REPORT
APWG SYMPOSIUM 2013
TRADE, INVESTMENT AND HUMAN RIGHTS IN ASIA

GROUPE DE TRAVAIL ASIE-PACIFIQUE

ASIA-PACIFIC WORKING GROUP

Un groupe de travail du CCCI
A working group of CCIC

April 16, 2013
Ottawa

The **Asia-Pacific Working Group (APWG)** is one of three geographic working groups of the Canadian Council for International Co-operation. It brings together NGOs, faith-based organizations, unions and solidarity groups from across Canada that have a specific interest in development, social justice, and human rights in Asia. The APWG's purpose is to improve the impact of participating groups through collaborative reflection and analysis, including input from southern partners, and through the coordination of policy development, dialogue and learning.

The APWG gratefully acknowledges the financial support provided by its member organizations and by the International Development Research Council (IDRC) for the organization of this Symposium on *Trade, Investment, and Human Rights in Asia*.

This Report on the 2013 APWG Symposium has been produced with the help of four student volunteers: **Matthew Gumley, Laura Pinkham, Matthew Pal, and Roshelle Ann Wee Eng**. The APWG is grateful to these students for providing the summaries which were used to prepare this report.

AGENDA | APWG SYMPOSIUM 2013
TRADE, INVESTMENT AND HUMAN RIGHTS IN ASIA

09:10–10:30	**Keynote address**
	Sanya Reid Smith | Third World Network **Impacts of Trade & Investment Agreements on Human Rights in Asia**
10:50–12:00	**Panel 1 - Canada's Trade and Investment Agenda in Asia: Are There Potential Benefits for Asian Populations?**
	Denis Côté | Canadian Council for International Co-operation **Overview of Canadian priority countries and priority sectors in Asia**
	Daniel Poon | North-South Institute **The China Development Model and Canada's Trade/ Investment in Asia**
12:00–13:30	**Lunch and networking**
13:30–15:00	**Panel 2 - Human Rights Concerns Associated with Canada's Increased Trade and Investment in Asia**
	Ah Nan | Burma Rivers Network **The Human Rights Impacts of Fast Increasing Investments in Burma**
	Stuart Trew | Council of Canadians **The Trans-Pacific Partnership and the Canada-China Investment Agreement: A View from Canada's Largest Citizens Organization**
15:20–16:30	**Asian People Mobilization against the Negative Impacts of Trade and Investment Agreements**
	Afsar Jafri | Focus on the Global South **Resistance in India and Beyond**
16:30-16:45	**Concluding remarks**
	David Bruer | Inter Pares | Chair of the APWG

— KEYNOTE ADDRESS —

SANYA REID SMITH

Third World Network

Impacts of Trade & Investment Agreements on Human Rights in Asia

** Summary report by:*
Matthew Gumley (University of Guelph)

Sanya Reid Smith opened the Symposium with a discussion on the effect of trade and investment on human rights in Asia. Ms. Smith discussed how the World Trade Organization (WTO), Bilateral Investment Treaties (BIT's), and Free Trade Agreements (FTA's) often impose obligations on developing countries which affect their capacity to uphold even the most basic of human rights.

World Trade Organization

The WTO determines the obligations of its members through rules that are strictly enforced. Failure to comply may result in legal action taken at the level of international investment tribunals and in economic sanctions. Intellectual property rights are one area which can serve to illustrate the negative impacts of WTO rules on human rights. For example, copyrights on textbooks - a form of intellectual property – are enforced over a period up to 50 years under the WTO and these long-term restrictions can have serious consequences on countries forced to continually import expensive textbooks in order to provide education to their population. In least developing countries in particular, these financial barriers are a significant threat to the right to education. Other intellectual property rights, like patents on medicine, affect the realization of the right to health for low-income families. For example HIV/AIDS medication - which had been patented for up to 20 years under the WTO - was eventually monopolized by the producer of the medicine and set at unaffordable prices. Developing countries with high incidence of HIV/AIDS were therefore unable to provide even the basic right to health to their population. Under rules intellectual property rules, members of the WTO also face difficult obligations regarding investment in agriculture and services.

