

INEQUITY UNLIMITED: FOOD ON THE WTO TABLE

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WHAT AILS THE DOHA DEVELOPMENT ROUND?

There is currently stalemate in the Doha Development Round (DDR) of current trade negotiation at the World Trade Organization (WTO) on the issue of public stockholding of food grains for national food security purposes. The 1994 Agreement on Agriculture (AoA), concluded during the Uruguay Round² of the General Agreement on Tariffs and Trade (GATT),³ limits the public procurement of food by national governments.⁴ While governments are allowed to distribute food to clearly-defined sections of their populations at any subsidized price they deem fit, such subsidies must not directly or indirectly favor local food producers by influencing prices and quantities. This remains the case even if the support is helping ensure food security, and/or supporting small producers living in poverty.

Stockholding programs are considered to distort trade when governments purchase produce from farmers at fixed prices, known as ‘supported’ or ‘administered’ prices. Purchases at market prices, calculated using the prices during 1986–1988 (known as the External Reference Price or ERP) as a baseline, are not counted as ‘supported’. The AoA makes it clear that the difference between today’s administered price and the ERP for the procured food is regarded as a ‘trade-distorting’ subsidy. This difference is part of the calculation of the Aggregate Measure of Support (AMS) of which each WTO member can only have a limited amount.

Such provisions in the AoA can be detrimental to the food security interests of developing countries.⁵ However, rather than examining all such issues, which would be beyond its scope, this paper demonstrates how the rules of the AoA work to the advantage of the United States (US) yet prevent developing countries like India from supporting their domestic food security programs.

WHAT AILS THE DEVELOPING COUNTRIES IN THE WTO?

To understand the level of inequity involved, consider this: the US spends approximately US \$75 billion on just one of its food subsidy programs—Supplementary Nutrition Assistance Program (SNAP), popularly known as the food stamps—for 47 million beneficiaries. This translates to US \$1,608 annually per person.⁶ Contrast this with the US \$20 billion dollars that India is proposing to spend to cover 867 million entitlement holders under its National Food Security Act (2013).⁷ This is less than US \$25 per person each year. The US thus provides roughly 64 times more food aid compared to what India intends to provide per person per year. While the WTO considers the US SNAP program as non ‘trade-distorting’, it regards India’s National Food Security Act as ‘trade-distorting’ since it is providing price support to food producers by purchasing produce above the ERP.⁸

However, this by no means implies that US support for its agriculture is relatively negligible. Instead figures suggest that the US is ‘box shifting’,⁹ that is taking advantage of the flexible rules that effectively shield ‘trade-distorting’ measures including high

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- 2 The term ‘Uruguay Round’ refers to the 8th round of multilateral trade negotiations conducted within the framework of the General Agreement on Tariffs and Trade (GATT), spanning from 1986 to 1994 and embracing 123 countries as ‘contracting parties’. It was launched at Punta del Este, Uruguay in September 1986 and concluded in Geneva in December 1993. For more information, please see: www.wto.org/english/docs_e/legal_e/legal_e.htm#agreements.
- 3 GATT was superseded by the WTO. An updated General Agreement is now the WTO agreement governing trade in goods. For more information, please see: www.wto.org/english/tratop_e/gatt_e/gatt_e.htm.
- 4 The original text of the Agreement on Agriculture is available at: www.wto.org/english/docs_e/legal_e/14-ag.pdf.
- 5 For a more detailed discussion, see: Konandreas, Panos, and George Mermigkas. *WTO Domestic Support Disciplines: Options for Alleviating Constraints to Stockholding in Developing Countries in the Follow-up to Bali*. Rome: FAO, 2014.
- 6 Wise, Timothy A. “Ten signs of US hypocrisy on India’s food security programme.” *FirstPost*, December 7, 2013. Available at: www.firstpost.com/world/ten-signs-of-us-hypocrisy-on-indias-food-security-programme-1270775.html.
- 7 The original Act is available at: indiacode.nic.in/acts-in-pdf/202013.pdf.
- 8 Berthelot, Jacques. *The green box a black box which hides the gold box*. Solidarité, 2005. Available at: goo.gl/16W0GK.

levels of agricultural support from being part of a country's AMS. While recent figures by the South Centre show a significant increase in the overall 'trade-distorting' support from approximately US \$7 billion in 1996 to US \$12.14 billion in 2012,¹⁰ non 'trade-distorting' subsidies rose considerably more from US \$51.83 billion to US \$127.44 billion in the same period.

