on FDI in Retail

India does not allow foreign direct investment in multi-brand retailing, but permits up to 51 percent in single-brand retailing. Thus, multinational companies like Tesco and Walmart are entering through joint ventures with Indian franchises such as Bharti Enterprises and Home Care Retail Mart Pvt. Ltd.

Germany's Metro AG was smarter at the outset in that, rather than going the FDI route, it directly entered the market through "the wholesale merchandising sector" since 100 percent foreign ownership is only allowed in wholesale trade. As such, Metro pitches itself as a "cash and carry" wholesaler (Box 5). Walmart and Tesco have since followed suit.

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84 See A.T. Kearny's 2007 Global Development Retail Index (GDRI): http://www.atkearney.com/shared_res/pdf/GRDI_2007.pdf
85 *See ibef.org/download/Retail_PPT_61108.ppt*

Box 5:
Metro Cash & Carry and Small Trader Resistance

Metro Cash & Carry; a subsidiary of the German retail giant Metro AG (now present in 28 countries and 2,330 locations), launched its first Indian distribution centre in Bangalore, in the state of Karnataka, on 22nd October, 2003. Covering 6,300 square metres, it has more than 50 sections in the store and stocks 17,500 products.

According to official documents Metro Cash & Carry was given permission to do wholesale cash and carry business in December 2000. But local traders protested its inaugural opening, alleging that it was violating the Agriculture Produce and Marketing Committee Act by selling agricultural products and acting as a wholesale front to lure retail buyers. The traders associations also filed a case against Metro.

In 2004, the Karnataka Commercial Tax department conducted a detailed enquiry. It reported that the company was conducting retail trade in violation of Government of India FDI rules. A letter was sent to the Ministry of Finance's Department of Economic Affairs (DEA). The DEA's cross verification of purchases indicated that Metro was involved in retail trade as many companies and individual shop owners purchased goods for personal consumption rather than for further sale. In addition to violating Indian laws, Metro's business resulted in a loss to Karnataka's resale tax revenue. Wholesalers and retailers were losing business.

Radio House and other traders filed a case in the High Court of Karnataka alleging that Metro Cash & Carry was involved in retail business and was affecting retail traders. In October 2007, the High Court of Karnataka directed the Government of India to monitor Metro Cash & Carry from time to time.

India FDI Watch, an NGO, along with the movement "Save Agriculture Retail and Livelihood Campaign Karnataka" and other like-minded organizations, protested in front of the Metro on 25th October, 2007. They demanded that the state and central government take immediate action against Metro because it was violating FDI policy and was involved in predatory price practices in the name of wholesale and reduced prices.

In July 2008, Metro Cash & Carry obtained a license to sell and purchase vegetables, fruits and flowers as a "private market" enabled by amendments in Karnataka's Agriculture Product and Marketing Committee (APMC) Act. This is the first private vegetable, fruit and flower market in Karnataka and in India. This amendment favours large capital because they can directly buy from farmers whereas small traders cannot.

Vegetable vendors and retailers in the surrounding areas are unhappy with Karnataka's decision. Many feel that their livelihoods are threatened. A small vegetable and fruit market located near the railway station of Yashwanthapur (locality near Metro) is on the verge of losing its business.

Source : Reproduced and edited from FDI WATCH, Electronic Communication, 26 September, 2008.

The French have learned from Metro AG and are trying a two-pronged approach: Carrefour SA will enter by 2009 through both the wholesale trade (100 percent ownership) and Carrefour India Master Franchise Co. Pvt. Ltd, an Indian franchise partnership for retail trade. The wholesale arm will feed the retail franchise. France's Intermarche group is partnering with Radhakrisna food service group for wholesale trade. Walmart will also follow the Carrefour approach.

The livelihood impacts of large-scale, multi-brand retailing in India are staggering. According to a study from the Center for Policy Alternatives in Delhi, even a 20 percent share of the Indian retail market by these giants will displace eight million self-employed retailers and hawkers. A large percentage of people tied to wholesale and retail – hawkers that are not unionized, daily wage laborers, etc. – are in the informal sector. Estimations of the number of self-employed retailers also does not include those linked to the supply chain, such as the farmers who supply to the wholesale market and the many small manufacturing businesses that cater to self-employed shops. FDI Watch, a civil society watchdog on the expansion of corporate retail in India estimates that close to 200 million people will be negatively affected by the emergence of large-scale corporate retail.

A study by ICRIER[86] suggests that after a few initial years of displacement, small retailers will be able to compete in the domestic market and both the organized and the unorganized sectors will flourish in the long term. There is also the notion that such mega-conglomerates will better the working conditions in the supply chain and create direct linkages between farmers and retailers, offering farmers a better price than the government controlled *mandis* or markets where wholesale trade is permitted for domestic farm produce. In fact, the ICRIER study finds that while self-organized retailers experienced a decline in their volume of business in the initial years when large retailers entered their neighborhood, the impact weakened over a priod of five years. However, this conclusion was based on anecdotal interviews asking retailers to reflect back up to five years. For a study based on robust data, annual profits would have to be measured on an annual basis in a time-series format and a proper assessment done as to how many stopped retailing all together. The actual ICRIER figures for profits of the unorganized sector also do not correspond well with their positive conclusions since they show a decline in profits over five years in most regions that they interviewed except for a marginal gain in one. The other regions continued to suffer losses even if they lessened over time.

ICRIER data on prices received by farmers is based on one crop (cauliflower) and 197 farmers, too few to really understand how the market is being impacted. However, ICRIER recommendations to form cooperatives and consolidating both the self-organized retailers and farmers hints at the power imbalance that this chain will face against both domestic and international conglomerates. The ICRIER conclusions that liberalization of retail in India will be a "positive sum game in which both unorganized and organized retail not only coexist but also grow substantially in size" does not correlate with the European experience of mega-retail stores and their impacts on small European retailers, grocery stores and farmers.

The Reality of Multi-brand Retail Supply Chains: The European Experience

The retail sector is characterized by oligopolistic behaviour that often leads to price fixing and a decreased role of wholesalers and small traders. The European experience shows that retail oligopolies have resulted in the disappearance of

86 Joseph et al., 2008.

wholesale markets and the removal of contracts or guarantees of fair prices and payments. Within Europe, farm prices declined by 27 percent in 15 European countries over a period of 11 years because of "buyer power" of large supermarkets[87]. Vander Stichele, 2006, has found that major retailers have completely changed the European supply chain – particularly in the fresh fruit and vegetable sector. Though such stores ensure low prices, high quality and safety standards, high volumes and all year round supply; the concentration of retail has also created a monopoly or oligopsony of suppliers. This means that most retailers use one or two suppliers or directly source from the producers. When this occurs, risks are shifted down the supply chain to the producer.

The buyer power of retailers allows them to reduce prices just when the producer has no other option to sell; delay payments because the producer does not want to fall off the supply chain; be forced to supply large quantities at short notice. The producers in turn are forced to cut costs – usually on the type of contracts they give labourers and by consolidating land to reach economies of scale. The entire chain is thus characterized by vertically integrated companies through mergers and acquisitions and the creation of strategic alliances between producers, traders and distributors. A major concern in the Indian context is the amount of capital that producers, traders and distributors would need to be able to plug into such a supply chain. Many people involved in the Indian retail logistics chain are below the poverty line.