The countries in the process of joining the WTO - many of which are Least Developed Countries (LDC's) - face some of the most substantial obligations. Given that their access to the WTO is contingent upon the approval of all existing members, these countries can be asked to adjust any and all restrictions or regulations on foreign investment. Bhutan, for example, will likely be required to liberalize its markets in the same way in which Cambodia, Vietnam and Laos were required to do so a few years ago. It is worth noting that for many developing countries, the collection of tariffs on imports can account for as much as 75% of their total budget. Thus the liberalization of markets imposed on countries wanting to access the WTO may significantly reduce state revenues and social spending.

Bilateral Investment Treaties

There are over 3000 BITs in effect around the world today. Generally, BITs protect the rights of the foreign investor and show no concern for the protection of human rights. Some of the protected areas involve the creation of factories, intellectual property rights, current/future profits and market-share, and much more. Two of the main principles promoted through these treaties include those of *fair treatment,* which requires a standstill on laws and regulations in the host country; and *expropriation*, which may be used to hold a government accountable for declining profits on investment.

Under BITs, foreign investors are provided with the authority to pursue legal action against a host country though international investment tribunals. For example, when Ecuador decided to end a deal with an oil company after it was determined that the investor had broken the law, the oil company successfully managed to sue Ecuador for 1.8 Billion USD in damages (or 2.4 Billion after compound interest) on the grounds that the country broke their agreement. Unfortunately, due to the increasing costs associated with such high-profile legal battles, many developing countries can often not even afford to appeal against these types of lawsuits.

Given the legal ability of BIT's to restrict the power of the host country, states' obligation to promote the realization of human rights may become significantly compromised. In Uruguay, the right to health was compromised as result of a BIT between the country and cigarette-manufacturer Philip Morris. Philip Morris sued Uruguay for billions of USD arguing that the placement of larger warnings on cigarette packages affected their future profits. In Bolivia, it was instead the right to water which was ultimately affected after the precious resource was privatized to a foreign investor. As the cost of water quickly increased by nearly 200%, Bolivia decided to cancel the agreement arranged under the BIT as its high costs greatly strained access to water. The foreign investor sued, albeit unsuccessfully, resulting in unnecessarily expenditure on legal fees. Additionally, there are a multitude of cases illustrating how BITs affect labour rights, women's rights, and indigenous rights in developing countries.

Free Trade Agreements

FTAs require the removal of tariffs and other trade barriers. The opening of markets, however, often has grave consequences for human rights. For example, foreign banks entering a developing country under a FTA are less likely to provide financial services to smaller clients as it costs them more in transactional fees, choosing instead to negotiate with wealthier clients. This inhibits the access of women, which are already inhibited in many developing countries, to their right to credit. In the sector of intellectual property rights, developed countries have requested even more protection under FTAs compared to what the WTO offers. The United States for example, in the negotiations around the Trans-Pacific Partnership (TPP), have requested increased patents on medicine, longer lasting patents, and even 5-year monopolies on medicine if the patent is not yet created. This would result in a dramatic increase of the costs of medicine which, in the case of a country like Vietnam, would severely restrain access to medicine. Also, these FTAs are negotiated under secrecy, which hinders the right to information.

Discussion Period

Following the keynote address, there was a brief discussion period. Prompting the discussion was a question on the manner in which we observe trade agreements and how we have come to understand the development process itself. Often trade agreements include provisions to democratize or to take steps to ensure societal change. While these provisions may benefit developing countries involved in these trade agreements, they are not always intended so altruistically. Rather, they are intended to force the country to adopt economic practices which are beneficial to investors.

Another participant commented on the positive areas to look at regarding trade and investment. Specifically, how negotiating pressure is being built against the so-called "bullies" of the foreign trade world. The response to this included mention of historical trade negotiations between Thailand the United States as well as South Korea and the US. In both countries, popular opinion weighed out over political power and in each case the US was unable to finalize trade agreements due to increasing backlash. On the topic of resource nationalism, Brazil took a separate approach than most other countries and has *never* agreed to a BIT. They maintain, despite this fact, a high level of foreign direct investment exemplifying their ability to conduct trade agreements on their own terms.