The European Union (EU) also appears to use this 'box-shifting' strategy to protect their high levels of agricultural support. The South Centre estimates that its 'trade distorting' subsidies have declined from €71.85 billion to €10.84 billion between 1995–96 and 2011–12,¹¹ yet non 'trade-distorting' subsidies provided in the same period have risen from €18.78 billion to €70.98 billion.

The lack of challenge to the 'box shifting' of subsidies by the EU and the US in the ongoing DDR negotiations and the threat to the public stockholdings for food security by developing countries illustrates the control that developed countries enjoy in the WTO.

THE INDIAN DILEMMA: FEEDING THE LOW-INCOME PRODUCERS OF FOOD

India's problem is that it procures food aid at administered prices, known as Minimum Support Price (MSP),¹² from its farmers, 98.97% of whom are low-income, resource-poor farmers with ten hectares or less.¹³ The food is then distributed through India's Targeted Public Distribution System (TPDS). Thus, India feeds those in poverty while also providing critical income support to a vast majority of its farmers who are net buyers of food.¹⁴ If India fails to provide this support, the people it intends to feed might not have the money to buy food even at subsidized prices. However, such support to the producers that is linked to current production levels is considered 'trade-distorting' under the AoA.

THE EXTERNAL REFERENCE PRICE: QUICKSAND FOR FOOD SECURITY IN THE WTO

The core of the problem is an unrealistically fixed ERP at the base year 1986–88.¹⁵ It basically penalizes developing countries for past good behavior.¹⁶ While developed countries were providing very high agricultural support during the 1980s, developing countries were not in a position to do the same. By setting the base year in that period, the AoA effectively bound developing countries to a zero-support scenario where permissible support levels would eventually be insufficient to take care of their food security needs.

The AoA does partially remedy this issue by allowing "due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments".¹⁷ However, developing countries have so far been effectively denied recourse to this remedy by developed countries failing to identify reasonable criterion for invoking this provision. This is despite the more than 500% inflation of food prices since the 1980s.

Today, as food security and nutrition come to the fore of the global development agenda,¹⁸ these archaic AoA rules prevent developing countries from ensuring a food secure future. What lies at the heart of the problem is the striking insensitivity of developed countries in refusing to discuss revising the ERP.

9 In WTO terminology, subsidies in general are identified by 'boxes' which govern whether the subsidies are permissible under WTO rules.

10 South Centre. *EU and US Domestic Supports: Some Figures and Trends*. Informal note [unpublished], April 29, 2015.

11 *Supra* note 8.

12 For more information on the MSP, please see: cacp.dacnet.nic.in/content.aspx?pid=62.

13 For more information see India's recent report to the WTO (G/AG/N/IND/7) dated June 9, 2011. Available at: goo.gl/e1hsLf.

14 More than half of India's population depends on agriculture and related activities for their livelihood.

15 The AoA has set the prevailing prices of food crops in the 1986–88 period as the ERP. It is the difference between the administered price and the ERP multiplied by the total eligible production that constitutes the market price support (MPS) for a given crop. There are some persisting disputes regarding the interpretation of the ERP-related provisions of the AoA. One significant controversy is whether the ERP used in calculating the MPS for procurements for public stockholdings is fixed or adjustable.

16 Correa, Carlos. *Subsidies and Food Security in WTO: A Permanent Solution is Still Pending*. Geneva: South Centre, 2014. Available at: www.gemdev.org/infosgemdev/wp-content/uploads/Analytical-Note-on-Subsidies-and-Food-Security_November-2014_Correa.pdf.

17 Paragraph 4, Article 18 of the AoA.

18 See the full report of the Open Working Group of the General Assembly on Sustainable Development Goals (A/68/970). Available at: www.un.org/ga/search/view_doc.asp?symbol=A/68/970. An abridged version is available at: sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf.

