

## Multiple RIAs: Breeding complexity

**In many cases, membership to multiple RIAs creates conflicting obligations, which complicate and dampen trade prospects**

Two regional treaties signed early this year hold much significance for South Asia. The first is SAFTA that SAARC member states signed in January. The second is BIMSTEC FTA that Nepal, Bhutan, India, Myanmar, Sri Lanka and Thailand signed in February. There is overlapping membership between the two FTAs. India, Nepal, Bhutan and Sri Lanka are members of both the FTAs. While SAFTA does not include Thailand and Myanmar, BIMSTEC FTA excludes Bangladesh, Pakistan and Maldives.

Globally, many countries are members of more than one regional integration arrangement (RIA). Probably, the most extreme example is the EU, in which each member is also a member of EU agreements with EFTA countries (the European Economic Area Agreements), most Mediterranean countries (the Euro-Med agreements), and East European countries (the Europe Agreements). Another example is that of Chile, which is a member of 11 different RIAs. Now that most South Asian nations have joined that bandwagon, it becomes imperative to answer the question, "How would overlapping membership impact or affect the trading system in South Asia?"

In many cases, membership to multiple RIAs creates conflicting obligations. In the South Asian context, while the actual modalities of both the FTAs are yet to be finalised, the respective framework agreement makes it evident that the targets and the depth of integration are different. BIMSTEC FTA is much more than mere FTA as it encompasses broad economic integration by including services and investment, whereas SAFTA deals only with trade in goods. Besides, while SAFTA aims at bringing tariffs to 0-5 percent level, BIMSTEC FTA seeks complete elimination. These differences, among others, are likely to bring complexities in the concurrent implementation of these FTAs.

Among the more obvious challenges for

the simultaneous implementation of these FTAs relate to the sensitive list and trade amongst countries that are members of both the FTAs. First, both the FTAs have a provision to maintain the sensitive list. Given the difference in tariff targets, there is every chance that the products under the sensitive list under the two FTAs would differ. In such a case, how would trade amongst countries that are members of both the FTAs be carried out?

Secondly, it is obvious that each individual country would want to protect its domestic market. In trying to do so, countries that are members of both the FTAs may seek protection under the FTA that best serves their interests. In essence, how would it be determined as to which FTA would prevail when trade is carried out amongst members of both the FTAs?

At worst, contradictory obligations may warrant exclusions, which will only add to the confusion.

Besides, securing full gains from an RIA may require considerable government commitment – for example, tackling the difficult issues of deep and wide integration – and membership of overlapping RIAs may be a diversion from this. The challenge is to improve their customs

administration to ensure that officials understand not just the prevalence of one FTA over the other but also the complex rules of origin requirements that are likely to vary under the two FTAs. The challenges are more profound for the two LDCs – Bhutan and Nepal.

Membership to multiple RIAs may as well hinder private sector decision making. Such multiple membership may even induce non-transparency and complicate business environment. Worse, there are inconsistencies, which can only create uncertainty, and thus dampen trade prospects. Unless negotiations under SAFTA and BIMSTEC FTA are carried out concurrently by ensuring that contradiction does not occur, complications are bound to surface. ■



## INSIDE

Gap between aspirations and actions	02
Millennium targets: Shifting the goalpost	03
South Asia: Policies global, initiatives local	04
Revitalising the Bangkok Agreement	05
Roadmap on S&DT and implementation	06
Nepal becomes 147 <sup>th</sup> WTO member	07
South Asia in post-MFA era	08
Who is Zoellick fooling?	09
Bangladesh to move WTO against India	10
Compulsory licensing: Kick-starting real ...	11
Agreement on SPS Measures	12
Agreement on Technical Barriers to Trade	13
Advocacy and capacity building on...	14
Commentary on Nepal's draft competition bill	15
No need to fear MNC competition	16
LDCs failing to attract FDI	17
Earth Day 2004	18
The intricate trade-environment relation	19
Will 'water' privatisation ensure ...	20
Competition advocacy and education project	21
Training of economic journalists	22
Afro-Asian Seminar: Run up to UNCTAD XI	23
Assuring gains from trade	24



SOUTH ASIA WATCH ON TRADE, ECONOMICS & ENVIRONMENT

Post Box No. 19366  
254 Lamtangeen Marg  
Baluwatar, Kathmandu, Nepal  
Tel: 977-1-4415824/4444438  
Fax: 977-1-4444570  
E-mail: sawtee@sawtee.org  
Web: www.sawtee.org

Published with the support from Novib and FES  
For private circulation only.  
Contributions and letters are welcome.

## Gap between aspirations and actions

**“All elements of society need to work much more effectively if we are to meet the goals by 2015; no one group on its own can achieve the goals”**

A comprehensive report released on the eve of the World Bank's spring meeting in Washington has concluded that the world community is simply not doing nearly what it could and should do to tackle poverty, war, ignorance and disease. A team of over 40 experts from around the world, overseen by a distinguished steering committee, has concluded that governments, international organisations, business and civil society are engaging in only about one-third of the effort necessary to realise the Millennium Development Goals (MDGs).

The first annual report of the World Economic Forum's Global Governance Initiative (GGI) represents a year-long independent analysis by seven groups of some of the world's leading experts in the areas of peace and security, poverty, hunger, education, health, environment and human rights. In

September 2000, at the UN Millennium Summit, leaders from 189 countries endorsed a set of objectives in these areas, many with a specific deadline of 2015. This report provides a 'benchmark' on efforts to tackle these goals.

As well as comprehensive analysis, the report also marks efforts by the international community on a scale of 0 to 10 on such issues as poverty, health, hunger, security, education, the environment and human rights. The report finds that during 2003 in no single area did the international community warrant more than a score of four on a scale of 0 to 10 measuring the level of effort and cooperation necessary to achieve the goals.

The report highlights a number of disturbing trends. For example, the proportion of hungry people is likely to increase in the Middle East, sub-Saharan Africa and South Asia. At least 96 countries are not on track to reach the target of universal primary education by 2015, and 104 million children are not even enrolled in primary school. Financial donors have fallen short in providing the US\$ 300 million necessary to sustain commitments under the Fast Track Initiative, which is a global effort to spur real progress on education.

There is also little evidence that the world is making any serious effort to curb greenhouse gas emissions, despite the fact that they can harm agricultural production, water supply and forests, and lead to vector-borne diseases. Although 12 percent of the Earth's

land surface is now ostensibly protected, the world is spending less than US\$ seven billion a year to make that protection meaningful, compared to the over US\$ 30 billion needed to properly implement protections.

In a number of areas, however, substantial progress is visible. In health, the Roll Back Malaria campaign has tripled international spending to more than US\$ 200 million and has led to cost-effective technologies and greater investment in basic infrastructure. Aggressive domestic policies and private initiatives have helped a number of countries move toward halving their poverty levels by 2015. China, in particular, made significant strides by increasing fiscal spending on poverty reduction and launching food-for-work programmes. Little noted in 2003 was the positive sign that no new civil wars broke out, indicating an improvement in the international community's conflict resolution and prevention capabilities.

Achieving success in other areas, however, will require the world's rich countries to match their verbal commitments with resources and action. Of particular concern, notes the report, was that the Cancun negotiations failed to agree on a framework to open markets to agricultural products from the developing world, leaving them at a continuing disadvantage.

Commenting on the findings, Richard Samans, Managing Director and Head of the World Economic Forum's Global Institute for Partnership and Governance said, "This is the first year that we have produced such a report, and although the 'headline' findings are disappointing, it does at least point the way to how improvements can be made. We hope that this report will become a benchmark against which the international community can begin to measure their success or failure in dealing with the fundamental problems of the world. The report shines an independent spotlight on the large gap between our collective aspirations and actions."

The GGI uniquely evaluates the contributions of the private sector and civil society in addition to governments and international organisations toward achieving the goals. Sir Mark Moody-Stuart, Chairman of Anglo American Plc, commented, "All elements of society need to work much more effectively if we are to meet the goals by 2015; no one group on its own can achieve the goals."

Indeed, in order to achieve human dignity for all, internationally agreed targets must be considered simultaneously and through coordinated strategies, which identify the different responsibilities of all actors in society. ■

*(Adapted from the Press Release of World Economic Forum, 21.04.04)*



**Financial donors have fallen short in providing the US\$ 300 million necessary to sustain commitments under the Fast Track Initiative**

# Millennium targets: Shifting the goalpost

Millennium targets are likely to become yet another set of "broken promises", warns Navin Dahal

The Millennium Development Goals (MDGs) are numerical and time bound targets that express key elements of human development. They include halving income poverty and hunger; achieving universal primary education and gender equality; reducing under five mortality by two thirds and maternal mortality by three quarters; reversing the spread of HIV/AIDS; and halving the proportion of people without access to safe water. These targets are to be achieved by 2015, from their level in 1990.

The Millennium Declaration updates many of the development goals originally set, and not met, for the year 2000 and reformulates them for the year 2015. The UN has been setting development goals since the first "Development Decade" in the 1960s.

Many question the feasibility of the MDGs. As most of the global targets are easily set but hardly met, there are no compelling reasons to believe that the MDGs will be a detour from the past. If we are to go by the progress on the MDGs so far, reasons are not enough to believe otherwise.

In developing countries, the average proportion of people living on less than US\$ one a day declined from 30 percent in 1990 to 25 percent in 1999. The simple extrapolation of this trend will indicate that the world is on track to halving poverty by 2015. Unfortunately, most of the global progress was due to the rapid decline in Asia, particularly China. Progress in Latin America and the Caribbean, sub-Saharan Africa, and the Middle East and North Africa combined, was merely a tenth of what was required to meet the agreed target. Global poverty projections will be valid only if they are based on country specific projections.

In 1990, the goal was set to provide basic education to all children by 2000. Sadly, the 1990s saw progress to the extent of only a fifth of the global target. The goalpost has now been shifted to 2015, but this promise will not be kept if progress does not accelerate two folds between 2000 and 2015.

If the global trend of the 1990s were to continue at the same rate until 2015, the reduction in the under five mortality rate will just be about one quarter, far less than the agreed target. Meeting the target requires that the rate of reduction increases more than five folds between 2000 and 2015, an extremely unlikely scenario.

In 1990, the target was set to halve the proportion of malnourished children by 2000. Data show that moderate and severe underweight declined from 32 percent to 28 percent respectively. Thus, only one quarter of the promise was kept. To meet the target, the current rate of progress will have to increase three folds.

In 1990, target was set to halve maternal mortality by 2000. In developing countries, the

proportion of births attended by skilled health personnel increased from 42 percent to 53 percent. If we look at the proportionate change in maternal mortality rate and percentage of births attended by skilled health personnel, this was just a third of the agreed target. Not surprisingly, the goalpost has been changed to reduce the maternal mortality ratio by three quarters by 2015. But the current rate of progress will have to increase three folds to meet the target.

AIDS is now the most serious threat to human development in many developing countries and the leading cause of death in sub-Saharan Africa. Globally, no progress has, however, been made towards reducing HIV prevalence among people in the developing countries.

In developing countries, the coverage of improved drinking water sources increased from 71 percent in 1990 to 78 percent in 2000 - far short of the goal set in 1990 to reach universal access to safe water by 2000. Not only has the goalpost been moved to 2015, the new target has been lowered from universal coverage to halving the proportion of people without access to safe water.

Why are the promises not being kept? Many reasons account for this and are often country specific. But one reason that stands out virtually in all countries is under investment in basic social services. Experience of high achieving countries such as Botswana, Costa Rica and Republic of Korea shows that a minimum of 20 percent of the national budget has to go to basic social services. However, developing countries with an average 12-14 percent of the national budget spent on basic social services fall far short of the requirement.

Given their financial constraints, official development assistance (ODA) to the poor countries is indispensable to enable them to increase spending on basic social services, and ultimately achieve the MDGs. It is, however, disheartening that ODA dropped from 0.33 percent of the combined gross national income of developed countries in 1990 to 0.22 percent in 2000. It now stands at less than one third of the agreed target of 0.7 percent.

In 2001, Nelson Mandela had asked, "Will legacy of our generation be more than a series of broken promises?" If the declining ODA is a testimony of "global partnership for development", the MDGs will become yet another set of "broken promises". ■

(Mr Dahal is Research Director at SAWTEE)



*It is disheartening that ODA dropped from 0.33 percent of the combined gross national income of developed countries in 1990 to 0.22 percent in 2000*

## South Asia: Policies global, initiatives local

**“There is no point to a globalisation that reduces the price of a child’s shoes, but costs the father his job”**

Globalisation is a buzzword of today’s world. Encouraged by market friendly state policies such as liberalisation, deregulation and withdrawal of the state from economic activities etc., it has the biggest potentials as well as greatest obstacles in terms of poverty reduction and overall development. However, as Joseph E Stiglitz, a Nobel Prize winner in Economics, in one of his writings on *Social Dimensions of Globalisation*, views, globalisation has not only failed to live up to its positive potential, but has also contributed to social distress.