A discussion than took place around the possibility of investing in new business models which, similarly to the non-profit model, would exist solely to benefit the disadvantaged. For example, they might focus on ensuring that a specific medicine remains without a patent, so that it is more freely available to people with low income.

— PANEL 1 —

CANADA'S TRADE AND INVESTMENT AGENDA IN ASIA: WHAT ARE THE POTENTIAL BENEFITS FOR ASIAN POPULATIONS?

DENIS CÔTÉ

Canadian Council for International Co-operation

Overview of Canada's Trade and Investment Agenda in Asia

** Summary report by: Laura Pinkham (University of Ottawa)*

Free trade agreements (FTAs)

At present, Canada has concluded nine free trade agreements but none of these agreements are with Asian countries. Nonetheless, Canada participates in ongoing trade negotiations with several Asian countries including India, Japan Singapore, and South Korea. Some negotiations are stalled like those with Singapore and South Korea. In the case of South Korea, while negotiations began in 2004-2005, thirteen rounds of negotiations have not been fruitful yet. An impasse on a number of issues but perhaps most importantly is the issue that one of Canada's key bargaining chips is preferential trade access to the United States. As South Korea has recently reached a trade agreement with the United States, the deal with Canada may be less of a priority. Canada's influence on trade agreements is thus strengthened when Canada can offer preferential access to the United States market. Thus Canada's current focus in terms of trade negotiations in Asia revolves around two specific deals. The first one is the negotiation of the Trans-Pacific Partnership (TPP), which Canada joined last year. The second is the deal with India: seven rounds of negotiations have been completed since 2010, and Canada would like to conclude this agreement by the end 2013. Additionally, formal exploratory talks between Canada and Thailand were announced in March 2013.

Foreign investment protection agreements (FIPAs)

A FIPA is a bilateral investment agreement aimed at protecting and promoting foreign investment through legally-binding rights and obligations. Thus in addition to trade agreements, Canada also seeks to sign FIPAs with Asian countries. Worldwide, Canada has 24 FIPAs that already came into force, two of them in Asia (with the Philippines and Thailand). Canada has already concluded negotiations with China and is negotiating new FIPAs with Indonesia, Vietnam, Mongolia, Pakistan and Kazakhstan.

DANIEL POON

North-South Institute

The China Development Model and Canada's Trade/ Investment in Asia

** Summary report by:*
Laura Pinkham (University of Ottawa)

The China development model is different than the model proposed by the Washington consensus. While the latter advocates privatization and the promotion of foreign direct investment, the Beijing model is both pragmatic and gradual. It emphasizes incremental reform and experimentation with policy process, export led growth, accumulation of foreign exchange, and a degree of authoritarianism. Lessons and advice from advanced economies are considered with extreme caution. Chinese policy-makers' promote an iterative and modest approach due to their attention to risk.

Further, China never relinquished control over the inflow and outflow of its capital account. China's fixed exchange rate enables the government to ensure more stable FDI flows and allows policy control over both monetary policy (interest rates) and fiscal policy. Free capital flows, as encouraged by the Washington consensus, is countered by the Beijing model where free capital flows is not assumed as a good. China's development success is rooted in its ability to design national plans and fund them without relying on foreign investors which typically will not support government intervention.

China's approach consists of 5 instruments to achieve economic growth and development:

- Creating markets and driving demand (energy consumption targets)
- Financing (domestic financing of domestic firms through grants and concessions)
- Infrastructure (incentives and subsidies)
- Support for domestic factories (domestic content requirements)
- State owned enterprises

China also presents opportunities for emerging economies:

- China does not impose significant conditionality as Western countries do, such as tied aid and conditions on labour.
- China invests in uneconomic sectors. For instance, in 2010, China spent $22 billion to build oil refineries in Nigeria as the country relied on imported refined fuels.
- Create the foundation for the economy to generate revenues to pay for social programs.
- China negotiates sensitive sector provisions. China gives partner governments latitude to shield certain sectors from Chinese competition.
- Trade agreements with China tend to be flexible.

