

## Working Group on Trade and Industrial Policy

### Towards Just Trade and Industrial Policy (working document)

#### Introduction

Trade and industrial policy have been the principal drivers of economic growth and development. Governments have strategically used trade and industrial policy to fulfill their employment generation and development objectives.

Three decades of liberalization and unbridled deregulation culminated in the 2008 financial crash. Since then, global inequality has grown enormously with a deepening unemployment crisis and devastating social consequences. Meanwhile continued environmental pressures, especially those of climate change have raised profound risks for global prosperity.

Economic policy focused on 'fiscal austerity' has failed to restore stable economic growth and has led to a jobs crisis around the world with deep implications for workers' rights to freedom of association and collective bargaining.

The 2017 ILO World Employment and Social Outlook shows the global unemployment rate at 5.8 per cent with over 201 million workers worldwide unemployed. Nearly 780 million workers in developing countries, almost every third worker, are still living in conditions of extreme or moderate poverty. More than 1.4 billion workers are in vulnerable employment.

Labour market deregulation, promoted by governments as the means to improve competitiveness and stimulate economic growth, has resulted in reduced job security and the exponential growth of precarious work, weakening collective bargaining and trade unions.<sup>1</sup>

Increasing automation in manufacturing technologies, known as the fourth industrial revolution or Industry 4.0, throws up new challenges for employment generation. UNCTAD's Trade and Development Report 2017 notes that with an ever-smaller number of highly skilled people required, large-scale job displacement and wage erosion is already being seen.

The failure of recovery only indicates the weaknesses in policy approaches to find a way out of the multiple crises the world is witnessing today. It is obvious that a business as usual approach will not work.

#### Need for new approaches to trade and industrial policy

In the absence of effective trade and industrial policy responses to deliver on the needs of working people, we are witnessing increasing calls for protectionist trade policies. This places a greater responsibility on the trade union movement to propose credible alternatives aimed at achieving more innovative, inclusive and sustainable forms of growth and prosperity.

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<sup>1</sup> ILO, World Employment and Social Outlook 2017: Sustainable Enterprises and Jobs: Formal enterprises and decent work. P44

The World Trade Organization (WTO) has so far failed to achieve consensus among its 164 member countries. The Doha Development Round (DDR), launched in 2001 with the promise of developmental outcomes, has not achieved its aims. The recent 11<sup>th</sup> WTO ministerial meeting held in Argentina in December 2017 concluded without a formal declaration on the future course of action.

In the past decade, DDR WTO negotiations have exposed the divergence of interest among its members. While developed countries are demanding more market access, developing countries demand in return an outcome with developmental objectives. This impasse has weakened the very nature of the consensus based decision-making process in the WTO.

The failure of WTO multilateral negotiations to open new markets has spawned a range of bilateral and regional free trade agreements (FTAs) as well as plurilateral trade negotiations such as the Trade in Services Agreement (TISA), Information technology Agreement (ITA) and Environmental Goods Agreement (EGA). The new generation FTAs go beyond WTO trade rules with legally binding and irreversible market access commitments in the areas of trade in goods, services, financial services, telecommunications, electronic commerce, competition policies, government procurement, investment and intellectual property rights and other areas.

While WTO negotiations were at least guided by principles that recognized the varying developmental needs of its member countries, the bilateral regional trade agreements treat countries as equal and demand full reciprocity in market opening commitments, even going beyond WTO trade rules in their depth. Developing countries are further disadvantaged through a lack of expertise to deal with highly technical trade negotiations and are under political pressures from powerful corporate lobbies. Negotiations are held in secret without democratic process and public scrutiny. Corporate representatives get privileged access to negotiations while workers representatives and the wider public are kept in the dark.

Deepening liberalization rules severely limit government ability to address developmental challenges. Governments need a mix of regulatory policy space to pursue structural transformation towards inclusive and sustainable development.