Even the export of these products requires "cold chains" through a highly concentrated ship or air freight that only those with large capital can afford. In the Indian context, this would mean that small farmers have very little chance of reaping benefits from a concentrated retail sector. And the implications of the disappearance of wholesale markets as a result of widespread organized retail – whether domestic or foreign – will have to be carefully examined by Indian officials interested in reviving the agriculture sector[88].

Exacerbating Inequality through Retail Liberalization

The EU is demanding national treatment – equal or better treatment than domestic providers – in both its services and investment negotiations. However, small traders, hawkers and farmers are demanding that the Indian government remove unfair trade advantages that favour foreign retailers and large corporations over them. For instance, India's Agriculture Product and Marketing Committee Act (APMC) does not allow any local trader to sell wholesale produce outside of government designated *mandis* (markets). However, Metro AG and soon Walmart and Carrefour will be able to directly sell "wholesale" fruit and vegetables in all cities through the formation of "private" markets (see Metro AG Box: 5). This actually favours foreign entities over domestic ones and large domestic corporations over small players because of economies of scale. The FTA in distribution services and related investments will prevent India from providing more favourable terms to domestic small-scale local shops and wholesalers because of non-discrimination clauses.

Unfair competition that includes predatory pricing, monopolies and oligopolies, necessitate that India sort out its internal competition policy before opening this area to 27 European countries. Farmers have been calling for a revision of India's internal trade and agriculture policies that allow them to supply India's domestic market more

87 Vander Stichele, 2006:62.
88 Ibid:73.

efficiently with greater support from the government rather than jumping to open India's agriculture and retail to compete with multi-national corporations.

National Hawkers Federation Data

According to the Federation, approximately 43,640 street vendors existed in 1999-2000 (NSSO 55th Round). In 2008, they estimated that the number has risen to over 10 million (one crore). These are unskilled or semi-skilled workers that are absorbed into this sector when daily wage labourers lose jobs in cities or rural areas. Not only are they being evicted physically near malls and being prevented from selling their wares in public spaces, they are being displaced economically because they cannot compete with the cheaper prices offered in multi-brand retailing. Their own case studies show that hawkers experienced a 25-30 percent decline in earnings within the first few months of a large retail presence.

Hawkers are demanding that the government put several policies in place to safeguard and improve their livelihoods. For instance, they would like much stronger regulation of organized retail (foreign and domestic); enforcement of the APMC regulations on foreign/joint venture "wholesale" stores that do not disadvantage domestic small-scale retailers; local sourcing of products, zoning laws that designate retail outside of hawker zones; and restrictions on the quantities and sizes of products that such large stores can offer[89]. A recent case study illustrates that these policies are necessary to sustain livelihoods, especially since many of the people involved in hawking have no other alternatives for earning a living and the state provides no safety nets or social protection for them (see Box 6).

Box 6:
A Hawkers' Survey

The study found that people were hawking because there was no other source of livelihood available (92 percent of them) and because of factory closures. Many were in this business from 5-20 years; 84.7 percent were the sole earners in their families. Close to 90 percent of them earned Rs. 4,000 a month and thus belonged to the low-income/low expenditure bracket. There was no dependence on state finance by over 70 percent of them and they sourced from small suppliers. In addition, they sold commodities produced in the state. Many of them paid the police because hawking is illegal in West Bengal. The majority of them said that they would be willing to pay the State for a license if hawking was legalized. The argument that these people could be absorbed by large corporate-style retailing is simply false. Most of these people are dependent on long-standing networks which allow them to barter and sell on credit; no such institutional facilities exist in corporate retail. And many of them lack the education required for employment at such stores.

Source : Survey at Gariahat Road and Rashbehari Ave, Kolkata, July 2008; Study sample: 632 hawkers from one site and 1,627 from another.

Energy and Water Services

The EU is targeting market access in Mode 3 and has interests in both energy and water services. German corporations are keen to provide energy services to India while France and UK water companies such as Suez, Violia/Vivendi and Thames Water seek cross border deregulation for water-related services in India. Violia has already entered through World Bank contracts in places such as Karnataka in the area of water distribution.

89 Letter to the Rajya Sabha, Hawkers Federation, mimeo.

An EU-India FTA would provide these companies with a legally binding framework that facilitates water or energy privatization. It would provide market access at equal or more favourable terms for the EU firms through the national treatment clause. Finally, it would allow for policy change at the national, state and local levels in favour of liberalization of extremely sensitive sectors such as water and energy – which are currently the subject of local governments and subject to scrutiny on a project by project basis.

Box 7:
EC's Fuzzy Answers regarding Water Services in the FTA

The EC has been circumspect in its responses about whether water is included in the EU FTA bid. Its consistent response to groups such as the Corporate Europe Observatory (CEO) has been, "*...in the framework of the services negotiations*, the commission does not intent (sic) to request... to negotiate commitments on *water distribution services*" (emphasis added). However, water services also include "water purification, waste water treatment" – a subject on which the EC has remained silent. Moreover, as CEO points out, water distribution could also be tabled in talks related to government procurement.
In fact, CEO found that the EU mandate for the EU-ASEAN proposal was to "envisage the progressive liberalization of procurement markets at national, regional and where appropriate, local levels, as well as in the field of public utilities, in particular in priority sectors". Hence, the EU could pursue three possible avenues in which to pursue these interests within the FTA: investment, services and government procurement.

Source : Corporate Europe Observatory (CEO) and Transnational Institute (TNI). (Forthcoming), 'The EU's FTA talks: Is water included'; CEO/ TNI Water Justice Project.

3.2.3: Specific Investment Concerns

Almost half of the world's FDI outflow originated from the EU in 2006-2007 and 84 percent of the global outflow came from developed country TNCs[90]. Consolidation of transnational firms also continued unabated for the same period as mergers and acquisitions (M&A) rose in terms of value and number to approximate the last M&A peak in 2000[91]. India was amongst the countries that continued to change its investment environment by increasing its promotional efforts to attract FDI. In fact, as the paper went to press, the GOI had just changed its rules on equity investments unilaterally. Now foreign equity investments that are routed through companies with majority Indian ownership will count as domestic equity[92]. This is an attempt by the government to "facilitate greater capital inflows" amidst greater economic uncertainty. An FTA would subject commitments on investment to dispute settlement by the EU, whereas unilateral decisions such as these can be reversed if negative economic impacts occur.

As in trade, EU is India's largest source of FDI, though that accounts for less than 1 percent of EU's FDI. In recent years, India's FDI outflow to the EU (€600 million) has risen to roughly half of the total EU outflows into India (€1100 million)[93]. Key EU sectors of interest remain services such as telecommunication, distribution, finance, transport and environmental services[94].

90 France, Spain and the UK, respectively were the top three, UNCTAD, 2007 WIR:1.
91 UNCTAD, 2007 WIR: 3.
92 Sinha, P., 2009.
93 HLTG:4.
94 ActionAid et al., 2008a:2.

