



TRADE LIBERALISATION, GENDER EQUALITY, POLICY SPACE

THE CASE OF THE
CONTESTED EU-INDIA FTA

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Acronyms

ASEAN	Association of Southeast Asian Nations
BPO	Business process outsourcing
EU	European Union
EFTA	European Free Trade Association
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTP	Foreign Trade Policy
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GSP	Generalised Scheme of Tariff Preferences
IGTN	The International Gender and Trade Network
ILO	International Labour Organization
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
SEZ	Special Economic Zone
SME	small and medium-sized enterprise
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Introduction

The global crisis from 2008/9 has accelerated the reconfiguration of political and economic power on a global scale. While the economic and financial crisis turned growth rates down everywhere, their impact on different economies varies a great deal. The crisis endangers the achievement of development objectives in least developed and many African countries. It adversely impacts transnational trade, demand for export products and employment in export industries – with significant gender-specific effects in job losses where foreign investors have withdrawn. The major industrial economies are in a deep recession, while the emerging giants in the South, China and India, seem to be recovering faster from the shock.

The multiple crises underline yet again that unfettered capitalist markets have failed in just allocation of resources, equal distribution of wealth, and in providing food, livelihoods, social security, welfare and well-being for everybody. It has highly unequalising tendencies, both within and between nations. The United Nations Conference on Trade and Development (UNCTAD), the so-called Stiglitz Commission of experts for the UN, and Keynesian economists such as the Nobel laureate Paul Krugmann blame deregulation of financial markets, excessive speculation on future markets and *laissez-faire* policies for the financial crisis. The UN Conference on the World Financial and Economic Crisis and its Impact on Development in June 2009 identified “systemic fragilities and imbalances,... regulatory failures, compounded by over-reliance on market self-regulation,... insufficient emphasis on equitable human development...”¹ as root causes of the global meltdown.

The new multipolarity of power manifests itself in the erosion of the governance regime of the G7/8 and the simultaneous rise of the G20 as a global governance entity, including India as a major global player. At a national level the nation states, and at a global level the G20 and the International Financial Institutions, are supposed to bring about responses to the crisis. In the European Union (EU), national bail-out and recovery programmes, stimulus packages, and partial takeovers of bankrupt banks and corporations by EU Member States indicate a shift away from the neoliberal dogma of free market and free trade with regulation in favour of capital towards a Keynesian approach and more protectionist measures.

At the same time, the G20 identified the danger of protectionism as a critical issue²

1 Conference on the World Financial and Economic Crisis and its Impact on Development, 22 June 2009, New York, www.un.org/ga/search/view_doc.asp?symbol=A/CONF.214/3&Lang=E.

2 This anti-protectionist standpoint also has to be seen as a lesson from the great depression in 1929, which was followed by protectionism, nationalism and fascism.

and committed itself to further liberalisation, including financial services, and to the conclusion of the Doha Development Round of the stalled World Trade Organization (WTO) negotiations. The EU insisted “to mitigate the impact of the global downturn and to facilitate economic recovery... it needs to enhance its competitiveness on a global stage ... and must remain committed to further liberalization of international trade on both the multilateral and bilateral level.” The priority of the EU is the implementation of its trade policy ‘Global Europe – Competing in the World’, which was launched in 2006.³ The Global Europe strategy marks a double shift in EU trade policies: firstly, it promotes a competition paradigm which subordinates development objectives such as human, social and pro-poor development and livelihood security. It gives preference to competition over cooperation, to corporate-driven growth over job- and security-oriented growth and public policies. Secondly, for the sake of competitiveness the EU plans to focus on a WTO-plus agenda in order to gain a foothold in the so-called “new areas of growth”, such as trade in services, investment, government procurement, and intellectual property rights. Most of these issues were earlier rejected by the countries of the South because of their detrimental effects on development.

To cope with the crisis the EU reaffirms three strategic pillars of its Global Europe policy: a) the Doha Round; b) “rapid conclusion of bilateral negotiations with Korea, India and other important partners”; and c) “the tackling of non-tariff regulatory barriers”.⁴ While markets in the EU are ailing, gaining access to emerging markets abroad could boost business for EU corporations and help them “to stay among the key players in the global economy”.

Despite the financial crisis and shrinking demand from developed countries, India’s new Foreign Trade Policy 2009–14, launched in August 2009, reaffirmed its strategy of export promotion and proliferation of Special Economic Zones (SEZs), denies protectionism and aims at Economic Cooperation Agreements with Latin America, Africa, and other Asian countries.⁵ Recently, India concluded a Comprehensive Economic Partnership Agreement with South Korea, a Trade in Goods Agreement with the Association of Southeast Asian Nations (ASEAN), which will come into force in 2010, and the Mercosur Preferential Trade Agreement. The new trade policy commits itself to the WTO and the conclusion of the Doha Development Round, and to trade engagement with “other major economic groupings”, without mention of the EU.

3 European Commission (2006) *Global Europe: Competing in the world. A Contribution to the EU’s Growth and Jobs Strategy*, Brussels: European Commission. http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm.

4 Conclusions from the Conference on Trade Liberalisation, EU 2009.CZ, 3.2.2009, Prague, <http://www.mpo.cz/kalendar/download/71507/priloh001.pdf>.

5 <http://www.infodriveindia.com/Exim/DGFT/Exim-Policy/2009-2014/>.

In the negotiations of an EU-India Free Trade Agreement (FTA), India primarily seeks to remove non-tariff barriers – standards, regulations, directives – and is pushing for harmonisation of the rules between the EU Member States due to its main interest in getting market access to all 27 EU Member States for manufactured goods, agricultural products, services, skilled labour, and investment.⁶

In India, a rift has opened between its confidence in rising to supposed superpower status and the recent increase in poverty and hunger. In the EU the tension between the race for competitiveness and the dismantling of the much-lauded social model is striking. Civil society organisations in India as well as in Europe challenge these gaps and contradictions, and are increasingly critical of policies which pursue further competitiveness-driven liberalisation. These policies do not adequately address development concerns, social security and sustainable livelihoods.

Apart from the strong opposition to India's SEZ policies, the Forum on FTAs, a coalition of public interest groups with activists from the farming and fishery, health and retail sectors and trade unions in India, as well as civil society groups and networks from EU and European Free Trade Association (EFTA) countries called for an immediate halt to the negotiations of the EU-India and the EFTA-India FTAs.⁷

However, neither the EU nor India has taken the public protests and the crises as an opportunity to question and rethink their current development and trade policies. Instead, both insist on further liberalisation and economic growth as the only way out of the crisis and out of poverty. Just as banks and corporations, who face problems in the economic slowdown in the EU, seek better investment and profit opportunities abroad, Indian exporters expect an impetus from trade policies in terms of decreasing transaction costs to ease access to new markets, for instance in Africa and Latin America.⁸

In the context of the multidimensional crises and the restructuring of economic and political power relations, a fresh look at trade policies between the EU and India and at the nexus of social justice, gender, development and trade is necessary.⁹

6 CENTAD/Sharma, Shefali (2009) *The EU-India FTA. Critical Considerations in a Time of Crisis*, Working Paper 11, pp4–6.

7 <http://www.indianet.nl.docs.HaltEU-IndiaFTANegotiations.doc>.

8 <http://profit.ndtv.com/2009/08/26210908/Trade-policy-Exporters-expec.html>.

9 This paper is a follow-up of an earlier report on the EU-India FTA and its gender implications: Wichterich, Christa (2007) *Economic Growth with Social Justice. EU/India Trade Negotiations and Their Implications for Social Development and Gender Justice*, Brussels: WIDE/HBF Delhi.

The initial enthusiasm and hopes for a fast conclusion evaporated soon after negotiations for an FTA between the EU and India were launched in June 2007. In the seven rounds of negotiations up to July 2009, a lot of tensions and uncertainties have built up, and the date of conclusion has been postponed several times. This can be used as an opportunity by civil society organisations in India and the EU for critical intervention, and for further clarification of their critical positions vis-à-vis the negotiations.

1. Trade, development and gender

In the new millennium, a fast restructuring of policies at different levels is taking place. From 2001 onwards, the WTO has tried to set up a new trade architecture with the Doha Development Round, which intended to do more justice to development and the countries of the South. In 2005, countries of the Organisation for Economic Co-operation and Development (OECD) set up a new aid architecture with the Paris Declaration on Aid Effectiveness. In the EU, the European Consensus on Development, adopted in 2005, preceded the new trade policy, Global Europe – Competing in the World. The latter aims to strengthen competitiveness of EU corporations and their access to emerging markets as policy priorities, while the Consensus on Development reaffirms development as a goal in its own right, eradication of poverty as a “primary and overarching” objective, and understands gender equality as a fundamental human right in itself.¹⁰ Gender, therefore, is seen as a distinct category in development with regard to social and economic inequality, and, regarding poverty reduction, emphasis is laid on women’s agency and empowerment. While development objectives become increasingly subordinated to the neoliberal market agenda, human development and women’s empowerment are streamlined towards market integration as outlined by the World Bank in its gender action plan Gender Equality as Smart Economics.¹¹

Trade liberalisation causes profound changes at the global, national and micro level of household economies, which – from the perspective of feminist economics – are seen as gendered processes of production, reproduction and consumption. The following

10 <http://www.dfid.gov.uk/eupresidency2005/eu-consensus-development.pdf>, see: Helen O’Connell: ‘Challenge of the European consensus on development and the new aid architecture’, paper read at WIDE’s annual conference, Madrid, 14–16 June 2007, in: WIDE (2007) *New Aid, Expanding Trade: What do Women have to say?*, Brussels: WIDE.

11 World Bank (2006) *Gender Equality as Smart Economics: A World Bank Group Gender Action Plan* (Fiscal years 2007–10), Washington, DC: World Bank.

chapter tries to explore the impact of trade liberalisation on development, as shaped by the bilateral FTA between the EU and India under negotiation. Further, it attempts to untangle the complex and partially contradictory links between trade, development and gender in the framework of feminist economic analysis.

1.1. Trade liberalisation as a way to lock or unlock development?

Trade liberalisation is widely seen as an engine for economic growth and development and, as such, is expected to create a win-win situation for everybody. Neoclassical economists assume that liberalisation will 'unlock' economic potential and generate growth, which will ultimately reduce poverty, as the market is regarded as the most efficient allocator of resources and distributor of wealth.

However, India, after its economic reforms and structural adjustments, became trapped in the so-called 'South Asia paradox': the highest growth rate in the world (after China) and the largest number of people below the poverty line. Indian development has been characterised by a rising growth rates – up to 9.2 per cent in 2006/7 – and the emergence of new consumer classes, and simultaneously by chronic poverty, hunger and increasing social polarisation. Using the World Bank poverty line of US\$1.25 per day, in 2004/5 the estimated number of poor people was 41.6 per cent of the population. Using the Asian Development Bank poverty line of US\$1.35, 54.8 per cent were poor.¹² The number of people suffering from hunger rose within three years from 209.5 million to 230 million in 2007/8.¹³

A key to the disjuncture of growth and poverty is employment. While the average annual growth rate was 6 per cent, employment grew at a rate of only 2.3 per cent per year, with almost all additional jobs in the unorganised sector,¹⁴ with organised jobs and real wages declining, thus increasing working poverty.¹⁵

12 <http://www.livemint.com/2008/09/09232719/Counting-the-poor-a-poverty-o.html>.

13 Bonnerjee, Aniruddha/Köhler, Gabriele (2009) *The 3 Fs crisis and South Asia's vulnerable*, UNICEF Regional Office South Asia.

14 In India, the 'unorganised' sector is defined by a labour force of fewer than ten workers in an enterprise (or fewer than 20 workers if no electricity is used in the enterprise). These employees are not covered by statutory labour laws and social security.

15 *Indian Express*, 17 July 2008; Jha, Praveen (2007) 'Globalization and labour in India: emerging challenges and responses', in: Bieler, Andrea/Lindberg, Ingemar/Pillay, Devan (eds) (2008) *Labour and the Challenges of Globalisation, What prospects for transnational solidarity*, London: Pluto Press, p65–81.