## Key areas for union intervention

### 1) Revitalize multilateralism

Global problems need global solutions. Instead of pursuing a multitude of bilateral and regional trade negotiations with the primary objective of serving the corporate trade agenda, **governments should return to the multilateral forums to create trade rules with the primary objective of achieving fair and just globalization and sustainable economic development.**

### 2) Democratic process and transparency in trade negotiations

Lack of transparency in the negotiation of free trade agreements is a major area of concern. In almost every trade agreement the negotiating texts are kept secret, away from the public scrutiny. Even members of parliament do not have access to negotiating texts. In many

countries, the pros and cons are not even discussed and voted in the parliament. Such secrecy does not allow for informed public debate over the consequences of trade agreements. It is only through leaked documents and negotiating texts that people come to know of the details of trade negotiations.

Often there is no adequate consultation with stakeholders who are directly affected by negotiations. The European Union, Australia and New Zealand are notable exceptions as they have established limited transparency and stakeholder consultations, but in the absence of public information, these have proved to be inadequate.

Once agreements are concluded and finally made public, it is almost impossible to change any specific provisions. **The veil of secrecy over trade negotiations process and the negotiating texts should be removed and a democratic process followed in trade negotiations.**

### 3) Oppose negative listing, standstill and ratchet clauses in trade agreements

Investment and services chapters in bilateral and regional trade agreements are often negotiated based on 'negative listing'. This means that each country lists all exceptions or conditions for market access and/or national treatment limitations it wants to apply. All sectors or sub-sectors that are not listed are, by default, open to foreign investors and service suppliers under the same conditions as for domestic players<sup>2</sup>. It is impossible for any country to list all its reservations when they are negotiating an FTA.

New areas of economic activity, which may develop through technological progress such as 3D manufacturing and E-commerce, are emerging all the time. It is not acceptable for policy space on future areas of economic activity to be written off in this way.

It has also become a standard practice to include standstill and ratchet provisions in investment and services negotiations. 'Standstill' means locking in existing levels of liberalisation so that additional liberalisation can take place, but the government cannot roll back the existing level of liberalisation at the time of the agreement.

A 'ratchet clause' means a country commits that if it unilaterally decides in the future to further open its markets in one specific sector, such opening would be locked in and there can be no step backwards.

Negative listing, standstill and ratchet clauses should all be opposed.

### 4) Oppose investor state dispute settlement (ISDS) clauses in trade agreements

Investor state dispute settlement (ISDS) provisions provide special legal rights to corporates to sue governments for huge sums of money in international arbitration tribunals if government

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<sup>2</sup> Services and investment in EU trade deals  
Using 'positive' and 'negative' lists, Source:  
[http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154427.pdf](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf)

legislation or policies affect the profitability of a foreign investor. ISDS provisions were originally developed in order to encourage foreign investment by protecting the investor from discrimination and expropriation. However, its implementation has been disaster.

ISDS provisions give enormous power to corporations to challenge government decisions and limit government policy space to regulate investments to suit the developmental requirements of the country. ISDS arbitration takes place outside of the domestic judicial processes and is held entirely in secret.

Any laws or policies adopted to protect workers' rights, enhance minimum wages and working conditions, generate employment, protect the environment or consumers, provide public services or for any other social and welfare purpose run the risk of being challenged by corporations.

**Democratically elected governments must be free to conceive, adopt and implement policies in the interests of their people without threat of being sued by multinational corporations.**

#### **5) Protection of industrial policy space and the right to regulate**

Many FTAs include countries that are at different stages of development. Through FTAs, governments undertake legally binding commitments to remove tariffs and deregulate various sectors. Often these commitments are almost irreversible, thereby permanently depriving governments of the policy space to pursue their development objectives.

For example, export taxes can be used to limit the export of raw materials on leather and iron ore and make them available for domestic industry. Such policy tools can help domestic industries to move up the value chain and thereby improve the quality and quantity of employment.

This shrinking of policy space has deep implications for the ability of countries, particularly developing countries, to generate manufacturing capacity in information and communication technology products and environmental products including solar panels and wind energy, industries that have the potential to generate employment in the future.

**When the need arises to protect a nascent domestic industry from international competition, governments must be able to utilize industrial policy tools.**

#### **6) Prohibition of performance requirements**

Negotiations are also held on restricting performance requirement regulations. These are policy tools to impose performance conditions on foreign investments, including procurement of raw materials locally, employment of local workers, technology transfer and indigenization.