Countries like Germany are interested in investing in construction and energy infrastructure. India is also seeking large amounts of investment to meet its infrastructure needs in energy, roads and urban infrastructure that it sees as the long-term bottlenecks for continued GDP growth. The 2008 World Investment Report (WIR) states that changing the investment regime to attract large-scale infrastructure-related investment from the private sector has led to a steady decline of public expenditure in this area in many countries. This is because the private sector did not fully compensate for the retreat of the state. Also, the WIR notes that a third of all investor to state disputes by the end of 2007 concerned infrastructure investment in electricity, transport, telecommunications and water and sanitation. The potential for social conflict and concerns related to access and affordability remained high in these areas. In India, the push towards public private partnerships in infrastructure is already coming at the cost of basic services for the poor and the ability of local governments to finance and govern such projects[95].

Problematic Provisions in the FTA

Just over five years ago, India, along with the majority of developing country governments opposed the inclusion of investment into the WTO because it would force developing countries to liberalize and legally bind investment in a multilateral trade agency. The agreement would give unfair advantage to powerful multinational companies from the developed world and could crowd out domestic firms, thwarting a domestic industrialization process.

Developed countries, backed by their multinationals were pushing for a broad-based definition of investment that could include virtually every asset. Developing country governments, with India in the forefront, opposed such a definition when the EU pushed it years ago in the Multilateral Agreement on Investment (MAI) and then again at the WTO. Like global agricultural and retail trade, the global investment arena is characterized by oligopolistic behaviour where large conglomerates have asymmetric power over governments and discretion to choose the most profitable markets. And many developing countries at the WTO have felt that a free trade and investment agreement would increase MNC market power and jeopardize development policy tools at the national level.

A broad "asset-based" definition which EU corporate lobbies continue to strongly advocate would include FDI and portfolio investments and entail anything from real estate, legal rights (such as licenses to operate, mine, fish, etc.), intellectual property, trademarks, built-operate-transfer (BOT) schemes or "any other form of participation in a company (such as shares, bonds)". Portfolio investments include "equity securities, debt securities in the form of bonds and notes, money market instruments and financial derivatives"[96] – in short, some of the same types of unregulated and opaque financial instruments that have led to the current financial crisis.

India, like many other developing countries, has opposed such a broad definition of investment and has maintained control over its capital accounts. In the WTO, India spoke strongly for the need to protect development provisions such as: "performance requirements on employment generation, transfer of technology, export performance requirements, manufacturing requirements, training and research and development requirements"[97]. It also reflected on

95 Baindur et al., 2008 Forthcoming.
96 Communication from the European Community and its Member States, 2002. Concept paper on the definition of Investment. WTO WT/WGTI/W/115, 16 April.
97 Communication from India, 2002. Development Provisions. 7 October, WTO Document: WT/WGTI/W/148

the problematic notion of equating liberalization of goods with investment: "The money market is considerably more opaque, less predicable, far more subject to purely speculative movements. The principles of free trade in goods and services can not be applied to the movement of capital"[98].

The EU's definition of investment has not changed since the discussions at the WTO, even if it is now referring more specifically to "establishment". For the FTA to be meaningful, EU firms will be looking to agree a broad-based definition of investment that combines services into one chapter. Yet the same considerations regarding development policy tools exist today, as they did a few years ago – particularly since there is much more of a need for sustainable and predictable investments that will not disappear due to market uncertainties or be purely speculative.

Box 8:
Investment Provisions in the FTA

Key features of investment provisions in the EU FTAs include:

- Free flow of payments and investment-related capital movements, which means no restrictions on the movement of capital back to the home country or anywhere else "in accordance with the laws of the host country".
- National treatment (treat EU firms/operations no less favourably than domestic firms/operations).
- Market access on an MFN basis (give EU the same treatment as India gives its more preferred trading partner once the EU has established a firm/operation in India).
- MFN on establishment (give EU the same privilege that India gives its most preferred trading partner in establishing EU firms/operations in India).
- Language in the text that stresses the need for investment to be commensurate with existing laws on social and environmental protection called "non-lowering of standards" (this pertains to social and environmental regulations in the respective countries).
- Periodic review of results with a view to continue liberalization of existing commitments (Means that further negotiations would lead to further opening up of investment rules and sectors).
- Perceived violations subject to dispute settlement.

Source : ActionAid et al., 2008:5.

While insisting on national treatment from India, EU's draft mandate does not include clauses on investment protection, expropriation or investor to state dispute settlement. This would enable individual European countries to maintain policy space to negotiate bilateral investment treaties (BITs). Moreover, it exempts EU member states from giving India the same benefits as "the most deep integration agreements" concluded with EU accession countries. In contrast, EU unfairly demands parity in services and investment on an MFN basis with other FTAs in which India engages. Thus, while EU insists that India give EU the same treatment as it gives to its other preferred

98 Communication from India, 2002. Non-Discrimination. 7 October, WTO Document: WT/WGTI/W/149.

FTA partners, it exempts EU member states from doing the same with India.

The concerns with EU's approach to market access and national treatment in investment remain the same as those that have prevented India from agreeing to an agreement in the WTO. For instance, with national treatment, India would not be able to demand more onerous conditions from EU firms than local ones, and it would be subject to dispute settlement. India would lose the prerogative to impose equity requirements for foreign firms over and beyond what it requires of domestic entities. Currently, retail is one example where multi-brand retailing of foreign firms is banned without a joint venture. The EU could target such provisions. And though India has now unilaterally liberalized its equity provisions on FDI, it would lose its flexibility to revise such provisions under an FTA in case of adverse domestic impact. National treatment would also affect procurement requirements that favour local companies, suppliers or export criteria. The rule would prevent the government from giving preferential treatment to domestic firms to stimulate local industries and establishments.

Liberalization of trade in goods combined with investment could also wipe out certain vulnerable sectors such as small-scale fisheries. Fish workers contend that local production will be easily displaced with the advent of EU trawlers entering Indian seas through a more liberalized investment regime[99]. Small- and medium-sized Indian enterprises would face the same problems with the more dominant EU firms, particularly within a liberalized establishment regime.

Finally, the EU's insistence on MFN on establishment would seriously undermine the benefits of any preferential trade agreements India enters, as India would have to offer EU the same deal. The "built in agenda" clause for periodic reviews of the agreement and "progressive" liberalization would necessitate that India continue to liberalize more sectors even if the agreed commitments began to have negative impacts on domestic industries. Thus, India may be forced to weaken credit, tax and labour regulations, and then be prohibited from "rolling back" these concessions to the EU, even if circumstances required such measures. The government would have to continue liberalizing "progressively" in subsequent rounds to make the investment environment more appealing to EU investors over time.

India's Experience with FDI

The Indian experience with investment liberalization in the 1990s suggests that where India used performance requirements, such as "phased manufacturing programmes" in the automotive industry, the rewards paid off[100]. The bulk of India's FDI in the 1990s has gone into services and "soft technology consumer goods industries"[101]. Meanwhile, India's thriving sectors today, such as software and other knowledge-based sectors like engineering, owe their competitiveness to five decades of government investment through pubic institutions such as the Indian Institute of Technology (IIT). This has been in sharp contrast to the East Asian economies where the share of manufacturing- and technology-intensive industries remains higher when compared to India.

