STATEMENT*

No to free trade
Stop corporate globalisation
Protect livelihoods; defend democracy & development policy space

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New Delhi, India

Researchers and representatives of labour unions, peasant groups, social movements, national campaign platforms and civil society organisations met for two full days on 22-23 September 2015 at the national conference in New Delhi on 'WTO, FTAs and Investment Treaties: Implications for development policy space'. There were more than 80 participants, including researchers from Indonesia, Philippines and USA. They had intensive discussions in the context of emerging multiple challenges; the upcoming 10th Ministerial Conference of the World Trade Organisation (WTO) in December 2015 (Nairobi, Kenya) and several bilateral/regional free trade agreements (FTAs) and investment treaties being implemented and negotiated by the Government of India (GoI). This statement reflects the broad outcomes from the conference.

Proponents of neo-liberalism have argued since the 1990s that corporate globalisation, pursued through the agenda of trade openness; de-regulation and privatisation would create more jobs, reduce poverty and ensure the access to services for the poor. We believe that two decades later, the evidence points to the reverse – India is today in the midst of a deeper macro-economic and developmental crisis. Further, the WTO and its Doha Development Agenda (DDA) suffer from a fundamental lack of legitimacy and credibility which has led to secretive mega-regional FTAs such as the just concluded USA led Trans Pacific Partnership (TPP) and the 16 nations Regional Cooperation and Economic Partnership (RCEP) agreement. We hold the view that the WTO and FTAs are two sides of the coin of corporate led free trade that should both be resisted by democratic and progressive forces in India and across the Global South.

Despite evidence of negative impacts of the free trade agenda on people's livelihoods in agriculture, industry and services in India, the current National Democratic Alliance (NDA) Government led by Prime Minister Modi continues the push to deepen neo-liberal policies. Reports from Geneva indicate that there is now a concerted attempt to jettison the ongoing DDA and launch a new 21st century round after the Nairobi Ministerial. There are also parallel attempts to liberalise public services through the Trade in Services Agreement (TISA) and conclude the European Union-India FTA and the RCEP agreements. We believe that based on the reasons indicated below, this flawed agenda will compromise our development policy space, undermine democracy and lead to further impoverishment for the working classes, peasants, indigenous peoples, artisans, dalits and other marginalised sections of the Indian population.

Deepening agrarian crisis
Trade commitments are being sought in agriculture in the backdrop of a deep agrarian crisis in the country. Agriculture has stopped absorbing additions to the rural labour force. Census data (2001-2011) shows that about 8.6 million peasants and workers have left agriculture. The lack of employment opportunities and incomes has resulted in an unprecedented reduction in the per

capita availability of foodgrains for the rural poor. The suicide of more than 300,000 farmers' over the last twenty five years is a yet another testimony to the tragic state of affairs in Indian agriculture. Much of these suicides are of cotton farmers who have been impacted adversely by trade distorting cotton subsidies in the USA which results in a 10-15% reduction in global prices. Rather than reducing their unfair subsidies under WTO rules the developed countries, while consistently increasing their support to agribusiness, have instead launched a frontal attack on India and other developing countries for providing support prices to resource poor farmers through public stockholding programmes. A supposed 'peace clause' on food security negotiated at the 2013 Bali WTO Ministerial offers little respite as it prohibits new countries from instituting such programmes and does not allow existing programmes to be expanded to new crops.

With the removal of quantitative restrictions and reduction in tariffs as part of various FTAs, imports of edible oil (where India was earlier self sufficient) have increased drastically leading to millions of farmers losing their livelihoods. In FTAs being currently negotiated with traditional agri-exporter countries such as the EU, Australia and New Zealand tariffs on almost 90% of agriculture commodities will be slashed to zero. Cheap subsidised imports of cereals, legumes, fruits and vegetables besides dairy products will impact India's farming communities, especially women who are the backbone of the dairy revolution in India. The WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) has also had a direct bearing on seed sovereignty and farmers freedoms. There is pressure to push the country to patenting of seeds.

Spectre of de-industrialisation

The industrial sector's contribution to GDP has stagnated at 18% and its share of employment is only 24%. Employment creation in manufacturing decreased sharply during the high growth period of the 2000s. India faces the situation of negative export growth rates accompanied with a significant increase in import dependence. These elements point to de-industrialisation with a shift from manufacturing to assembling. By 2005, the WTOs Information Technology Agreement (ITA-1) had made India completely eliminate tariffs on more than 200 Information Technology (IT) products. This led to job losses and the virtual decimation of the indigenous electronics hardware industry. Given current trends on import dependence, the import bill for electronics could soon overtake the oil import bill. India does not manufacture electronic products but merely assembles them. The GoI expected that integration into Global Value Chains (GVCs) would result in an advantageous position; evidence shows that India's share of value addition on GVCs is not growing significantly relative to the global brands headquartered in the developed world.

The ASEAN-India FTA led to the closure of Small and Medium Enterprises (SMEs) in agriculture-related and food products, as well as in intermediate goods and light manufacturing products. In 2014-15, India imported 9.31 million tonnes of steel, an increase of 71% over the previous year due to reduced tariffs under the FTAs with South Korea and Japan. This resulted in a domestic slowdown in steel. It was not viable to produce or sell steel at prices higher than that of imported steel. SMEs and workers have borne the brunt of these policies.

Import dependency has also shot up in medicines production due to the increase in imports of APIs (Active Pharmaceutical Ingredients). Compliance with TRIPS meant lesser opportunities for domestic generic producers to bring new generics on the market. Experts point to lack of new opportunities as a key reason for the trend of take over's of Indian generics by TNCs. This has been accompanied by a higher reliance on foreign markets for profits, as well as increased instances of generic producers manufacturing patented medicines for big pharmaceutical companies. The increased dependence on imports of APIs is only the tip of the iceberg of a much deeper transformation in the sector away from production for the local market and local needs in medicines.

The rot runs deeper. Out of 13 FTAs, India's market share (between 2008 and 2014) has deteriorated in 8 cases and fluctuated in 3. In regard to industrial products, autonomous liberalisation of imports combined with the slump in export markets of employment intensive industries such as textiles, garments, leather and leather goods and gems and jewelry have already had devastating effects on our industry, particularly SMEs and workers in the sector. The policy space now available to raise industrial tariffs to protect indigenous industry will be severely reduced by the tariff cutting formulae being negotiated at the WTO and FTAs.

Foreign direct investment and outflow of profits

Data available from UNCTAD on the composition of Foreign Direct Investment (FDI) outflows into developing countries suggests that actual new FDI into host countries is only a small proportion of the reported FDI outflows from developed countries. The share of reinvested earnings (that is, profit generated and retained within the host economies) in reported FDI outflows has increased sharply from 50 % in 2009 to 81 % in 2014. Out of the total FDI equity that flows in, there is a high ratio of remittances back to the home countries in the form of equity repatriation/disinvestments, interest payments and charges for the use of intellectual property (IP).

In case of India, the share of such remittances in equity inflows has increased from 34 % in 2009–10 to 49 % in 2014–15. If the entire post-crisis period 2009–10 to 2014–15 is considered, this ratio works out to almost half of the total equity inflows, representing a heavy servicing burden. If the negative trade balances on account of foreign subsidiaries are also taken into account, the situation would be much worse. The sector-wise trade balance of foreign subsidiaries shows that with an average import dependence of 50 %, the manufacturing sector was a heavy loser with a huge trade deficit generated by foreign subsidiaries. The import to total purchase ratio is as high as 79 % in computer, electronics and optical products; 68 % in food products; and 46 % in pharmaceutical, medicinal and chemical subsidiaries. Total trade balance for all foreign subsidiaries in India would have been in the negative, if not for the exports of IT-related companies.

Following the relaxation of rules on royalty payments, increased foreign exchange outflow is evident on account of royalty payments for companies such as Maruti Suzuki, Nestle India, Hindustan Unilever, Colgate Palmolive and others. Royalty payments do not necessarily represent technology transfer. A significant part of the payments is for the use of brand names or the substitutes for dividend payments because they want to avoid paying dividend distribution tax and corporate tax. Foreign exchange outflows continue to take place in the name of payments for R&D, technical know-how and engineering fees, license fees, patent and trademark license fees, professional services, prototype and testing expenses, IT support charges, Intellectual Property Rights (IPR) license fees, trademark fee, application support charges, quality support charges, etc. Policy makers should take note of payments under such multiple heads which are likely to be of perpetual nature.

The GoI sees FDI as a major driver of growth and development. But current policies including the NDA Government's flagship 'Make in India' programme do not take into account the account the evidence available on the assessment of impacts and quality of inflows. The Make in India programme provides no cap on royalty outflow or set obligations on technology transfer and need for regulation. Laws on land acquisition, labour and environment are being actively diluted to attract foreign capital. Such shortsightedness defeats the very purpose of FDI as it will only promote assembly lines, not manufacturing and increase in domestic capabilities.

Acquisitions or brownfield investments accounted for as much as 51 % of the realistic FDI into the manufacturing sector. FDI is involved more in displacing domestic entrepreneurs rather than adding new production facilities. Geographical break-up of the inflows indicates the high share of inflows originating from Mauritius. Low quality FDI inflows entering into construction and real estate development in the form of private equity funds, portfolio and India-related investments are looking only for capital gains and like to keep their identity secret. A vast majority of the realistic FDI did not seem to utilise the tax haven route. Assessment suggests that there was hardly any investment into the manufacturing sector that could be directly identified with Mauritian businesses. Currently India is also under pressure to open up the e-commerce sector to FDI which will have an adverse impact on small retailers as the industry will move from the current model of aggregation to inventory holding.

Evidence of cases brought against the GoI through secret arbitration mechanisms (Investor–State Dispute Settlement mechanisms or ISDS) where companies can attack governments are a matter of deep concern. Due to obligations under a Bilateral Investment Treaty (BIT) India was forced to pay the Australian firm White Industries in a case against Coal India. In the most recent case the Public Sector Undertaking (PSU) Antrix will have to pay German funded Devas 4,300 crore rupees for canceling a satellite lease contract on strategic grounds. While such cases have led to India reviewing its BITs strategy, similar provisions are included in mega-regional agreements such as RCEP. No positive relationship was observable between the number of BITs signed by a country and the level of FDI inflows received by it. Brazil which receives significant amounts of FDI in the Latin American region has not signed a single BIT so far.

TRIPS furthers corporate power of big pharma and seed companies

In 1995, the Agreement on TRIPS was incorporated into the overall WTO package with the promise that it would bring in high quality FDI into key sectors, such as pharmaceuticals, electronics, software products, seeds and biotechnology. This FDI would then supposedly help stimulate sustained investment in R&D and innovation in all these sectors, helping compensate the country for higher prices of medicines for new products. India fought hard and earned flexibilities in the way of a 10 year transition period for implementation. Consequently the domestic pharmaceutical industry that had hitherto succeeded in providing high volume low priced medicines could get some breathing space. While India did create an alternative in the form of a cheaper source of generic medicines for the domestic and Third World markets, the situation is rapidly changing. We are now at a turning point. Evidence shows that hard won gains in the form of safeguards inserted into Indian domestic IP laws (such as Section 3d) that prohibits ever greening and keeps the space for the domestic industry to make its contribution to the supply of low cost essential medicines are now being compromised in FTAs and economic partnerships (such as the India-US Trade Policy Forum).

India has agreed to discuss bilaterally with USA, new mechanisms of data exclusivity and patent linkage which will effectively extend the monopoly period of patent holders and dominance of the market by TNCs. IPR does not only impact the pharmaceutical sector. Already the guidelines issued on patenting of software by the Indian patent office point to a trend of buckling under the US demand for stronger monopolies in the IT sector. Strategic patenting on computer programs and software raises the costs of innovating, especially in industries such as software that rely on cumulative innovation.

All of these developments do not augur well and have happened despite the Indian Parliament statutorily excluding these demands of the USA when India adopted the amendments to the 1970 Indian Patent Act. India should insist at the WTO TRIPS council following on from Article 71, that once the transitional period is over, patents on medicines should be discontinued. Similarly increased imbalance is found in access to knowledge due to complications created in copyright. Limitations are imposed on libraries and archives. Access to books and information is being restricted. Even non-commercial use or use for teaching is blocked. Expansion of copyright now enforces multiple royalty payments. India should ensure the safeguard of interests of users and transparency of all agreements. No unfair increase in the cost of creation of knowledge should be allowed. India should resist limitations being placed by commercial agencies on the use of knowledge produced through a non-commercial collective process.

Liberalisation and privatisation undermining access to essential services

Services are today the dominant sector in the Indian economy contributing close to 60% of GDP. These are the sectors where the developed world continues to dominate and with saturated markets in the north, the vast and burgeoning services sector in developing countries such as India are predictably the target of TNCs. The WTOs General Agreement on Trade in Services (GATS) is an extraordinarily powerful tool for these TNCs to enter and control the service sector. At Nairobi, there is likely to be pressure on India to submit an ambitious offer on services in sectors such as higher education, banking, distribution, accountancy and environmental services. Services liberalisation is also a key demand in the EU-India and RCEP FTAs. At the GATS and other services negotiations, labour is seen as an export commodity. However temporary movement of labour through the GATS Mode 4 approach is sought exclusively during a workers productive period and creates a high dependence on the employer, similar to the Gulf States tied-work contracts model. This has an adverse impact on labour relations, and ability of migrant workers to collectivise and claim their rights.

Sectors such as telecommunications, banking, insurance, health, electricity, information technology enabled services (ITES) and education have been the major impetus for the reform process of the past two decades. In several sectors the reforms have failed in terms of distributive equity, access and provision of decent jobs. Take for instance, the health sector. Today, India has one of the most privatised health systems in the world with private health care accounting for 80% of outpatient care of 60% of inpatient care. The private sector is thriving and large sections of the population are forced to spend on irrational and unnecessary drugs leading to catastrophic health expenditures. Electricity is another area where privatisation and de-regulation have been spectacular failures, especially in Maharashtra, Odisha and Delhi. Defying reason, there are now moves afoot to further liberalise the sector through the Electricity Amendment Act, 2014, which will cement the trend of higher prices and lower quality services. Water privatisation attempts have been marked with rising costs, inefficiencies, corruption and lack of transparency as is evident in the failed Nagpur water privatisation case. In banking, liberalisation has led to numerous rural banks shutting down. The insurance sector was liberalised with the promise of new talent, technology and finance. While the public sector Life Insurance Corporation (LIC) continues to be dominant and provide the best service, private companies have led to an increase in contract workers with poor working conditions and little recourse to unions and collective bargaining. This has affected the overall quality of service.

In much of the services sector, the push has been to undermine the public sector through lack of budgetary resources; freezing the number of permanent jobs and not filling vacancies, leading to an increase in contractualisation as well as outsourcing. The introduction of competition in essential services has lead to a weakening of the existing system that cannot function under the logic of free markets. Further opening up of the services sector without adequate assessment of the impacts of current liberalisation and privatisation on national employment, livelihoods, equity and welfare will result in far reaching negative impacts.

New avenues for trade liberalisation

While we recognise the need to hold the GoI accountable for its engagement at the WTO, there are now new fronts through which a WTO plus agenda is being imposed on India and other developing countries. We will actively monitor and campaign on new agreements such as the TISA and RCEP which aim to go beyond WTO rules in areas such as Government Procurement, Competition Policy and Investment further constraining our development policy space. While

India is as yet not a member of the TISA, industry lobbies such as the National Association of Software and Services Companies (NASSCOM) and other sections of industry are actively lobbying for it to join. Other agreements on the anvil include the Information Technology Agreement (ITA) 2 and Environmental Goods Agreement (EGA) which are tools to further market access for products from the developed countries.

The way forward

Two decades of trade liberalisation show that there is no evidence or reason to make further commitments at the WTO, FTAs or through autonomous policies. Instead India should both reclaim and actively use the available policy space in agriculture, manufacturing and services. We demand a standstill on further commitments at the WTO and FTAs and a rollback of agreements such as TRIPs that have had a damaging effect on our country.

In the run-up to the Nairobi Ministerial, various organisations will host a National Convention at New Delhi in the first week of December 2015 to impress upon the NDA Government the need to thoroughly reorient its stand in international trade and investment negotiations. Trade issues have intruded on domestic policy space as a result of a systematic strategy pursued by global capital and lapped up by successive Governments over the last twenty five years. Approval from the Parliament and state legislatures should be made mandatory for the signing of BITs and FTAs, economic partnerships and the outcome of the WTO Nairobi Ministerial. It is critical that State Governments are involved in this decision-making process. We call upon mass organisations from across the country to join this process of defending democracy, reclaiming self-reliance and sovereignty. Only a united resistance by people can provide a ray of hope. India, with its size, its political history, its inherent economic, technological and political strengths and, above all, her peoples' indomitable will has the potential to resist the onslaught successfully.

* The conference was jointly organised by Focus on the Global South, Forum against FTAs, Institute for Studies in Industrial Development (ISID), Madhyam, Médecins Sans Frontières (MSF) Access Campaign, National Working Group on Patent Laws and WTO (NWGPL), Public Services International (PSI)-South Asia, South Solidarity Initiative (SSI)-ActionAid India and Third World Network (TWN).