For example, lithium is a key ingredient for batteries used in electric cars. As the impetus for electric car manufacturing grows, Australia's lithium mining industry is witnessing significant investment from Chinese companies like Tianqi Lithium and Ganfeng Lithium, which are looking to expand their presence in both mining and processing activities. While investment

provisions in the China-Australia FTA (ChAFTA) currently do not include performance requirements, it is being negotiated under RCEP.

**It is essential that governments have the policy space to regulate investments towards employment generation and sustainable development.**

### **7) Protection of public services**

Public services should be excluded from the legally binding commitments under trade agreements. It is unacceptable that services chapters in trade agreements are dominated by approaches such as standstill, negative listing, and ratchet provisions that facilitate irreversible liberalization.

**Democratically elected governments must have absolute right over utilizing policy tools to ensure that citizens have access to public services.**

### **8) Digital trade agenda and protection of digital industrial policy tools**

The world economy is witnessing a rapid digital shift that is resulting in growing digital based restructuring and transformation of manufacturing, agriculture and services sectors. While traditional areas of trade in goods and services are governed through multilateral, regional and bilateral trade agreements, governments are still exploring policy tools to regulate key areas of the digital economy. This provides an important opportunity for governments to devise digital industrial policy tools to facilitate and promote developmental objectives and for developing countries to catch up on technological development.

New generation plurilateral, regional and bilateral trade agreements are promoting policy instruments in areas such as internet governance, data localization, cyber security, data privacy and security, cross border digital trade flows, cross border data flows, high-tech intellectual property rights, cloud computing, electronic commerce, public procurement, encryption regulation and big data. Leading information and communication technology corporations and industry associations are heavily involved in lobbying for their own digital trade agenda.

**It is essential that governments do not lose policy space to regulate the digital economy, even before understanding its developmental implications. Governments should deploy adequate resources and make conscious effort to inform the public of digital trade policy issues and facilitate an informed public debate, before undertaking legally binding commitments through trade and investment agreements.**

### **9) Enforceable clauses on labor rights**

International trade and investment agreements rewrite rules that affect production activities in global value chains with deep implications for industrial relations and labour standards. Liberalization measures and tariff reductions create winners and losers in the labour market, with some firms experiencing enhanced market access and increased production while others face unfair competition from cheaper imports.

In order to stay competitive, companies resort to lowering wages, retrenchment, intensification of work, long working hours, poor working conditions and precarious work. We see governments weakening labour protections in order to enhance trade and attract investments.

More free trade agreements are now including labour provisions to protect fundamental principles and rights at work, but these are largely inadequate. While trade agreements provide detailed legal and arbitration procedures to protect investor rights, labour provisions predominantly champion cooperative approaches to protecting worker rights, without legally binding commitments.

**It is essential that trade agreements include enforceable clauses with reliable, responsive and effective participatory mechanisms and strong transparent institutional structures to protect labour rights.**

### **10) Intellectual property rights and limits to industrial policy**

Rules governing standards of intellectual property rights (IPR) protection and enforcement are one of the core issues of trade agreements. IPR provide monopoly rights to persons or companies over matters including innovations, technology, test data for medicines and agro chemicals, plant varieties, geographical indicators and a host of other goods and services.

Third parties cannot produce or perform or use the creations that are protected under IPR without the authorization of the right holder. Strong patent regimes with stricter protection and enforcement rules are advocated with the view that such protection would promote innovation, industrial development and attract foreign direct investment, but the case for this has not been established.

A stronger IPR regime raises the costs of protected goods and reduces access to innovation. It gives more monopoly power to patent holders, which are mostly multinational corporates. Premium costs associated with IP protected technology are a barrier to diffusion of innovative technology in the interests of greater wellbeing for more people. It also affects the development of infant domestic industries, limiting their ability to catch up with foreign technology at a lower cost.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) provides extensive IP protections that are legally binding on all WTO members. It also provides for flexibilities that can be used by developing countries to pursue industrialization and developmental objectives. But the new generation of trade and investment agreements seek binding commitments beyond TRIPS provisions and call for a stringent IP regime.

