

To
The Director General,
World Trade Organisation
Camp Abu Dhabi, UAE.

Madam,

Sub: Memorandum by Swadeshi Jagran Foundation at 13th Ministerial Conference of WTO at Abu Dhabi

Swadeshi Jagran Foundation, an accredited non- governmental organisation from India wishes to submit its memorandum to your Goodself relating to the following issues:

1. Ultra-virus Plurilateral agreement

We understand that a plurilateral agreement, Investment Facilitation for Development Agreement (IFA) is being pushed to be added in the WTO framework, which is ultra-virus as per the constitution of WTO, as per the Marrakesh Agreement. Swadeshi Jagran Manch (SJM) resolutely opposes attempts to illegally add the IFA to the WTO at the ongoing 13th Ministerial Conference of WTO in Abu Dhabi.

We stand in solidarity with our Indian and South Africa delegation, who have strongly opposed the addition of this agreement to the WTO. We wish to highlight that the present attempt of the WTO secretariat at the behest of certain global powers, including China, is completely illegal. There are several legal issues involved in the process of adding IFA as a plurilateral agreement to Annex-4.

First, it is our considered view that the IFA does not qualify as a ‘trade agreement’ under Article X.9 of the Marrakesh Agreement. The IFA does not include any substantive provision related to trade. We completely reject the proposition that the IFA is a “trade agreement”.

Second, the request to add the IFA into the WTO can come only from Members that have fulfilled their domestic procedures to sign and ratify the IFA, and for which the agreement has entered into force. As the IFA has not yet entered into force for even a single party, the request to add it into the WTO is ultra-virus. Such a request can be made only after the IFA enters into force, and not before that.

Third, negotiations on the IFA were initiated without a multilateral mandate. This was contrary to the long-held practice of the WTO to take decisions by consensus, and prevented Members from examining whether issues related to investment facilitation are trade-related or not. Attempts at adding the IFA to the WTO ignores the reality of illegality of initiation of the underlying negotiations.

Considering these legal infirmities mentioned above, we firmly oppose integrating the IFA into WTO at MC 13. We call upon the WTO Membership to respect the legal requirement that the IFA can be added to the WTO exclusively by consensus. A rules-based WTO cannot ignore its own rules and go ahead with this China-led initiative.

We further note that there is nothing in IFA that will help developing countries to attract foreign investment. In reality, it is a charter for protecting the interests of foreign investors. It

strengthens multinational corporations to lobby against new laws that they oppose, giving them rights that we don't have as citizens. Finally, there is no provision for special or differential treatment in the IFA.

Further, we wish to emphasise that inviting foreign direct investment is the prerogative of a sovereign, which cannot be and should not be diluted or tempered with any international agreement, as it would be encroaching upon the rights of the legislature or in other words, people of the sovereign nation.

There seems to be sinister designs behind the intent, content, and structure of the proposed agreement. This is also apparent from the fact that in the garb of creating global standards for investment facilitation measures, they want to deprive the sovereigns from the rights of regulating and monitoring FDI in their respective territories.

Though, the promoters of the agreement are claiming that agreement will not restrict the parties to regulate FDI in the public interest within their territories, but it is contradicting itself because the agreement includes provisions such as 'Most Favoured Nation' (MFN) treatment and impartial administrative procedure for investment from all member countries. This can be explained by an example that post Dokolam conflict, India has put certain restrictions on FDI from all the countries which share their borders with India, mandating permission of investment through 'approval route', in place of 'automatic route'. With this measure, India could restrict investment from a country which was at war with India. If we allow this agreement, we shall be deprived of any such freedom to safeguard our respective interests.

It is being observed that IFA has been pushed by China and more and more signatures consenting the proposal have been obtained by arm twisting of the small nations participating in Border Road Initiative (BRI). It is no secret that through BRI, China is giving effect to its infamous 'Debt trap' diplomacy with its expansionist strategy. Through its debt trap diplomacy, China has been able to snatch away key strategic assets and locations from BRI participating countries and is increasingly becoming threat to global security and peace.

Therefore, SJM earnestly believe that IFA needs to be blocked lock, stock, and barrel in the interest of global peace.

2. Proposed Fisheries Subsidies Agreement is against small fishermen

The WTO along with developed nations is trying to push ratification of fisheries subsidies agreement. Though, the real issue is the depletion of fisheries and other ocean resources and endangered future availability of the fish for the mankind on sustainable basis. This can be achieved only by disciplining big corporates undertaking fishing at deep sea with mechanised vessels. However, the issue has now been shifted to the ratification of the Agreement by two third of the membership of WTO, pushing the discipline on real culprits of depleting ocean resources, that is, developed countries, at the back burner. It is being said that first let the agreement be enforced and the issue of imposition of discipline on those responsible for depletion of fisheries resources, shall be taken up later. It is no secret that the developed countries are responsible for depleting ocean resources that after exhausting their own waters, their big vessels, with the support of the subsidies given by their respective governments, are exploiting deep sea resources in distant waters. It is notable that according to data from

OECD Fisheries Subsidy Estimates (2014-16) and the FAO yearbook, Fisheries and Aquaculture Statistics, 2016, Denmark provides subsidy of \$75,578 per fisherman, Sweden \$65,979, New Zealand \$36,512, UK \$2,146, and India provides subsidy of hardly \$15 per fisherman. Therefore, they need to commit withdrawal of subsidy for their deep-sea fishing activities.