Discussion period

China offers "sweeteners" like value-added processes to trade agreements. For example, in Zambia, China invested in copper to support the sector. Additionally, Chinese policy makers are actively improving their behavior and image. Chinese investments extend beyond mining and include infrastructure and development.

China is setting economic foundations for 'what could be'. An alternative approach is one that starts with ensuring political and civil rights without economic rights. However, this approach tends to leave all rights unfulfilled. In China, high levels of unemployment could have led to the corruption of civil and political rights. For example, judges can be bought off with inadequate economic development. In contrast, once the economic welfare of the general population is lifted to a certain level, it allows for the enforcement of judges. With this economic foundation in place, civil and political rights can then be ensured.

— PANEL 2 —

HUMAN RIGHTS CONCERNS ASSOCIATED WITH CANADA'S INCREASED TRADE AND INVESTMENT IN ASIA

AH NAN

Burma Rivers Network

The Human Rights Impacts of Fast Increasing Investments in Burma

** Summary report by: Roshelle Ann Wee Eng (University of Ottawa)*

Despite the recent changes, conflict and displacement still continues in ethnic areas in Burma. There are many foreign investment projects in the country that are located in ethnic and highly politicized area, but the development dividends from these investments are not felt. 90% of the newly generated electricity in Burma goes to its neighboring countries. Most people in Burma still live without electricity.

International mining companies have been lining up to invest in Burma. However, the country's mining law is still weak. Under the current law, all the minerals belong to the State and thus, there is no protection of ownership and little benefits to community stakeholders and individuals. Also, there are currently no law or legal mechanisms enforcing the mining law. In this regard, local rights are subject to abuses. All the revenues derived from mining go to the central government. However, there is no transparency and so there is no knowledge how these revenues are reallocated. The Burmese army also benefits from this law as they have a large share in many mining operations throughout the country.

A new mining law is being drafted. However, its focus is to attract more foreign investments. For example, foreign firms are allowed 100% ownership for up to 50 year leases on the mines. Other impacts of the development projects, especially on human rights, should be considered such as land confiscation, disappearance of religion and cultural heritage, loss of livelihoods, and environment destruction. Concerns on the drafting of the new mining law process have also been raised. For example, there are no publicly available Environmental and Social Impact Assessments. No compensation is given for relocation and loss of community livelihood. And most importantly, there is no legal framework to protect the local people.

Without a political solution to ethnic conflicts, investment will not bring sustainable development. Therefore, what is recommended for the current investors and policymakers is to refrain from investing in large-scale extractive operations in ethnic areas until there is a legal framework ensuring fair rights and benefits for local communities; and to encourage political dialogue among stakeholders in order to bring the stability that will foster and secure foreign investment in Burma.

STUART TREW

Council of Canadians

The Trans-Pacific Partnership and the Canada-China Investment Agreement: A View from Canada's Largest Citizen Organization

** Summary report by:*
Roshelle Ann Wee Eng (University of Ottawa)

Free trade has generally been assumed to be positive in terms of economic and human development. However, the negative impacts of free trade should also be considered. There has been an increase in economic inequality and no substantial economic effect has been felt. For example, the quantity of Canada's exports with the US has remained the same since the signing of NAFTA. The quality of trade has also decrease as more raw resources are being traded as compared to the high value added products. People who are benefiting from these trade agreements are the multi-national companies, the global elite, and patent and copywriters, while the vast number of people are losing. In this light, one should think twice in agreeing to a free trade agreement.

Harper's government trade priorities run along the same liberal perspective framework. One priority is to find new export markets to important sectors such as beef and grains. Another priority is to increase the competitive advantage for Canadian mining companies in other countries by socializing the risks pertaining to the resistance to Canadian mining due to environmental measures. What is dangerous with free trade is that there is no going back on liberalization -- it only has one direction and that is not good for development.

What are Canada's NGO perspectives of the upcoming trade agreements? Canada can provide positive contributions through an intellectual and policy role. It is argued that Canada is joining the new trade agreements for defensive reason rather than profits. Canada has to be there to protect its corporate shares it has with NAFTA. In terms of procurement, services, and investments, trade agreements can limit what the government can do. Trade agreements limit government spending and can increase spinoffs. What the civil society can do is to present cases against these agreements and galvanize public debate. For example Europe, despite having a larger water privatization scope, has not agreed with maximum coverage. The same should be considered with Canada's trade agreements.

The Canada-China Foreign Investment Protection Agreement (FIPA) increases Canada's chances to be challenged. Canada is already the 6th most challenged country in the trade regime and investors will have more tools to challenge the country's sovereignty. Even though Canada can fight for limitations and reservations in certain chapters, this may be a lost because since it might not even be accepted in trade tribunal. In addition, FIPAs may conflict with the constitutional rights of the First Nations. In this light, treaties should be placed under a microscope and thoroughly examined.

Therefore, it is important to think of different alternatives to the situation. First, these proposed trade agreements are an opportunity to start lobbying against investor-state dispute settlements. Second, states should not negotiate trade and investment agreements in secrecy: these issues should be discussed upfront.

Discussion period

To resist free trade agreements, organizations should link and cooperate with each other with the common goal of protecting Canadian public interest. Another solution is to allow more cooperative trade agreements such as the barter system where countries share what they have in abundance. This is a different aspect of development and trade that we should consider.

It is easy for the governments to sign these investment agreements now. However, it will be hard for them to get out of it in the long run if they want to. What is needed is to find a possible way to temper these treaties and to allow future governments to pull out with no consequences and engage in meaningful reduction of negative trade impacts on livelihoods and human rights.

— CONCLUDING PRESENTATION —

AFSAR JAFRI

Focus on the Global South

Asian People Mobilization against the Negative Impacts of Trade and Investment Agreements: Resistance in India and Beyond

** Summary report by:*
Matthew Pal (Norman Paterson School of International Affairs)

Focus on the Global South does research and policy work and works on development issues, such as trade; land forest and water; agriculture and food security; climate change and intellectual property. It is linked to farmers' groups in India, including many that are against the use of genetically modified organisms (GMO) in agriculture.

Although much of the story presented at the symposium has been depressing, things are not all bad. Mobilization against the proposed India-EU free trade agreement (FTA) has enjoyed great success—at the most recent meeting in Brussels, the signing of the FTA was stalled and no conclusion was reached. This was due to the efforts of Indian civil society groups that worked very hard in opposition of the meeting, in the face of support for the FTA by the Indian Prime Minister, who has been pushing for an agreement.

Prime Minister Singh promotes neoliberalism and the mandate he has given to the trade ministry is to prioritize an agreement while giving little consideration to consequences. India is currently negotiating FTAs with the EU, Canada, Israel, Australia, New Zealand, and 30 other countries. The secrecy of these negotiations is a problem—unlike WTO negotiations, no drafts of Indian FTAs are made available to the public. Furthermore, trade deals are never discussed in parliament; none of India's 29 states are consulted on FTAs; and FTA negotiations are not covered by the Right to Information Act, meaning details are never disclosed outside of occasional leaks from European civil society groups and European negotiators.

Another concern is that although the government maintains that agriculture is not part of trade negotiations, evidence suggests that it is. The impact of previous Indian FTAs on the agricultural sector has been negative. The signing of the India-Sri Lanka FTA, for example, removed quantitative restrictions on agriculture, which led to a high level of agricultural imports that hurt farmers when the price of peppers and other crops fell to a third of the pre-FTA price. The same effect was seen in the edible oils sector. India was 98% self-sufficient in edible oils production in early 90's, but the removal of duties and restrictions combined with the rise of state monopolies led to soybean, coconut, and palm oil dumping in India. By 2002, India became 50% dependent on edible oils imports.

In spite of the negative history of FTAs in India, the government is going forward with FTAs with Japan, South Korea, Canada, and others, all initiated within the last three years. The India-Canada FTA centers two key issues: agricultural imports and mining. India imports pulses from Canada, but Canada has almost 100% GM Canola, soybeans and corn. In contrast, India has stringent biosafety laws and a moratorium on Bt. Brinjal. A number of reports have indicated that India is not ready for GM and that there needs to be biosafety laws to protect the Indian environment and farms. If India were to sign an FTA with Canada, it would be inundated with GM foods, risking contamination of non-GM crops, as has happened in Sri Lanka. Intellectual property laws would have an effect here as well, as farmers will lose the right to exchange and replant seeds if seed patents are enforced.