Indeed, if we observe the impacts of globalisation on countries with different status, we find that the development gains of globalisation have not reached among poor regions and their poverty-stricken populations. For many poor countries, while its advantages are too distant, its risks are too real. South Asia is a glaring example.

The globalisation process in South Asia was initiated to enhance internal and external competition, privatisation and trade liberalisation. By the late 1980s, a majority of South Asian countries adopted a more outward-oriented development strategy. What have been the results then? A recent UNESCAP report reveals that more and more communities are being displaced from traditional lands, forests, watersheds, eco-systems and means of livelihoods because of privatised property regimes, export-oriented growth strategies, and the destruction of traditional safety nets. Clearly, the region has not benefited from globalisation, particularly in terms of reducing poverty.

One may, however, argue that before blaming globalisation for the devastating consequences, the region’s initial conditions prior to globalisation should be considered. In the pre-globalisation period, the region was characterised by high population growth rates, high levels of illiteracy, poor health attainments, pervasive poverty and inequitable distribution of income and assets. Therefore, given the evidence of high human derivations prior to globalisation, there is no point to blame globalisation for all the negative consequences on the poor. However, whoever argues with this logic must not ignore the fact that due to globalisation, there have been considerable differences in the state policies that affect poor. Therefore, if globalisation cannot be blamed solely, it is not sacrosanct either.

Based on this argument, let’s observe where do South Asian countries stand in the global race for globalisation. Out of 62 world economies that contribute 96 percent of total world GDP and are home to 84 percent of total global population, the latest Globalisation Index released by the Foreign Policy Magazine ranked Pakistan at 46, Sri Lanka at 51, Bangladesh at 56 and India, the largest economy of the region, at 61. While Pakistan moved six positions

up from last year’s ranking, Bangladesh, India and Sri Lanka moved one, four and six positions down respectively. This clearly means that the South Asian countries are finding it hard to secure the development gains from globalisation, particularly in terms of poverty reduction.

For example, despite India having managed to reduce its poverty-stricken population by 20 million during 1990-1997, poverty started increasing after 1997 as the country accelerated its globalisation process, mainly to comply with WTO rules. Since long, the Indian government has stopped making public its poverty figures but it has been estimated that the number of people living below the poverty line in India has increased by 19 million during 1997-2002. This means an average increase of almost five million people a year. It is interesting to note that increase in poverty in India occurred during the period when the country registered its highest ever GDP growth.

Similarly, Pakistan reduced poverty from over 40 percent in 1960s to 18 percent in 1988. However, poverty almost doubled during the 1990s. The increase was more pronounced after Pakistan joined the WTO. The poverty trend is still increasing despite steadfast reform process initiated a decade back. Surprisingly, Pakistan is the most globalised country in South Asia in the Globalisation Index but has registered the highest increase in poverty as well. The cases of Nepal and Bangladesh are more or less same. Increasing poverty still remains a major challenge to their development efforts.

Globalisation has offered gains to those who were already better off and who had the ability to access the opportunities that arise from this trend. However, it has left lower-end and primary producers, workers and cash-poor rural and urban communities much more vulnerable than before. They have to compete for income, services, and opportunities in new, unequal and unpredictable markets without protection against the risks that new conditions bring. This is one of the reasons why poor are continuing to be poor in the region. Take the case of India. The lives of the educated and rich have been enriched by globalisation. Due to advancement of information technology, the educated and rich people have benefited but the benefits have not reached the majority of rural poor.

The South Asian economies are becoming increasingly global but the initiatives from their governments, private sector, and other socio, economic and political institutions are still local. Furthermore, none of the existing global institutions (for example the WTO) provide adequate democratic oversight of global markets or redress basic inequalities between countries. Indeed, as mentioned in an ILO report, “There is no point to a globalisation that reduces the price of a child’s shoes, but costs the father his job.” ■



# Revitalising the Bangkok Agreement

**New membership combined with the outcome of the revitalisation process will surely allow the Bangkok Agreement to move closer to realising its true potential**

Asia's one of the oldest preferential trade agreements (PTAs) between developing countries, signed in 1975 as the Bangkok Agreement, has so far failed to produce the desired results. Trade amongst its member countries has not been much encouraging. Nonetheless, member countries are putting in efforts to make the Agreement more fruitful, and are planning major reforms, through what can be touted as the 'revitalisation exercise'.

Revitalisation of the Bangkok Agreement, if plans run smooth, should begin during the first session of the Agreement's Ministerial Council slated to be held in July this year. Ministers of the member countries are likely to: a) sign the amended version of the Agreement; b) chart the future course of the Agreement; c) announce the conclusion of the ongoing third round of trade negotiations and launch a new round; and d) even consider the entry of some countries as new members.

Apparently, high importance is now being accorded to the pioneering Asian PTA, which originally comprised Bangladesh, India, Republic of Korea, Lao People's Democratic Republic and Sri Lanka, and which was later acceded by China in April 2001. Obviously, one question arises - "Why has the interest on the Agreement suddenly surged?"

First, the increased interest in boosting the PTA is because of China's entry. Established at the initiatives of UNESCAP, which serves as its secretariat, the Bangkok Agreement is presently the largest PTA in the world in terms of population coverage. The Agreement covers a total population of 2.5 billion.

Secondly, many countries are beginning to view the Bangkok Agreement as the only true regional PTA

in Asia. Taking into account only its current members, it is also the only truly 'regional' trading arrangement in Asia-Pacific, since membership spans various sub-regions. It is the only PTA linking the three major regional economies of China, India and the Republic of Korea. The PTA is now looked upon as having great potentials to develop into a forum for region-wide cooperation in trade and related issues. Because membership to the PTA is open to all developing countries in the ESCAP region, many are looking forward to becoming a part of it.

Thirdly, in all likelihood, the Bangkok Agreement would transform into an FTA sooner or later. And when that happens, the Agreement would father a formidable market. That partly explains why many countries, which have participated in different meets under the PTA as observers, are showing interest to join it. Among them include, Cambodia, Mongolia, Iran, Fiji, Thailand, Indonesia, Malaysia, Bhutan, Nepal and Pakistan.

Fourthly, observers view that the Bangkok Agreement has the potential to strengthen trade linkages between East and South Asia, and serves as a bridge linking these sub-regions with other sub-regions. In fact, the PTA is already playing a bridging role for some countries to access other countries' market. One of the examples is that of India getting preferential market access to China. Likewise, Nepal formally applied for membership of the group in a strategic move to gain access to the Chinese market.

New membership combined with the outcome of the revitalisation process will surely allow the Bangkok Agreement to move closer to realising its true potential. As discussions on cooperation on other matters such as non-tariff barriers (NTBs) and services eventually commence, region-wide integration in trade will strengthen. Indeed, the framework for a region-wide trade agreement is already to be found in the Agreement.

Notwithstanding the potential benefits, there are impediments as well. Several constraints can be identified in the Agreement, which have undermined the potential benefits of the Agreement. Very little has so far been done to promote intra-regional trade. Besides, the lack of vision, limited coverage of products and unattractive nature of tariff concessions, existing NTBs for trade among member countries, and absence of sectoral cooperation and direct measures for trade expansion, among others, are some of the major impediments. These obstacles need to be addressed and done away with. Hopefully, the revitalisation process will try and do away with such impediments as well. ■

## MFN tariff rates and tariff range negotiated under the Bangkok Agreement

Country		MFN tariff	Tariff range for BA	Percent reduction
Bangladesh		5-37.5	0-33.75	10-60.5
China	General	0-37.5	0-33.0	0.40.0
	Special	2-33.3	0-5.0	0-100.0
India	General	20-35.0*	15-35.0	0-71.0
	Special	5-35.0	5-30.0	**
Rep. Korea	General	0-40.0	0-22.5	0-50.0
	Special	0-10.0	0-6.0	0-50.5
Sri Lanka	General	0-25.0	0-22.50	0-50.0
	Special	5-25.0	25-21.0	14.2-50.0

\* There are two extreme cases where existing rates are 50 percent and 40 percent

\*\* Some of the special tariff concessions are higher than MFN rates

## IMF to help countries hit by trade woes

The IMF recently offered extra funding to governments that face balance of payments shortfalls due to trade liberalisation, hoping it will help to revive stalled trade talks.

The IMF said the Trade Integration Mechanism (TIM) was not a new lending facility but would provide additional funding to countries already under IMF loan programmes whose export markets may be hurt by changes in trade policies in other countries.

The TIM is designed to mitigate concerns among some developing countries that their balance of payments positions could suffer, albeit temporarily, as multilateral liberalisation changes their competitive position in world markets.

Hans Peter Lankes, who heads the IMF's trade policy division, said the fund had developed the new trade mechanism because of concerns by smaller countries about the value to them of a Doha settlement. He said there are also concerns about the phasing out of quotas in textile trade at the end of 2004 under the Uruguay Round or that cuts in agricultural export subsidies could increase food prices.

According to the IMF, there are about 10 possible low income candidates and 18 other developing countries that may be eligible for the TIM. Among the LDCs, it named Malawi, Mauritania, Cambodia, Bangladesh, Maldives, Haiti, Cape Verde, Sao Tome and Principe, Tanzania and the Comoros. Other possible candidates are Mauritius, Albania, Fiji, Nicaragua, Tunisia, Morocco, Dominican Republic and Belize.

Such countries would have to implement policies to adjust to the changes and would be able to request help under the TIM. The IMF expects only a modest rise in its own financing for the TIM.

The TIM money would not cover balance of payments needs but would be made available to central banks to soften the impacts of lower exports as their governments adjust (*Reuters*, 15.04.04). ■

## Roadmap on S&DT and implementation

On 5 April, a group of developing and least developed countries circulated a submission on the Doha work programme on special and differential treatment (S&DT) and outstanding implementation-related issues – the former dealing with specific flexibilities in the rules for developing countries and the latter referring to a broader group of issues stemming from perceived imbalances in the Uruguay Round Agreements.

The sponsoring countries, including Bangladesh (on behalf of the LDC Group), India, Indonesia, Mauritius (on behalf of the African Group) and Trinidad and Tobago (on behalf of the Africa, Caribbean, Pacific states), called for, *inter alia*, "a clear roadmap with specific benchmarks to fulfil the mandate on the outstanding implementation issues and S&DT issues in a time bound manner...". According to the submission, "hardly any progress" has been made on these issues post-Doha. Thus, the submission called for them to be addressed "on a priority basis".

Ministers in Doha had agreed that a report on the S&DT mandate "with clear recommendations for a decision" would be completed by July 2002. Eighteen months and three missed deadlines later, discussions on S&DT continue. Implementation-related issues, for their part, were to be addressed in two paths: i) under the mandate given for those issues where a "specific negotiating mandate" was provided for in the Doha Declaration itself; and ii) "addressed as a matter of priority by the relevant WTO bodies". By mid-2003, only a few implementation issues to be resolved post-Doha had seen forward movement and in July the same year, the job of finding a way around the impasse was given to the Trade Negotiations Committee (TNC) and its Chair, WTO Director General Supachai Panitchpakdi.

In that regard, Supachai announced on 17 July 2003 that discussions on certain implementation issues would resume, with some continuing under the auspices of the TNC and others returning to subsidiary bodies for further technical work (*BWTND*, 08.04.04). ■



Since the Cancun failure, the IMF and the World Bank set out to convince countries of the benefits of open markets as an engine of economic growth

## Stronger than expected growth spurs modest trade recovery

Propelled by higher than expected economic growth in Asia and the US, world trade recovered at an increased rate in 2003, and could expand further in 2004 should the global economy continue to improve, according to the WTO's latest figures.

A 2.5 percent increase in global output in 2003 spurred world trade to recover by 4.5 percent. While this growth was stronger than expected a year ago after the outbreak of severe acute respiratory syndrome (SARS) and the build-up of tensions in the Middle East, trade and output expansion in real terms in 2003 remained below the average rates recorded since 1995.

However, WTO economists say that with global GDP growth expected to reach 3.7 percent in 2004, world trade could expand by 7.5 percent in 2004, although there are a number of risks associated with these projections – including the possibility of slower than expected import growth in the US and a faltering in demand recovery in Western Europe.

In 2003, Asia and the transition economies were

the regions recording the most dynamic trade performance. Their merchandise exports and imports expanded in real terms (i.e. adjusted for price changes) between 10 percent and 12 percent, more than twice as fast as world merchandise trade.

China's imports expanded by a remarkable 40 percent in nominal dollar terms (i.e. not adjusted for price changes) while its exports expanded by 35 percent, unprecedented levels of expansion for a country with such substantial trade volume.