In 1974 only 10 percent over-fishing was taking place, today over-fishing has extended to 34 percent. The United Nations' concern about the extinction of marine resources is justified, but the measures being adopted by the World Trade Organization for this purpose are not going to solve the problem, it will rather harm the livelihood of the small fishermen of the world. Due to the continuous decrease in availability of fish, the livelihood of people living in coastal areas has been adversely affected and their poverty is increasing.

Today about 50 crore people in the world depend on fishing, and they account for hardly 40 percent of total fishing. Big companies which are very small in numbers, undertake substantial fishing in the deep sea, due to which the fishery resources in the oceans are gradually disappearing. There are no clear-cut restrictions on the subsidies given to overfishing by developed countries to the companies that own these fleets.

Though, no doubt, there is a need to put a full stop to the illegal, unregulated, and unreported (IUU) fishing by countries like China, our small fishermen in no way responsible for any alleged IUU fishing. Therefore, question of imposing any discipline on them, does not arise.

SJF urges upon you to not encourage any such move by the developed countries, directly and indirectly, to bring about a consensus on disciplining those who are the real villain of depleting ocean resources, for the sake of future generations. On the one hand we need strong disciplines on those who are responsible for overfishing and overcapacity which the text now being negotiated does not offer. On the other hand, we must ensure we have full flexibility up to the EEZ for supporting fishing, in keeping with our rights under UNCLOS. We must have full and permanent exemption for subsidies for small fishers. There cannot be any dilution of this provision in forthcoming fisheries subsidies negotiations.

3. Rights of Global Poor cannot be compromised for food security and permanent solution on public stock holding is need of the hour

As per the official briefing by the WTO Secretariat, the issue of support for public stockholding (PSH) for food security continued to remain the bone of contention. The Cairns Group of countries (net exporters of food grains) were seen as blocking the permanent solution which was agreed upon in 2013, 2014 and 2015.

In 9th MC at BALI in December, 2013, a decision on public stockholding for food security purposes was taken. Members agree to put in place an interim mechanism and to negotiate on an agreement for a permanent solution applicable to all developing countries. It was also decided in 2014 that until a permanent solution is found, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism. This is known as 'Peace Clause'. Since, it is the right of India and other developing countries to get permanent solution for public stockholding under this agreement, the efforts to block the same is highly deplorable.

There is also an urgency to intensify efforts to get the reference period changed from 1986-88 till the time permanent solution is achieved along with change in criteria of 'eligible production' to 'actual procurement'.

In addition, SJF urges to make your best efforts for getting the permanent solution by bringing public stockholding for food security into Green Box, which is a category of subsidies which are not subject to any restrictions under the WTO agreement on Agriculture.

Swadeshi Jagran Foundation calls upon you to understand the rights of global poor for food security; first condition of which is ability to have sufficient public stock holdings to save people from hunger and malnutrition. We further wish to emphasise that there is no reason for WTO to object to measures taken by the sovereign governments to safeguard the interests of their respective populations. If the developed world continues to block permanent solution to public stock holdings issue, there is no relevance of WTO and we may be forced to give a call for exclusion of agriculture from WTO, as was the case with its predecessor, that is General Agreement on Trade and Tariffs (GATT).

4. Moratorium on e products must end

Since 1998, WTO members have periodically agreed not to impose custom duty on electronic transmissions of digitizable goods which is also known as 'moratorium on electronic transmission'. The decision was taken at that time in the background that e-commerce was in nascent stage and its full potential in increasing the trade was yet to be assessed.

Imposition of tariff on electronic transmission will be the first condition for success in fourth industrial revolution, namely, digital industrialisation by the developing countries in general and Bharat in particular and to block the monopoly of developed countries and digital monopolisation by tech-giants, which is already taking an ugly shape. The surging trend in digitisation of greater number of products, especially increasing percentage of 3D printing of manufactured goods is showing further losses of tariff revenue.

We wish to put on record that current moratorium on custom duty on electronic transfer is extremely against the interests of developing countries in general and India in particular. This is not only impacting job creation in electronic sector, but also the revenue generation. Therefore, we strongly recommend you to work towards ending this moratorium on imposing custom duty on e-transmission.

Thanking you,

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