In its trade policies and the decision to negotiate an FTA with India, the EU refers to the “shining” side of Indian development, the emerging consumer markets and stunning growth rates – in line with its Global Europe strategy, which aims to secure the competitiveness of European corporations in the emerging markets. Trade liberalisation and export growth are equated with development benefits, without evidence that they are actually pro-poor and that the neoclassical assumption of the ‘trickle-down effect’ of wealth will work out. The EU is in the process of reducing its aid for human development and its anti-poverty programmes, also in India, because it no longer perceives India as a developing but as a threshold country. It is shifting assistance to economic cooperation and aid for trade. “The EU commitment to development through trade is long-established.”¹⁶ This reverses the means–end relationship: trade used to be perceived as a vehicle for development; now development aid becomes a tool for enhancing trade.

Assuming that India is an equal trade partner, the European Commission declared reciprocity of trade liberalisation a guiding principle for liberalisation.¹⁷ Reciprocity means a paradigm shift away from special and differential treatment of developing countries under the EU Generalised Scheme of Tariff Preferences (GSP). Demanding reciprocal trade liberalisation and forging equal trade rules between unequal trading partners disregards the existing economic disparities, as well as special development needs of different countries. It also ignores the asymmetries which prevail in many economic sectors between the EU and India and ultimately manifests itself in the fact that India’s Gross Domestic Product (GDP) is not even 7 per cent of the EU’s.

Mechanisms such as reciprocity and harmonisation of tariffs and regulations among unequal partners tend to privilege the stronger parties, countries and companies, and disadvantage the weak actors on the markets. Therefore, Stiglitz and Charlton call the principle of reciprocity between unequal trade partners an impediment to fair trade and just distribution of wealth, and an anti-development principle.¹⁸ The UN Committee on Economic, Social and Cultural Rights, an independent body entrusted with monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, warned India that provisions made in the EU-India and

16 Commission of the European Communities (2006) *Explanatory Memorandum. Recommendation from the Commission for a Council decision authorizing the Commission to negotiate a free trade agreement with India*, p13, <http://register.consilium.europa.eu/pdf/en/06/st16/st16483-ex01.en06.pdf>.

17 Recommendations from the Commission to the Council to negotiate a free trade agreement with India on behalf of the EC and its Member States, Draft negotiating mandate, 2006.

18 Stiglitz, Joseph/Charlton, Andrew (2005) *Fair Trade for All – How Trade Can Promote Development*, Oxford: Oxford University Press.

EFTA-India trade agreements might undermine people's rights, particularly the most disadvantaged and marginalised groups.¹⁹

The principle of reciprocity in tariff liberalisation caused tensions in the FTA negotiations between India and the EU from the very beginning. There are huge differences in tariff structures between the two partners. Although India reduced its applied tariffs from an average of 79 per cent in 1990 to 17 per cent in 2005, this still cannot compare to EU tariff levels, which average 2 per cent only. A list of sensitive products, 10 per cent of tariff lines, is allowed to be excluded from tariff cuts. However, it is doubtful whether this percentage is sufficient to protect food security and sensitive livelihoods in agriculture and non-agricultural sectors. Additionally, the EU insists on a standstill clause which would not allow for a later increase of tariffs even in case of urgent need.

Elimination of 90 per cent of tariff lines and trade volume will mean a substantial loss of customs revenue for the Indian government: supposedly one third of its tariff revenue would be lost.²⁰ In the past, revenue loss led to an increase in direct and indirect taxes as well as in cuts in public spending. These fiscal policies particularly disadvantage the poor segments of society and would have devastating consequences in this crisis situation.

The Global Europe strategy pays special attention to non-tariff barriers and international regulatory convergence. Seeking the removal of domestic regulations which protect local industries from competition from foreign investors, lifting of Foreign Direct Investment (FDI) restrictions on performance standards such as local content requirements, the dismantling of capital control, and removing of export restrictions on agricultural products means to limit the policy space of the partner countries. In order to avoid a food crisis and to stabilise prices for staple food, in 2008 the Indian government increased export restrictions on rice and wheat and stopped futures trading in grains. The FTAs would severely restrict India from using this kind of policy tools.

With its *Panchayat Raj* institutions, India has an extensive regime of elected local

19 United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) (2008) *Consideration of Reports submitted by States Parties under articles 16 and 17 of the Covenant, Concluding Observations: India*, Geneva: UNCESCR, www.pwescr.org/Concluding_Observations.pdf.

20 Polaski, S./Ganesh-Kumar, A./McDonald, S./Panda, M./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.

and provincial governance bodies which are supposed to decide upon development priorities, strategies and budgets. One third of the constituencies are reserved for women, while seats are also reserved for scheduled castes and tribes according to their percentage of the population. However, provisions for trade and investment liberalisation in FTAs will overrule democratic decision-making in local and national governance with regard to public services, redistributive policies, liberalisation, privatisation, and the state's mediation between the markets and the care economy, between production and social reproduction.

Provisions in FTAs deprive governments of their right to use regulation as a policy instrument to pursue their development priorities.²¹ In this neoliberal logic, positive discrimination of vulnerable groups and preferences or protection given to weak sectors are considered to distort trade. The limitation of policy space results in what the economist Ha-Joon Chang²² called “kicking away the ladder” – the ladder to the development of competitive domestic industries, to food sovereignty, to protection of weaker sections of the economies, to employment generation.

So far, trade liberalisation and the Global Europe strategy have failed to contribute significantly to job creation in the EU or abroad. On the contrary, it reinforces tendencies of boosting competitiveness by reducing costs through informalisation, flexibilisation and precarisation of employment, and through deregulation and undermining of labour rights.²³ The same holds true for policies in India, which is proud that its economic reform created a competitive environment in which Indian entrepreneurship could flourish and output rose. However, financial and other investors are lobbying the government to speed up neoliberal policy reforms, including trade and investment agreements with nearly 30 countries.

In its “initial observations” on the EU-India FTA, Traidcraft from the UK came to the conclusion that “the FTA is likely to restrict the scope for India to regulate in the interests of development” and that it “risks stripping away the very tools that India could use to re-balance the gains from growth and to ensure that the poor are not further marginalized”.²⁴

21 UNCTAD (2007) *Trade and Development Report*, Geneva: UNCTAD, p63.

22 Chang, Ha-Joon (2002) *Kicking away the ladder – development strategy in historical perspective*, London: Anthem Press.

23 War on Want (2009) *Trading away our Jobs. How free trade threatens employment around the world*, London: War on Want.

24 Traidcraft (2008) *The EU/India FTA: initial observations from a development perspective*, London: Traidcraft.

1.2. Gender, growth and poverty

Untangling the links between trade liberalisation, growth, poverty and gender is at the centre of the gender and trade discourse. Gender analysis links market and non-market sectors, the micro- and macro-economic level, economic and social issues, and the quantity and quality of jobs – which is critical for understanding the interconnections between trade, growth and poverty.²⁵

It is now widely recognised that macro-economic policies such as trade policies are not gender neutral. Opening markets and trade liberalisation have redistributive effects and change national economies as gendered processes of production, reproduction and consumption. There is a large body of research to show that trade policies, like any other economic policy, involve and impact men and women differently. Feminist analysis shows that gender and trade have a two-way relationship – gender has an effect on trade, on export orientation and investment, while trade liberalisation has a different impact on women and men.²⁶ This gender differential is informed by and based on the gender division of labour – in the market as well as in the household – on women's and men's different access to and control over resources such as assets, rights and time, and on cultural ascriptions of gender stereotypes and norms.²⁷

Recently, proponents of neoliberal policies, such as the World Economic Forum, stated a positive correlation between women's economic participation and a nation's competitiveness.²⁸ And the World Bank²⁹ and economist Jagdish Bhagwati suggest that trade liberalisation is even a driving force for gender equality. Free markets are considered the best mechanisms for resource allocation, wealth distribution, and the narrowing of gender gaps. This rationale is based on various premises: firstly, that trade produces growth, and growth will open up opportunities for better education, more jobs, higher income, more credit and better opportunities for women

25 Kanji, Nazneen/Barrientos, Stephani Ware (2002) *Trade Liberalisation, Poverty and Livelihoods: Understanding the Linkages*, Brighton: Institute of Development Studies.

26 Van Staveren, Irene (2007) 'Monitoring Gender Impacts of Trade', in: van Staveren, I./Elson, D./Grown, C./Cagatay, N. (2007) *The Feminist Economics of Trade*, London: Routledge, pp257–76.

27 Randriamaro, Zo (2006) *Gender and Trade. Overview Report*, BRIDGE, Brighton; Joekes, Susan (1999) 'Gender Analytical Perspective on Trade and Sustainable Development', in: UNCTAD (1999) *Trade, Sustainable Development and Gender*, New York/Geneva: UNCTAD, pp33–60.

28 World Economic Forum (2008) *Global Gender Gap Report 2008*, Geneva: World Economic Form, p24, <http://www.weforum.org/pdf/gendergap/report2008/pdf>,

29 World Bank (2006) *Gender Equality as Smart Economics. Gender Action Plan 2007–2010*, Washington, DC: World Bank.

entrepreneurs;³⁰ and, secondly, that the competition by foreign enterprises will put pressure on domestic companies to shed prejudices and discrimination against women, resulting in a narrowing of the gender wage gap.³¹

However, the positive relationship between trade liberalisation, growth and poverty elimination has been questioned by Keynesian³² and feminist economists alike. They highlight the growing inequality and social disparity as an adverse impact of an economic logic which subordinates social and distributive concerns to the objective of growth and competitiveness. Feminist economists and gender activists succeeded in making UN organisations, the World Bank and even the WTO acknowledge their concerns about gender inequalities due to trade liberalisation and trade policies. UNCTAD carried out a gender analysis of the different WTO agreements, assessing whether trade liberalisation promotes gender equality or reproduces gender differences. UNCTAD concluded that gender differences continue to exist, and that women are more often affected by negative impacts of trade liberalisation than men. At the same time, free trade provides new market and job opportunities to women, and there are a number of success stories of women who are able to make an entrepreneurial career.³³ UNCTAD designed a formula for 'engendering' trade, namely "make liberalisation work for women". Its objective is a more beneficial integration of women into global competition and trade without questioning the agenda of trade liberalisation.

Going beyond this concept of engendering macro-economics, women's non-governmental organisations (NGOs) dealing with gender and trade, such as WIDE and the International Gender and Trade Network (IGTN), asked how macro-economic and trade policies have to be shaped in order to serve sustainable economic development, poverty eradication, social security and women's social and economic empowerment. These aims cannot be achieved by merely 'mainstreaming' gender into neoliberal macro-economic policy regimes. Rather, the macro-economic policy regimes themselves have to be changed if social justice, human and women's rights, food sovereignty, gender equality, environmental and resource protection are to be made guiding principles for international trade. Applying a gender perspective to trade policies

30 United Nations (2004) *Trade and Gender. Opportunities and Challenges for Developing Countries*, New York/Geneva: UNCTAD.

31 Bhagwati, Jagdish (2004), In Defense of Globalization, Oxford: Oxford University Press, p75

32 Rodriguez, Francisco/Rodrik, Dani (1999) *Trade Policy and Economic Growth: A Skeptic's Guide to Cross-National Evidence*, National Bureau of Economic Research Working Paper WP/99/7081, Cambridge, MA: National Bureau of Economic Research.

33 UNCTAD (2007), op cit.

means overcoming the divide between social and economic policies, giving access to affordable essential services and social security, and enforcing women's and poor people's right to food, health, education and livelihoods.

The following chapters highlight some of the key areas of concern regarding trade liberalisation and gender with some special references to the case of India, using findings and evidence from transnational value chain analysis, context-specific livelihood studies and human/women's rights-based analyses.