BYPASSING HYPOCRISY FOR A PERMANENT SOLUTION

In 2012, in the face of this hypocritical intransigence of the developed countries, especially the US and the EU, the G-33,¹⁹ led by India, demanded a permanent solution to the problem of public stockholding for food security.²⁰ Although it may be difficult to change the fixed ERP in the AoA, a permanent solution would still require significant amendments to the AoA. Nonetheless the G-33's crucial Non-Paper suggests that certain policies and services promoting rural development and poverty alleviation be exempted from reduction commitments under the AoA.²¹ The permanent solution must also exclude the acquisition of food stocks by developing countries to support their low-income or resource-poor farmers from the calculation of AMS.

The G-33 understood that such far-reaching amendments to the AoA would take considerable time. Given this, it suggested that the WTO take certain supplementary decisions to alleviate the problem in the interim. This includes recognizing the unfairness of the ERP, easing the conditions currently required to invoke the inflation remedy and, most significantly, adding a 'peace clause' exempting developing countries' public stockholding programs from any adverse legal action under the existing WTO provisions until the issue is resolved.

BALI PACKAGE AND THE AFTERMATH

However, after much deliberation and debate in the run up to the 9th WTO Ministerial held in Bali, Indonesia in December 2013, developing countries could only get a watered-down 'peace clause' and a LDC (least developed countries)²² package. This was also only after agreeing to sign the first multilateral agreement of the DDR, the Trade Facilitation agreement (TF).

The euphoria surrounding the TF predicted a US \$1 trillion gain in overall world trade, however, the actual gains from the TF, especially towards developing countries, remain uncertain.²³ All that this package offered to the LDCs was promises on behalf of the developed countries to make world trade fairer for them. Moreover, the non-binding language of the relevant decision offers little hope for any meaningful gains for the LDCs.

The 'peace clause', which seemed like certain relief for the developing countries' food security programs in the G-33 proposal, was marred by a 'constructive ambiguity' regarding its expiry date.²⁴ The 'peace clause' asked WTO members to "refrain from challenging through the WTO Dispute Settlement Mechanism"²⁵ the already existing public stockholding programs of developing countries that ensure food security. However, the Ministerial Decision refers to the 'peace clause' as being in place "in the interim, until a permanent solution is found."²⁶ This language evoked much controversy regarding the actual length of time for which the 'peace clause' would be in force. It was almost a year later, in November 2014, that the US finally agreed to India's interpretation that the 'peace clause' would not expire until a final decision on public stockholdings has been taken at the WTO.²⁷

The 'peace clause' also imposes onerous reporting obligations on developing countries before they can access the protection offered. In addition, it restricts the kind of food that can be acquired for public stockholding programs. Furthermore, the protection only applies to those public stockholding programs that already existed at the time of the decision (December 7, 2013). This implies that if a developing country launched or intends to launch a public stockholding program after this date, it

19 The G-33 is a group of developing countries that coordinate on trade and economic issues. It was created to help countries that were all facing similar problems. For more information, please see: www.wto.org/english/stratop_e/ada_e/negotiating_groups_maps_e.htm?group_selected=GRP017.

20 G-33 Proposal on Some Elements of TN/AG/W/4/Rev.4 for Early Agreement to Address Food Security Issues (Job/AG/22) dated November 30, 2012.

21 G-33 Non Paper (Job/AG/25) dated October 3, 2013.

22 LDCs are identified by the UN Committee for Development Policy. There are currently 48, including Bangladesh, Nepal, Sudan and Sierra Leone. For more information, please see: www.un.org/en/development/desa/policy/cdp/ldc_info.shtml.

23 Capaldo, Jeronim. *The Uncertain Gains from Trade Facilitation*. Massachusetts: Tufts University, 2013. Available at: ase.tufts.edu/gdae/Pubs/rp/PB13-02UncertainGains.pdf.

24 For a discussion of this 'constructive ambiguity', see Häberli, Christian. *After Bali: WTO Rules Applying to Public Food Reserves*. Rome: FAO, 2014. Available at: www.fao.org/3/a-i5820e.pdf.

25 WTO. *Public Stockholding For Food Security Purposes, Ministerial Decision (Wu/Min(13)/38)*. Bali: WTO, 2013, paragraph 2. Available at: www.wto.org/english/thewto_e/minist_e/mc9_e/desci38_e.htm.

26 *Ibid.*

27 Office of the United States Trade Representative (USTR). *Fact Sheet: U.S.-India Agreement on Trade Facilitation*. Washington: USTR, 2014. Available at: ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/November/US-India-Agreement-on-Trade-Facilitation.

would not have the protection of the 'peace clause'. Such harsh terms imposed by the developed countries on the only concession made regarding food security do not give much hope for a meaningful permanent solution to the public stockholdings issue.

Even with such modest gains, the developing countries were able to give the WTO a new lease of life by conceding to the TF. However, the aftermath of the Bali Ministerial has been marked by increasing rigidity by developed countries against providing any further relief to the developing world on the issue of public stockholding. After keeping the 'constructive ambiguity' of the 'peace clause' simmering for almost a year, the US and the EU, and the allies of other developed countries are endeavouring to keep the developing countries divided. Despite their leverage at Bali, the TF was cheaply obtained, and developing countries now have little besides their unity to bank on during the upcoming 10th Ministerial Conference in Nairobi, Kenya (December 2015).²⁸ If the food security of the millions of people living in poverty is to be defended at Nairobi, it needs to become a non-negotiable end in itself rather than be a bargaining chip at the WTO table.

THE WAY FORWARD

The meeting of civil society organizations from Africa and Asia organized by the Our World Is Not For Sale Network (OWINFS),²⁹ on the sidelines of the World Social Forum in Tunis in March 2015, suggested four basic principles that developing countries should push for at the WTO.³⁰

Firstly, all countries (including developed countries) should be able to conceive and implement comprehensive support programs to develop sustainable food production systems that ensure domestic food security. Public expenditure and the stockholding of food for food security should, therefore, be made part of the Green Box subsidies.

Secondly, all countries must be provided with mechanisms that can help protect their domestic food economy against the inequities and shocks of free trade. No country should be allowed to export any subsidised commodity that has a potentially adverse impact on the domestic food production of another country. Food, which is procured at domestically subsidized rates for public stockholding purposes as well as the food produced with subsidized inputs, should not be exported at prices lower than the world market price.

Thirdly, the existing stringent conditionalities and triggers for deployment of Special Safeguard mechanisms currently being negotiated should be revised and relaxed so that countries can realistically use them to protect against import surges.³¹

Lastly, countries should be allowed to use tariffs to protect their domestic food markets. However, if any future tariff cuts are negotiated, developing countries should have full recourse to Sensitive Products³² and Special Products³³ mechanisms.

Given recent developments in Geneva at the WTO, the journey to the 10th Ministerial Conference in Nairobi is likely to be characterised by strong opposition from developed countries to any fundamental changes to the current trade order. As in Bali, every attempt will be made to coerce the Kenyan government to push other developing countries for a settlement that is less than satisfactory to ensure a 'successful' African Ministerial Conference. Since such a settlement would be detrimental to peasant farmers in most African countries, including Kenya, it is imperative that civil society does not allow the Nairobi Ministerial to be converted into an African Ministerial that needs to succeed at all costs.

28 Raghavan, Chakravarthi. "South Faces Uphill Fight on Food Security, Commitments on Bali Decisions." *TWN Info Service on WTO and Trade Issues*, April 9, 2015. Available at: www.ourworldisnotforsale.org/en/article/south-faces-uphill-fight-food-security-commitments-bali-decisions.

29 For more information on OWINFS, please see: www.ourworldisnotforsale.org/en.

30 James, Deborah. *Investing in Agriculture in Developing Countries: The Whole World Says Yes, but the WTO Says No*. Washington: OWINFS, 2015. Available at: www.ourworldisnotforsale.org/en/report/investing-in-agriculture-developing-countries-whole-world-says-yes-wto-says-no.

31 For more information, please see: Das, Abhijit, and Sachin Kumar Sharma. *Evolution of WTO Agriculture Modalities: Survival of the Financially Fattest*. New Delhi: Centre for WTO Studies. Available at: wtocentre.iift.ac.in/Occasionalpaper/01.pdf.

32 "These products will undergo lower tariff reduction by deviating from the generally applicable formula cuts, but developed countries would be required to provide new access opportunities through expansion of tariff quota on these products. The extent of deviation from the formula cuts is linked to the extent of expansion of tariff quota - higher the deviation from the formula cut, more would be the expansion required in the tariff quota..." *Ibid.*, p. 35.