The government has continued to employ some level of domestic ownership and export performance requirements with regards to FDI.

99 Debnath, H., 2008.
100 Kumar, 2005:1467.
101 Ibid.

These have also proven to boost manufacturing in the East Asian economies such as Korea, Malaysia and Thailand. However, results have been mixed in terms of development because FDI has contributed to the crowding out of domestic investment in some sectors while attracting more investment in others. WTO's Trade Related Investment Measures (TRIMS) agreement has already curtailed the ability of countries to enforce local content requirement that helped boost the domestic economy. A bilateral deal with the EU would force India to make many more concessions to the EU, particularly if an asset-based definition of investment was used.

Experience with FDI has shown that TNCs in India have spent less on research and development (R&D) than other components of their business. This R&D has been geared less towards local enterprises and technology absorption within India than to respond to the parent company's needs. Technology transfer usually results from joint ventures or certain inter-firm linkage requirements, and in all likelihood, these would not be allowed under the FTA regime. Also, many of the TNCs within India, due to economies of scale, are able to gain control of higher segments of the Indian market and thus reap much larger profit margins than local enterprises. The ability to channel FDI in desired ways requires that the state be able to regulate.

Investment and the Financial Crisis

Much has been written about the pros and cons of FDI and its contribution to development. There is a large body of literature that shows that FDI does not automatically lead to development and, if lightly regulated, can handicap a country's ability to develop its domestic economy[102]. Policy space in this arena, particularly in areas such as capital account liberalization, remains vital for a country as large as India.

The FTA provisions related to the free flow of capital could negate benefits of FDI by allowing the bulk of profits to be repatriated to the home country rather than remaining in India. With the global financial crisis and the enormous setbacks to transnational corporations, capital flight and corporate downsizing will be of critical national concern as companies seek to prevent losses. Liberalization in this sector could lead to balance of payment problems in the current account and could make India much more vulnerable to financial crises. Thus, the definition, scope and coverage of an FTA matter greatly in allowing the government to prevent capital flight and maintain productive investment within the country.

According to UNCTAD's Trade and Development Report 2008, empirical evidence suggests that countries that have relied on savings from corporate profits and the ability of domestic banking systems to create credit have been able to create sustainable forms of investment finance. Domestic rather than foreign finance has contributed to macroeconomic stability and led to more sustainable forms of investment financing. This is because domestic firms have tended to reinvest into productive capacities rather than use capital for speculative activities[103]. The EU will likely push for full capital account convertibility and thus the FTA would not encourage such practices of reinvestment, but would rather allow the repatriation of profits back to the home country.

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102 Chang, 2002; Akyuz, 2006; Khor, 2006; Singh, 2007.
103 UNCTAD, 2008b:VII-IIX.

4. Intellectual Property: Trading Away Farmers Rights and Access to Medicines

Future FTAs will also promote enforcement-enhanced legal frameworks and binding enforcement commitments on IPR in order to reduce IPR violations and the production and exports of fake goods.

European Commission[104]

The EU is pushing for WTO plus commitments on IPR protection that include conditions that India abide by all major IPR treaties to which the EU is a party and much more stringent enforcement of rights along the lines of the EC Enforcement Directive[105].

Though India has already made some very significant changes to make its IPR regime WTO compliant, the EU seeks WTO plus commitments that would require further changes to India's IPR policies. The biggest threats of more onerous IPR rules continue to be food security linked to farmers' rights to save, produce, reproduce and sell seeds and access to affordable medicines.

Pushed by the German government, the EU wants India to adhere to UPOV[106] 1991 and the OECD Seed Scheme that defines standards on seed quality. It also wants India to become a member of the International Seed Testing Association. UPOV 1991 is a plant variety protection regime that protects commercial plant breeders' rights by granting exclusive rights to breeders for 15 – 30 years for plant varieties that are "new, distinct, stable and homogenous"[107]. This disadvantages resource-poor farmers from benefiting from their own plant varieties and sharing and reproducing seeds since they do not have the financial means or expertise to engage in such a technical system. Moreover, UPOV 1991 restricts their ability to re-sow proprietary seeds. And commercially oriented plant variety systems narrow cultivation into a few profit-generating conventional crops[108].

Placing the monopoly of such knowledge into the hands of a few restricts the ability of farmers and the government to generate new plant varieties free of cost or cheaply and restricts farmers from contributing to food security and adapting to climate change by stifling their local practices.

Increasingly proprietary IPR regimes have helped the seed, biotech and agro-chemical industries become highly concentrated. A Canada based advocacy group, ETC, reports that only 10 companies now control more than 66 percent of the global proprietary seed sales, while just 30 years ago thousands of seed companies and public breeding institutions existed. Five of these companies are European. Ten companies now control almost 90 percent of agrochemical sales worldwide, with three European companies (Bayer, Syngenta and BASF) controlling close to 49 percent[109] of the share and ten companies account for three-fourths of the biotech industry revenues globally[110].

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104 European Commission, 2006a:21.

105 ActionAid et al., 2008c. The enforcement directive shifts the burden of proof from the claimant to the defendant whereby the accused would have to show that the claimant is not the owner of a related right (ActionAid et al., 2008c:4).

106 International Union for the Protection of New Varieties of Plants.

107 http://www.fao.org/docrep/007/y5636e/y5636e03.htm.

108 Cullet, P., 2005.

109 ETC Group, 2008:15.

Because seeds and food security remain major political issues in India, not just for food production but also for the protection of livelihoods, the parliament passed the Protection of Plant Varieties and Farmers' Rights Act, 2001. This act does not subscribe to UPOV 1991 requirements and allows farmers to reproduce and share seeds. However, the power of commercial seed corporations within India continues to negate farmers' ability to use their rights effectively.

The FTA will have impacts on other IPR related issues as well. For instance, India has yet to pass the Seed Bill 2004 that addresses seed quality. EU's insistence on OECD standards will have implications on the types of standards India sets and the costs associated with the registration of seeds. Adhering to EU standards would push India towards meeting the needs of the European seed industry instead of focusing on domestic capacities and requirements. These have financial as well as practical implications for the domestic seed industry.

4.1 Breeders Rights and Food Security

Accelerated use of commercial seed amongst Indian farmers began in the 1990s when India joined the WTO. This acceleration led to the concentration of the seed industry and price increases for commercial seed. For instance, the seed price of cotton hybrids was Rs. 950/kg in 2004, three times that of the public hybrids at Rs 340/kg[111]. The price of Bt cotton seed was nearly four times the price of non-Bt cotton. Even public open pollinated variety (OPV) cotton seed was sold by the private sector at a price nearly five times that charged by the state seed corporation[112].

The IPR regime affects seed prices, use of seeds and access to commercial seeds by small farmers. Moreover, it has serious implications on biodiversity and resilience of local seeds and local food systems. Access to more favourable plant breeder rights, the legal and ecological implications of GMOs being inserted into seeds and their subsequent use and reproduction by small farmers impacts food security and biodiversity in India[113].

Changes to India's IPR regime should not be dictated by the EU standards, but rather by how such changes will contribute to building resilience of small farmers, food security and biodiversity.

An impact assessment of the EU IPR proposals on India's food security and biodiversity should be conducted by the GOI with civil society input. For this to be possible, the draft negotiating text needs to be accessible to parliamentarians and civil society. Inside sources suggest that India is insisting that the IPR chapter of the FTA should be consistent with its obligations under the Convention on Biological Diversity and relevant Indian laws that protect traditional knowledge. However, until the Indian position becomes public and is debated, it is difficult to ascertain whether these interests will indeed be protected.

4.2 Access to Medicines and "Data Exclusivity"

The EU is also pushing for certain provisions that will hamper access to medicines for Indians. European Federation of Pharmaceutical Industries and Associations (EFPIA), the lobby of pharmaceutical and agrochemical industries, has pushed for "data exclusivity" provisions that would require TRIPS Plus policies to be adopted by India. Multinational companies have been pushing for "data exclusivity protection" which allows exclusive rights over their test data for a period of 8-10 years in the case of the EU and thus delays

110 http://www.etcgroup.org/en/materials/publications.html?pub_id=706.
111 Pal, S. et al., 2007:237.
112 OPVs are seeds that can be easily saved and reproduced by farmers unlike hybrid seeds.
113 Cullet, P., 2005.

competition from generic drug manufacturers[114]. Neither drug regulatory authorities nor generic drug manufacturers are able to use this data to issue and use compulsory licenses for public health concerns until the data exclusivity period expires. Thus, data exclusivity clauses provide additional protection to Big Pharma beyond the 20 year patent rights.

The EU is likely to demand that India further amend its patent laws to address issues like data exclusivity and to allow patents for even minor modifications to components in molecules used to make drugs or chemicals[115]. This practice is called "evergreening" of monopoly rights since minor changes allow new patents and thus longer time periods of IPR protection.

The Patent Act 2005 (which India ammended to become WTO compliant) already restricts India's ability to make affordable generic drugs because the TRIPS agreement grants twenty year monopoly rights to patent holders. This makes medicines more expensive in India. It also negatively affects other developing countries that import cheap Indian generics. For instance, India's generic antiretroviral medicines provide treatment to 80 percent of the 80,000 people who receive treatment in *Medicins sans Frontiers* (MSF) projects in over 30 countries[116] and constitute 70 percent of the treatments purchased by UNICEF and other global agencies since 2005[117]. Despite the positive function that the Indian generic industry provides for the poor, global pharma companies would like to restrict them further. They have complained that India did not go far enough in implementing TRIPS through the revised Act.

The 2005 Patent LawAmmendment limited India's ability to issue compulsory licenses for drugs. Governments issue compulsory licenses to allow the reproduction of patented drugs in the interest of public health and welfare. The 2005 Ammendment requires that generic manufacturers wait at least 3.5 years to even apply for a compulsory license. Moreover, it provides no ceiling on royalties for patented drugs and allows for legal challenges by pharmaceutical companies on the issuance of compulsory licenses. Data exclusivity provisions that the EC is demanding will further restrict the ability of the GOI to issue compulsory liscenses in the interest of public health.

The EU is pushing for data exclusivity in spite of the fact that WTO members do not (emphasis added) have to grant these rights as per TRIPS article 39.3. However, if India grants these rights in an FTA, it will be bound by the latter agreement and will have to implement it on an MFN basis to all WTO members as per the obligations under TRIPS. The ability of India to issue compulsory licenses with ease remains vital for public health and access to medicines.

The EU is also likely to include a clause that supports the right of the FTA parties to protect public health, however a data exclusivity clause would severely curtail that right. Reports show that litigation by major pharmaceutical companies such as Novartis post the 2005 Act is already on the rise with such companies filing for patents on spurious grounds. Indian public health advocacy groups are opposing such patents in the interest of cancer and HIV/AIDS patients[118].

114 MSF, 2004.
115 The 2005 Third Amendment Section 3d of the Indian Patent Law does not allow patentability of minor modifications to molecules already invented, Dhar et al., 2007:5078.
116 Raja, K.m 2006.
117 APN, 2008:29.
118 In 2006, the number of HIV positive people in India was estimated to be 2.5 million (39% women and 3.8% children), APN, 2008.

5. Government Procurement

Public procurement is an area of significant untapped potential for EU exporters. EU companies are world leaders in areas such as transport equipment, public works and utilities (emphasis added). But they face discriminatory practices in almost all our trading partners, which effectively close off exporting opportunities. This is probably the biggest *trade sector remaining sheltered from multilateral disciplines.*

European Commission[119]

A government procuement chapter in the FTA would aim for the progressive liberalization of central, state and local government procurement systems – including public utilities – of goods and services. India's large government procurement market remains a key interest for the EU. Public procurement[120] at the central, state and municipal levels contributes 11-13 percent of India's GDP. It remains a vital macroeconomic tool that governments use to boost domestic production and deal with economic recession by providing work and stimulating demand.

The EU is pushing for provisions similar to those in the EU-ASEAN FTA for this sector. The terms include binding rules on transparency of the public procurement system and changes that enable EU firms to know details and terms and conditions of government bids. Any such agreement would have to be consistent with the government procurement agreement within the WTO (which India has not signed) and would also have to deal with challenge procedures and cooperation in the field of electronic procurement.

As in all areas of an FTA, this chapter would also abide by the principles of non-discrimination and national treatment. India has thus far resisted any EU efforts to negotiate in this area. India sees this as interfering with the role of the Indian government whereby EU corporations may have more access than the Indian polity to influence the outcomes of such processes.

Currently, the central and state governments have at their disposal an array of policy tools to ensure that public procurement can benefit SMEs and marginalized populations (scheduled castes and tribes). These tools can also help boost the domestic economy by ensuring that goods and services are procured through local producers and suppliers.

They include:[121]

- Unbundling of contracts (splitting large contracts into smaller ones).
- Price preferences (inflating prices of foreign bids to advantage local/national providers or to favour SMEs over larger contractors even if their prices are higher).
- Local content requirement (designating local sourcing of goods or supplies from a particular area or region to boost economic activity of that area and/or in certain sectors).
- Reservations (setting aside certain items that the government should purchase only from SMEs and designating a certain percentage of people to be employed in public sector undertakings from the scheduled caste and tribes category).

Policies called "offsets" are macroeconomic tools that use government purchases of domestic goods and services to boost economic activity in times of recession. Measures such as local content requirement can improve local development by providing opportunities for local industries. They

119 *Global Europe* paper cited in ActionAid et al., 2008a.
120 The term covers not just government contracts, but also public utilities and state owned enterprises, ActionAid et al., 2008a:2.
121 Powell, S., 2008:34.

can also resolve balance of payment problems by depending less on foreign imports. Investment and licensing of technology requirements can also direct economic activity towards key domestic sectors for the future. For example, active government procurement policies on technology in the 1980s helped to develop the IT industry into what it is today.

India's public procurement sector still has a large potential to serve SMEs, marginalized populations and poorer states. Though significantly pared down, India's reserve list for SME purchases still contains 358 items such as electrical appliances, rubber goods, small parts, cotton products and furniture.

This sector also employs a large number of people within India. Though India privatized many public sector enterprises in the 90s, remaining PSEs still employ a reservation system unavailable in the private sector. This system requires that these enterprises hire a certain number of people who come from traditionally discriminated communities on the basis of caste and tribal status. This practice gives these extremely marginalized groups job opportunities that are otherwise unavailable due to an endemic process of social and economic exclusion. Finally, public procurement practices have the potential to help balance development by directing economic activity to states where poverty remains high. Procurement practices can help divert some of the income to underserved states.

Sectorally, European firms are extremely competitive in areas such as construction, public utilities, transport equipment and pharmaceuticals. Office and computing equipment; medical and pharmaceutical devices, services and construction; and architectural, legal and accounting services account for about 50 percent of government procurement in the EU. The EU not only wants market access for these various sectors within India, but has also complained that India's energy sector discriminates against EU companies by giving preferences to Indian manufacturers and suppliers. EU companies have also lodged complaints about India favouring domestic port maintenance industries, thereby disadvantaging EU contracts[122]. The EU would like to address these issues through a systemic change in India's procurement policies through an FTA.

Procurement remains contentious, however, and the Indian government has refused to negotiate on this issue thus far. EU companies are interested in public utility contracts and construction – two areas that provide essential services and work for the poor. According to the Global Europe strategy, where EU partners do not reciprocate on government procurement, the EU should "consider introducing carefully targeted restrictions on access to parts of the EU procurement market to encourage [its] partners to offer reciprocal market opening"[123]. This means that there will be pressure on India to open up parts of this sector. On the other hand, the EU's procurement market to date remains largely closed to developing countries with close to 98 percent of EU contracts going to EU countries[124].

Government Procurement with Only Transparency Requirements?

Many view a limited "transparency on government procurement" chapter as the back door entry to a full agreement on government procurement. Some of these requirements entail agreeing to international tendering procedures that can be complicated for domestic firms and for which they can be penalized if improperly executed.

122 European Commission Market Access Database.
123 ActionAid et al., 2008a:2-3.
124 Personal Communication, European Official September, 2008.

6.Current State of Play

As of December 2008, both partners had completed at least five rounds of talks. Though the original intention was to finalize the agreement by December 2008, several areas of contention have led to delays. For instance, EU demanded that the deal had to be implemented on a reciprocal basis, meaning both sides making equal tariff cuts in equal number of products over an equal period of time as equal partners. India had difficulty finalizing a list of products that should be excluded from the FTA because of the large number of products that are sensitive to cuts. Each party is interested in removing items from the other's exclusion list. But the EU has identified at least 461 sectors that it wishes to protect in the FTA while India has identified 521 products that 10 percent of its total value in trade and the total number of tariff lines for its exclusion list[125]. In addition, a host of issues concerning non-tariff barriers remain on both sides.

Due to a lack of public transparency on both sides, drafts of the negotiations or even detailed summaries are unavailable. Thus, it is difficult to ascertain what level of agreement has been reached to date. As of September 2008, it appears that a combined chapter on investment and services remains contentious for India and that an MFN clause for both investment and services was problematic. They agreed that these issues "appeared not solvable" and required discussion at a higher political level[126]. Liberalization of financial services, especially given the current global turmoil and retail trade, remain controversial.

It also appears that IPR issues remain problematic in areas where India would have to undergo important policy changes to comply with EU demands, such as accession to some international agreements and on data exclusivity (see section on IPRs below). India continues to oppose talks on government procurement and resists "even hypothetically speaking" about procurement practices of sub-central entities[127].

Because the EU continues to push for transparency requirements, India has proposed to provide the EU with details of existing provisions for transparency within Indian law and administration, which the EU interprets as enabling the parties to develop a legal text at the next round. Finally, a sustainable development clause remains "highly sensitive"[128].

However, steady progress was occurring up until November when both sides became embroiled in dealing with the global economic crisis. The two sides seem to have produced consolidated texts on IPR, competition and TBT. They also continued to debate existing texts on services and investment. Finally, they agreed to finish sectoral discussions in services soon and proceed to services offers.

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125 Government of India, 2008. Exclusion List.
126 European Commission, 2008b:2.
127 Ibid:3.
128 Ibid.

Conclusion

The policy space that developing countries had at their disposal to influence the manner of their integration into the global economy and the possibility for developing internationally competitive domestic industries, many of the elements of such FTAs reduce that space even further, in some cases very significantly. These elements are not considered in standard modeling analyses of the impact of trade liberalization.

UNCTAD Trade and Development Report 2007, pg 57

While the EU-India FTA negotiations continue, the past year has witnessed several crises. Last year started with the global food and commodity price crisis, followed by the US sub-prime lending crisis that has since turned into a major global financial crisis. Climate change also continues to add unpredictability and will lead to further problems in agriculture and other sectors dependent on natural resources. Increased price volatility in trade in goods and a global economic recession will continue to be prominent features of the global economic outlook. The financial, food and fuel crises starkly illustrate the pitfalls of an economically integrated world that lacks adequate checks and balances and economic and trade policies that believe that markets will get the prices right in any circumstances. Many policy makers are beginning to acknowledge the importance of the role of the state in preventing such crises.

These circumstances are also forcing governments to finally address the lack of oversight and regulation that has prevented them from: 1) foreseeing the extent of "toxic" debt and recklessness that has become endemic in the financial industry; and 2) having the transparency and accountability tools necessary to avert such economic turmoil at the expense of average citizens. They provide important lessons about the need for governments to have policy tools at their disposal to prevent such crises and the need for a more holistic understanding of trade and investment impacts on global sustainability.

The current "free" trade and investment policies are proving to be highly costly to citizens while their governments negotiate away their right to regulate. The response requires a thoughtful approach that democratizes the trade policy process. This response must integrate the fact that countries have, in the past, had access to a myriad of essential policy tools that are now deemed "more burdensome than necessary" for trade and investment. And that greater public debate on the complexities of trade and investment policies and its impact on citizens – particularly the poor, may lead to healthier and more just national trade and economic policies.

Though a large number of products in the roughly 520 items placed on the exclusion/ sensitive list for an EU-India FTA are for agriculture, a much deeper impact assessment needs to be done that integrates impacts on supply chains in both agriculture and non-agriculture sectors, including on small and medium enterprises. The primary

lens of such an assessment should be food security and livelihood protection.

The financial crisis is proving that India is more vulnerable to global economic shocks than previously thought. India's foreign exchange reserves are borrowed and the country faces a rising fiscal and current account deficit. During such times, a sound investment regime that protects the country from panicked foreign investors is critical. Regulations are therefore necessary to ensure that foreign investors do not simply expropriate resources and leave when conditions are unfavourable for their profits. Instead, the FTA provisions for services and investment would significantly curtail India's ability to use economic policy tools that help stabilize the economy.

Both Indian and the EU members' parliaments and civil society need to sit at the table to understand what their governments are negotiating; to assess the impacts this will have for job creation, food security and strengthened domestic sectors; and to have input on the final negotiating position. And the governments, in return, must be able to answer to parliaments and their citizens about what they will negotiate and to monitor the impacts and modify these decisions to address changing socio-economic circumstances.

Because these negotiations are taking place behind closed doors, the bulk of Indian and European civil society remains ignorant about what is at stake in the final outcome. There is thus a need for greater collaboration between Indian and European civil society groups and trade unions to actively monitor and demand accountability from their governments.

References

ActionAid. (2008), 'An Assessment of the Likely Impact of the India-EU Free Trade Agreement'; An ActionAid Briefing for UK MPs.

Action Aid, ChristainAid, Oxfam International. (2008a), 'EU's Approach to Free Trade Agreements: Government Procurement'; EU FTA Manual Briefing 7.

ActionAid, ChristainAid, Oxfam International. (2008b), 'EU's Approach to Free Trade Agreements: Investment'; EU FTA Manual Briefing 5.

ActionAid, ChristianAid, Oxfam International. (2008c), 'EU's Approach to Free Trade Agreements: Intellectual Property'; EU FTA Manual Briefing 8.

Adlung R., Molinuevo M. (2008), 'Bilateralism in Services Trade: Is there Fire behind the (BIT-) Smoke?'; Staff Working Paper ERSD, January, World Trade Organization.

Asher, Manshi. (2007), 'SEZs: Stirring up a Storm along the Indian Coast'; Infochange News and Features.

Asia Pacific Network of People Living with HIV/ AIDS (APN+), (2008), 'Our Health Our Right: The Roles and Experiences of PLHIV Networks in Securing Access to Generic ARV Medicines in Asia'; www.apnplus.org/document/ OurHealthOurRight.pdf.

Asian Development Bank (ADB), (2007), Purchasing Power Parity Preliminary Report, Manila.

Akyuz, Yilmaz. (2006), 'From Liberalization to Investment and Jobs: Lost in Translation'; Third World Network, February. www.twnside.org.sg/ title2/par/AkyuzInvTWN.pdf.

Banerjee-Guha, S. (2008), 'Space Relations of Capital and Significance of New Economic Enclaves'; Economic and Political Weekly.

Baindur, V., Kamath, Lalitha, (Forthcoming), 'Reengineering Urban Infrastructure: How the World Bank and the Asian Development Bank Urban Infrastructure Finance and Governance in India'; Bank Information Center.

Balagopal, K. (2007), 'Land Unrest in Andhra Pradesh-II: Impact of Grants to Industries'; Economic and Political Weekly, 29 September.

Bundesverband der Deutschen Industrie e.V. (BDI, 2008), 'EU Trade Policy with India: Requirements for a bilateral free trade agreement'; Position Paper, Document No. D 0186.

CIREM (2007), 'Economic Impact of a Potential Free Trade Agreement between the European Union and India'.

Chang, Ha-Joon. (2002), 'Kicking Away the Ladder: Development Strategy in Historic Perspective'; Anthem Press, London.

Corporate Europe Observatory (CEO, 2008), 'Global Europe: An Open Door Policy for Big Business Lobbyists at DG Trade'.

Consolidated Text EU and India. (2007), Chapter X: 'National Treatment and Market Access for Goods'; 2nd Round meeting, 1-5 October.

Cullet, P. (2005), 'Seeds Regulation, Food Security and Sustainable Development'; Economic and Political Weekly, 6 August, pp 3607-3613.

Dasgupta, S. (2008), 'Report of Survey on Hawkers at Gariahat Road and Rashbehari Ave, Kolkata'; July 2008.

Debnath, H. 2008; personal Communication with Chairperson, National Fishworkers Forum, Meeting organized by Center for Education and Communication, 19-20 September, New Delhi.

Dev, M. (2004), 'Perspectives: How to Make Rural India Shine'; Economic and Political Weekly, October 2, pp 4415-4422.

Dhar, B., and Gopakumar, K. M. (2006), 'Data Exclusivity in Pharmaceuticals: Little Basis, False Claims'; Economic and Political Weekly, 9 December pp 5073-5079.

Economic Bureau 2009, 'November Exports Reel Under Crisis Ripple Effect : Negative Trend Continues'; Financial Express, January 2.

Economic Times. (2008a). 'India to Push for Easier Norms For Exports to EU'; 8 January.

Economic Times. (2008b). 'Differences over Negative List Hold up India-EU Trade Pact'; 7 February.

Economist (2008), 'Saving the System: The Panic, the Rescues and a Special Report on the World Economy'.

ECORYS. (2009), 'Trade Sustainability Impact Assessment for the FTA between the EU and the Republic of India'; Final Report

ETC Group. (2008). 'Who Owns Nature'? 12 November.

European Commission, (2008a), 'Global Europe: EU-India trade in facts and figures'; 26 September.

European Commission. (2008b), Report of the 5th Round of EU-India FTA Negotiations 8th-9th September, Brussels.

European Commission, (2008c), 'India-EU Bilateral Trade and Trade with the World'.

European Commission, (2007): Recommendation from the Commission to the Council: Authorising the Commission to negotiate a free trade agreement with India on behalf of the European Community and its Member States.

European Commission, (2006a), 'Global Europe: Competing in the World A Contribution to the EU's Growth and Jobs Strategy', Commission Staff Working Document, 4 October, Brussels (SEC 1230), pp 1-28.

European Commission, (2006b), 'Minimum Platform on Investment: Commission's Services Views on Remaining Outstanding Issues'; 133 Doccuments/478 Revision 478c-06.

European Commission, (2006c), 'Establishment, Trade in Services and E-Commerce'; 133 Documents/478Revision2b-06.

European Commission, (2006d), Issue Paper: 'Upgrading the EU Investment Policy - Note for the attention of the 133 Committee'; Brussels, 31 May.

Financial Times, (2008), 'Govt Asks EU to lift 'Paranoid' health-related trade barriers'.

FAO. (2008), Food Outlook: Global Market Analysis, November.

Fuchs, P, (2007), 'Global Europe – Die neue EU-Handelspolitik im Wahn der Wettbewerbsfähigkeit. Ein Diskussionspapier aus der AG Handel im Forum Umwelt & Entwicklung'.

Goswami, B, (2008), 'Forthcoming. Doha Round: Mercantilists not Developmental for Agriculture'; India Economic Review, pp 34-41.

Government of Germany, (2006), 'Shaping Globalization: Strengthening the EU's External Competitiveness – Safeguarding Growth and Jobs'; Position paper prepared by the German Government, July.

Government of India (2006). Personal Communication with Indian Official, 16 July.

Government of India (2008). Draft Exclusion List, April Doc.

High-Level Task Force on the Global Food Security Crisis (HLTF), (2008) : Comprehensive Framework for Action. United Nations, July.

High Level Trade Group (HLTG), (2006) : Report of the EU-India High Level Trade Group to the EU-India Summit, 13 October.

Kelsey, J. (2008) : Regulatory Implications of the Services and Investment Chapter of the CARIFORUM-EU EPA, University of Auckland, March.

Khor, Martin, (2006), 'The Investment Issue in Trade Agreements: A Development Perspective'; Third World Network, November.

Krugman, P. (2008), 'No deal', Economic Column in The Hindu, 20 September, Delhi Edition.

Kumar, N. (2005), 'Liberalization, Foreign Direct Investment Flows and Development: Indian Experience in the 1990s'; Economic and Political Weekly, 2 April, pp 1459-1469.

Maes, M. (2007), 'The EU approach to the ASEAN, India, Korea FTA negotiations'; EU-ASEAN FTA Seminar, Bangkok, 7-8 February, Transnational Institute.

Medcins Sans Frontier (MSF), (2004), 'Data exclusivity in international trade agreements: What consequences for access to medicines?'; MSF technical brief, May.

Mohandas, Poornima (2008), : Firms retrench about 700,000 workers: industry body. LiveMint.com/Wall Street Journal, Thursday, 4 December.

Ministry of Finance (2008) : Monthly Economic Report, December. Department of Economic Affairs, Economic Division.

IndiaStat : Ministry of Finance Budget Documents.

Joseph, M., Soundararajan, S., Gupta, M. and Sahu, S. (2008), 'Impact of Organized Retailing on the Unorganized Sector'; ICRIER.

Nagaraj, R. (2004), 'Fall in Organised Manufacturing: A Brief Note'; Economic and Political Weekly, 24 July, pp 3387-3390.

National Commission for Enterprises in the Unorganised Sector (NCEUS). (2007). Report on the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector.

National Hawkers Federation (NHF). (2008). Letter to Director of Rajya Sabha Secretariat. Kolkata, undated.

OECD-FAO. (2008) : Agriculture Outlook 2008-2017.

Pal, S., Tripp, R. and Louwaars, N. (2007), 'Intellectual Property Rights in Plant Breeding and Biotechnology: Assessing Impact on the Indian Seed Industry'; Economic and Political Weekly, 20 January, pp 231-240.

Pekka, A. (2009) : International Sourcing In Europe, Eurostat 4/2009.

Polaski, S., Ganesh-Kumar, A., McDonald, S., Panda, M. and Robinson, S. (2008), 'India's Trade Policy Choices: Managing Diverse Challenges'; Carnegie Endowment for International Peace, Institute of Development Studies and Indira Gandhi Institute of Development Research.

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

Raja, K. (2006), 'Health: Novartis urged to drop patent case against India'; Third World Network, 20 December.

Reserve Bank of India (RBI). (2008). RBI Monthly Bulletin, September.

Reserve Bank of India (RBI), (2007) : Report on Trend and Progress of Banking in India, Overview 2006-2007, Government of India.

The Hindu. (2008a), Indian banks largely insulated from the consequences of global turmoil'; 19 September, Delhi Edition.

The Hindu. (2008b). George W. Bush Quoted, 20 September, Delhi Edition.

The Telegraph. (2008), 'Free Trade Talks with EU Lose Pace'; 16 March.

Sainath, P. (2008), '16,632 Farmer Suicides in 2007: Broad trends remain dismal; Maharashtra crosses 4,000 mark'; The Hindu, 1 December, Delhi Edition, Front page.

Seattle to Brussels Network, (2006). The New 'Global Europe' Strategy of the EU: Serving Corporations Worldwide and at Home, November.

Sen, S. and Raj, S. (2007), 'Globalisation and Expanding Markets for Cut-Flowers: Who Benefits?'; Economic and Political Weekly, 30 June, pp 2725-2731.

Sharma, S. (2007), 'India and the Agreement on Agriculture: Civil Society and Citizens' Engagement, Working Paper 278, Institute of Development Studies, Brighton.

Shrivastava, Aseem. (2008), 'SEZs: The Problem'; Seminar, 19 February.

Schulz, H. (2006), 'Foreign Banks in Mexico: New Conquistadors or Agents for Change'; 22 April, University of Pennsylvania.

Singh, K. (2008a) : Banking Sector Liberalization in India in the Context of Proposed India-EU Free Trade Agreement, Madhyan Books, New Delhi and SOMO, Netherlands.

Singh, K. (2008b) : Entry of big foreign banks has not widened access to include India's poor, Letter to the Financial Times. Financial Times, 29 July.

Singh, K. (2007) : Why Investment Matters: The Political Economy of International Investments, Madhyam Books.

Sinha, P. (2009), 'New investment norms throw FDI gates open'; Times of India, 12 February.

UNCTAD. (2008a), 'World Investment Report 2008: Transnational Corporations and the Infrastructure Challenge'; New York and Geneva.

UNCTAD. (2008b) : Trade and Development Report 2008, New York and Geneva.

UNCTAD. (2007a) : Trade and Development Report 2007, New York and Geneva.

UNCTAD. (2007b) : World Investment Report 2007: Transnational Corporations, Extractive Industries and Development.

Vander Stichele, M. (2006), 'Who Reaps the Fruit: Critical Issues in the Fresh Fruit and Vegetable'; Chain, SOMO.

Vander Stichele, M. (2005) : Critical Issues in the Financial Industry, SOMO Financial Sector Report, SOMO.

Wichterich, C. (2007), 'Economic Growth without Social Justice: EU-India Trade Negotiations and their Implications for Social Development and Gender Justice'; WIDE Network, Brussels.

Weblinks

http://infochangeindia.org/index2.php?option=com_content&do_pdf=1&id=6062.

http://www.corporateeurope.org/docs/GlobalEurope-OpenDoors.pdf

http://www.financialexpress.com/news/nov-exports-reel-under-crisis-ripple-effect-negative-trend-continues/405566/2.

http://tsia.ecorys.com/india.

http://www.etcgroup.org/en/materials/publications.html.

http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140777.pdf.

http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113390.pdf.

www.forum-ue.de/fileadmin/userupload/publikationen/aghan_2007_globaleurope.pdf.

www.twnside.org.sg/pos.htm.

http://krugman.blogs.nytimes.com/2008/09/20/no-deal.

www.tni.org/docs/200702091533297605.pdf.

www.tradewatch.org/documents/DataExclusivityMay04.pdf.

http://www.livemint.com/2008/12/04234838/Firms-retrench-about-700000-t.html.

http://finmin.nic.in/stats_data/monthly_economic_report/2008/inddec08.pdf.

http://nceus.gov.in Condition_of_workers_sep_2007.pdf.

http://www.fao.org/es/esc/common/ecg/550/en/AgOut2017E.pdf.

www.traidcraft.co.uk.

www.twnside.org.sg/title2/health.info/twninfohealth064.htm.

www.bilaterals.org/article.php3?id_article=6611.

www.ids.ac.uk/ids/bookshop/wp/wp278.pdf.

http://www.countercurrents.org/shrivastava190208.htm

http://fic.wharton.upenn.edu/fic/papers/06/0611.pdf.

www.unctad.org/en/docs/tdr2007_en.pdf.

www.unctad.org/en/docs/wir2007_en.pdf.

www.ncdo.nl/docs/uploads/rapport%20somo%20ffv.pdf.

http://somo.nl/html/paginas/pdf/Financial_sector_report_05_EN.pdf.

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