But Western Europe and Latin America recorded weak real import growth – the weakest in fact of all regions – at less than two percent, reflecting the sluggishness of their economies.

For the third successive year, US import growth exceeded the world average. This buoyancy has been a significant factor in mitigating sluggish world trade growth over the last few years. However, US import growth continues to exceed export growth, further widening the trade deficit (*www.wto.org*). ■

## US to spike preferential trade status

The USTR is considering the withdrawal of preferential trade privileges to Bangladesh following its failure to extend its national labour law in its export processing zones (EPZs).

According to USTR statement issued on 13 April in Washington – “The government of Bangladesh does not provide freedom of association or the right to collective bargaining to workers in its EPZs.”

Bangladesh had given a long-standing commitment that it would extend these labour rights on 1 January 2001 to the EPZs. However, it had failed to do so.

The USTR committee studying the matter is now seeking public comment on appropriate measures before issuing a final policy recommendation.

The USTR began reviewing Bangladesh’s failure to apply legislation protecting workers’

rights following a 1999 petition from the American Federation of Labour - Congress of Industrial Organisations (AFL-CIO), requesting that the country’s preferential trade status be withdrawn, suspended or limited.

At a recent review meeting, the Generalised System of Preferences (GSP) subcommittee of the Trade Policy Staff Committee (TPSC) considered whether to withdraw, suspend or limit the duty-free treatment accorded to imports from Bangladesh on the grounds that the latter has not implemented long-standing commitments to the US on its labour laws issue.

Bangladesh receives duty-free access to US market on certain export items under the GSP, which is designed to boost exports from developing countries. In 2003, Bangladesh had more than US\$ 15 million worth of exports to the US that were eligible for duty-free treatment under the GSP, according to the USTR statement ([www.hindustantimes.com](http://www.hindustantimes.com)). ■

*The USTR is seeking public comment on whether or not to retract preferential treatment to Bangladesh*

## Nepal becomes 147<sup>th</sup> WTO member

Nepal became the 147<sup>th</sup> member of the WTO on 23 April. On 24 March 2004, the Nepalese government notified the WTO that the process of ratification and acceptance of the Protocol of Accession had been completed. According to established practice, the entry into force of the Protocol occurred 30 days later – on 23 April 2004.

Nepal is the first LDC to complete the cumbersome accession procedure by adapting its trading system after complex negotiations with WTO member countries. Nepal completed five rounds of tough bilateral negotiations with existing WTO members and three rounds of Working Party meetings (*See the table on major commitments that Nepal has made for becoming a member of the WTO*).

Prior to Nepal’s formal accession, the WTO had 29 LDC members. All these LDC members got their membership by virtue of the fact that they belonged to its predecessor, the GATT.

WTO membership of two LDCs, Nepal and Cambodia, had been accepted in principle by ministers from the 146 other member countries in September 2003 during the fifth Ministerial of the WTO in Cancun, Mexico.

Cambodia was actually set to become the 147<sup>th</sup> member. However, it requested the WTO to extend the deadline for

ratification, thus paving way for Nepal to precede WTO membership. Cambodia completed accession negotiations in 2003 but the process of ratification in Parliament is still pending.

Another 24 countries are in the process of negotiation to become members of the WTO. These are (arranged by the date of their application): Algeria, Russian Federation, Saudi Arabia, Belarus, Ukraine, Sudan, Uzbekistan, Vietnam, Seychelles, Tonga, Kazakhstan, Azerbaijan, Andorra, Lao People’s Democratic Republic, Samoa, Lebanese Republic, Bosnia Herzegovina, Bhutan, Cape Verde, Yemen, Serbia and Montenegro, Bahamas, Tajikistan and Ethiopia.

Vanuatu has completed the negotiations but no further action has been taken since the last meeting of the Working Party on 29 October 2001 (*TKP, 24.04.04 and www.wto.org*). ■

### Major commitments\* Nepal made for WTO membership

Measures	Initial offer (%)	Final offer (%)	Deadline
Agricultural tariffs	Average 51	Average 42	31.12.2006
Industrial tariffs	Average 39	Average 24 **	31.12.2013
Full implementation of TRIPS Agreement			31.12.2006
Full implementation of SPS Agreement			31.12.2006
Full implementation of TBT Agreement			31.12.2006
Full implementation of Customs Valuation Agreement			31.12.2006
Not to introduce export subsidy on agriculture			Accession date
Not to impose new TRIMS			Accession date
Zero tariff on information technology products			31.12.2008
Complete phasing out of other duties and charges (ODCs)			31.12.2013

\* Includes broad commitments made in 11 service sectors

\*\* Includes categorical commitment to reduce tariff peak on motor vehicle from 130 percent at present to 40 percent at the end of implementation period, implying an annual reduction of nine percent

*Adapted from various WTO sources.*

## South Asia in post-MFA era

**Will South Asia be able to defend so many adversaries with the only weapon - cheap labour, asks Md. Golam Robbani**

The million-dollar question now is: "What will be the post-MFA impact on the spectacular growth of textiles and clothing export of South Asia?" Candidly speaking, till date, the answer is clear to none. The impact of quota abolition will differ from country to country - because it was negotiated bilaterally, applied discriminatorily and was not imposed globally.

A large body of literature predicts an increase in global trade in the post-MFA era with varied impacts on different countries and regions. The common apprehension is that big countries might gain at the cost of small ones. Flanagan (2003) included Bangladesh, China, Hong Kong, India, Indonesia, Pakistan, Philippines, Korea, Sri Lanka, and Thailand in the group of countries seriously hit by the quota regime. Nepal was categorised as a country blessed by quota. Taking note that most of the South Asian countries are in the restricted list, one might argue that in the post-MFA era, these countries, except Nepal, should gain.

However, some developments of late, which could not be foreseen during the Uruguay Round, are emerging as new challenges to South Asian exporters. A number of factors are likely to be important in determining the new patterns of trade, affecting location and sourcing decisions in a quota-free world. Considering some key success factors, an assessment of the relative competitiveness of South Asia may be made. The table below summarises the factors, situations and the relative strength of South Asia.

A quick eyeballing to the table reveals that the main strength of the region is the low cost of labour. Fairly long learning curve in dealing with foreign buyers is an excellent asset. Although some countries have deficits in

textiles, others have surplus. On an average, the region is balanced with major inputs. On the negative side, there are some home-grown problems in individual countries - socio-political unrest in Bangladesh, Maoist insurgency in Nepal, Kashmir issue and religious/ethnic problems in India and Pakistan, and civil unrest in Sri Lanka - that are impediments to trade and investment. The most disadvantaged situation, however, is the distance from the market and discriminatory policies of the North. Backwardness in international marketing will appear another major challenge to the region.

Beginning 2005, "survival of the fittest" will be the rule of the game. Naturally, competition will intensify. Unbeatable textile giant China's accession to the WTO and recent entry of some low cost players in the market will aggravate the situation further. Enhanced cooperation among South Asian countries on textile and clothing can be a good option to create a common position, widen the market to attract more FDI and to enhance forward integration with world class textiles/apparel giants in the EU/US.

Now the big question remains: "Will South Asia be able to defend so many adversaries with the only weapon - cheap labour, which is indeed blunt due to low productivity?" All stakeholders, including business community, political leaders and civil society organisations (representing the weak and unorganised stakeholders) should come forward to address the issue. To accomplish this, commitment, strong political will and dynamic leadership are a must. ■

*(Mr Robbani is a PhD Fellow, United Nations University, Bruges)*

**The impact of quota abolition will differ from country to country - because it was negotiated bilaterally, applied discriminatorily and was not imposed globally**

### Assessment of the relative competitiveness of South Asia

Factors	Description	Strength of South Asia
Labour cost and productivity	Textiles and clothing is labour intensive.	Labour cost competitive, low level of productivity
Business climate and infrastructure	Business climate through stability, support services, and communication facilities. Infrastructure facilities like roads, highways and efficient ports.	Weak (except India)
Availability of raw material	Bangladesh, Nepal and Sri Lanka depend on imported raw materials.	Strong for India and Pakistan, weak for others
Learning curve	Exporting for last two decades, South Asian exporters have gained ample experience in the field of international business.	Very strong
Proximity to market (the US and the EU)	On average, shipping time from South Asia to the US is 28 days compared to two days from Mexico and Canada. A 20-day ocean voyage is equivalent to 16 percent tariff.	Very weak
Market access	Due to numerous regional integration arrangements, competitors are getting more preferential benefits than South Asia.	Weak

## Who is Zoellick fooling?

Is the US willing to work with the right spirit? History shows that it is not, argues Pradeep S Mehta

Bob Zoellick will never learn. Following closely on the heels of his EU counterpart Pascal Lamy, Zoellick was recently on a whistlestop tour of Asian capitals to push the Doha Round, and adding new words to the trade lexicon, each smelling of arrogance and bullying. At Tokyo, he warned that countries reluctant to push the global talks will be 'left out', as America cuts bilateral deals on its own. At Cancun, Zoellick spoke about the world being divided in the two camps of 'can-do' and 'won't-do' countries.

Who is Zoellick fooling? Soon after Cancun, the Free Trade Agreement of the Americas (FTAA) met at Miami to achieve nought. Brazil and Argentina did not go along. A recent meeting at Pueblo, Mexico also saw the two strong sides locking their horns over differences, which are too deeply entrenched. At Miami, the US wished to push investment, stronger IPR rules, etc, while Brazil pushed for agriculture. Brazil, the leader of G-20, did not show any appetite for tariff reductions within the proposed FTAA. Other bilaterals, which the US is pursuing are generally insignificant, save and except that with Australia.

Is the US willing to work with the right spirit of trade liberalisation? History shows that it is not. Just after the successful conclusion of the Doha Ministerial, the US brought about a new farm subsidy bill, which enhanced doles to the farm sector in the US by more than half. The steel tariffs issue, too, was a sign of increasing protectionism, though now relaxed under the domestic consumer lobby pressures. Similarly, the Byrd amendment, which distributed the spoils of anti-dumping and anti-subsidy rulings, has been struck down by a WTO panel, but is yet to be scrapped.

Indeed, Zoellick sent out a letter to all the WTO members in January urging them to move on the stalled Doha Round, and also made an offer to address export subsidies in farm goods. This letter merely reassures others that despite the US presidential elections, it is prepared to move ahead. But skeptics say that it is one thing to negotiate a deal and another thing to give it real effect, even when it is agreed. History is replete with examples of unkept promises. For example, in spite of a clear mandate to negotiate implementation issues at Doha, nothing was done during the whole of 2003.

Lately, the process issue at the WTO was also held to ransom by the US. New chairs were to be elected for the General Council (GC) and all subsidiary bodies, and it was not in favour of Japan taking up the GC chair. However, that bump has now been removed and things will move forward at Geneva. The new appointments has, however, signalled something for the opponents of Singapore issues, as no chairs have been appointed for these working groups. Except, that on trade facilitation, which is on the path of least resistance, the WTO Deputy Director General, Rufus Yerxa will continue to consult members.

Speaking about the process issue, Lamy has been repeatedly speaking about giving more powers to the

Director General (DG) of the neolithic WTO so that he can move contentious issues. But what he doesn't realise is that the WTO is about hard-nosed economic issues, and members will not provide any further powers to the DG. There is too much at stake.

The EU is also not covering itself in glory. True that it has a notorious record of protectionism in agriculture, it has been trying to deflect the same by bringing on board new trade-unrelated issues. Earlier, when agriculture negotiations were going on in the past, the EU had introduced the issue of animal-welfare standards. In a recent discussion paper released in February, which is yet to be adopted, the EU has proposed that countries should be allowed to ban imports from countries that did not share their

'national values and standards'. This will be a nightmare, if implemented, as it will be highly subjective and divide the globalising world further.

WTO rules do allow banning imports of goods under GATT Article XX on several grounds, such as health, safety etc, but the WTO jurisprudence also says that it should be tested on the grounds of 'necessity' and 'least trade restrictive'. Hormone-treated beef and genetically modified food are some examples of trade friction, as being against the consumer interest, have been quoted in this paper.

Be that as it may, both trading giants continue to come up with confidence-reducing measures, which vitiate the negotiating atmosphere at Geneva. Another such measure is challenging the role of UNCTAD in the trading system. Ever since the WTO came into being, UNCTAD's role as a negotiating forum has diluted. However, it has continued to be engaged in generating excellent analyses and providing advice to poor countries on trade negotiations.

In the run up to UNCTAD XI, to be held in Sao Paulo in June 2004, the US and the EU have suggested that UNCTAD's role be limited to providing technical assistance and capacity building. This would mean that the work of analyses will either be stopped or reduced. However, it is the developing countries, save and except few big ones, which have a very limited capacity to analyse and have thus been dependent upon UNCTAD et al.

Thus, the levels of confidence and trust in the trading system continue to be eroded. That will certainly have an adverse effect on moving the Doha Round. This is other than the fact that at Geneva, negotiators are often too immersed in the nitty gritty of negotiations, i.e., looking at even the commas, semicolons and full stops very carefully. Given this scenario, the parties will need greater resolve to move the agenda forward. That was the half-empty glass scenario. There is a half-full glass feeling too, as it is in the interest of all to move the Doha Round. If properly negotiated, benefits will also accrue to the developing world. In the words of the former GC chair and the Uruguayan Ambassador Carlos Perez de Castillo: "We are all blinking, but things can move only if we blink together". ■

(Mr Mehta is Secretary General of CUTS, Jaipur)



## WTO rejects India's claim

The WTO Appellate Body (AB) on 07 April reversed the finding of a WTO Panel in December 2003 and rejected India's claim that WTO rules do not allow to differentiate between developing countries.

India had challenged the EU's system of trade preferences for seriously drug-affected countries, also known as General System of Preferences (GSP) drug regime.

India argued that this regime discriminated among developing countries and was thus contrary to the WTO "Enabling Clause", which allows preferential and more favourable treatment to developing countries.

The AB has, nevertheless, found that the EU's current GSP drug regime is not based on objective and transparent criteria for the selection of the beneficiary countries. The EU will now examine the AB report in detail to consider its practical implications for EU legislation in this respect.

India had challenged the EU's GSP "Drug Arrangements" in 2002 claiming that they are inconsistent with Article I of the GATT 1994 (MFN principle) and are not justified under the Enabling Clause.

The WTO Panel on 01 December 2003 ruled that under the Enabling Clause and, in particular, the non-discrimination principle, identical tariff preferences have to be provided to all developing countries without any differentiation with the exception of LDCs and the so-called "a priori limitations" (graduation mechanisms).

A WTO Panel had taken the Indian viewpoint against which the EU filed an appeal on 08 January 2004. The AB report issued on 07 April reversed the Panel's finding that the term 'non-discriminatory' requires that identical preferences have to be given to all developing countries without differentiation ([www.europa.eu.int](http://www.europa.eu.int)). ■

## Bangladesh to move WTO against India

Bangladesh has decided to go to the WTO's Dispute Settlement Body (DSB) for a ruling on a long-standing trade dispute with India.

India has been imposing anti-dumping duties on the import of lead acid batteries from Bangladesh for more than three years.

This is going to be the first case under the DSB initiated by an LDC against a developing country and can potentially set precedent for other LDCs.

Bangladesh made the decision for seeking WTO ruling on the dispute in April, after the country's consultations with India on anti-dumping measures against its product failed in Geneva.

Bangladesh has already directed its mission to the WTO in Geneva to request for the panel regarding definitive anti-dumping measures that India had imposed on import of lead acid batteries from Bangladesh in March 2001.

Earlier, the Bangladesh mission to the WTO officially requested for consultations - the first step of dispute resolution - with the Indian mission to the WTO in a communique on 28 January this year. However, the consultations failed to produce anything substantial (*THT*, 08.04.04). ■

**The WTO Appellate Body rejects India's claim that WTO rules do not allow differentiation between developing countries**



## WTO reports decline in new anti-dumping investigations

The WTO Secretariat reported that in the period 01 July – 31 December 2003, 14 members initiated 115 anti-dumping investigations against exports from a total of 30 different countries or customs territories.

This represents a significant decline from the corresponding period of 2002, during which 18 WTO members had initiated 161 anti-dumping investigations. Forty six of the 115 initiations during the second semester of 2003 were reported by developed countries.

India initiated the most investigations during the second semester of 2003, 33, a significant decline from the 56 investigations it had initiated during the second semester of 2002. The US had the second highest number of initiations (21) during the second semester of 2003, up from 13 during the corresponding period of 2002.

Likewise, China reported 11 initiations, up from six during the corresponding period of 2002. Canada, Mexico, and Australia reported, respectively, nine, eight, and seven initiations each. The eight other members who reported initiations reported five or fewer initiations each.

China remains at the top of the list of countries subject to anti-dumping investigations, with 30 investigations initiated on its exports during the second semester of 2003, the same number as during the corresponding period of 2002.

The US, the European Communities, and Japan were next, with, respectively, 12, eight, and eight

investigations initiated on their exports in the second semester of 2003. India and Korea followed with seven each, while Chinese Taipei had 6 investigations initiated on its exports.

Twenty three other countries or customs territories each had four or fewer investigations initiated on their exports during the second semester of 2003.

The largest number (31) of investigations initiated during the second semester of 2003 involved products classified in the chemicals sector of the Harmonised System of Tariff Classification. India initiated 13 of its 33 investigations on products in that sector, followed by the US with 10, and China with four.

The second most affected sector was base metals, which includes iron, steel and aluminium products, with 29 investigations initiated. Canada initiated seven of its nine investigations in that sector, followed by Mexico and the US, with five each, and Australia and New Zealand with four each. The plastics sector accounted for 16 initiations, with India initiating nine, followed by China with three.

Sixteen WTO members imposed a total of 107 final anti-dumping measures against exports from 31 countries or customs territories during the second semester of 2003. This is a slight decline from the 113 measures imposed during the corresponding period of 2002. Developed countries imposed 23 of the 107 final anti-dumping measures in the second semester of 2003, a decline from 33 measures imposed during the corresponding period of 2002 ([www.wto.org](http://www.wto.org)). ■

## Compulsory licensing: Kick-starting real drug benefits

A South Asian position for compulsory licensing must balance the needs of the region's individual pharmaceutical production capacities, writes Faisal Haq Shaheen

Access, blame and compulsory licensing form the 'ABC' of international access to drugs and life saving medicines for many of the world's poor. Despite India's strong generic drug manufacturing capability and South Asia's collective ability to weather the storms of plagues, unfavourable climatic conditions, pollution, lack of sanitation and poor hygiene is leading to a deteriorating health situation in the region.

Many of South Asia's drug manufacturers are able to supply cheap and inexpensive drugs to their respective middle and lower classes. However, undermined by different economic and political constraints, there is lack of capacity in the development of new drugs to meet the needs of the global poor and serve the long term goal of drugs development.

In recent days, IPRs have become a cause for concern as the current regime requires significant up front investment to secure the rights and ability to produce drugs with the given formulation without fear of IPR infringement. A region-wide strategy may be needed to counter the management of intellectual property and the trend towards consolidation of patents within the research and development divisions of the US and OECD pharma lobby.

South Asia's public requires more holistically based medications that can treat stronger and tougher strains of local and imported diseases prevalent in polluted urban centres and vulnerable rural areas. Essentially, South Asians need a drug development and distribution strategy that is centred on their regional and district level needs as well as the divide between the rich and the poor.

The current Doha text on compulsory licensing restricts exports to nations unless they are absolutely without domestic drug capacity. Compulsory licensing is subject to a number of terms and conditions, including limiting distribution, marketing and supply, and ensuring transparency with regards to quantities supplied to each importing country. Such hurdles conflict with the spirit of the clause and may discourage generic manufacturers from supplying a poorer market. In cases such as India, generic manufacturers are being allowed to produce and export without the need for compulsory licenses until 2005. Once compulsory licenses are required, it will be the governments who will issue them and monitor exports in good faith. India, is one of the few nations in South and South East Asia capable of manufacturing and producing generic drugs, which leaves the rest of the region relying increasingly on expensive

imports from Japan or generics from India. In South and South East Asia, the LDCs have been granted the right to be exempt from pharmaceutical patents until 2016 at the earliest. While this removes them from the obligations under TRIPS, it makes sense for them to invest and collaborate with neighbouring states, which have the capacity to export under compulsory licensing.

An issue that surfaces in this scenario of being fully or marginally exempt from patent protection is that government resources are required to manage patents in an industrial environment that has not emphasised intellectual property in the past. Such resource allocation could again result in taking away from a spirit of technology transfer and intellectual property acquisition and sharing.

A South Asian position for compulsory licensing must balance the needs of the region's individual pharmaceutical production capacities by maintaining a regional strength in India's generic production. Investment in strong drug sectors to develop, patent and strategically grow the exploration of those drug formulations with a focus on providing for the needs of the local population is essential.

At the same time, local production needs to be encouraged so as to diversify the sector of drug manufacturers and providers who will be able to meet the region's future drug needs. Regional cooperation and a region-wide trade association that takes into account the needs and strength of the private sector (through entrepreneurial involvement), the public (through non-governmental and relief organisations) and government development agendas is key to meeting such goals.

There is a need for space and vision for intellectual property development within the region's drug and medications sector. Compulsory licensing may undercut a nation's infant drug producing sector if drugs are allowed from a larger trading partner such as India. However, the drug producing capacities of the Indian private sector are likely to be more closely aligned with any of its regional neighbours than drug manufacturers from the OECD. IPRs and the direction that drug development takes need to be made with the social needs of the public in mind. Essentially, the region needs a long term development focus that is concerned with the health of the country rather than market driven influences. Compulsory licensing can hinder or help that vision, depending on how regional and national stakeholders manage its implementation. ■

(Mr Shaheen is a visiting Research Associate with SDPI, Islamabad)



## Agreement on SPS Measures

The SPS Agreement encourages governments to establish national SPS measures consistent with international standards, guidelines and recommendations

In order to ensure that a country's consumers are supplied with 'safe' food and that the health and safety regulations are not used as an excuse for protecting domestic producers, the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures entered into force within the WTO system on 01 January 1995, the date when the WTO itself came into existence. The Agreement concerns with the application of basic rules for food safety and standards for animal and plant health.

The Agreement requires all countries to maintain measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. SPS measures can take many forms, such as requiring products to come from a disease-free area, inspection of products, specific treatment or processing of products, setting of allowable maximum levels of pesticide residues or permitted use of only certain additives in food. SPS measures - sanitary (human and animal health) and phytosanitary (plant health) - apply to domestically produced food or local animal and plant diseases, as well as to products coming from other countries.

The basic aim of the SPS Agreement is to maintain the sovereign rights of any government to provide the level of health protection it believes appropriate, but to ensure that such sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade.

The SPS Agreement, while permitting governments to maintain appropriate SPS protection, reduces possible unpredictability of decisions and encourages consistent decision making. It requires that SPS measures be applied for no other purpose than that of ensuring food safety and animal and plant health. In particular, the Agreement clarifies, which factors should be taken into account in the assessment of the risk involved. Measures to ensure food safety and protect the health of animals and plants should be based as far as possible on the analysis and assessment of objective and accurate scientific data.

The SPS Agreement encourages governments to establish national SPS measures consistent with international standards, guidelines and recommendations. This process is often referred to as "harmonisation". The WTO itself does not develop such standards. However, most of the WTO's member governments participate in the development of these standards in other international bodies. The standards are developed by leading scientists in the field and governmental experts on health protection and are subject to international scrutiny and review.

International standards are often higher than the national requirements of many countries, including developed countries, but the Agreement explicitly permits governments to choose not to use the international standards. However, if the national requirement results in a greater restriction of trade, a country may be asked to provide scientific justification, demonstrating that the relevant international standard would not result in the level of health protection

the country considered appropriate.

Due to differences in climate, existing pests or diseases, or food safety conditions, it is not always appropriate to impose the same SPS requirements on food, animal or plant products coming from different countries. Therefore, SPS measures sometimes vary, depending on the country of origin of the food, animal or plant product concerned. This is taken into account in the SPS Agreement.

Because SPS measures can so effectively restrict trade, GATT member governments were concerned about the need for clear rules regarding their use. There was a fear that SPS measures might be used for protectionist purposes.

The SPS Agreement was intended to close this potential loophole. It sets clearer, more detailed rights and obligations for food safety and animal and plant health measures, which affect trade. Countries are permitted to impose only those requirements needed to protect health, which are based on scientific principles. A government can challenge another country's food safety or animal and plant health requirements on the grounds that they are not justified by scientific evidence. The procedures and decisions used by a country in assessing the risk to food safety or animal or plant health must be made available to other countries upon request. Governments have to be consistent in their decisions on what is safe food, and in response to animal and plant health concerns.

SPS measures, by their very nature, may result in restrictions on trade. All governments accept the fact that some trade restrictions may be necessary to ensure food safety, and animal and plant health protection. However, governments are sometimes under pressure to go beyond what is needed for health protection and use SPS restrictions to shield domestic producers from economic competition. A SPS restriction, which is not actually required for health reasons, can be a very effective protectionist device, and because of its technical complexity, can also be a deceptive and difficult barrier to challenge.

Major criticism of the SPS Agreement is that the developing countries, in practice, face a great number of difficulties when using the Agreement. A few larger middle-income countries appear to see clear benefits from the Agreement while most countries do not possess the financial, human, and technical resources necessary to use it. Some countries, especially LDCs, are excessively burdened by the implementation costs of the SPS Agreement. ■

## Comparison of SPS and TBT Agreements

- Both Agreements encourage governments to establish national SPS measures consistent with international standards, guidelines and recommendations
- Both Agreements encourage governments to establish national SPS measures consistent with international standards, guidelines and recommendations
- Both Agreements encourage governments to establish national SPS measures consistent with international standards, guidelines and recommendations
- Under the TBT Agreement, governments are not obliged to notify other WTO members of proposed technical regulations, standards or conformity assessment procedures if they are appropriate due to geographical reasons
- Under the SPS Agreement, governments are not obliged to notify other WTO members of proposed SPS measures without any special circumstances
- The TBT Agreement does not require governments to impose technical regulations, standards or conformity assessment procedures for national security or deceptive practices
- The SPS Agreement does not require governments to impose SPS measures only to the extent that they are necessary to protect human, animal or plant health on the basis of available scientific information

## Agreement on Technical Barriers to Trade

The TBT Agreement contains a provision to base all standards and regulations on international standards

The Technical Barriers to Trade (TBT) Agreement tries to ensure that regulations, standards, testing and certification procedures that governments lay down for the reasons of security, health or the environment do not create unnecessary obstacles to trade. Work on reducing technical barriers to trade had begun during the Tokyo Round of GATT negotiations in the 1970s and a 'Standards Code' was adopted in 1979. The TBT Agreement was negotiated during the Uruguay Round (1986-1994) extending and improving on the Standards Code. The Agreement came into force with the establishment of the WTO in January 1995.

The standards and regulations are important as they facilitate their utilisation and widely accepted standards make it possible to have uniform designs, machinery, tools and inputs resulting in economy of production, an assurance of quality. They also help consumers, with more confidence in buying a product and the producer is known to adhere to standards. But technical regulations and industrial standards vary from country to country and can have too many different standards. If the standards are set arbitrarily, they could be used as an excuse for protectionism and thus can become obstacles to trade. Therefore, detailed disciplines have been prescribed in this regard in the TBT Agreement.

Technical regulations and standards set out specific characteristics of a product - such as its size, shape, design, functions and performance, or the way it is labelled or packaged before it is put on sale. In certain cases, the way a product is produced can affect these characteristics, and it may then prove more appropriate to draft technical regulations and standards in terms of a product's process and production methods rather than its characteristics *per se*. The TBT Agreement makes allowance for both approaches in the way it defines technical regulations and standards. The difference between a standard and a technical regulation lies in compliance. While conformity with

standards is voluntary, technical regulations are by nature mandatory. They have different implications for international trade. If an imported product does not fulfil the requirements of a technical regulation, it will not be allowed to be put on sale. In the case of standards, non-complying imported products will be allowed on the market, but then their market share may be affected if consumers prefer products that meet local standards such as quality or colour standards for textiles and clothing.

Conformity assessment procedures are technical procedures - such as testing, verification, inspection and certification - which confirm that products fulfil the requirements laid down in regulations and standards. Generally, exporters bear the cost, if any, of these procedures. Non-transparent and discriminatory conformity

assessment procedures can become effective protectionist tools.

Government should avoid unnecessary obstacles to trade meaning that when it is preparing a technical regulation to achieve a certain policy, it should not be more trade-restrictive than necessary to fulfil the legitimate objective. According to the Agreement, specifying, whenever appropriate, product regulations in terms of performance rather than design or descriptive characteristics will also help in avoiding unnecessary obstacles to trade. Unnecessary obstacles to trade can result when (i) a regulation is more restrictive than necessary to achieve a given policy objective, or (ii) when it does not fulfil a legitimate objective. A regulation is more restrictive than necessary when the objective pursued can be achieved through alternative measures, which have less trade-restricting effects, taking account of the risks non-fulfilment of the objective would create. Elements that members can use for risk assessment are: available technical and scientific information, technology or end-uses of the products. Article 2.2 of the Agreement specifies that legitimate objectives include *inter alia*: national security requirements, prevention of deceptive practices, protection of human health or safety, protection of animal and plant life or health or the environment.

Like many other WTO Agreements, the TBT Agreement includes the GATT's most favoured nation and national treatment obligations, i.e., products imported from the territory of any member be accorded treatment no less favorable than that accorded to like products originating in any other country and to like products of national origin. The Agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies.

A system of equivalence is set out where national technical standards that are different but achieve the same level of quality should be treated as equivalent. Harmonisation of technical standards is encouraged through active participation in international standard setting bodies such as the International Organisation for Standardisation (ISO). International standards are not set out in the Agreement itself.

The TBT Agreement contains a provision to base all standards and regulations on international standards which should be published and notified to the WTO. Members should provide time to comment while preparing new regulations. National governments are also required to establish a national enquiry point and a central authority to implement the Agreement. Provisions are made to assist developing countries to implement it and developing countries are also allowed to keep certain barriers to protect their development needs.

The TBT Agreement has been criticised for its trade distorting nature. Disagreements between countries about regulations and standards involve complex issues not specifically addressed by the Agreement. As a result, developed countries have been exploiting such a flexibility to restrict imports by imposing stringent norms and standards. Besides, developing countries, especially LDCs, face difficulty in implementing this Agreement due to lack of financial, human, and technical resources. ■

### between TBT

have common fea-  
ntive rules are dif-

mbody basic obliga-  
mination, advance  
used measures and,  
points

ncourage the use of  
ards

reement, govern-  
ed to use interna-  
they seem to be in-  
o technological or  
ns

reement, govern-  
ed to use such stan-  
scientific basis

nt allows govern-  
chnical regulations  
and for curbing de-

nt allows measures  
at is desired to pro-  
or plant health on  
ole scientific infor-

## Advocacy and capacity building on competition

Competition laws and policies in developing countries must be well adapted to their national development circumstances

The last two decades have seen most developing economies in the world, including those once committed to central economic planning, taking great efforts in advancing towards market driven economy. In this agenda for reforms, comprehensive development of legal and regulatory framework has been a focus, with competition law and policy as an integral part, especially now that the need for, and the role of, such a law and policy in the development process are broadly accepted in principle.

It is well recognised, nonetheless, that in order to achieve targeted policy objectives and contribute most to the reform cause, competition laws and policies in developing countries must be well adapted to their national development circumstances, taking into account all the local economic, social, and cultural dimensions, and by no means be a copy of developed country competition regimes. They are also to be supported and promoted by efficient institutions, which are well equipped with sufficient capacity and skills. Towards such policies and concomitant institutions, it is necessary, at the first instance, for developing countries to foster public acceptance as well as widespread participation and contribution of various national stakeholders into the policymaking process and build up the capacities and skills of the competition authority and complementary institutions. In the whole process, it is important for them to learn from their own experiences. Externally, sharing and comparing the experiences with other developing countries will help them overcome the impediments to having an effective competition regime.

Strongly aware of the severe resource and capacity constraints of the developing countries, Consumer Unity & Trust Society Centre for Competition, Investment & Economic Regulation (CUTS C-CIER), a network institution of SAWTEE, is taking up a new initiative, codenamed "the 7-Up MARK II Project". The project endeavours to accelerate the process toward a formal competition law and policy, which has been absent until now in three developing countries in the Mekong sub-region, namely, Cambodia, Lao People's Democratic Republic and Vietnam, and advance the environment in which the law and policy can be enforced for better results, which is to be done through various research based advocacy and capacity building activities. The initiative is supported by the State Secretariat for Economic Affairs, Federal Department of Economic Affairs, Switzerland.

The three project countries are all pursuing market oriented reforms, which entail an explicit demand for an effective competition law and policy. Given the local capacity and resource constraints, technical assistance is needed. The need has been underscored by the integration and cooperation process of these countries into regional (ASEAN) and multilateral economic systems (WTO). Moreover, given the strong geographical, historical, cultural, economic and socio-political links among these three countries, a comparative study and integrated advocacy cum capacity building programme will be a practical approach to cross fertilise and consolidate expertise and resources from the perspectives of developing countries, helping to achieve synergies and contribute to policy and performance developments in the competition area in all the three.

Taking up the mission of "Enabling the regulatory framework through effective competition regimes", the project envisions a long term cause towards a competition culture for economic development. An action oriented programme entails research based advocacy and capacity building as the two pioneering flags to be upheld during the whole initiative, aiming at:

- Establishment of structures/actors able to advocate efficiently for the enactment of a competition legislation
- Developments/changes in competition law and policy
- Establishment of enhanced training facilities in the country (e.g., university courses on competition)
- Development of a meaningful dialogue between civil society and consumer groups (where existing) and government officials

Implementation and management are structurally modelled after the 7-Up MARK I Project. This involves partnering with renowned research institutions in respective project countries, and engaging a Project Advisory Committee of prominent experts on competition to provide guidance and consultations. CUTS, in addition to the pivotal role of coordinating and maintaining the sustainability of the project, will also provide the needed expertise to the beneficiaries for realising the targeted results. Flexibility is strongly retained to ensure the demands and most urgent needs of the beneficiaries be met, while complementary and synergy with other initiatives will be most welcome. ■

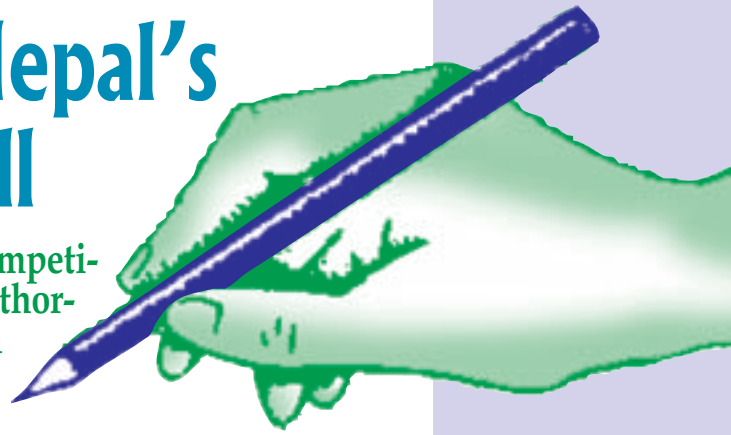
(Prepared by Ms Alice Pham, CUTS C-CIER)

*The project endeavours to accelerate the process toward a formal competition law and policy, which has been absent until now in three developing countries in the Mekong sub-region*



## Commentary on Nepal's draft competition bill

Despite some CSOs' suggestions that the Competition Commission be made an independent authority, the government did not appear too keen to buy the idea, comments Neelu Thapa



Competition is a key to survival in any market driven economy. This holds true also in the Nepalese context not least because the country has adopted a policy of progressive reforms. The country's recent accession into the WTO has provided an impetus to this process. Competition now is likely to increase, and the Nepalese firms may find it hard to survive under the global trade regime.

While competition, *per se*, cannot be, and rather should not be, regulated by the government, it has, nonetheless, the onus to ensure that competition prevailing in the market is fair. This is important especially because large global industries, namely the MNCs, flex their deep pockets and abundant resources to create a market condition where small domestic players are elbowed out. To prevent such an undesired situation, competition law and policy are needed.

Nepal is in the process of finalising a competition law, currently in the form of the Fair Competition Bill. The Bill is an integral part of the country's competition law and policy. It seeks to strengthen and instil vibrancy in the domestic market in the era of free and open trade by promoting fair competitive practices in the industrial, trade and services sectors.

Beginning with the definitional aspects, including the definition of the word 'competition' itself, the Bill covers all possible competition related areas relevant to Nepal and applicable in the Nepalese context. Anti-competitive practices, which may come through price fixation, predatory pricing, price discrimination, collusive bidding, carteling, misinformed advertising, mergers and acquisitions, market sharing and tied selling, among others, have been well dealt with in the Bill. Besides, the Bill also has a provision aiming at curbing the abuse of IPRs.

The draft Bill has provisioned (Article 15.1) for the establishment of a Competition Commission (CC), which comes as an integral part of the whole competition policy. The Bill vests the CC with powers that are necessary to ensure full implementation of the Fair Competition Act. It is actually the effectiveness in the functioning of this authority that will determine the success or failure of the competition law.

The draft Bill also contains provisions for punishment of the indicted. As per Article 19 of the draft Bill, depending on the gravity of

the crime, persons or firms found indulged in anti-competitive activities are liable to a fine of 0.5-3 percent of their annual turnover, or imprisonment for two years, or both. Besides, one of the important features of the Bill relates to the burden of proof. The Bill reverses the burden of proof, meaning that it is the responsibility of the accused to prove innocence.

However, a number of shortcomings still exist. For instance, the Bill does not segregate investigative and adjudicatory functions, and vests the CC with both powers. It is hard to imagine how a body that carries out an investigation would lose a case that is decided upon by itself.

In addition, no competition authority can function effectively if there are frequent political interferences. This is one aspect, which the Bill has failed to address properly. The Bill does not ensure complete autonomy of the CC. The CC is accountable to the government, which in essence, leaves enough room for political interferences. One viable option could be to make the CC accountable to an independent body such as the Public Accounts Committee of the Parliament.

Besides, the term of the Competition Commissioner is also important in determining the level of fairness in the CC's operation. To ensure that undue replacements are not made, the CC has provisioned for a commissioner's fixed tenure of four years. But the fact that the Bill allows an additional four years for the re-appointment of commissioners can only pave the way for sycophancy. This provision for re-appointment must be deleted from the Bill. Despite the suggestions provided by some CSOs to make the Commission an independent authority, the government did not appear too keen to buy the idea. What CSOs have succeeded in doing is to keep the body outside the government ministries, fix the tenure of the commissioners, and provide the clear cut criteria for the appointment of commissioners.

Notwithstanding all shortcomings, the formulation of the Fair Competition Bill came with tremendous participation of different stakeholders, including academia, civil society and business community. This is likely to induce a greater sense of ownership, which ultimately can go a long way in ensuring the implementation of the legislation in its true spirit. ■

(Ms Thapa is Programme Officer at SAWTEE)

**No competition authority can function effectively if there are frequent political interferences**

## No need to fear MNC competition

Today, many Indian enterprises are out competing international firms in the domestic markets, explains Laveesh Bhandari

In almost all countries, during the initial phases of opening up, concerns arise about the viability of a domestically owned manufacturing sector in the face of competition from MNCs. India has been no exception. Since the post 1991 reforms, the performance of the new multinationals has belied fears of many nationalists. Today, many Indian enterprises are out competing international firms in the domestic markets. And this has given them the confidence to even attempt competing in the international markets.

First consider these facts. Despite many policies oriented at protecting Indian firms, many multinationals in a variety of industries from engineering to pharma to toiletries have been operating in India since independence. These firms have the advantages of both MNCs as well as Indian firms, in that they can access capital and technology from abroad and have well developed distribution networks as well as brands. We call them the old MNCs. The 1991 reforms in the licensing and FDI regimes brought with them many new MNCs. In addition, the reforms also benefited the Indian owned private sector as they could now more easily access technology from abroad as well as did not require to go through complex licensing and other controls. That is, the private sector as a whole benefited. But the key question is: 'Who benefited more?'

MNCs with access over vast amounts of capitals, internationally powerful brands, as well as latest product and process technologies had key advantages. The old MNCs also had established distribution and marketing networks. The Indian private sector had the advantage of being more in tune with the happenings in India: cultural advantage as well as well established networks. Within five to seven years since the reforms were initiated, great changes could be seen in the Indian manufacturing sector.

The most important one was that most new MNCs were performing poorly. Among others, their costs were too high, they were having difficulty in breaking into the extremely cost conscious Indian market, they were having difficulty in retaining employees as they had not decentralised enough and the creation of their distribution network was taking much longer than expected. All in all, the story within a few years was that new MNCs were rather unsuccessful, and many had to close down and exit. However, this is not the interesting set. The more interesting firms are the older MNCs.

Using the annual report data from Prowess Database of CMIE, we are able to study the performance of 126 'older' MNCs against 970 Indian private sector owned companies operating from before 31 March 1991. The key results of this comparison are as follows:

- The older MNCs, on the whole, performed better in terms of profitability.
- They were less leveraged and less likely to expand rapidly and perhaps as a result were less likely to make mistakes of over-expansion.

- They had better cost controls and greater output per input of capital.
- They were likely to spend more on research and development as well as marketing.

Their better performance was not account of greater financial resources from abroad but better management and cost controls. This is also reflected in their profitability during both economic upturns as well as downturns. The foreign companies increased their profit margins from six percent in 1991 to seven percent in the slowdown year of 1999, whereas the Indian companies suffered from a fall in profit margins from five percent in 1991 to three percent in 1999.

However, there is another side of the story. Many Indian firms outperformed MNCs in their industry. We studied those Indian firms that were present in 64 manufacturing sectors where they were competing with MNCs and were performing better in terms of greater profit margins.

These Indian companies that were present in the same sectors as foreign companies are responding to the competitive pressures.

Like foreign owned companies, they are spending more on activities such as research and development, marketing, advertising and distribution. Inasmuch as financial variables reflect their responses, they are becoming more like foreign owned companies.

In part because of their international antecedents, foreign companies have historically been more 'open' to the international economy. With the loosening of government controls, these Indian companies today buy and sell more from international markets. These Indian companies today are changing the way they have historically functioned.

Even more interestingly, of the Indian companies whose profit margins were lower than their foreign owned counterparts in the early 90s, almost 100 companies improved to actually outperform their foreign competitors (the achievers). Conversely, there were 135 Indian companies whose profitability fell from above to below that of their foreign owned counterparts (the laggards).

It is not that the Indian companies that achieved better performance were limited to a few sectors. In fact, they were in similar activities as many Indian companies whose performance lagged behind.

Domestic companies do not have any disadvantage vis-à-vis foreign companies that they cannot circumvent. Though some might not have managed it, many domestic firms have done precisely that. Like the foreign owned companies, the achiever domestic companies managed to reduce their costs, and hence improved profit. They achieved this without necessarily going in for large capacity expansion. They also did not have to buy international brands or expensive technologies. All that they did was improve their flexibility and responsiveness to changed circumstances. ■

(Mr Bhandari is Chief Economist at Indicus Analytics, New Delhi)



# LDCs failing to attract FDI

Despite many alluring measures, most LDCs are lagging behind in terms of attracting FDI

In order to accelerate the pace of economic growth, finance their development efforts, and provide employment opportunities to the growing number of their population, most of the LDCs are rigorously promoting FDI. In the backdrop of the reduction in official development assistance (ODA) and change in donors' priorities as well as focus, LDCs are providing extra incentives to foreign investors to invest in their respective countries.

For example, in Nepal, under the 'one window' policy, foreign investors are provided with a one-stop clearance procedure for their proposal. Except for the limited number of sectors, excluded mainly on cultural and national security grounds, all economic activities are open for foreign investment. Approval is almost automatic, provided the relevant environmental criteria are fulfilled.

Similarly, Bangladesh has not only considerably simplified its investment regime but also offers host of incentives to foreign investors. Some of the fiscal incentives offered by Bangladesh to allure foreign investors include, tax holiday for five to seven years, accelerated depreciation and tax exemptions on royalties and technical fees as well as capital gains. Duty free import of capital goods and spare parts, and interest exemptions on foreign loans under certain conditions are other incentives offered by Bangladesh.

Generally, LDCs provide more favourable environment for FDI compared to their developing counterparts. UNCTAD data on foreign investment regimes in the late 1990s show that out of a sample of 45 LDCs, only nine maintained strict controls on the remittance of dividends and profits and capital repatriation. However, despite these alluring measures, most LDCs are lagging behind in terms of attracting FDI.

Decision to invest in any country is guided primarily by the investors' perception of risk and return. While high potential for return, which can offset the risks, could provide tremendous stimulus to the inflow of FDI, there are other important factors that determine the inflow of FDI in the host country. Lack of stability or predictability of political, institutional, legal and regulatory frameworks within which investment evolves may prove to be a disincentive for the foreign investors.

FDI are generally of two types - resource seeking and market seeking. In the case of the LDCs, it is mostly the first type of investment that has the greatest potential. For example, oil, gas and diamond reserves have led to Angola consistently being the best performer among LDCs. As per UNCTAD World Investment Report (2003), Angola was the best performer in the world in terms of attracting FDI only after Belgium and Luxembourg. Similarly, foreign investors were enthusiastically queuing up to invest in Bangladesh after the discovery of natural gas reserve there. How-

ever, their enthusiasm waned after they found that the government did not want to export this resource for the time being.

LDCs are not likely to attract market seeking variety of investment because of their small size of the market. It must be noted here that population and growth are not the sole indicators that define the size of the market. If that were the case, Bangladesh (with a population of 133 million) would have received the highest amount of FDI among LDCs. Market requires people with effective demand, which comes about not only as a result of willingness to pay, but capacity to pay as well. Bangladesh, with per capita income of US\$ 360, is unlikely to provide tremendous market opportunity for foreign investors. This is the reason why Bangladesh has been attracting more resource seeking variety of FDI (because of low wages) targeted to export markets - such as in the readymade garment and textile sectors.

Similarly, Nepal with a population size of over 23 million (which is close to the combined population of Belgium, Netherlands and Luxembourg), has not been able to attract much of market seeking variety of investment because of the same reasons. With per capita income of US\$ 240, Nepal cannot possibly attract such investment. Therefore, most FDI in Nepal are targeted to the Northern Indian market bordering Southern Nepal. Since this region of India has sizeable middle class population, it only makes sense for the foreign investors to target to such market.

Another major factor limiting the prospects of LDCs to attract FDI is sheer political instability these countries are encountering. It will be difficult, if not impossible, for LDCs like Sierra Leon, Rwanda, Haiti or Nepal to attract FDI even if they have the best of policies and institutional set-ups. Investors want to know beforehand whether their investment will fetch the required return to justify their investment at the first place and whether they will be able to repatriate the profits earned by them. Whether a country has a socialist type of political system or a capitalist type of system does not matter much to the foreign direct investors as long as they can be sure of the return and ability to repatriate their assets as well as profits. The success stories of China and Vietnam have proven this point beyond doubt.

It is depressing to note that the years ahead too do not look promising for LDCs. As projected by UNCTAD World Investment Report (2003), LDCs make up for 14 out of 20 countries in the list of lagging economies with lowest potential for attracting FDI. ■



*A major factor limiting the prospects of attracting FDI for the LDCs is sheer political instability*

## Earth Day 2004

Around 40 years ago, Walt Kelly, through his cartoon character, said, "We have met the enemy and he is us." The world today faces an alarming threat to its environment (*See the box*). Globally, 600 million hectares of land has already eroded. In South Asia, environmental problem of erosion has contributed to a loss of US\$ 100 million.

So how do we determine and deal with the part of us that is the enemy without feeling threatened by the implications? Earth Day is a small but very important step to answer some of these alarming questions.

Actually, the idea of Earth Day evolved over a period of seven years starting in 1962. For several years, US Senator Gaylord Nelson was troubled with the state of the environment and also with the fact that it was a non-issue in US politics.

Eight years after the idea was brought by the Senator, in late 1969, the *New York Times* carried a lengthy article by Gladwin Hill reporting on the astonishing proliferation of environmental events:

"Rising concern about the environmental crisis is sweeping the nation's campuses with

an intensity that may be on its way to eclipsing student discontent over the war in Vietnam...a national day of observance of environmental problems...is being planned for next spring...when a nationwide environmental 'teach-in'...coordinated from the office of Senator Gaylord Nelson is planned...."

It was then on 22 April 1970, a huge grassroots nationwide demonstration was made in the US to save the Earth. Since then the celebration takes place every year and has become a global calendar event.

But to think and internalise about environ-

## Threats to Our Home

- **Biodiversity Loss** - The delicate web of life that connects all plants, animals and their habitats is being torn by global warming, development, industrial agriculture, forestry, fishing practices, toxic waste, and many other threats.
- **Depleted and Polluted Water** - The water cycle, fundamental to all life on Earth, has been seriously altered by humans. This presents problems both for the natural world and for people's access to safe drinking water.
- **Vanishing Forests** - Forests are so much more than just trees - they purify our air, protect our soil, and provide food and shelter for millions of species. Unsustainable forestry practices are threatening the last of our planet's ancient forests.
- **Energy, Pollution, and Climate Change** - Energy allows us to stay warm, prepare our food, and move around. Yet our reliance on polluting energy sources is changing our climate and dirtying our air and water.
- **Equity & Environment** - The impacts of environmental degradation are not equally shared by all. We are failing to meet the basic needs of many of the Earth's current inhabitants, while polluting and degrading natural systems for short-term gain. ■



**Governments and their citizens should embrace a new way of thinking and acting about the future**

ment, should we really wait for a so called 'Earth Day'? Today's society is inhabited by well aware global citizens, voters, consumers, employees and investors, who care for the planet and future generation.

Therefore, a transformation is required in communities all over the world. Governments and their citizens should embrace a new way of thinking and acting about the future. And if this quiet transformation occurs, no one has to wait for yet another Earth Day to think about our global commons (*Compiled from different sources*). ■

## Global water, sanitation problems

The eighth Special Session of the UNEP Governing Council/Global Ministerial Environment Forum (GCSS-8/GMEF) was held from 29-31 March in Jeju, Republic of Korea. Delegations from 158 nations, including 90 environment ministers, met to discuss the theme of water, sanitation and human settlements.

The meeting was aimed at identifying a "specific framework to supply enough water for 10 billion people worldwide suffering from lack of water and provide 25 billion people with upgraded sanitary services". Various issues were raised at the forum, such as threats related to handling solid wastes from industry, households and tourism. The vulnerability of small islands across the Caribbean, Indian Ocean and the Pacific, was highlighted and discussed. "Dead zones" — oxygen-starved areas of the world's oceans that are devoid of fish, mainly caused by excess nitrogen run-off from farm fertilisers, sewage and industrial pollutants — was also on the agenda, as was the issue of global environmental governance. "Dead zones" were raised in UNEP's first-ever Global Environment Outlook Year Book, circulated to government officials at the Forum.

The outcomes of the Jeju meeting will form the basis for the 12<sup>th</sup> meeting of the UN Commission on Sustainable Development to be held in New York from 14-30 April around the theme of water, sanitation and human settlements (*BWTND, 08.04.04*). ■

## The intricate trade-environment relation

**Doha has changed the ball game on trade and environment and the issue is no longer whether or not they are linked, concludes Sajid Kazmi**

It was at the Singapore Ministerial back in 1996 that environment was introduced into the WTO agenda. According to the then WTO Secretary General Renato Ruggiero, as quoted by Reuters on 15 May 1998, "Environmental standards in the WTO are doomed to fail and can only damage the global trading system".

If we delve deep into some trade restrictive measures of the developed countries, it will become clear that their policies encourage environmental degradation in the developing countries. For example, tariff escalation – the practice of having higher tariffs on processed products and lower tariffs on raw materials or on intermediate goods in a product chain – induces environmental degradation. If the export basket of a country is such that it includes a high percentage of intermediate goods, this country puts more strain on its natural resources.

The South has a justifiable concern regarding the linkage between trade and environment in the rules-based trade regime. Ignoring the broader concerns of equity and poverty in the South would weaken the scope for negotiations. For instance, compliance with environmental standards has implications for distribution.

There is a divergence of views on fundamental in-built incompatibility to pursue trade or environment priorities. Some people give priority to trade reasoning that they need trade for economic growth, which according to them, will take care of environment as well. There are also people who see no fundamental in-built incompatibility to pursue trade and environment priorities simultaneously.

However, there is no country that denies environment as a priority. That is more so in the case of developing countries, almost all of which have a range of compelling environmental challenges. Yet, at the same time, every developing country wants to have better market access to the North. In this sense, trade too is a high priority. Many developing countries fear new obstacles to their market access. Trade policy has entered into the field of environment through a dispute. It was due to the famous Tuna-Dolphin dispute that environment entered the global trade talks. There is a general fear that developing countries would face a whole new series of restrictions on their exports citing animal rights, biodiversity and conservation issues. All these fears led to stiff resistance on the inclusion of environment in trade negotiations.

However, refusal to negotiate on environment by developing countries is not going to resolve the genuine issues in any way. This is exactly why the South, rather hesitatingly, and as part of a larger compromise, accepted trade and environment on the

agenda of the Committee on Environment (CTE), which was created by the WTO with an agenda largely revolving around on how environmental regulation affect trade.

The issue now is not whether trade and environment will be linked, but is about how it will be done. The fact that the Doha mandate on trade and environment was left vague creates more uncertainty. And besides, the CTE has drawn no conclusions as of yet. However, in the process, the CTE needs to balance the agenda by pulling together the elements that represents the environmental interests of the developing countries as well. This is important more so in the light of the fact that many of the developing

country negotiators have expressed difficulties in terms of shaping their own positions on environment because they did not get adequate back up from their respective country's research institutions.

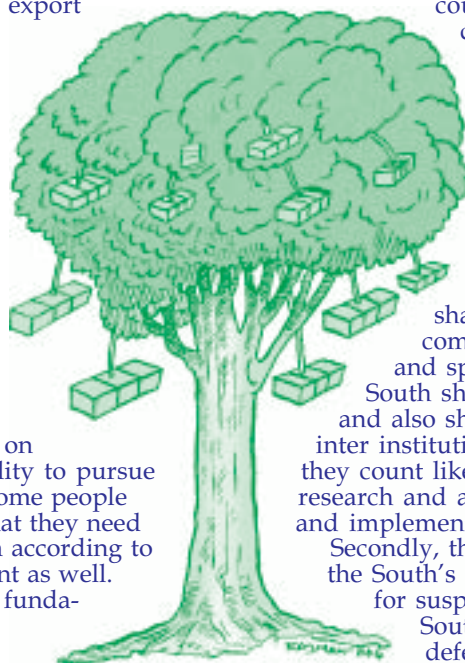
There now are only two approaches left to be followed simultaneously. First, the South should build an agenda of their own and the contours of which could be traditional knowledge, benefit sharing, polluter pays principle, common but differentiated responsibility and special and differential treatment. The South should build linkages at national level and also should look into building intra and inter institutional linkages, build capacities where they count like in negotiation processes, national research and analysis and domestic dissemination and implementation.

Secondly, the North should recognise that given the South's capacity constraints and the history for suspicion on environmental issues, the South could very easily slip back into a defensive and risk-minimising strategy of containment. Southern apprehensions

include fears of environmental protectionism. There is nervousness about Doha's unclear mandate as to which multilateral environment agreements are trade related, whether it includes environmental goods and services and if at all it would be about environmental measures.

All in all, there is no denying that even if developing countries are able to block environmental negotiations at the WTO level, they would not be able to stop it from becoming a condition for market access in bilateral agreements. Many bilateral agreements – such as US-Jordan, US-Central America, and US-Singapore, among others – have considered environmental aspects as condition for market access. So the bottom line is that Doha has changed the ball game on trade and environment and the issue is no longer whether trade and environment are linked. Of course, at the same time, debate continues to rage on whether or not to overburden the WTO with an additional agenda like environment. ■

*(Mr Kazmi is associated with SDPI, Islamabad)*



## Will 'water' privatisation ensure consumer rights ?

Water is a 'basic consumer right', not a 'commodity' to be sold, argues Prashamsa Gadtaula

It was around four years back that Fortune Magazine stated, "Water will be to the 21<sup>st</sup> century what oil was to the 20<sup>th</sup>". The statement holds relevance to the core now. Among all the 'hustle-bustle' and 'yours-mine' stories and other contentious issues across the globe, water lies at the heart of all. The world today is facing an alarming water crisis - one in every six of the world's people has no access to clean water and twice as many lack adequate sanitation.

The UN predicts that by 2050, at least one out of four people is likely to live in countries affected by persistent freshwater shortage. The problem has now emerged as a global threat to consumers all over the world.

Privatisation of services such as water is a private sector solution to these alarming problems. In the past few decades, many countries have experienced a rampant increase in the privatisation of their public services, including water. But the question is - how good is privatisation in itself, particularly when it comes to water, i.e., a matter of life and death? On one side, advocates of privatisation argue that it is necessary to combat state failings to give basic services. They are also of the opinion that private investment is good for the ordinary people because the company pays for additional costs such as time and cost overruns on their projects.

Evidence, on the other hand, presents a different scenario altogether. Multilateral and regional development banks such as the World Bank and the ADB are among the largest supporters of water-projects in developing and least developed countries. They are also the most important international institutions in making policies for the water sector. They not only encourage private ownership, but also make it a prerequisite in loan agreements and debt relief measures. The case of Nepal is a glaring example.

The ADB clamped down 'privatisation' of the water sector as one of the conditionalities for providing loans to Nepal. The US\$ 464 million loan provided to the country's biggest drinking water project - The Melamchi Water Supply Project - comes with such a conditionality. The very purpose of the institution whose aim is to discourage debt by building independence for development is defeated when the 'core value' of the institution is set to loose.

True that many public sector enterprises (PSEs) are delivering poor services, but in the absence of proper regulatory mechanism, privatisation often aggravates, rather than

relieve poor consumers. Bolivia is a case in point. Bolivia's water sector was privatised in 1999, but much to the dismay of the poor Bolivians, the tariffs after privatisation increased to unaffordable levels - up to one-third of their income. Fierce resistance by the local people ousted the water profiteers, ultimately veering the consumers to victory in the 'water war' in January 2000.

The world then saw that privatisation fails miserably with the 'community' suffering as consequence. It is, thus, clear that privatisation invariably increases inequality among the commoners by further supporting those who can pay for it and excluding the poor. Even if PSEs do not deliver services up to the mark, they hold significance to the poor mass and the society. They at least ensure affordability and accessibility. But the privatised entities do not bother about these responsibilities.

The UN Human Development Report 2003 states that "Countries with 'good enough' services before privatisation often continue to do well after." Then why try to fix something that is not even broken?

The key point is that some basic needs like water always should be under the control of the state because it is its indispensable responsibility to deliver basic services to the public. Water is a 'basic consumer right', not a 'commodity' to be sold. Decisions on its

distribution should not be based on pure economics. "The value of scarce resources is high." The equation, however, cannot be as simple as that.

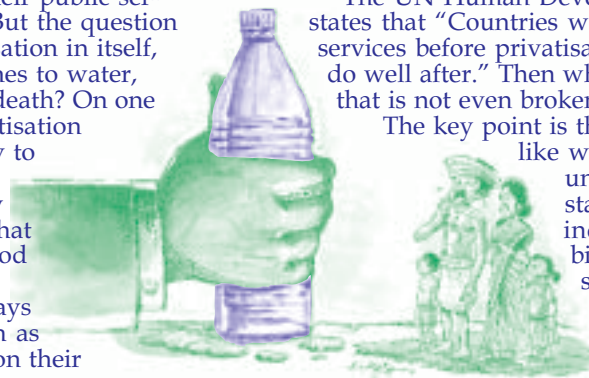
The world today needs a water strategy, but the strategy should be based around approaches of consumer rights, keeping in view the environmental needs, local needs, local accountability and democratic control over the resource.

The 'one size fits all' model is too outdated to be implemented wherever it apparently looks feasible. Depending upon the stages of development of a country, the workability of privatisation should be assessed. Just implementing, whether it works or not, is definitely not 'development'.

If this 'yours-mine' stories keep on happening, it won't be far that the world will witness yet another war similar to the one on Iraq; this time not for the 20<sup>th</sup> century 'oil' but for the 21<sup>st</sup> century 'water'. It is high time we decided: "The essence of life - water: Should it be privatised?" ■

(Ms Gadtaula is Programme Associate at SAWTEE)

The ADB and the World Bank not only encourage private ownership, but also make it a prerequisite in loan agreements and debt relief



## Competition advocacy and education project

Before enacting the Competition legislation, it is necessary to build competition culture among the stakeholders

After WTO membership, Nepal has been obliged not to discriminate between foreign or domestic "like" products nor introduce new barriers to trade. Moreover, the country now requires to liberalise a number of key economic sectors. Since MNCs have deep pockets and long hands, they could resort to various forms of anti-competitive practices to wipe out domestic industries and subsequently, attain "market power" in the Nepalese market. However, there is enough evidence to suggest that international "cartels" have a tendency to migrate to such countries where competition rules either do not exist or where there is a laxity in the enforcement of competition rules.

Since Nepal neither has a well-articulated competition policy nor a competition law, it is likely to receive a serious setback, if competition policy is not prepared on time and competition law enacted.

Interestingly, the Ministry of Industry, Commerce and Supplies (MoICS) has prepared a draft Fair Competition Bill. However, the Bill requires a serious scrutiny and analysis as there are many grey areas where further improvement is required (See commentary on Nepal's draft competition bill on page 15).

Also, before enacting the legislation, it is necessary to build competition culture among the stakeholders. History is replete with the examples of "policy failures" resulting from the lack of support from the stakeholders. Privatisation policy of Nepal is a burning example in this connection.

Realising these problems, SAWTEE, with the support from Department for International Development (DFID) of the UK government, has initiated a three-year "Competition Advocacy and Education Project (CAEP)". The project involves multiple stakeholders such as government, private sector, consumer groups and civil society organisations. The specific objectives of CAEP are to:

- Inculcate competition culture among the stakeholders;
- Create atmosphere for the formulation and enactment of competition friendly policies and legislation;
- Ensure participation of stakeholders in the process of formulation of competition policy and law and their enforcement and implementation; and
- Build capacity of stakeholders to act as a watchdog to prevent anti-competitive practices.

The following activities shall be conducted during the project period:

- Two research studies on: a) status of competition policy and law in Nepal; b)

documentation of "best practices" in other countries. These reports will be published and disseminated to a wide range of stakeholders with a view to sensitising them and provoking actions.

- Workshops (See the box) both at the national and sub-national levels to sensitise a wide range of stakeholders (government authorities, business chambers, consumer groups, concerned government agencies, academia and media) on the significance of competition policy and law and providing them with tools of advocacy to make their concerns heard at the national level.
- Publication of newsletters focusing on competition abuses at the national, regional and global levels, best practices around the world and analytical articles on contemporary and burning competition issues.
- Publication of briefing papers and circulation of e-newsletters;
- Development of the website and CD Rom; and
- Creating a network of stakeholders in various parts of the country and provide them with necessary training in order to act as a pressure group to ensure competition friendly outcomes. ■

*The major activities of the project include research on the status of competition policy and law in Nepal and documentation of "best practices" in other countries*



### Competition policy and law: Why and for whom?

As a part of CAEP, SAWTEE together with MoICS organised a two day workshop on "Competition Policy and Law: Why and for Whom?" in Biratnagar, Eastern Nepal from 20-21 February and Pokhara, in the West from 21-22 April 2004. The participants in these workshops discussed various issues concerning competition policy and law in the context of Nepal. The main objectives of the workshops held in two different cities were to discuss and comment upon the draft Fair Competition Bill, prepared by the Nepalese government, and inculcate competition culture among the stakeholders.

The participants in the workshops discussed that private monopoly is more deleterious for consumers' interest and social efficiency than public monopoly. Hence, it is important to regulate such behaviour. The participants realised the need to include specific provisions in the competition law rather than providing discretionary power to the enforcing authority. They identified that it would tremendously minimise rent seeking practices and would significantly contribute to create a competitive environment in the marketplace (for more information please visit [www.sawtee.org](http://www.sawtee.org)). ■

## Trainings for media in Pakistan

Journalists for Democracy and Human Rights (JHDR), Islamabad, Pakistan, a network institution of SAWTEE, conducted two training programmes for media during March and April 2004.

During the first programme, training was imparted to young journalists and students of Mass Media from Quaid-e-Azam University, Islamabad on "Parliamentary Reporting". The training focused on how to report development issues extracting from the parliamentary proceedings, particularly from the Question Hour for wider dissemination. The group of 36 participants were taken to the Parliament House so that they could observe the parliamentary procedures. This visit provided the participants the first hand information on how the parliament works.

The second training programme was organised in April for journalists from Punjab (Lahore, Multan, Rawalpindi) and North West Frontier Province (NWFP). This training programme focused on how media can promote development issues under its mandate of protecting the 'Right to Know' of the people. The sessions also covered the Freedom of Information Ordinance and its dismal implementation. Twenty five participants from different newspapers participated. During a session, different trade and agriculture related development issues were discussed in light of the WTO agreements.

The journalists reported after the training that these trainings were fruitful to them and enlightened them on many critical issues, especially WTO rules and provisions and their implications on the livelihoods of the people. ■

*The journalists reported after the training that the trainings were fruitful to them and enlightened them on many critical issues relating to the WTO*



## Training of economic journalists

Economic journalism in Nepal is still at a relatively nascent stage. The understanding and coverage of economic issues are very limited. The limitation is more apparent on issues of globalisation and WTO and the reportage, more often than not, lack clarity. Need was, hence, felt to feed the basic knowledge on globalisation and WTO issues and train economic journalists in order to enable them to make media reporting more substantive and in-depth in coverage.

Against this backdrop, SAWTEE, ActionAid Nepal and Society of Economic Journalists of Nepal (SEJON) jointly organised a week-long training programme from 15-22 March 2004 in Kathmandu, Nepal. The objectives of the training programme were as follows:

- Creating awareness amongst economic journalists about globalisation and WTO issues;
- Enabling them to understand WTO Agreements and their ramifications on Nepal;
- Strengthening the media reporting on globalisation and WTO issues and their implications on Nepal.

Two sessions on each day of the training were conducted on various WTO issues. Resource persons from concerned ministries, departments, agencies, international and national non-governmental organisations, and academic sector provided the training during the sessions. Journalists representing 19 audio-visual and print media were trained. ■

## Post Cancun agenda for South Asia

SAWTEE, with the support from Novib, The Netherlands and Friedrich Ebert Stiftung (FES), Nepal has published a briefing paper on "Post Cancun Agenda for South Asia". In the backdrop of the sluggishness of the Doha Development Agenda, the Cancun fiasco and a spate of different bilateral and regional agreements, this paper looks into the post Cancun agenda for South Asia.

Researched and written by Bhaskar Sharma and Kamallesh Adhikari of and for SAWTEE, the paper analyses the costs and benefits associated with different types of 'isms' and recommends that South Asia must strive hard to revive the spirit of multilateralism, seeking ways to give momentum to it.

The paper in its concluding part indicates that there cannot be any debate on whether or not South



Asia should support the WTO system. The bottomline is - South Asia cannot afford to remain out of the multilateral trade regime. The loss from being indifferent to the WTO process can surely cripple the South Asian economies. Therefore, the South Asian nations must put in concerted efforts to clinch a better deal at the WTO.

It is here where the role of regional bloc, SAARC is important, the paper suggests. Highlighting the importance of unity and sense of cooperation among SAARC member states, the paper recommends South Asian governments to maintain solidarity to strengthen their stance during post Cancun negotiations.

The South Asian countries must remain vigilant of the divide and rule tactics adopted by the developed countries. (To download the full paper visit [www.sawtee.org](http://www.sawtee.org)). ■

## Afro-Asian seminar: Run up to UNCTAD XI

The event generated ideas for achieving better coherence between the international trading system and national development strategies

A three day Afro-Asian Civil Society Seminar "From Cancun to Sao Paulo: The Role of Civil Society in the International Trading System" was held in New Delhi, India on 13-15 April 2004.

More than 150 participants from 30 different countries representing non-governmental organisations, inter-governmental organisations, research institutions, media and governments agencies took part.

Organised by Consumer Unity & Trust Society (CUTS), Jaipur, India, a network institution of SAWTEE in India, the seminar involved and engaged the civil society representatives and policymakers in order to have diverse discussions and debates for taking the Doha Development Agenda forward.

One of the major thrusts of the event was to generate ideas for achieving better coherence between the international trading system and national development strategies. The objectives of the seminar were to:

- take stock of various aspects of the international trading system, which are of special interest to developing countries in Asia and Africa;
- discuss concerns and necessary actions of civil society organisations, governments and other stakeholders for achieving better coherence between the international trading system and national development strategies;
- provide networking platform to civil society organisations and others to discuss issues of mutual interests and build partnership between and among different stakeholders; and
- adopt the Afro-Asian Civil Society Statement on Trade and develop research agenda and advocacy inputs for civil society organisations and others.

The plenary sessions of the seminar focused on the following themes:

- Assuring development gains from the international trading system and trade negotiations;
- Does the international trading system promote the interests of the poor?;
- Building and strengthening capacity in trade policy; and
- The role of UNCTAD in assisting national trade and development strategies.

During the seminar, the participants stressed that the developing countries need to recognise their differences while forming coalitions.

Some of the participants even challenged the existing development model and called to put primacy to social and human consider-



ations over economic considerations. Another set of participants argued that it is the system, which needs to be reformed and profound structural changes are required to operate the system in a more acceptable way.

The seminar was organised as a part of the advocacy campaign in the run up to the Eleventh Session of United Nations Conference on Trade and Development (UNCTAD XI), which will be held in São Paulo, Brazil in June 2004.

The theme of UNCTAD XI is "enhancing coherence between national development strategies and global economic processes towards economic growth and development, particularly of developing countries". ■

*The seminar was organised as a part of advocacy campaign in the run up to UNCTAD XI*

### LDC-CSO network envisaged

In the sidelines of Afro-Asian Civil Society Seminar, a meeting of CSOs from Asian and African LDCs that are working in the area of trade, globalisation and the WTO was organised in New Delhi.

The meeting proposed to launch LDC-CSO Network. LDC-CSO Network is being envisaged to work in the area of trade and economic development in the LDCs. The network will work to increase the capacity of CSOs to deal with trade issues.

Participants welcomed the idea of having such a network and viewed that this will help to learn from each other's experiences in the area of trade policymaking. They added that this kind of network would also help the LDCs to maintain cohesiveness in international forums. They also said that such a network would facilitate the linking of various stakeholders in trade policymaking in respective countries.

Participants suggested that the networking should be kept at the minimal level in the beginning and suggested to have an e-group. Once the e-group is established and main issues clarified, a workshop will be organised to formally launch the network.

It was also proposed to have the secretariat of the network at SAWTEE office in Kathmandu, Nepal. ■

## Assuring gains from trade

The Eleventh Session of United Nations Conference on Trade and Development (UNCTAD XI) is slated to be held in São Paulo, Brazil in June 2004. UNCTAD is organising this session to enhance the coherence between national development strategies and global economic processes to

ensure economic growth and development in the developing countries. "Assuring development gains from the international trading system and trade negotiations" is one of the four sub-themes of the session.

In this context, SAWTEE and

ActionAid Nepal together organised their twelfth monthly forum on globalisation and WTO on 9 April 2004 on "Assuring Development Gains through Multilateral Trading System" in Kathmandu, Nepal. The major objectives of the forum were to:

- create awareness among the stakeholders on the need to use UNCTAD as a platform to further the objective of trade and development in developing countries like Nepal;
- provide input to the Nepalese government for developing position for UNCTAD XI; and
- contribute in the process of Afro-Asian Civil Society Seminar "From Cancun to Sao Paulo: The Role of Civil Society in the International Trading System" that was held in New Delhi, India on 13-15 April 2004

Attended by over 60 participants comprising representatives from government, academia, business chambers, non-governmental organisations and media, participants

in the forum stressed upon capacity building to exploit the gains of the WTO. Participants stressed that as trade is an engine of growth, it can expand markets, induce innovation and increase productivity. Trade should be viewed as a means for alleviating poverty. ■

## WTO and farmers' rights in Sri Lanka

The Law & Society Trust (LST), Colombo, Sri Lanka, a network institution of SAWTEE, organised a dissemination workshop on "The Impact of the WTO and its Agreements on Sri Lankan Agriculture and the Rights of Farmers" on 02 March 2004. The workshop was held in the inservice centre of the Department of Agriculture, Bombuwala.

About 60 participants including the research officers of the rice research institute of Bombuwala, and the agriculture instructors of the Department of Agriculture participated. Representatives of various farmer organisations also took part in the workshop.

The speakers in the workshop discussed the impacts of genetic use restriction technologies on the Sri Lankan agriculture and farmers' rights. The speakers focussed on the possible impact of the hybrid seed programme of Sri Lanka on agriculture in the light of the plant breeders' right (PBR) regime. The origin of the PBR regime and the impact of the draft Plant Variety Protection Bill on the Sri Lankan agriculture and farmers' rights were also discussed at length.

Mr Senewiruwan of the Saruketh Movement (a farmer organisation involved in promoting indigenous crop varieties) talked on sustainable farming practices adopted by them and the importance of protecting indigenous varieties.

The presentations were followed by floor discussion. At the discussion, the impact of the recently passed Seed Act of No 22 of 2003 and the impact of privatising the seed farms of the government were also discussed. ■



**Participants stressed that as trade is an engine of growth, it can expand markets, induce innovation and increase productivity**

## SAWTEE NETWORK

### BANGLADESH

1. Associates for Development Initiatives (ADI), Dhaka
2. Bangladesh Environmental Lawyers Association (BELA), Dhaka

### INDIA

1. Citizen Consumer & Civil Action Group (CAG), Chennai
2. Consumer Unity & Trust Society (CUTS), Jaipur
3. Development Research & Action Group (DRAG), New Delhi
4. Federation of Consumer Organisation of Tamilnadu & Pondichery (FEDCOT), Thanjavur

### NEPAL

1. Society for Legal & Environmental Analysis & Development Research (LEADERS), Kathmandu
2. Forum for Protection of Public Interest (Pro Public), Kathmandu

### PAKISTAN

1. Journalists for Democracy & Human Rights (JDHR), Islamabad
2. Sustainable Development Policy Institute (SDPI), Islamabad

### SRI LANKA

1. Law & Society Trust (LST), Colombo

## SAWTEE

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian non-governmental organisations (NGOs), South Asia Watch on Trade, Economics & Environment (SAWTEE) is a recognised, registered, non-profit and non-governmental organisation. Its mission is to build capacity of the stakeholders in South Asia by equipping them with knowledge, information and skills to voice their concerns particularly in the context of liberalisation and globalisation. It currently operates through its headquarters in Kathmandu and 11 network institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka.

The views expressed in the articles published in *Trade and Development Monitor* are solely those of the authors and do not necessarily reflect the official position of SAWTEE or its member institutions.

Composed and published by South Asia Watch on Trade, Economics & Environment (SAWTEE)  
P.O.Box: 19366, 254 Lamtangeen Marg, Baluwatar, Kathmandu, Nepal.  
Coordinator: Ratnakar Adhikari. Editors: Kamalesh Adhikari and Bhaskar Sharma.  
Design: Indra Shrestha. Printed at United Graphic Printers, Kathmandu.

## SOURCES

BWTND: Bridges Weekly Trade News Digest;

THT: The Himalayan Times; and

TKP: The Kathmandu Post.