Export, value chains and employment

In the course of trade liberalisation, a large number of young women have been incorporated into the process of export-oriented, labour-intensive industrialisation in many countries of the South. This has been celebrated as feminisation of the labour force, which managed to overcome the earlier exclusion of women, helped them to get out of poverty and thereby induced pro-poor growth. FDI targeted sectors such as garments and footwear, electronics and toys, where cheap, docile and flexible female labour was available in abundance. The gains in factory employment for women have been particularly strong in SEZs in Central America and in Asia (with the exception of India). Capital- and technology-intensive export industries such as automobiles are male dominated.

Mostly, working conditions are poor and working hours long, often without adequate overtime payment. Women are concentrated in low-paid sections, and the horizontal, sector-wise gender segmentation as well as the vertical (hierarchical) segregation persist, with women at the bottom end of payment, valorisation of work, bargaining and decision-making power. Export workers are rarely allowed to organise and are not able to build up bargaining power. Subcontracting and outsourcing of labour-intensive export production to small manufacturing units and sweatshops in the informal economy or a shift from semi-permanent employment in SEZs to piece-rate and casual work arrangements have been strategies to reduce costs.³⁴ Women workers tend to be pushed further into flexible and precarious forms of employment which can provide a 'rapid response' to orders from foreign retailers. New methods

34 Carr, Marilyn/Chen, Martha (2001) *Globalization and the informal Economy: How Global Trade and Investment Impact on the Working poor*, Cambridge, MA/Manchester: WIEGO, www.wiego.org/papers/carrchenglobalization.pdf.

of placing orders increase competition and pressure to cut costs. Nowadays, many orders are placed by 'online reverse auction'. Bidders can see their competitors' offers on the Internet and try to undercut them, which results in a 'race to the bottom'.

Due to the rapid relocation of production sites and the dependency on consumer markets abroad, employment is highly volatile and insecure. Women's share in employment fell and male employment increased where production was technologically upgraded – for example, in Mexico.³⁵ The end of the 30-year-old Multi-Fiber Arrangement, with its quotas on textile and apparel imports, has led to fast dynamics of relocation of production, in particular to China, and loss of jobs from Central American to Southeast Asian countries. Thus each relocation dynamic causes a defeminisation of export labour, in some places parallel to the feminisation of labour at other corners of the world economy.

Gender segmentation of export labour and the gender wage gap indicate that trade liberalisation does not break up the structural and normative gender inequality in labour. On the contrary, the case of China and other transition economies shows that the gender wage gap increases alongside market liberalisation.³⁶ Women's wage discrimination in labour-intensive export manufacturing contributed significantly to the competitive advantage and the growth of export economies in semi-industrialised economies.³⁷ The gender norm – that women's work counts less – is prolonged in the transnational value chains.

Jobs in export factories and SEZs are better paid than farm or domestic labour, self-employment or jobs in the informal economy. Often joint ventures or foreign companies seem to pay higher wages than domestic firms. However, within the export industry female employment is largely relegated to low-paid, unskilled positions, while trade liberalisation is often associated with an increase in the wage gap between skilled and unskilled labour. Increasingly, women export workers work on temporary and

35 Miller, Carol/Vivian, Jessica (eds) (2001) *Women's Employment in the Textile Manufacturing Sectors of Bangladesh and Morocco*, Geneva: United Nations Research Institute for Social Development (UNRISD).

36 Wichterich, Christa (2009) *Trade – A Driving Force for Jobs and Women's Empowerment? Focus on China and India*, Bonn: FES.

37 Seguino, Stephanie (2000) Gender inequality and economic growth: a cross-country analysis, in: *World Development* 28, pp1211–30.

casual contracts and have to go through labour agencies which pay them less.³⁸ Wages in the Bangladeshi export garment sector, for example, are lower than in domestic manufacturing because of the absence of collective bargaining in export industries. Women workers were not able to translate their higher productivity into higher wages or more bargaining power. Government policies promoting export growth have not ensured that workers, especially women, reap the benefits. In Latin American countries where the gender wage gap in the export sector narrowed, it is not possible to establish whether this results from men's wages declining or women's wages rising. However, gendered wage discrimination is often used to put some pressure on higher male wages.³⁹ According to the International Labour Organization (ILO), women tend to stay in underpaid, informal and precarious employment, which results in working poverty.

The ambiguity between women's empowerment through employment outside the household, visibility in the public sphere and cash income, on the one hand, and ongoing discrimination and lack of equality⁴⁰ on the other, demonstrates the paradoxical integration of women in the transnational value chains and free trade regimes. Women bear the brunt of the hidden costs in transnational value creation in terms of over-exploitation, no living wage, lack of labour standards, health hazards, and absence of social security.⁴¹ This manifests itself along the transnational value chains of textiles from factories and sweatshops in China, Bangladesh or India with exploited and exhausted seamstresses to discounters such as Walmart, Tesco, Carrefour, Aldi and Lidl in Europe, where women workers and saleswomen face highly volatile, hazardous, and unregulated working conditions.⁴² Actually, this multifold discrimination is one of the key reasons for low consumer prices of transnationally traded goods and services, which ultimately make the whole system of trade liberalisation attractive to consumers. The transnational value chains comprise transnational cost and risk chains in which a great deal of costs and risks is downloaded on women.

38 UNCTAD (2009) Mainstreaming gender in trade policy. Expert meeting on mainstreaming gender in trade policy, Geneva 10–11 March 2009, <http://www.unctad.org/en/docs/ciem/2d2en.pdf> and <http://www.unctad.org/en/docs/ciem/2d3en.pdf>.

39 United Nations Research Institute for Social Development (UNRISD) (2005) *Gender Equality. Striving for Justice in an Unequal World*, Geneva: UNRISD, p40.

40 Beneria, Lourdes (2003) *Gender, Development, and Globalization. Economics as if All People Mattered*, New York/London: Routledge.

41 Kidder, Thalia/Raworth, Kate (2004) 'Good jobs' and hidden costs: women workers documenting the price of precarious employment, in: *Gender & Development*, Vol. 12.2, July 2004.

42 Clean Clothes Campaign (2009) *Cashing in. Giant retailers, purchasing practices, and working conditions in the garment industry*, Amsterdam: Clean Clothes Campaign.

Unlike its neighbours Bangladesh and Sri Lanka, which have followed a path of female-led export industrialisation, the average share of women workers in SEZs in India has never been particularly high and even declined in the 1990s, from 48 per cent to 36 per cent. A significant feature of India's export production is the incorporation of the informal economy in transnational production chains. For example, the bulk of India's export garments come from small factories, sweatshops and other small establishments, from unorganised and even home-based work in Tirupur, a town in Tamil Nadu, and from Mumbai and Delhi. Ninety-seven per cent of women workers in the textile and garment sector in India work in the labour-intensive unorganised sector, with low productivity and low wages.⁴³ The objective of integrating women into this sector "has been precisely to lower overall wages", costs, and environmental and labour standards.⁴⁴ Feminisation is a strategy to ensure labour market flexibility and cut wage costs.⁴⁵ This holds true for the high share of children involved in sweatshops and home-based work, for example, in embroidery, who get paid only half of women's wages. Home-based work, including child labour, guarantees the most docile, hard-working and low-paid labour in the global supply chains. India is an example that market liberalisation did not bring about substantial improvement in women's working conditions and in wages for casual and home-based work.⁴⁶

Trade in services has become another source of employment for women, in particular in India, the Caribbean and some newly industrialised countries. Business process outsourcing (BPO) – the offshoring of office work by Western firms to India – draws on a large supply of educated, English-speaking and 'affordable' workers from the urban middle classes. Young women are recruited right from college into formal skill-intensive employment in IT-enabled services, mainly software development and programming, data processing, accounting and other office work, and call centres. In these sectors women make up 35 per cent of the workforce. In call centres women account for more than half of the labour force. In contrast, high-end work in programming is still male dominated, and as little as one fifth of employees are women.

43 Hirway, Indira (2008) 'Trade and Gender Inequalities in the Labour Market: The Case of the Textile and Garment Industry in India', paper prepared for the international seminar 'Moving towards Gender Sensitisation of Trade Policy', organised by UNCTAD, New Delhi, 25–27 February 2008.

44 Mazumdar, Indrani (2004) 'Impact of Globalisation on Women Workers in Garment Exports. The Indian Experience', in: Jha, Veena/UNIFEM/UNCTAD (eds) *Trade, Globalisation and Gender, Evidence from South Asia*, New Delhi: UNIFEM/UNCTAD, pp91–153.

45 Neetha N./Varma, Uday Kumar (2004) *Labour Employment and Gender Issues in EPZs. The Case of Noida Export Processing Zone, Noida*: V.V. Giri National Labour Institute.

46 Centre for Social Research, India (2004) 'Gender and Trade: Impact of Globalisation on Women Workers in the Textile and Food Processing Industries in India', in: Jha, Veena/UNIFEM/ UNCTAD (eds) *Trade, Globalisation and Gender Evidence from South Asia*, New Delhi: UNIFEM/UNCTAD, pp153–228.

The high prestige attached to the IT sector and the comparatively high wages have helped to create the space for young women to break with patriarchal norms and move out of traditional gender roles – for instance, by working night shifts.⁴⁷ In India young female programmers or call centre workers get a starting salary that is three times the salary their fathers bring home after 30 years as government officials. However, even in these knowledge-based sectors the gender wage gap and vertical gender segregation persist. Although educated female professionals benefit from these new opportunities, they constitute only 10 per cent of the management of IT firms.⁴⁸ Nevertheless, they tend to perceive the new situation as an increase in individual freedom in a male-dominated society and despite continuing dependence on their family. However, one has to remember that only 0.3 per cent of urban women employees work in IT services, which employs altogether only one million people.⁴⁹

The growing gap in India between skilled and unskilled labour indicates the split between the professionalisation and proletarianisation of labour.⁵⁰ However, the recent growth miracle is a case of jobless growth: India lost jobs while growing at a brisk pace. In 2004, while the growth rate in manufacturing rose to 7 per cent, jobs in manufacturing declined by 3.1 per cent. The new jobs created in the IT and the financial service sector, and through BPO, could not compensate for this loss. Any crisis or slow down in outsourcing and exports will increase the loss of jobs, reinforcing the overall trend in India that unemployment is the biggest problem.⁵¹

In the wake of more employment of women, the gender division of labour in the household has not substantially changed. Everywhere, the bulk of care work is still performed by women. India is an outstanding example of the work asymmetry in the household: women invest ten times more than men in unpaid care work.⁵² Traditionally, land-owning and upper castes, and recently middle-class families tend to solve the care problem by employing a ‘cheap’ domestic worker, often women from lower castes, young girls or migrants from more backward areas or Nepal.

47 Kelkar, Govind/Shrestra, Girija/Veena N. (2005) ‘Women’s Agency and the IT Industry in India’, in: Ng, Cecilia/Mitter, Swasti (2005) *Gender and the Digital Economy. Perspectives from the Developing World*, New Delhi: SAGE Publications, pp110–132.

48 Ibid.

49 Chandrasekhar, C.P./Gosh, Jayati (2007) ‘Women Workers in Urban India’, http://www.macrosan.org/the/employment/feb07/emp060207Women_Workers.htm.

50 Moghadam, Valentine (2005) *Globalizing Women. Transnational Feminist Networks*, Baltimore: The John Hopkins University Press, pp52–6.

51 Times of India, 28 August 2006.

52 Budlender, Debbie (2008) *The Statistical Evidence on Care and Non-Care Work across Six Countries*, Geneva: UNRISD.

In addition to the care labour in the household, it is women's responsibility to supply fuel and water for the family. In the slums of the cities, semi-urban areas and in the countryside India still suffers from a lack of public provision of water and energy and other essential services which would ease women's care burden. Most of the women workers in garment sweatshops in Tamil Nadu still have to collect firewood and carry drinking water to their houses. That means the global value chain rests on the unpaid subsistence and care labour of these women workers, who have to cope with extreme time poverty in addition to income poverty.

Labour export and remittances

Labour has become an export product in many developing countries, and migration is part and parcel of a development strategy. Increased mobility of labour occurred parallel to the increased mobility of capital and jobs, and is in itself a highly gendered process. The patterns of migration changed in the recent past, and tend to be more temporary and circular, more undocumented and more feminised.⁵³ The notion of 'feminisation of migration' reflects the fact that the share of women increased to half of the (officially) 200 million migrants worldwide, that more women migrate in their own right and not for the purpose of family re-unification, and that the demand for feminised jobs – such as domestic and care workers, sex workers or wives – in destination countries increased.⁵⁴

Parallel to trends for precarisation and professionalisation in labour markets, gender stereotypes determine migrant labour within a bifurcation between skilled and less-skilled migration. While women workers in the reproductive and care sector are still not recognised as 'proper' workers, women are now in the category of professional and skilled migrants, although mostly in feminised sectors such as health and education.

While female migration breaks with many traditional gender norms of patriarchal control and women's limited mobility, the transnationalisation of care work upholds the gender division of labour in the household. Migrant women who leave their families in an effort to escape poverty in their own countries find themselves trapped in jobs that mimic their traditional roles – as housemaids, as caregivers for children and old

53 United Nations (2005) *World Survey on the Role of Women in Development. Women and International Migration*, New York: UN.

54 Piper, Nicola (2007) 'International Migration and gendered Axes of Stratification', in: UNRISD (2007) *New Perspectives on Gender and Migration: Livelihood, Rights and Entitlement*, Geneva: UNRISD, p4.

people, as providers of sexual services, as nurses. On the one hand, the labour of these 'surrogate wives and mothers' subsidises the income-earning potential of the women who employ them by filling the 'care gap' in better-off countries. At the same time they cause a care drain. The domestic workers constitute a link in a transnational care chain: the care work they do for others is subsidised at home by a daughter, a female relative or neighbour who takes care of the children or elderly family members.⁵⁵

Government policies and FTAs classify migrant workers according to the gendered demand in destination countries. Japan, South Korea and Taiwan issue a special 'entertainer's visa' for "professional overseas performing artists". Women migrants are channelled 'legally' into feminised jobs. The General Agreement on Trade in Services (GATS) Mode 4 and the Blue Card Directive of the EU include migration of skilled labour under trade in services, legalising these under the trade regime. At the same time, policy stances towards undocumented and illegal migrants are becoming increasingly xenophobic. Migration of investment-related white collar workers under GATS Mode 4 – for instance, from one corporate branch office to another – is largely dominated by skilled males.

Remittances of migrant workers have become a key element of development economics. Remittances to developing countries are higher than the development aid they receive: in 2007 US\$100 billion poured into developing countries in the form of aid, while US\$251 billion were remitted by migrants.⁵⁶ The same amount might be sent home outside the formal financial service system in order to avoid transfer fees of 20 per cent – called 'underground' or 'ethnic' banking. The remittances called 'financing development from below' are crucial subsidies to the survival of private households and a capital source for developing countries.

Women tend to transfer a larger share of their income and on a more frequent basis than men, and thus pay more fees to financial service institutions, which reap high profits from the regular money transfers. Women also tend to be the largest recipients of remittances in the home countries and spend most of the money to improve family welfare and on children's education, while men buy their favourite consumer items.⁵⁷ India is the largest recipient of remittances in the world, coming to US\$24.1 billion in

55 Parrenas, Rhacel Salazar (2005) *Children of Global Migration: Transnational Families and Gender Woes*, Palo Alto, CA: Stanford University Press.

56 International Organization for Migration (IOM) (2008) *World Migration Report*, Geneva: IOM.

57 UNFPA (2006) *State of World Population 2006. A passage to Hope. Women and International Migration*, New York: UNFPA.

2005/6,⁵⁸ generated by 20 million non-resident Indians living abroad. Three types of so-called 'body shopping' – demand-driven labour migration – from India are prevailing: permanent migration to North America, Europe and Australia, contract labour migration to the Gulf and Southeast Asia, and seasonal migration within the region. From the 1970s onwards, female 'care professionals', doctors, nurses and other care workers went mainly from South India to the Gulf and to Europe. India is the top emigration country of physicians. Its focus of body shopping has shifted to the export of skilled IT professionals, the majority being male, to industrialised countries with a craze for green and blue cards and closely linked to trade liberalisation in services, as planned in GATS. Migration of skilled labour such as medical and IT professionals to higher-income countries implies hidden costs for the sending country in terms of a brain drain and an export of skills and knowledge acquired in the home country. The remittances are supposed to compensate for the losses incurred. However, India is a unique case of reverse brain drain: IT specialists from Silicon Valley in the USA return to India for business opportunities.⁵⁹

Each crisis has a sector- and a gender-specific impact on employment and earnings of migrants, resulting in smaller remittances, job losses or even return migration. While male workers in construction and industries are adversely affected by the present downturn, women migrants in health and education are not yet affected, whereas domestic workers suffer whenever middle-class households have to cut their expenses. The fall in remittances will lead to a decline in household consumption in the countries of origin, which normally do not have social security provisions to fall back on.⁶⁰ This is another example of the transnational cost and risk chains caused by the reckless globalised market economy.

Livelihoods and food security

Trade liberalisation in agriculture favours the development of large-scale commercial, input-intensive, export-oriented farming. It tends to undermine small-scale farming for subsistence or local markets, which has been based on biodiversity, indigenous

58 The New York Times, 2 March 2009.

59 Chishti, Muzaffar (2007) *The Phenomenal Rise in Remittances to India: A Closer Look*, Washington DC: Migration Information Source; IOM (2008) *World Migration Report*, Geneva: IOM, p65f.

60 Awad, Ibrahim (2009) *The global economic crisis and migrant workers: Impact and response*, Geneva: ILO.

knowledge systems and exchange of local seeds, mostly done by women. It encourages consolidation of land holdings, monocultures and the introduction of machinery, while women still struggle to gain land rights and access to credit, technology and information. Additionally, the expansion of commercial agriculture leads to the depletion of common land and state forests, which were used by women for collection of fuel, fodder, water, oil seeds and fruit, as well as roots and herbs for nutritional and medical purposes. Liberalisation makes for the introduction of hybrid and genetically modified seeds, industrial fertiliser and pesticides, which push up production costs, while cheap imports from the EU, the USA and Japan are pouring in. The twofold objective of this complex liberalisation is a) the integration of agriculture and resources from countries in the South into the so-called global 'high-value' agricultural chains; and b) the further opening of markets for imports of agri-inputs and food crops from the industrialised countries.

The protection of some 'sensitive' products and the safeguards which are allowed by trade agreements cannot shelter small-scale farming from the massive influx and competition from imports. The resultant restructuring of the agricultural production system is undermining the livelihood of small farmers and small producers and traders in farm products such as poultry. When it comes to export to the EU, small producers are not as competitive as large exporters because small farmers find it difficult to meet sanitary and phytosanitary standards, which function as new non-tariff barriers in their access to the EU market. The new trade regime thus works in favour of strong actors and large companies and disadvantages small and weak actors in the markets.

Like export industrialisation, the expansion of agricultural exports has been highly gendered. Women work as unpaid family labour on their husband's cash crop fields, as hired labourers on large-scale commercial farms and plantations or recently as small-scale contract farmers who produce non-traditional agricultural exports comprising vegetables, fruits and flowers for foreign buyers. In many countries horticulture for export and agro-industries have become new feminised sectors of the economy because of their labour intensity.⁶¹

Contract farming attempts to integrate small farmers and their fertile plots into the global market by switching their production of mostly local species for local consumption to export products which land up in cash and carry markets by foreign retailers such as Metro or in supermarkets abroad. Natural resources are diverted towards export production at the expense of food production for local consumption. In effect,

61 Fontana, Marzia (2007) 'The gender effects of trade policies in developing countries', note prepared for the Committee of International Trade of the European Parliament, Brussels, 18 December 2007.

therefore, soil fertility and water are exported along with the agricultural products. Contract farming not only makes farmers dependent on commercial seeds and industrial inputs, it also makes them net purchasers of food, thus making their food security hostage to price fluctuation and speculation on the world market.

Furthermore, local biodiversity has been eroded; the high-yielding varieties promoted by the government and multinational seed companies have marginalised traditional varieties and have caused local species and indigenous knowledge to disappear, leaving small farmers once again with fewer resources to ensure food sovereignty. Patenting of living organisms, such as seeds, and commercialisation by big corporations means a threat to the production systems of farmers and deprives them of their most important livelihood resources and biodiversity. Permitting patents on seeds and life forms will result in another price hike for seeds and agrochemical inputs while restricting the use of community-owned seeds. This impacts negatively on food sovereignty and the right to food. Acquisition of land by big companies for production of biofuels such as jatropha or palm oil tends to further marginalise food production, and has been identified as one of the major causes of the global food crisis of 2007–8.⁶²

In India, declining growth rates (only 2.7 per cent in 2006) and the fall in per capita output of grains have led to regional food insecurity and pockets of hunger.⁶³ High prices for agrochemical inputs and low prices for agricultural products have driven small farmers into a cycle of debt, impoverishment and food scarcity. The debt crisis at the micro level has forced small-scale peasant farmers to sell their land, become casual labourers or migrate to the cities. In the cash crop sector, particularly cotton and groundnuts, this debt and livelihood crisis has manifested itself in thousands of farmers committing suicide in recent years.

Moreover, in 2008 a new type of food crisis emerged. Futures trading in wheat, rice and pulses integrated food like any other commodity in the speculative mechanisms of the financial markets. This caused market manipulation and a price rise from which small farmers did not benefit at all, while the world's dominant grain traders recorded huge profit margins.

The neoclassical prescription dictates that those who get crowded out from uncompetitive sectors should shift to sectors where the country has a competitive advan-

62 <http://www.globalresearch.ca/index.php?context=va&aid=9547>.

63 Government of India (2005) *Economic Survey 2004–2005*; Patnaik, Utsa (2004) 'Alternative Ways of Estimating Poverty and Implications for Policy, A Critical Appraisal of the Indian Experience', International Conference on 'The Agrarian Constraint and Poverty Reduction: Macroeconomic Lessons for Africa', Addis Ababa, Ethiopia, 17–19 December, www.networkideas.org.

tage. In the case of women squeezed out from agriculture or petty trading it is generally assumed that they could move to labour-intensive manufacturing such as textile production or agro-industries. However, it is very doubtful whether the women who will lose their small incomes in agriculture or in petty trading will be absorbed by the production units in the upcoming SEZs. Up to January 2009, the Indian government had approved 578 SEZs, including many technology and IT parks, and manufacturing which seeks to take advantage of economies of scale with the help of more sophisticated technology and will shift to higher value-added products. These modes of export production require skilled labour, and women are less likely to benefit from the jobs generated.

In the fishery sector, women are involved in processing the catch at cottage-industry level or as wage labourers in processing factories, and in trading, while men are engaged in fishing, building boats and repairing nets. Depending on the catch, women are employed on a casual basis, causing them a lot of uncertainty. The peeling of shrimps, one of their main activities, is subcontracted, paid at a piece rate and carried out under poor conditions. Therefore, the income gain masks high hidden costs in terms, for example, of health hazards.

Additionally, the fishery sector will face more competitive pressure from imports of marine products from the EU and other countries. This will jeopardise the livelihoods of local fisherfolk, women fish vendors and workers in marine product processing, and will cause further informalisation of employment and downward pressure on wages. Only the 'big fish' will survive.