33 "General Council Decision of August 1, 2004 specified that the developing countries would have the flexibility to designate an appropriate number of products as Special Products, based on the criteria of food security, livelihood security and rural development needs." *Ibid.*, p. 42.

CONCLUSION

The right to adequate food and nutrition (RtAFN) for everyone is not just a moral imperative. It is enshrined in international treaties and covenants,³⁴ and members of the WTO are obligated to respect, protect and fulfil the right to adequate food and nutrition not only for their own people, but also those living in other countries, and the global community at large.³⁵ The somewhat hypocritical US stance against LDCs' food security concerns in the WTO explains why it has still not ratified many of these international covenants.³⁶ It is therefore important that all developing economies and the LDCs stand up to the US, the EU and their key allies to protect human rights, especially the economic, social and cultural rights of their people.

The Nairobi Ministerial might well prove to be the most decisive chance for the developing world to level the global playing field in agricultural trade. At stake in Nairobi is not just the food security of billions of people in developing countries, but a chance to reverse the historic inequity that permeates the present global trade order under the WTO today.

INSIGHT 6.1

Extraterritorial Human Rights Obligations in Trade Policies—The Case of the European Union

Armin Paasch³⁷

Over the past years, various UN human rights treaty bodies and Special Procedures have been recognizing and affirming the extraterritorial scope of states' human rights obligations, in many instances inspired by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.³⁸ While among governments ETOs are still much under debate, not least in Europe, interestingly Articles 3 and 21 of the Treaty on European Union (TEU)³⁹ clearly obligate the European Union (EU) to, at least, respect and promote human rights abroad. Undoubtedly these obligations cover its trade and investment policies. In reality, though, the situation looks different.

For years studies have been raising serious concerns about violations or threats to human rights arising from existing and future EU trade agreements with African countries, Colombia, Peru, India and others. Excessive tariff cuts can trigger import surges of milk powder, tomato paste and chicken parts to West Africa that drive smallholders out of their local markets. Strict intellectual property rights provisions can limit farmers' access to and control over seeds in Peru and Colombia. Opening up big supermarket chains can destroy millions of jobs in the informal sector in India. In all these cases the human right to adequate food and nutrition is under threat.⁴⁰

This threat is even greater since the EU does not currently have any effective instruments or mechanisms in place to avoid and mitigate such impacts. So far the Sustainability Impact Assessments (SIA), which the EU has been conducting on all of its trade agreements since 1999, do not sufficiently cover human rights.⁴¹ The human rights clauses that are routinely included in all EU trade agreements since the early 1990s do not meet the human rights requirements of the TEU. Most importantly, they do not allow a party to take measures to respect, protect and fulfil human rights domestically when such measures contradict provisions in the trade agreement.⁴²

34 This includes the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

35 ETO Consortium. *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*. Heidelberg: FIAN, 2013. Available at: www.etoconsortium.org/nc/en/library/maastricht-principles/?cx_drblob_pi1%5BdownloadUid%5D=23.

36 The Wire Staff. "India Suggests US Set Up National Human Rights Commission." *The Wire*, May 15, 2015. Available at: thewire.in/2015/05/12/india-suggests-us-set-to-up-national-human-rights-commission.

37 Armin Paasch is Officer on Business and Human Rights at MISEREOR, the German Catholic Bishops' Organization for Development Cooperation. For more information, please visit: www.misereor.de. Special thanks to Laura Michéle (FIAN International), Peter Lunenborg (The South Centre), and Antonio Onorati (Centro Internazionale Crocevia) for their support in reviewing this article. This article was originally written in English.

38 ETO Consortium. *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*. Heidelberg: FIAN, 2013. Available at: www.etoconsortium.org/nc/en/library/maastricht-principles/?cx_drblob_pi1%5BdownloadUid%5D=23.

39 The full text of the Treaty is available at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN.

40 Paasch, Armin. *Human Rights in EU Trade Policy—Between Ambition and Reality*. Aachen/Berlin: MISEREOR, Heinrich Böll Foundation, and Glopolis, 2011. Available at: www.ecofair-trade.org/sites/ecofair-trade.org/files/downloads/12/03/ecofair_trade_dialogue_human_rights_in_eu_trade_policy_paasch_2011.pdf.