Mining is a serious issue in India due to the desire of foreign companies to invest in mineral-rich areas and the fact that mineral resources are concentrated in areas where there is a large population of indigenous people. This tension has spawned large protests by local people, leading the government to form a paramilitary force called Green Hunt, the objective of which is to kill tribal people that are opposing the development of the mining sector. Large-scale mobilizations have taken place against South Korean and British mining companies, and if Canadian companies start exploiting these resources, human rights issues will spread further still.

An India-Canada FTA also poses problems in the financial sector and in infrastructure, where India is inviting investment of US$1 trillion, which Canadian companies are interested in. Investment disputes and public procurement are prominent issues as well. When the Indian government allowed foreign bids on public food procurement, domestic procurement went down dramatically. In fact, Australian multinationals even procured wheat from Indian farmers and then sold it to the Indian government at a premium price. Experiences like these are why so many in India are opposed to free trade deals.

The question is: who gains from FTAs in India? Several reports say India is not gaining—countries signing the FTAs with India are winning while India is losing. Thailand, ASEAN, Singapore, South Korea, Malaysia, and Japan are the winners. India's trade deficit has increased as a result of these deals. Yet in spite of all this, the government is going forward with a host of FTAs.

Consequently, resistance against the trade agenda is spreading. India has a diverse tradition of vibrant dissent with relation to trade agreements, dissent that ties into a broader global movement. Civil society mobilization against the WTO was successful in preventing the most recent round of WTO negotiations from finishing. Similarly, the fact that Indo-EU negations started in 2007 but have not yet finished is a success. Similarly in South East Asia, progress on an ASEAN-EU FTA has also stopped.

A host of networks exist in India to oppose these FTAs. Via Campesina is very active throughout Southeast Asia and in India and has successfully mobilized large numbers of people against the FTAs. At the global level, struggles in India are part of a campaign against the WTO called Our World Is Not For Sale. "No deal is better than a bad deal" is the position of these organizations with respect to trade agreements. Leftist groups, trade unions, and NGOs are the key figures in an 'Indian peoples Campaign against the WTO' that includes supporters across the political parties, with the exception of Congress and right-wing parties.

Another key source of resistance to the India-EU FTA came from HIV positive people and others suffering from illnesses who spend a large amount of money on medicine. These people depend on generic medicine, and have requested that India not sign an FTA with the EU. Support for this movement has come in from all over the world where people rely on cheaper generic medicine, much of which is produced in India. Over 80% of HIV medicines used by Doctors Without Borders comes from India, and is produced at a fraction of the cost of similar medicine in Europe—many people will not survive without access to these cheaper drugs.

Retailers are also opposed to FTAs. Once multinational retailers are allowed to enter the Indian market, hawkers and small retailers will find themselves unable to compete and eventually unemployed. Indian businesses in the banking and insurance sector oppose the FTAs for similar reasons.

One successful strategy adopted by the coalition has been working with parliamentarians. Forum against FTAs, of which Focus on the Global South is a member, wrote to the Member of Parliament heading up a parliamentary standing committee on commerce tasked with reviewing the FTA and asked to meet with the Forum members. After doing so, the MP wrote a letter that was widely published telling the Prime Minister that there is no hurry to sign a trade deal when the Parliamentary committee is reviewing the FTAs and that any deal must be reviewed by parliament. This broadened support for greater scrutiny of FTAs in India. Similarly, by publishing open letters to the Prime Minister, the coalition has gained the support of farmers and food security groups that oppose agricultural imports.

By sending out press releases, organizing press conferences, mobilizing MPs, and working with a broad array of left-wing parties, the coalition has achieved a number of meaningful successes. Going forward, the long-term strategy is to form a parliamentary forum on FTAs and to ensure that parliament must ratify all FTAs.