**It is essential that the IP regime facilitates governments' efforts to achieve sustainable development goals, and should not be a hurdle in the process.**

### **11) Public procurement should remain as an industrial policy tool**

Across the world, public procurement has been utilized as one of the key policy tools to promote industrial development and fulfill sustainable development objectives. Public procurement is often used towards policy goals such as promoting employment generation, rural development and innovation among domestic industries. Most governments, when

purchasing goods and services and granting infrastructure projects, provide preferential treatment to domestic firms.

Public procurement occupies a substantial share of world trade amounting to more than €1.3 trillion per year.<sup>3</sup> Particularly developing countries spend much more for public procurement as a percentage of GDP. In South Asia it is 19.27%, Sub-Saharan Africa 14.91%, Latin America and Caribbean 14.53%, Europe and Central Asia 12.30%, North America 11.70%, Middle East and North Africa 11.38% and for East Asia and Pacific it is 9.26%.<sup>4</sup> In the EU, public procurement is estimated at 16% of GDP. Thus, public procurement by governments has significant implications for the global economy and development.

Public procurement regulatory disciplines in trade and investment agreements seek to end the preferential treatment for domestic firms and demand equal treatment for foreign firms. Opening up public procurement for international firms, not only at the national level, but also at federal, local government and municipal level through legally binding and irreversible commitments would erode governments' policy space.

**Public procurement must continue to be available to governments as an industrial policy tool.**

#### Trade union intervention in Trade Policy Forums and Processes

Trade negotiation processes are shrouded in secrecy and even the venue, negotiation dates, names of government personnel handling negotiations are kept confidential. It is also important to recognize that corporate lobby has been very active. A mix of traditional and innovative approaches of sharing information, intelligence gathering and response strategies are required to create space for intervention and engage on trade policy issues. While challenges are many, there are also many ways in which the trade union movement can strengthen its responses to trade and industrial policy issues in order to influence government decisions in favor of workers' interests.

#### National level interventions:

- 1) Unions can intensify their engagement with ministries involved in trade negotiations (usually trade and commerce) to demand information.
- 2) Before and after every round of trade negotiations, unions can contact the respective ministry to inform them of their views.
- 3) Unions can enhance their political engagement through representatives in parliament.
- 4) On a regular basis unions' position and response on specific issues and overall approaches to trade negotiation can be communicated to the government, union members, media and larger public.
- 5) Unions can undertake sustained campaigns at the national level.

#### Regional level interventions:

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<sup>3</sup> Source: <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

<sup>4</sup> Simeon Djankov (PIIE), Asif Islam (World Bank) and Federica Saliola (World Bank), "How Large Is Public Procurement in Developing Countries?" (November 7, 2016) Source: <https://piie.com/blogs/realtime-economic-issues-watch/how-large-public-procurement-developing-countries>

Regional alliances among unions can be formed around some of the key regional trade agreements to constantly monitor developments with the objective of intervention. Unions can demand consultative space at the venues where regional trade negotiations are held. Trade negotiators and ministers can be invited to address such events. Unions can jointly organize regional events coincided with trade negotiations towards sharing information, evolving collective positions and building solidarity among unions

Regional agreements currently under negotiations are:

- 1) Regional Comprehensive Economic Partnership (RCEP)
- 2) Transatlantic Trade and Investment Partnership Agreement (TTIP)
- 3) North American Free Trade Agreement (NAFTA)
- 4) EU – Japan FTA
- 5) EU- ASEAN FTA
- 6) EU-MERCOSUR
- 7) EU's Economic Partnership Agreements (EPAs) with African nations
- 8) The Continental Free Trade Area (CFTA) in Africa

#### **At the global level:**

The important forum at the global level is the WTO.

- 1) The WTO Public Forum is an important event that provides a platform for stakeholders including government delegations, business and civil society to organize events and discuss trade policy issues.
- 2) The WTO Ministerial Conference is the top decision-making body of the WTO. It meets once in every two years. Trade ministers of WTO member countries participate in the event along with their delegation, which usually includes representatives from trade unions, business and civil society.

#### **IndustriALL's unique strength**

IndustriALL's affiliates are present in manufacturing sectors, which are directly affected by trade policies. This puts IndustriALL in a strong position to call for effective intervention. IndustriALL's presence in 140 countries, with a politically active membership, forms a unique strength. Further, IndustriALL has a strong membership base in key countries and regions that are heavily engaged in trade negotiations including in North and South America, Europe, Africa, Asia and the Pacific. IndustriALL is in a unique position to build policy alternatives through global solidarity of workers. Drawing on these strengths, IndustriALL can influence trade policy decisions at national, regional and global forums.