41 Bonanomi, Elisabeth Bürgi. *EU Trade Agreements and their Impacts on Human Rights*. Bern: German Federal Ministry for Economic Cooperation and Development (BMZ), 2014. Available at: www.uti.org/fileadmin/user_upload/nccr-trade.ch/other_publications_events/01_CDE_Working_Paper_Buerqi_2014.pdf.

42 Bartels, Lorand. *A Model Human Rights Clause for the EU's International Trade Agreements*. Aachen/Berlin: German Institute for Human Rights and MISEREOR, 2014. Available at: www.institut-fuer-menschenrechte.de/uploads/cx_commerce/Studie_A_Model_Human_Rights_Clause.pdf.

The current crisis of EU trade policies caused by the massive protests against the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA) can open a window of opportunity for reforms, including regarding human rights.⁴³ In May 2015 the European Commission published a revised draft Handbook for SIA that includes human rights as a key component of sustainability.⁴⁴ The European Commissioner for Trade, Cecilia Malmström, also announced a new trade strategy that may “go beyond our current approaches to trade and labor, human rights and environmental protection.”⁴⁵ However, such reforms should not legitimize and perpetuate an approach to trade policies that is problematic in general. Reforms must be substantial in order to serve human rights.

INSIGHT 6.2

TTIP is a Trojan Treaty

*Mute Schimpf*⁴⁶

Over two million people have signed a European Citizens’ Initiative (ECI) organized by an alliance of more than 380 European organizations to protest against the Transatlantic Trade and Investment Partnership (TTIP).⁴⁷ Tens of thousands have also taken to the streets across Europe. Yet over the previous decade dozens of trade deals have been negotiated, signed and implemented without garnering half as much public attention in Europe. What is it about the EU-US trade deal, currently being hammered out, that has caused such an outcry?

TTIP’s route to increased trade has a different focus than traditional trade deals. It intends to harmonize regulations between the EU and US, including the regulations that govern food safety and chemical use, as well as numerous other issues that are extremely personal and immediate to many people. Given this, the rising public opposition ceases to surprise. This deal’s impact on our food and farming would be immense.

TTIP is being negotiated behind closed doors. While big business lobbyists are known to be greatly influencing the discussions, civil society groups are largely excluded and left in the dark. However, the intentions of trade negotiators are clear from documents leaked and publicly available. Regulations are branded as ‘barriers to trade’, and must therefore be circumvented or removed.

According to a study by the European Parliament, if finalized the TTIP would allow more industrial farming products to be traded across the Atlantic.⁴⁸ Although agri-businesses have been pushing hard for this market access, few others will win from an influx of factory-farmed chickens and dairy products. The environment will lose as intensive farming and food production practices emit more greenhouse gases and carry greater risks of local pollution. European farmers will lose out too.

And the price for citizens? The EU and US have fundamentally different approaches to the issue of food safety. For instance, the US lacks federal standards for food production at farm level. Its federal legislation only applies once the animal enters the slaughter house. There are thus no specific rules regarding the use of antibiotics or animal welfare. This completely contradicts the EU’s regulatory approach of minimizing the risks to the environment and human health at every step of the food production process, from field to fork.

43 For further information on the TTIP, see insight box 6.2 below.

44 European Commission. *Handbook for Trade Sustainability Impact Assessments*. Brussels: European Commission, 2015. Available at: trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153400.pdf.

45 The full speech is available at: trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153265.pdf.

46 *Mute Schimpf* is a member of Friends of the Earth Europe (FoEE). Friends of the Earth is a grassroots environmental network based in Europe that unites more than 30 national organizations with thousands of local groups. For more information, please visit: www.foeeurope.org. Special thanks to Laura Michéle (FIAN International) and Peter Lunenborg (South Centre) for their support in reviewing this article. This article was originally written in English.

47 For more information about the campaign to stop TTIP/CETA, please visit: stop-ttip.org/about-the-eci-campaign.

48 European Parliament. *Risks and Opportunities for the EU Agri-Food Sector in a Possible EU-US Trade Agreement*. Brussels: EU, 2014. Available at: www.europarl.europa.eu/RegData/etudes/STUD/2014/514007/AGRI_IPOL_STU%282014%29514007_EN.pdf.

However, it is not just current protection for people and the environment that is at risk if EU and US regulations are harmonized. TTIP could also prevent desperately needed future improvements to regulation protecting our environment and public health from going forward. For the sake of our food and its impact on our environment, TTIP needs to be stopped.

INSIGHT 6.3

The Trans-Pacific Partnership: A Threat to Human Rights

*Tessa Khan*⁴⁹

As the latest round of negotiations in the WTO continues at an incremental pace, governments have sought to secure foreign market access for their companies through the negotiation of preferential trade agreements (PTAs). An almost universally low rate of tariffs, together with the emergence of supply chain management, has shifted the focus of PTAs from addressing traditional barriers to trade to ensuring that domestic regulatory frameworks favor foreign trade and investment.

The Trans-Pacific Partnership (TPP) is among a new generation of ambitious PTAs which, if adopted, are likely to have alarming implications for the fulfillment of human rights. It is currently being negotiated between twelve of the major economies, including the US, Canada, Australia, Japan, Malaysia, Mexico, Peru, and Singapore. If adopted, it will cover one-third of all global trade. Like the TTIP, the manner in which the TPP is being negotiated is in itself a cause for grave concern and a *prima facie* violation of the right to participate in public affairs. The draft text is not publicly accessible although hundreds of corporate lobbyists have acted as advisers.⁵⁰ Moreover, even after the agreement is finalized, it will remain classified for years.

Leaked drafts of the TPP indicate that it will significantly constrain the regulatory powers of governments, including through an investor-state dispute settlement (ISDS) mechanism. Aside from serious concerns regarding the impartiality and transparency of ISDS, under the current TPP draft companies can sue governments for alleged losses due to government policies made in the public interest.⁵¹ There have already been such cases, including the one brought by the tobacco company Philip Morris against the Australian government for requiring cigarette packages to include health warnings.⁵² Other ISDS awards in favor of transnational corporations have been astronomical. Occidental Petroleum, for example, successfully sued Ecuador for US \$1.77 billion.⁵³

The threat of such international arbitration can have a ‘chilling effect’ on governments and prevent them from introducing legislation. Given the range of policy measures governments take to protect the right to adequate food that may contravene trade agreements such as the TPP, including public stockholding and procurement from local farmers, this ‘chilling effect’ poses a significant threat to local food security.

Civil society in almost all negotiating countries have been vocal in their opposition to the TPP, uniting social movements working to protect labor rights, the right to health, and women’s rights and gender equality. The Asia Pacific Forum on Women, Law and Development (APWLD) is leading one of the global campaigns against the TPP, calling on governments to publicly release the draft text and ensure that the TPP does not further entrench corporate dominance and social and economic inequalities, including gender inequality.⁵⁴

- 49 Tessa Khan is an international human rights lawyer for the Asia Pacific Forum on Women, Law and Development (APWLD). APWLD is the Asia Pacific’s leading feminist, membership-driven network. It uses capacity development, research, advocacy and activism to claim and strengthen women’s human rights. For more information, please visit: www.apwld.org. Special thanks to Laura Michéle (FIAN International), Peter Lunenborg (The South Centre) and Antonio Onorati (Centro Internazionale Crocchia) for their support in reviewing this article. This article was originally written in English.
- 50 “Secret Trans-Pacific Partnership Agreement (TPP)-IP Chapter.” *WikiLeaks*, November 13, 2013. Available at: wikileaks.org/tpp/pressrelease.html.
- 51 Ranald, Patricia. “Investor-State Dispute Settlement (ISDS): the Threat to Health, Environment and Other Social Regulation.” Paper presented at the Stakeholders Forum, Eighth Round of Trans-Pacific Partnership Agreement negotiations, Chicago, September 10, 2011.
- 52 Australian Government. Tobacco Plain Packaging—Investor-State Arbitration. Attorney-General’s Department. Available at: www.ag.gov.au/tobaccoplainpackaging.
- 53 Gill, Nathan. “Occidental Awarded \$1.77 Billion in Ecuador Contract Dispute.” *Bloomberg Business*, October 6, 2012. Available at: www.bloomberg.com/news/articles/2012-10-05/occidental-awarded-1-77-billion-in-ecuador-contract-dispute-1-
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