Third World Network - TWN

STATEMENT AND INPUT ON TRADE AND INTELLECTUAL PROPERTY RIGHTS

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The trade chapter of Financing for Development is not only a key systemic issue but is perhaps one of the most cross-cutting issue areas with finance, technology, financing flows as well as external debt and the international monetary system.

I will address three key issues, which are:

1. Bilateral Investment Treaties/Investor-State Dispute Settlement System

2. Integrating sustainability – as it relates to Intellectual Property Rights

3. Ensuring adequate policy space in trade rules for industrial development

1. BITs/ISDS

The FfD Elements paper recognizes that trade and investment agreements are not aligned with sustainable development policies and plans; calls for a commitment to human rights impact assessment of all trade and investment agreements and amending investment treaties to address shortfalls in investor-state dispute settlements, while safeguarding the right of the state to regulate.

a. The severity of development challenges imposed by bilateral investment treaties and free trade agreements is acutely highlighted by the **investor-state dispute settlement mechanisms**. The investor-state-dispute-settlement clause allows transnational corporations to sue governments in closed-door arbitration cases for extraordinary financial sums. This phenomenon is freezing public interest policy regulation worldwide.

This fundamentally challenges Sustainable Development: More than 50% of these cases are in the area of natural resources threatening access to clear water and air, land, and preventing environmental sustainability and conservation. They also disproportionately punish women and children, indigenous and local communities, and the elderly.

b. Some Bilateral Investment Treaties and investment chapters under Free Trade Agreements prohibit **capital account regulation and management,** even in the context of financial crises, where many countries experience rapid capital outflows: This vital instrument to safeguard economic and social stability should maintain its inclusion in the Elements paper as a cross-cutting financial regulation and trade issue.

c. The **TRIPS (Trade-Related Aspects of Intellectual Property Rights)** plus provisions in BITs and FTAs include such measures as data exclusivity, patent term extension, ever-greening and enforcement measures. These measures are used to tighten and increase Intellectual Property standards, which push smaller and cheaper producers in developing countries out of production while also raising costs of essential medicines and health care, agricultural inputs and therefore food prices.

While these treaties and agreements are supposed to both protect foreign investors and benefit recipient countries, the World Bank and various other experts have found that there is little correlation between having an investment treaty and increased investment.

Thus, we call for:

- A comprehensive **review of all trade agreements and investment treaties,** and in particular the investor-state dispute settlement mechanism, to identify all areas where they may limit developing countries' sovereign right to carry out key regulations, including the ability to prevent and manage crises, regulate capital flows, protect the right to livelihoods and decent jobs, enforce fair taxation, deliver essential public services and ensure sustainable economic and social development.

2. Integrating sustainability – Intellectual Property Rights

The FfD Elements paper includes the following strong language on intellectual property rights: "Strengthen public interest exemptions under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) for health and technologies for climate change mitigation and adaptation."

Intellectual property regimes should be consistent with and contribute to the SDGs; not the other way around. Integrating sustainability in Financing for Development requires addressing the international regime of Intellectual Property Rights. Clean and renewable technologies and knowledge need to be accessible to developing countries.

Indeed, developing countries need transfer of technology and exemptions or amendments to intellectual property rights rules in order to be able to develop their own technologies, products and services related to sustainability.

Without such cooperation on technology and intellectual property rights, ‘sustainability’ may risk becoming a proxy for developing countries increased dependency on technology imports and purchases.

Thus, we call for:

- A **review of all intellectual property rights regimes** that have been introduced in developing countries through FTAs, ----- as well as the Technology Bank already called for by many developing countries.

3. Ensuring adequate policy space and an enabling international environment for industrial development is vital in order to create diversified, employment-generating and value-added domestic economies.

a. All of today’s industrialized economies have used infant industry protection to industrialize. The possibility of using **infant industry protection** should be recognized in the World Trade Organization process on non-agricultural market access.

b. The WTO Agreement on Trade-Related Investment Measures (also known as TRIMS) prohibits the use of **local-content requirements** in national production processes, another key tool for industrial development.

c. Another fundamental tool to achieve value addition is **export taxes on raw materials.** FTAs often ban export taxes, and the WTO has been discussing proposals to introduce such a ban as well.

The third Financing for Development conference can play a critical role in the road toward a fair, differentiated and development-oriented international trade system by addressing such structural constraints to the right to development in its trade chapter.