The same holds true for the highly fragmented food and grocery retail sector. While earlier, with the help of trade unionist organisations such as the Self-Employed Women's Organisation (SEWA), female small traders and street vendors were able to secure space in urban areas and obtain a licence to set up small stalls, pavements and other urban spaces are now being 'cleaned up' and small traders evicted to make way for supermarkets and hypermarkets, retail chains and fancy shopping malls. Small shop owners, street vendors and hawkers face direct competition from corporate retailers, both domestic and foreign, who have political support for the restructuring of the whole retail sector.⁶⁴ This sector is currently highly contested in India, with petty traders and women vendors putting up a strong resistance against the establishment of supermarkets and retail chains. A study by FDI Watch India on the impact of corporate and chain retail on hawkers observed that scheduled tribe

64 Traidcraft (2008) *The EU/India FTA: initial observations from a development perspective*, London: Traidcraft, pp20–6; CENTAD/Sharma, Shefali (2009) *The EU-India FTA. Critical Considerations in a Time of Crisis*, Working Paper 11, pp21–6.

communities and women earn considerably less than others and suffer most from the competition from corporate and chain outlets. Government is responsible for most of the harassment and evictions they have faced in the recent past.⁶⁵

Public services and public goods

Shrinking revenues due to tariff cuts and capital flight have an adverse effect on fiscal policies and government expenditure, public services and public goods such as the health of the population and the health of the environment. Lack and loss of revenue push governments deeper into a fiscal squeeze which results in austerity measures and a decline of public investment and cuts in subsidies of, for example, food grains. The most common fiscal response has been indirect taxation on goods and services – for example, value added tax. This tax is often levied on household and consumption goods and is particularly detrimental to women as caretakers and as consumers.⁶⁶

Constraints on policy space induced by trade agreements and the fiscal squeeze impact public spending on health, education and social security, and the related domestic regulation, supplementary programmes, targeted protection and safety nets for those in need. Policy change and reduced spending in social sectors such as health have a multiple impact on women's well-being as well as on their paid and unpaid work. Cuts in social services are likely to have an adverse effect on women's employment, since sectors such as health and education have been key sources of employment for women at all levels.

Changes in drug policies and patent laws determine people's access to medicines. India has been an outstanding example of the production of generic drugs for its own use and for export to other countries of the South. Enforcement of the Trade-Related aspects of Intellectual Property Rights (TRIPS) regime and data exclusivity for pharmaceutical products (meaning that local drug makers would have to conduct all trials once again) would block or delay production of cheap medicines such as compound drugs against HIV/AIDS.⁶⁷ However, for poor people access to public health care and affordable drugs is a question of life or death. Recently customs in the EU confiscated generics shipped from China and India via Europe to developing countries – ignoring

65 ActionAid (2008) *An assessment of the likely impact of the India-EU Free Trade Agreement. An ActionAid briefing for UK MPs*, London: ActionAid, p10.

66 Randriamaro, Zo (2006): *Gender and Trade. Overview Report*, Brighton: BRIDGE, p20. In the course of gender budgeting done in African countries, women demanded a lifting of VAT on sanitary items.

67 Correa, M Carlos (2009) *Negotiation of a Free Trade Agreement European Union – India: Will India Accept TRIPS-Plus Protection?*, Berlin/Bonn: Oxfam Germany/EED.

the actual violation of the right to health and survival for people in the global South.

Underfinancing of public health facilities implies that local hospitals are understaffed and insufficiently equipped with technical instruments and drugs. In particular in crisis situation such as the HIV/AIDS pandemic, care is moved back from clinics to private households and taken over by women. Low pay for nurses and doctors in the public sector causes a run on private hospitals and outward migration. High-quality private clinics in India attract medical tourists from the Gulf and Europe.

Where governments spend less on health and education they normally ask for cost-sharing by patients and students, while many officials tend to charge a bribe to compensate for their low salaries. This affects access to high-quality services for poor sections of the society who rely completely on free or low-cost public services, and violates their right to education and health. Additionally, tied household budgets tend to reinforce gender norms which privilege boys' and men's access to education and health.

Biopiracy and patenting of genetic resources and agricultural knowledge by companies, as happened in the case of the neem tree and basmati rice in India, further deprive local farmers of traditional livelihood resources – in particular, women, who are already suffering from resource poverty. Women used to be the main custodians of seeds; the sharing or sale of seeds and resowing were common practice in the traditional farming system.⁶⁸ While patents extend legal recognition to the rights of corporate 'breeders', they negate farmers' rights to reproduce and exchange seeds, and undermine community-based property rights to biodiversity, indigenous knowledge as common goods and their use.

Liberalisation and the fiscal squeeze undermine the development state in the South as it undermined the welfare state on the West.⁶⁹ Trade and investment liberalisation through GATS and FTAs in the service sector and in government procurement provide a legal framework for further privatisation of services and public goods. In many countries of the South privatisation has already resulted in a dual system of high-quality private schools and clinics vis-à-vis low-quality public facilities with a lack of personnel and equipment, resulting in a marked social polarisation along this disparity. Provisions in FTAs facilitate the privatisation of water and energy supply and other sensitive sectors and utilities which were formerly part and parcel of the public sector, such as telecommunication, transport, environmental services, and

68 UNIFEM/GATI (2006) *WTO and Gender Concerns in South Asia*, New Delhi: UNIFEM/GATI.

69 Bakker, Isabella (2002) 'Who Built the Pyramids? Engendering the New International Economic and Financial Architecture', in: *femina politica*, 1/2002, 13–26.

finance. Privatisation of water supply in Bolivia and the Philippines gave evidence for a marked increase in prices which distorted poor people's access to basic services. This is detrimental to poverty reduction and social security, and a threat to basic human and women's rights.

In countries where the banking sector was state-owned and state-run, as in China and India, credit facilities were offered as an instrument to promote rural development, and small and medium-sized enterprises (SMEs). Foreign banks, however, lack this development orientation, follow up profit opportunities and cherry pick on up-market consumer financing, credit card systems and investment banking. Until now, in India no EU-owned bank has opened a branch in a rural area where the poor are concentrated and less profit is expected. After liberalisation of financial services and the influx of foreign banks, lending to socially disadvantaged sectors, to small farmers and to SMEs has declined; in rural areas a lack of affordable loans emerged.⁷⁰ Foreign banks are also famous for charging higher fees on financial services. Altogether that means their business model serves wealthy corporate customers and is based on a bias against poor people and most women.

In particular in a crisis situation, each government needs a broad range of policy tools and options to counter the credit crunch, balance the economic downturn, and extend special support packages to poor people. However, trade liberalisation as foreseen in the FTAs would rather tie the hands of the state than open more policy options to search for solutions for the sake of people's well-being.⁷¹

2. Make FTAs accountable: policy space for development, social equality and gender justice

The EU-India High Level Trade Group maintained that market liberalisation is in the interest of both sides and both "support a social form of economic development and are keen to encourage a model of growth with equity, which is socially inclusive and broad-based".⁷² The report on the EU-India FTA by the European Parliament strongly stresses the liberalisation ambitions. It took on only very few of the civil society concerns, and states that the European Parliament "recognises the right of governments

70 Singh, Kavaljit (2008) 'Banking Sector Liberalisation in India in the Context of Proposed India-EU Free Trade Agreement', www.madhyam.org.in.

71 Traidcraft (2009) *The Wrong Direction: Why the EU-India free trade agreement will not help India through the economic crisis*, London: Traidcraft.

72 Report of the EU-India High Level Trade Group to the EU-India Summit, 13 October 2006.

to maintain necessary policy space and regulatory capacities to shape economic and social policies that serve their most vulnerable people, including trade measures to protect weak economic actors".⁷³

The first part of this paper gave evidence that trade liberalisation comes with high development and social costs, borne to a large extent by poor people. Increasingly, women are integrated into the global monetarised economy but mostly at high hidden costs, and in a context of social disintegration and disparities. This part of the document highlighted the tension between this integration of women into the market and new opportunities in global value chains, on the one hand, and the persistence of gender inequality and injustice on the other. Trade and investment liberalisation open space to manoeuvre for corporate interests, but they restrict policy space and democratic decision-making about development, and at the same time undermine the economic space of weak market agents.

It has been widely recognised that trade liberalisation has adverse effects on vulnerable sections of society, on small and marginal market agents, on poor women. As a result, in India the groups concerned started to protest against this negative impact on their livelihoods, labour and well-being. Although civil society protests are largely ignored, India's reaction to protests in Kerala was to seek Asian Development Bank funding to help compensate industries that are adversely hit by markets opening up.⁷⁴ Even the cabinet of Kerala opposed the controversial India-ASEAN FTA because of its expected adverse effects on the farm, fishery and pepper sectors.

The question is how these concerns could be lobbied into the process of shaping trade liberalisation and trade relations, and how the central government of India could use its policy space and domestic regulation for safeguarding people's livelihoods and basic needs instead of liberalising at any cost and ensuring business interests.

The next part of the paper explores how Indian policies address development objectives, gender equality and women's empowerment in the framework of growth and market liberalisation. Secondly, it has a closer look at the issues of government procurement and of labour standards in the sustainable development chapter of the forthcoming FTA between India and the EU. Presently, both those chapters are highly controversial for the EU and India, and could be deal-breakers in future negotiations. Until now India refuses to negotiate them and perceives them as a threat to its policy space. The issues of government procurement and labour standards are a yardstick

73 European Parliament (2009) *Report on an EU-India Free Trade Agreement*, Committee on International Trade, Rapporteur: Sajjad Karim, A6-0131/2009, 12 March 2009: Brussels: European Parliament.

74 *Financial Express*, 30 September 2008.

of whether social and economic policies are coherently integrated, and how trade and development objectives are intertwined.

Both the EU and India have different ideas and concepts about addressing gender issues in the trade framework. These approaches will be analysed later.

2.1. Gender in development and trade policies in India

The focus of the Eleventh Five-Year Plan 2007–2012⁷⁵ is stated to be “inclusive growth” with special attention to the poor, socially marginalised castes and groups, and women. In identifying the market as the preferred vehicle for delivering development goals and inclusive growth, the document is unequivocal in endorsing a continued commitment to further liberalisation and “increased integration with global markets” as the prescription for achieving both social justice and economic goals. The commitment to inclusive growth is described in terms of “equality of opportunity for all” and reads regarding women: “for the first time... women are recognised not just as equal citizens but as agents of economic and social growth...”⁷⁶ However, apart from the chapter on women, the rights framework and recognition of women’s agency is nowhere visible in the rest of the Plan document, which is unapologetic about sacrificing rights to advance the interests of private capital and the ongoing neoliberal project of bringing economic activity outside the realm of state control.

The Eleventh Five-Year Plan continues the almost exclusive focus on microcredit and self-employment⁷⁷ as the preferred vehicle for simultaneously tackling women’s poverty and women’s empowerment, with more than 50 per cent of the Ministry of Women and Child Development’s (MoWCD) allocation for the Plan budget earmarked for microcredit schemes. According to the concept of market integration through microfinance and self-employment, women are the most cost-effective and flexible agents to contain the adverse impact of reform policies.⁷⁸

Not only have the total allocations for women in the Gender Budgeting Statement stagnated at a meager 5.5 per cent of the Total Union Budget, there are no earmarked

75 Planning Commission of India. Eleventh Five-Year Plan 2007–2012, <http://planningcommission.gov.in/plans/planrel/fiveyr/11th/11default.htm>.

76 Planning Commission of India. Eleventh Five-Year Plan 2007–2012, Volume II Chapter 6 (6.3).

77 Data from the national survey (NSS) suggest that almost 50 per cent of self-employed women earn less than Rs 2000 per month (€30), meaning they are working poor.

78 Menon-Sen, Kalyani and Kalpana Kannabiran (2007) ‘The World Bank and Women’s Poverty in India’. paper presented at the Independent People’s Tribunal on the World Bank in India, New Delhi, 9–13 September 2007.

allocations for women in programmes and projects of the Ministries of Agriculture, Science and Technology, Environment and Forests, and Small-Scale Industry, even though all these sectors have major implications for women's poverty,⁷⁹ and the debt relief for farmers had no special provisions for women farmers.⁸⁰

The Eleventh Five-Year Plan contains several trade-related policy commitments – provisions that are likely to have a severe impact on poor women.

- Legislation to protect labour rights (such as the Industrial Disputes Act and the Contract Labour Regulation Act) is described as a problem for entrepreneurs wishing to establish large units. There is a clear statement of intent to amend these laws to increase labour flexibility (I.1.60).
- The strategy of reserving certain items for manufacture by micro- and small-scale units, which account for the bulk of employment in the manufacturing sector, is to be phased out, as are incentives and fiscal benefits for this sector (I.1.61).
- Low domestic support to agriculture is cited as a major positive bargaining point in trade negotiations (I.13.51).
- Implied commitment to allow FDI in retail and go beyond the current 50 per cent cap in FDI in insurance, print and electronic media and air transport if matching concessions are offered by trade partners (I.13.55 and I.13.70).
- Implied commitment to further autonomous reduction of tariffs in exchange for additional concessions from trading partners (I.1.57).
- Commitment that exemptions will not be sought in future FTAs except for agricultural products (I.1.61).

Impoverishment due to informalisation of labour and the decrease in real wages has been further exacerbated by the reduction in public investments in education and health, the introduction of user fees for essential services such as water and sanitation, as well as reduced subsidies and cuts in entitlements of food grains under the Public Distribution System, the 'fair price shops' in India. This mirrors a withdrawal of the state from social expenses and social responsibility.

Despite the global downturn and the tight fiscal situation, the budget 2009–10 again makes several concessions to the export sector. The tax holiday for SEZs, including Software Technology Parks, was extended for another year.⁸¹ The estimate of revenues

79 Centre for Budget and Governance Accountability (2009) 'Response to the Union Budget 2009', http://www.cbgaindia.org/whats_new.php?id=21.

80 *The Hindu*, 31 July 2009.

81 C.P. Chandrasekhar, 'Corporate gloom', <http://www.flonnet.com-fl21615-stories-20090732161500900.htm>.

forgone from corporate revenues in 2008–09 is Rs 68,914 crore (= €10 billion).⁸² By contrast, the National Rural Employment Guarantee Scheme (NREGS), covering tens of millions of impoverished people, gets Rs 39,100 crore (= €6 billion). Nearly half of the total person days of work generated under the scheme have been contributed by women; however, many did not get the guaranteed minimum wages.⁸³

According to official figures, the targets to double exports in goods and services were largely met between 2003 and 2008. Fiscal policies propped up the corporate sector: the total income forgone in 2007–08 due to direct tax concessions, cuts in excise duty and cuts in customs duty was Rs 303,260 crore (over €45 billion).⁸⁴ Despite the global recession, Indian corporations reported a rise in net profits in April–June 2009, while 1.5 million jobs are said to have been lost in the export sector between September 2008 and April 2009.⁸⁵

The overall thrust and direction of India's new Foreign Trade Policy 2009–2014⁸⁶ (FTP), announced at the end of August 2009, continues to toe the neoliberal line. The immediate objective of the new FTP is to arrest and reverse the declining trend of exports and to provide additional support to those sectors (such as textiles, leather, gems, jewellery and handicrafts) which have been hit badly by recession in the developed world. Growth estimates are extremely optimistic – a target of annual export growth of 15 per cent has been set for the period 2010–11, rising to 25 per cent per year by 2014, with a consequent doubling of India's share in exports of goods and services. Trade expansion is to be used as an effective instrument of employment generation.

While the Eleventh Five-Year Plan stated jobless growth, the Government of India claims that nearly 14 million jobs were created directly or indirectly as a result of augmented exports during 2003–08. Despite its recognition of significant job losses in key export sectors, the new FTP focuses entirely on support to exporters. While some commitments are made to support employment-heavy sectors such as textiles and leather, no binding measures are mentioned that might induce exporters to hire from marginalised groups or make this support contingent on workers' welfare or women's employment. The FTP's focus on technological upgrading and value addition in the export sector aims at creation of skilled employment, product diversification, increased competitiveness and "export excellence", which is not likely to benefit un- and semi-skilled women.

82 One crore = ten million, 1 Euro = 68 Rupees, 100 Rupees = 15 Euro

83 Mishra, Yamini/Jhamb, Bhumiika (2009) An Assessment of UPA-1 through a Gender Budgeting Lens, in: *EPW*, 29 August 2009, pp61–9.

84 <http://indiabudget.nic.in/ub2009-10/statrevfor/annex12.pdf>

85 Sainath, P. (2009) 'Drought of Justice, Flow of Funds', *The Hindu* 15 August 2009, <http://www.thehindu.com/2009/08/15/stories/2009081555920800.htm>.

86 <http://www.infodriveindia.com/Exim/DGFT/Exim-Policy/2009-2014/>.

The FTP extends and enhances duty cuts and refunds, income tax exemption and subsidies to exporters, permits “greater flexibility” and reduces transaction costs. This will increase the revenue loss to the national exchequer, resulting in a high risk of further cuts in social services and national welfare. No social concerns are raised in the document, reaffirming the principle that concerns for social justice and gender equality – not to mention women’s, Dalits’, Adivasi’s and religious minorities’ rights – remain very low on the macropolicy agenda.

Apart from a firm commitment to the WTO and the successful conclusion of the Doha Development Round, the new FTP shows a distinct turn away from European and other developed markets towards Latin America, Africa, Oceania and other Asian countries. The reason given for the diversification of Indian exports to other markets is the “weaker demand in developed economies, triggered by falling asset prices and increased economic uncertainty”. As many as 26 new countries have been included within the ambit of the Focus Market Scheme, and there are significant incentives for exports to all countries in Africa and Latin America. Like the SEZ strategy, this looks much like a copy of the Chinese model. While there is no specific mention of the EU, the new FTP reaffirms India’s commitment to deepening its trade engagement with “other major economic groupings”.

2.2. Government procurement and implications of the EU-India FTA

Although India clearly indicated that it does not wish to open up government procurement, the EU insists on liberalisation of government procurement of goods and services, including public utilities, at state, provincial and local governance level in India. In the wake of the competitiveness and market access priorities, the European Commission – being subject to heavy lobbying in Brussels – promotes the interests of European service and multi-utility corporations. The EU does not exclude essential services such as infrastructure for health, education and water from its demand to open up government procurement. This makes liberalisation of government procurement in the FTA coherent with the sustainable development chapter which asks for liberalisation of “environmental services and goods”, which could imply privatisation of public utilities such as water and energy supply. Under the auspices of market access and competitiveness, public procurement is seen as “an area of significant untapped potential for EU exporters”.⁸⁷ The objective is to achieve market access for EU service suppliers and investors based on the principles of non-discrimination and national treatment.

87 European Commission (2006) *Global Europe: Competing in the world. A Contribution to the EU’s Growth and Jobs Strategy*, Brussels: European Commission.

The discussion on government procurement in India has largely been around the issue of India's accession to the Government Procurement Agreement (GPA) in the WTO.⁸⁸ Thus far, India has not signed this document despite considerable pressure from the World Bank, which has invested heavily in 'reform' of public sector procurement rules and procedures such as the Public Health Sector Reform project in Rajasthan and Public Sector Reform project in Andhra Pradesh.

Government procurement in India, as in several other developing countries, is a significant instrument of social policy. For instance, measures such as unbundling of contracts allow access to small bidders. Reservation of certain items for procurement from public-sector enterprises or small enterprises can boost economic activity in times of recession. Price preferences can be used to encourage domestic bidders, and local content requirement can create employment opportunities in under-served areas. Job reservations for members of socially marginalised groups such as Dalits and Adivasis have been enforced by linking them with government contracts, and have proved to be an effective tool to create equality in employment in public-sector enterprises. Investment and licensing of technology requirements can also direct economic activity towards key sectors – for instance, government procurement policies played a significant role in the rise of the Indian IT sector in the 1980s.⁸⁹

The size and scale of government procurement in India makes it a tempting target in trade negotiations.⁹⁰ A World Bank calculation in 2003 estimated that total public procurement by the central government in India stood at US\$100 billion, which is equivalent to over 20 per cent of GDP.⁹¹

During WTO negotiations, India is positive on the issue of increased transparency and efficiency in public procurement but has so far been opposed to market access, particularly in the case of services. India also opposes the use of international dispute resolution mechanisms on issues of transparency, and takes the position that domestic regulations and mechanisms are sufficient for this purpose. However, EU proposals to stress transparency might be a disguised way to achieve 'national treatment' for foreign providers and market access.

88 Srivastava, Vivek (2003) 'India's Accession to the Government Procurement Agreement: Identifying Costs and benefits', in: Mattoo, Aditya/Mitchell Stern, Robert (eds) (2003) *India and the WTO*, Washington, DC/Oxford: World Bank/Oxford University Press.

89 CENTAD/Sharma, Shefali (2009) *The EU-India FTA. Critical Considerations in a Time of Crisis*, Working Paper 11, pp4–6.

90 ActionAid/Christian Aid/Oxfam (2008) *The EU's approach to Free Trade Agreements. Government procurement*, EU FTA Manual Briefing 7, London/Oxford: ActionAid/Christian Aid/Oxfam.

91 World Bank (2003) *India Country Procurement Assessment Report*, Washington, DC: World Bank, p6.

Although there is still no single legislation to ensure uniformity in procedures, the procurement policy regime in India has seen considerable reforms since 1991, with a view to increasing trade transparency, fair play, quality procurement, competition and equal opportunity to eligible vendors. In general, procurement is undertaken through a process of competitive bidding.⁹²

Efficiency and transparency in procurement are also likely to increase in the current economic climate, where public-sector units (PSUs) find themselves increasingly working to tight budgets and come under increasing public scrutiny through instruments such as the Right to Information Act, which mandates transparency in policymaking and allows all citizens to demand access to most categories of official information.

According to existing policy, foreign bidders are treated with the same as domestic bidders, with earlier provisions for price preference and purchase preference having been scrapped in 1992. However, preferential treatment is allowed for village industries, small-scale industries, women's development corporations, federations of women's self-help groups and the public sector. For instance, Indian Railways gives preference to the public sector for purchases from US\$1.12 million up to US\$22.5 million.⁹³ In such cases, foreign firms face the same degree of discrimination as national firms not belonging to the preferred categories.

Purchases from the small-scale sector made up 8–10 per cent of total procurement by the Directorate-General of Supplies and Disposal between 1994/5 and 1998/9.⁹⁴ Policy protection through reservation of some items for exclusive production and preferential treatment in government procurement (such as exemptions in earnest money and tender fees, and a 15 per cent margin in price) has had a major positive impact for small and tiny industries, village industries and village artisans, among them many women. Any changes in these policies can be expected to have a devastating impact

92 Tender documents are published in the Indian Trade Journal published by the Department of Supplies, as well as uploaded on the NIC-NET website of the National Informatics Centre for free access, viewing and downloading. Firms wishing to bid for government tenders are registered either centrally (by the Directorate-General of Supplies and the National Small Industries Corporation) or autonomously (as done by the Indian Railways and PSUs). Arbitration mechanisms are built into contracts. Similar or analogous procedures have already been put in place by most if not all large PSUs.

93 From the report of a CUTS meeting on 'Challenges and Opportunities from a Possible India–EU FTA', New Delhi, 8 November 2006, www.cuts-citee.org/pdf/Report-InteractiveMeeting-EUFTA.pdf

94 Srivastava, Vivek (2003) 'India's Accession to the Government Procurement Agreement: Identifying Costs and benefits', in: Mattoo, Aditya/Mitchell Stern, Robert (eds) (2003) *India and the WTO*, Washington, DC/Oxford: World Bank/Oxford University Press.

on these sectors, as well as on poverty in the country as a whole, since these sectors constitute the major share of employment in manufacturing in India.

Quantitative data on the potential impact of opening up government procurement on the livelihoods of traditional artisans are not available. However, anecdotal evidence and qualitative studies provide ample reason for the continuation of these policies. For instance, thousands of small weaving units affiliated to the Khadi and Village Industries Board, who have lost their traditional markets because of the penetration of branded products into rural areas, are almost completely dependent on government contracts for their survival. Similarly, the decision by Indian Railways in 2004 to use environment-friendly clay cups to serve tea had an immediate impact on the lives of thousands of traditional potters, with an average of 36,000 cups being used per day on just 27 superfast trains running out of Delhi.⁹⁵ Cotton sheets and towels are purchased by Indian Railways from Khadi cooperatives which are predominantly women. Eggs, spices and ingredients for school midday meals are bought from women's self-help groups by the Education Department in Tamil Nadu. Contracts for stitching uniforms are awarded to women's groups and women's development corporations in Tamil Nadu and Maharashtra.

The argument for bringing government procurement into the ambit of foreign trade is based on the classic neoliberal assumption that any barriers to trade, such as preferential treatment to national firms in award of contracts, are ultimately welfare-reducing. Bringing all the existing procurement systems into conformity with a single standard will be a costly and complicated exercise, but it is argued that increased competition will lower costs and lead to savings, and that increased transparency will counter corruption and rent-seeking by bureaucrats and politicians.

Srivastava⁹⁶ cites several studies that support the view that a) positive discrimination in government procurement does not have any significant impact on trade; b) that domestic competition can be effective in terms of reducing costs; and c) that price-cost margins can be increased by expanding domestic output. The benefits from opening up government procurement to foreign bidders are, therefore, only likely to accrue if government demand exceeds domestic supply or if there is a significant difference in the quality of foreign goods compared to domestic goods.

95 www.rediff.com/money/2004/jun/09rail.htm.

96 Srivastava, Vivek (2003) 'India's Accession to the Government Procurement Agreement: Identifying Costs and benefits', in: Mattoo, Aditya/Mitchell Stern, Robert (eds) (2003) *India and the WTO*, Washington, DC/Oxford: World Bank/Oxford University Press.

Sharma⁹⁷ emphasises that despite shrinkage in recent years, government procurement still has a significant role to play in advancing the goals of equity and social justice in India through focused support to SMEs, marginalised regions and oppressed groups. India's reserve list for government procurement still has over 358 items including electrical appliances, small parts, cotton goods, furniture, and rubber goods. The public sector continues to provide the largest share of formal employment to marginalised categories such as Dalits and Muslims.

Fair trade and standards in government procurement of EU Member States

Public procurement by the 27 EU Member States is estimated at 1,500 billion, which is equivalent to 16 per cent of the total EU GDP. The broad range of public works, public supply and public services and 'special sectors' such as water, energy, transport and postal services include purchases from pencils and paper to PCs, from uniforms to tanks, from flowers for state events to natural stones for public squares, from canteen to transport services, from coffee to office furniture – everything needed by national, provincial and local administrations and authorities.

Fair trade, consumer and other civil society organisations in the EU use social and ecological standards to demand ethical market behaviour from public authorities and make them accountable to citizens. Fair trade criteria for public procurement are pursued in order to set up public social responsibility parallel to corporate social responsibility. Civil society activism requests public authorities in Europe to integrate standards of fairness and sustainability into their tenders and purchasing policies. These campaigns seek to contribute to decent work and decent earnings and the livelihood and well-being of small and marginal producers and SMEs in the global South. Gender considerations, however, are to a large extent absent from the range of criteria. These kinds of codes of conduct are considered a tool for sustainable development and more sustainable production and consumption patterns.⁹⁸ Awareness campaigns – for example, about child labour involved in cutting of natural stones in India – seek to contribute to transparency along the whole transnational value chain.

The EU itself seems to support this approach. A communication entitled Policy Coherence for Development reads: "The EU will enhance its support for Fair Trade

97 CENTAD/Sharma, Shefali (2009) *The EU-India FTA. Critical Considerations in a Time of Crisis*, Working Paper 11, pp4–6.

98 European Fair Trade Association/Rezzin, Marzia (2007) *Fair Trade in Public Procurement. Case Studies of Belgium, France and Italy*, Brussels: European Fair Trade Association.

as a tool for sustainable development and poverty reduction”,⁹⁹ and the European Parliament approved a resolution called ‘Fair Trade and Development’. However, the EU is scared of over-regulation through legislation and refers – as the corporate sector does – to non-binding measures only, meaning that social and environmental standards are voluntary.

2.3. Sustainable development and labour standards in the FTA

The Explanatory Memorandum mandating the European Commission to negotiate an FTA with India states: “Future FTAs would also need new ways of ... incorporating provisions on trade-related aspects of sustainable development... including both its environmental and social dimensions.”¹⁰⁰ The report of the European Parliament on the FTA adds: “Both the EU and India have to ensure that foreign direct investment are not encouraged by lowering environmental, core labour or occupational health, safety legislation and standards. Human rights and democracy clauses constitute an essential element of the FTA.”¹⁰¹

Deliberately, the EU chose to include environmental and social issues in a separate ‘sustainable development’ chapter in its bilateral FTAs. The reason given in the Global Europe policy is: “As we pursue social justice and cohesion at home we should also seek to promote our values, including social and environmental standards and cultural diversity, around the world.” Additionally, the EU perceives the WTO as not willing to take up these issues, “which many, particularly developing countries, believe are cover for protectionism. Bilaterally we can achieve more in these fields, provided we take a co-operative, not a sanctions-based approach.”¹⁰² Focus should be on core labour standards including decent work and on facilitation of trade in environmental goods, technologies and services. Adherence to and effective implementation of internationally agreed social and environmental standards are seen as a “necessary condition for sustainable development”. Phrasing a separate chapter on sustainable development in the FTA means that social (including gender) and environmental

99 European Commission (2005) *Policy Coherence for Development*, Brussels: European Commission, http://ec.europa.eu/development/policies/policy_coherence_en.cfm

100 European Commission (2006) *Explanatory Memorandum. Recommendation from the Commission for a Council decision authorizing the Commission to negotiate a free trade agreement with India*, Brussels: European Commission p14, <http://register.consilium.europa.eu/pdf/en/06/st16/st16483-ex01.en06.pdf>.

101 European Parliament (2009) *Report on an EU-India Free Trade Agreement*, Committee on International Trade, Rapporteur: Sajjad Karim, A6-0131/2009, 12 March 2009: Brussels: European Parliament.

102 European Commission (2006) Accompanying document to footnote 100: *Impact Assessment*, Brussels: European Commission, <http://www.uni-mannheim.de/edz/pdf/2006/sek/2006/1559-en.pdf>.

concerns are not mainstreamed into the various trade sectors but are earmarked to be distinct from the economic objectives and sectors.

Starting in the 1990s, when India vigorously opposed the inclusion of a social clause at the WTO, controversies around labour standards as “new conditionality” and as voluntary measures continued between North and South, and among feminists as well.¹⁰³

Controversies about labour standards in the FTA

India is a signatory to the ILO Declaration on Fundamental Principles and Rights at Work but has ratified only four of the eight core ILO labour conventions: the convention on ‘Forced Labour’, ‘Equal Remuneration’, ‘Abolition of Forced Labour’ and on ‘Minimum Age’. It did not sign the conventions on ‘Freedom of Association and Protection of the Right to Organise’, ‘Right to Organise and Collective Bargaining’, ‘Discrimination (Employment and Occupation)’ and ‘Elimination of the Worst Forms of Child Labour’. There is continued and widespread discrimination in employment and wages on the basis of gender, religion and caste, as well as lacunae in domestic law which allow rights violations to continue with impunity.

Trade unions affiliated to the International Trade Union Confederation (such as SEWA, the Hind Mazdoor Sabha and the Indian National Trade Union Congress) are strong supporters of introducing a social clause into trade instruments. However, their views do not find favour with a much larger section of opinion within either civil society or government.

A recent study by Kolben,¹⁰⁴ involving interviews with a range of informants including government officials, trade unionists, civil society activists and academics, provides a useful summary of arguments against linking social issues with trade agreements.

Economic arguments against linkage generally involve concerns that linking trade and labour standards will have the effect of protecting domestic markets in the West from cheap goods, thereby adversely impacting trade and employment in India. This perception is by no means confined to government – it is shared by several trade unions and NGOs who see global markets and global trade as opportunities for

103 Franck, Anja (2008) *Key Feminist Concerns. Regarding Core Labor Standards, Decent Work and Corporate Social Responsibility*, Brussels: WIDE.

104 Kolben, Kevin (2006) ‘The New Politics of Linkage: India’s Opposition to the Workers’ Rights Clause’, in: *Indiana Journal of Global Legal Studies Vol. 13* (2006) p225–58.

employment and economic development. NGOs opposed to the “contamination of trade with non-trade issues” take the view that “demanding the inclusion of social issues in WTO implies opening the window for never-ending non-trade issues including gender, human rights and social development”, which are inimical to trade and, by implication, to development.¹⁰⁵

Political arguments and positions taken by anti-globalisation activists reflect the concern with protecting sovereignty and opposing moves that serve the interests of global financial institutions such as the WTO, the World Bank and the International Monetary Fund. For instance, labour rights activists and groups associated with the World Social Forum and the Independent People’s Tribunal Against the World Bank in India point out that including a social clause in trade agreements would provide legitimacy to these institutions but would not in any way change the oppressive nature of neoliberal macro-economic policies.¹⁰⁶

Structural arguments focus on the inadequacies of trade agreements and bodies such as the WTO for enforcing labour standards – it would be far more strategic to strengthen the ILO and give it the resources and teeth required to monitor and enforce labour rights and labour standards. Most civil society organisations want labour standards only set by ILO and not by any other multi- or bilateral forum. Hence, FTAs should only refer to signing all ILO conventions. As the FTA is a treaty between governments, civil society actors such as trade unions or NGOs will not have the *locus standi* to intervene in case of violations of a proposed social clause. Another concern expressed is that trade sanctions are a blunt instrument inasmuch as they cannot be calibrated to reach only those employers who violate labour standards while rewarding employers who conform.

Some feminist economists have also taken the position that imposition of labour standards will result in adverse consequences for women workers in developing countries. Kabeer¹⁰⁷ argues that enforcement of labour standards with trade sanctions could exacerbate inequalities in the labour market due to a reduction in women’s employment or job transfers to the informal sector where labour standards are non-existent. Razavi¹⁰⁸ sees only a weak link between productivity increases and higher

105 Pradeep S. Mehta (2006) ‘The trade-labour linkage is not “dead” as yet’, <http://www.financialexpress/old/wto/assess2.html/>.

106 www.worldbanktribunal.org.

107 Kabeer, Naila (2004) ‘Globalisation, Labour Standards and women’s rights: Dilemmas of Collective (in) cation in and interdependent World’, *Feminist Economics* Vol. 10, No. 1, pp3–35.

108 Razavi, Shahra (1999) ‘Export-Oriented Employment, Poverty and Gender: Contested Accounts’, *Development and Change*, Vol. 30, pp653–83.

wages on the ground. She cautions that even if a country is successful in upgrading products and technologies, the upgrade may entail a shift in employment opportunities towards men, who are considered more skilled by most employers. Both Kabeer and Razavi argue for a move away from a narrow focus on labour standards in the formal sector toward more broad-based social policies that raise living standards for large numbers of women, including women workers in the informal sector.

Rohini Hensman, a strong voice in favour of ‘internationalising’ labour rights, suggests that it is possible to improve working conditions and raise wages of women workers in export-oriented manufacturing without adversely affecting their employment prospects if structural lacunae are addressed through transparent monitoring and the use of trade incentives rather than trade sanctions.¹⁰⁹

Meanwhile, away from the arena of trade negotiations – as much as EU Member States are involved in deregulation of labour in order to pursue flexibilisation – the Government of India has shown itself increasingly eager to speed up on ensuring “labour flexibility”, which is considered crucial for increasing investment, expanding employment and ensuring external competitiveness in a difficult international environment. This is the policy position set out in the Eleventh Five-Year Plan document, which is unambiguous in stating that “the perceived lack of flexibility in some of our labour laws, such as Chapter V-B of the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, which focus on job protection, remains a psychological block for entrepreneurs against establishing new enterprises with a large workforce... The Contract Labour (Regulation and Abolition) Act also results in the industry letting go of the opportunities for seasonal supplies, particularly in international markets. In a globalised world where our manufacturers have to compete with others who enjoy greater flexibility, it is necessary to find practical solutions for the problems created by these laws.”¹¹⁰ In this perception, legal protection afforded to workers such as curbs on employers’ ability to hire and fire, minimum wages or freedom to engage in collective action all actually operate to reduce employment.

There are several restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. The Supreme Court has recently held¹¹¹ that government employees do not have the “legal or moral right to strike”. In taking this view – in stark contradiction to previous pro-worker judgements

109 Rohini Hensman (2002) World trade and workers’ rights: In search of an internationalist position, *Antipode* Vol. 33 No. 3, pp427–50.

110 Planning Commission of India. Eleventh Five-Year Plan 2007–2012, Volume I Chapter 1 (1.60).

111 TK Rangarajan versus Government of Tamilnadu and Others, 2003. Supreme Court of India, 6 August 2006.

– the court has shown itself willing to turn a blind eye to the steady dismantling of protective legislation and weakening of legal provisions to secure labour rights in the last decade. However, women workers repeatedly stress that labour rights and unionisation are important vehicles for empowerment and their identity as workers, in particular as domestic workers.

As per the above discussion, the inclusion of labour standards as ‘positive conditionalities’ within FTAs is ambivalent: questions regarding its effectiveness and protectionism remain unanswered; it cannot guarantee rights for women workers and might indeed result in worsening their situation. From a feminist perspective, therefore, the adoption of labour standards must take into account the relative valuation and position of women workers in the formal, informal and care sectors.

2.4. Gender-sensitive products

Since it is highly contested whether the inclusion of core labour standards in FTAs could work as a tool to address gender concerns in trade, another recent approach has been to consider gender as a criterion for the selection of special products, meaning the negative list of 10 per cent of tariff lines to be excluded from tariff liberalisation. While it is doubtful whether India will be able to accommodate all vulnerable sectors and food security within this 10 per cent, the FTA does not allow the list to be modified or increased after it has been signed – not even in case of emergency. On the contrary, the FTA seeks to reduce the list over time.

The approach to choose gender as a sensitivity criterion for the special products was proposed by UNCTAD and taken up by the Ministry of Commerce. Gender sensitivity is defined by a single indicator: high share of female employment in sectors. Rashmi Banga from UNCTAD’s India project defined as gender-sensitive products those “produced by the industries where female employment is three times higher than the average for the entire manufacturing sector”, which stands at 13 per cent.¹¹² Sectors under consideration are the manufacturing of:

- tobacco products (where women constitute 64 per cent of the workforce);
- clothing (59 per cent); and
- food products (39 per cent).

Additionally, agriculture and animal husbandry – where women make up 39 per cent

112 Presentation by Rashmi Banga from UNCTAD’s India Project at the UNCTAD Expert Meeting on Mainstreaming Gender in Trade Policy, Geneva, 10–11 March 2009, www.unctad.org/sections/wcmu/docs/ciem2p17_en.pdf.

of the workforce – and the handloom sector are considered gender sensitive, while fishery products are not. Narasimha Reddy from the Centre for Handloom Information and Policy Advocacy (CHIP) proposed a gender benchmark in preparing the special product list, which should include handloom weaving.¹¹³

To address gender concerns with the special products list alone is a one-dimensional and very confined approach to the complex gender and trade nexus, and turns a blind eye to its multidimensionality. To use gender sensitivity as a criterion for the special product list ignores other dimensions of social inequality and vulnerable groups in India, such as Dalits, Adivasi and Muslims. Focusing on trade in goods and therein on female employment only, and leaving aside trade in services, investment, government procurement, intellectual property rights and safeguard measures, is an extremely undercomplex and inappropriate way of addressing the gendered impact of trade liberalisation and of trying to balance unequal trade effects. Neither efficiency nor justice is achieved by providing protection and positive discrimination to a few vulnerable feminised sectors or women-led and women-relevant sectors, leave aside the fact that women's employment in sectors might change but the list of special products cannot be changed later on.

The approach of gender-sensitive special products makes gender visible as a relevant category in trade. However, the deficits of this restricted approach highlight that gender is a cross-cutting category in the economy and in trade, and that as such it has to be taken into account by macro-economic policies. Singled-out gender-sensitive products will not be able to counter the negative impact of trade liberalisation on poor women. Instead, a comprehensive and gender-responsive restructuring of trade liberalisation, trade relations and rules is needed which gives priority to basic needs and rights, food sovereignty, sustainable livelihoods, and provision of essential services.

3. Conclusions

Negotiations of an FTA and 'harmonising' rules which confine policy space are a tricky power play around sovereign policymaking in an increasingly interdependent economic world, in particular in a crisis situation. Rules stipulated in FTAs restrict the

113 Narasimha Reddy/Centre for Handloom Information and Policy Advocacy (CHIP) (2009) 'Women handloom weavers: Facing the brunt', paper prepared for WIDE/SAI/HBF Workshop on Gender and Trade, New Delhi, 26 March 2009, http://boell-india.org/download_en/Microsoft_Word_-_HBF-DNR_presentation.pdf.

existing national policy space which can be used to counter or at least cushion the consequences of increasingly uneven, untimely and unequal development and of the multiple global crises.

In India as well as in the EU, the process of neoliberal policy 'reform' is increasingly undermining social and development objectives, the promise of employment creation and inclusive growth, gender equality, and social and food security. The present crisis, however, puts some pressure on the state to reclaim its power of market intervention and regulation, of fair distribution and positive discrimination towards vulnerable sections in society. While the corporate sector lobbies for more trade liberalisation, civil society forces demand not only more Keynesian intervention but a conversion of key industries, a transition to a low-carbon economy, a redressing of economic and trade imbalances, and a democratisation of trade and investment policies.

This dilemma is reflected in the present struggle on the issue of further liberalisation of the retail sector in India, which essentially reflects the debate on employment-led versus foreign-investment-led growth in India. The Department of Small and Medium Enterprises within the Ministry of Industry seeks to protect small retailers against large domestic and foreign retail chains, while simultaneously industry lobbies are pushing for raising the FDI cap in SMEs.

While gender equality has been recognised as a development and social objective, the neoliberal tilt narrows it down to mere integration of women into labour, credit and consumer markets. These markets are informed by the principles of competitiveness, efficiency and cost reduction, and accordingly structured in a highly unequal and socially polarised way, with women – informal, self-employed and flexible – at the bottom of transnational value chains. There is a constant disjuncture between gender commitments in 'soft' policies, development objectives and political rhetoric, on the one hand, and macropolitics, macro-economy and budget allocation on the other. This holds true for India's Eleventh Five-Year Plan as much as for the European Consensus on Development adopted in 2005, which understands gender equality as a fundamental human right in itself and as a question of social justice. Many sections of the Consensus, however, among them the trade chapter, do not include a gender analysis or gender perspective.

This paper highlights the extent to which neoliberal development and trade policies are subsidised by women's paid and unpaid work. Since there is a clear understanding at policy level that India's position in the global economy depends on the ready availability of cheap and flexible labour, the emphasis has been on deregulation of labour markets. Policies in the last decade have encouraged the proliferation of informal activities, subcontracting, and part-time and home-based work. This policy

thrust has found a ready response from poor women who are willing to accept low-quality employment, with little or no labour protection and social security, because this gives them the flexibility they need to fulfill their domestic responsibilities.

While it is now widely recognised that trade liberalisation has adverse effects on vulnerable sections of Indian society and on small and marginal market agents, in particular poor women, the question is whether these negative effects can be and should be cushioned by some mechanisms in the FTAs. More than that, the whole competitiveness- and profit-driven concept of the FTA and the structures of trade liberalisation, growth and competition must be changed towards just trade instead of free trade at any costs. Nobel laureate Joseph Stiglitz and Andrew Charlton insist that fair trade requires a rule-based system of progressive preferential market access given by stronger countries to comparatively weaker countries. Only such a differentiated system of preferential provisions could close the development gap between stronger and weaker countries.¹¹⁴

This paper has discussed from a social and gender justice perspective the issues of safeguarding policy space, ensuring sustainable development and protection of vulnerable market participants through government procurement, a sustainable development chapter in the FTA, and sensitive products. It suggests that neither gender-sensitive products nor the inclusion of gender under labour standards in the sustainable development chapter can prevent the negative effects of trade liberalisation on women. These limited approaches delink gender from the broad range of other trade issues and sectors, instead of trying to mainstream them into all sectors and to engender macro-economic policies throughout. The sustainable development chapter stands at the end of the FTA, after all the highly debated trade and investment sectors, as if social and environmental sustainability could be added on ex post. Similarly, adding on special products as an exemption from the principle of tariff reduction does not make for a revision of the principal of reciprocity.

Instead, sustainability concerns as well as protection of and support to weak sectors should be made a guiding principle of trade ex ante – from the very beginning. Safeguarding policy space implies reserving opportunities for non-neoliberal or Keynesian policy instruments, for domestic regulation, positive discrimination and government procurement. Making trade policies gender sensitive would mean to shape trade relations in a way that they contribute to the achievement of development objectives such as empowerment of vulnerable sections in society, poverty eradication, social equality, gender justice, and food sovereignty. Applying

114 Stiglitz, Joseph/Charlton, Andrew (2005) *Fair Trade for All – How Trade Can Promote Development*, Oxford: Oxford University Press.

a gender perspective to trade policies means to prioritise the rights and the needs of disadvantaged groups, in particular poor women.

A precondition for enforcement of women's rights and needs in trade relations is ensuring women's voices in trade policies. However, there is a notable absence of democratic participation of women's groups in trade policymaking in both the EU and India. One of the emphases made in the EU Communication on Gender Equality and Women's Empowerment in Development Cooperation¹¹⁵ published in 2007 stresses gender mainstreaming in "political dialogue". In India a broad-based policy dialogue between activists from the women's movement, feminist scholars and the government, the planning commission and, in particular, 'soft' issue ministries was established from the late 1980s onwards. However, still there is a striking absence of women's voices in trade policies, and no inter-ministerial consultations have been set up to link trade and gender policies. While in India and the EU business representatives are increasingly involved in shaping trade rules and are becoming partners in political decision-making, civil society organisations are rarely included in stakeholder consultations. Including women entrepreneurs is not a good enough representation of Indian women.

In India, the delinking of business and trade negotiations from democratic oversight by elected representatives has gone so far that the government of the day feels free to ratify FTAs without the approval of Parliament. This is completely antithetical to the principles of transparency in negotiations and an oversight by democratically elected institutions that is a precondition for a just, sustainable and people-centred trade system.

This paper has argued that accelerated liberalisation of trade and investment cannot be a solution to the persistent problems of poverty, social inequality and gender injustice in India. Inclusion of very limited gender concerns cannot turn unequal and asymmetric trade relations into a just, development-oriented and gender-sensitive trade regime. The EU's Global Europe strategy, with its principle of reciprocity, is not conducive to setting up a regime of fair trade rules that would support development objectives and enforce human and women's rights. The competitiveness-driven bilateral FTA limits India's policy space and tools to protect weaker sections in the market, including poor women.

Hence, this paper supports civil society organisations' call in India and the EU to

115 European Commission (2007) *Communication on Gender Equality and Women's Empowerment in Development Cooperation*, Brussels: European Commission, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0100:EN:HTML>.

immediately halt the negotiations of the EU-India FTA. If equality and social justice are indeed key concerns, as repeatedly affirmed by political leaders in the EU as well as in India, they should prove their good faith by agreeing to review EU-India trade relations in partnership with democratically elected institutions and civil society organisations. This is a historic opportunity for both partners to make a u-turn in the direction of trade policy and establish the rights and needs of people, rather than corporate interests, as ultimate benchmarks.

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