#### **Review of mechanisms in trade agreements that facilitate union participation**

Provisions on labour standards are increasingly being incorporated in free trade agreements. From 1994, with the signing of North American Free Trade Agreement (NAFTA), labour provisions have become common in trade agreements. As of 2016, labour provisions are included in 77 trade agreements, which cover 136 economies<sup>5</sup>.

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<sup>5</sup> ILO Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (2017)

Most labour provisions refer to the ILO 1998 Declaration on Fundamental Principles and Rights at Work. They also cover ratification and implementation of ILO fundamental conventions and internationally agreed frameworks such as the Decent Work Agenda. Trade agreements between both developed and developing countries (North-South agreements) and among developing countries (South-South agreements) include labour provisions.

Particularly countries such as Canada, Chile, the EU and US are very active. The US included labour provisions in 13 out of its 14 agreements in force. Canada has it in nine agreements, while EU has concluded 15 trade agreements with labour provisions. Chile has included labour provisions in 12 out of its 26 agreements in force. Countries in Latin America and Sub-Saharan Africa have also included labour provisions. However, no countries in Southern Asia and only four of the 12 Arab States with trade agreements have such provisions.

Countries such as US, Canada, EU, EFTA and New Zealand have taken the lead in incorporating labour provisions in FTAs. However, many developing countries hold a perspective that labour issues are to be dealt with in international fora rather than bilaterally or regionally in trade agreements.

The US and EU's approaches towards labour provisions provide templates for labour chapters in FTAs. In terms of enforceability of labour provisions, it is important to recognize that there is disconnect between rhetoric and reality. While both the EU and US claim to advocate for linking trade and labour standards, various studies and trade unions' positions note that existing labour provisions have insufficient mechanisms to enforce labour standards.

US FTAs usually include a labour chapter, while EU FTAs include sustainable development chapters addressing environment and labour standards. The overall approach has been to promote international labour standards espoused in ILO declarations and core conventions and not to weaken existing labour law regulations. It also includes commitments to enforce labour laws and cooperative actions to promote implementation. However, applicability of the provisions of labour chapters is limited to matters that affect trade and investment. This presents a practical difficulty to establish how lowering labour standards has in fact affected trade and investment in order to appeal for relief by invoking labour chapter provisions.

Labour provisions in US FTAs require parties to maintain laws, regulations and practices in accordance with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). EU FTAs often go further in calling for laws in accordance with the ILO Decent Work Agenda (EU-Korea and EU – Canada (CETA)) and compliance with ILO core labour conventions (EU-Central America FTA). However EU FTAs do not provide provisions that lead to withdrawal of trade concessions in case of violations of labour standards. While many developing countries do not favor inclusion of labour provisions that provide trade sanctions, the EU itself seems to be not in favor of such provisions. Recently, serious concerns were raised over labour rights violations and lack of enforceability of labour provisions in the EU-South Korea FTA. A case in point is CETA. While Canada advocated for a labour chapter with trade sanctions or compensation, the EU decided not to have such provision. Nonetheless, the CETA labour chapter represents significant progress from earlier FTAs.

Dispute settlement processes pertaining to labour chapters do not provide for a participatory approach and often use state-to-state dispute settlement mechanisms, for example TPP. Labour provisions place no obligation on governments to ensure that corporations comply with specific principles that are endorsed by governments such as the OECD Guidelines for MNCs.

They typically place enormous discretion upon governments to receive, consider and prosecute complaints on labour issues. No adequate institutional space has been established to address and improve labour relations issues. Further, existing labour chapters do nothing towards enhancing transnational labour relations to address workers' rights across the supply chain.

In February 2018 the EU issued a non-official paper on 'Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements'<sup>6</sup>. The paper notes that as there is no consensus on a sanctions-based model, it is impossible to move to such an approach.

While the paper offers a step towards progress with calls for increased engagement with the ILO and a stronger role for civil society including the social partners, the many concerns over effective implementation of labour provisions in FTAs remain unanswered.

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<sup>6</sup> Source: [http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf)