

Salvaging the Doha Round

There is no need to wholeheartedly welcome the July text as the balance is still tilted in favour of developed countries

A so called 'historic' agreement hammered out within the deadline of 31 July 2004 is likely to salvage the Doha Development Round (DDR) and the future of the WTO itself. It is touted to have made a major breakthrough on agricultural trade – which has been, by far, the most contentious issue. The 31 July text of the General Council (GC) is apparently more flexible in favour of developing countries on market access compared to earlier texts. The tiered formula, which classifies tariffs into various bands for subsequent reduction from bound rates, envisages deeper cuts in higher tariffs.

Similarly, a proposal made by the EU, Japan and other protectionist countries to maintain 'sensitive list' in which tariff cuts would not be very deep has been extended to developing countries as well. This provides leeway for developing countries to designate, subject to negotiations, some products as 'sensitive' and make less-than-full reciprocal commitments on removing trade barriers.

On special and differential treatment (S&DT) relating to agriculture, the text retains the provisions on the flexibility for developing country members to designate an appropriate number of products as Special Products. These products would be subject to more flexible treatment, based on the criteria of food security, livelihood concerns and rural development needs.

Cotton subsidies provided by the US, which have affected the livelihood of millions of farmers in West Africa, had become a controversial issue during the Cancun Ministerial. This issue has now been incorporated for negotiations under agriculture.

Only one of the four Singapore issues, namely trade facilitation, has been taken up for negotiations. The other three issues have been kept out of the DDR. Further, developing countries managed to tie the implementation of commitments to the receipt of technical assistance from developed countries.

On the issue of non-agricultural market access (NAMA), the modalities are yet to be agreed upon, but a political commitment to start negotiations has been recorded. Though the NAMA text could be considered ambiguous, one major point is that develop-

ing countries would be allowed to make less-than-full reciprocal commitments.

However, there is no need to wholeheartedly welcome the July text as the balance is still tilted in favour of developed countries. First, the GC prepared modalities for negotiations only on five issues. There has simply been a reaffirmation of commitment to negotiate on some other issues that are of crucial significance to developing countries.

Second, some developing countries and NGOs have criticised the opaque and undemocratic nature of negotiations with only the key grouping of Five Interested Parties (FIPs) – comprising the US, the EU, Brazil, India and Australia – exclusively deciding the fate of entire WTO members on agricultural issues.

Third, there are still a number of grey areas even in the case of agriculture.

For example, the protectionist camp having agreed to eliminate export subsidies is hailed as a major achievement by developing countries, but there is no deadline.

Fourth, the major area in which gains from trade liberalisation would have accrued to the developing countries, i.e., liberalisation of movement of natural person under mode 4 of General Agreement on Trade in Services (GATS), is the weakest part of the agreed text. Noting the 'interest' of developing

countries on this mode of supply is one thing, but actually making a commitment to start negotiations along the lines of proactive liberalisation is another.

Fifth, nothing significant could be achieved on the implementation and S&DT issues. All that the GC did was to postpone the deadline for reviewing the progress and taking appropriate actions on implementation related issues and concerns until July 2005. Similarly, on S&DT, the GC set a new deadline of July 2005 for the Committee on Trade and Development to complete its review of the 'outstanding' agreement-specific proposals – the fourth such deadline.

Given the fact that 'development dimension' has been downplayed by the July decision of the GC, the challenge for the developing countries remains bringing 'development' back in the DDA (See pages 12-13 for detailed analysis). ■



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Unemployment in South Asia Markets do not work on their own

South Asian countries should design their macroeconomic and trade policies in a way that help them reduce unemployment levels, writes Mr Sudyumna Dahal



For South Asia, which houses the largest chunk of global poor, unemployment is a serious challenge. There is a great deal that markets can do in helping people find productive employment. But markets are influenced by what governments do. In the present context of globalisation and the WTO, when governments are being guided by the rules-based system, markets certainly cannot remain unaffected by what takes shape at the global level.

Though the region witnessed an average GDP growth rate of 5.5 percent during 1990-2001, employment grew by an insignificant average of 1.5 percent – dropping from higher rates in previous times. The unemployment levels rose from 2.9 percent in 1995 to 3.4 percent in 2001. Proponents of trade liberalisation generally argue that a liberalised trade regime has a favourable impact on growth, thus leading to increase in employment. Nevertheless, as South Asian experience has shown, liberalisation does not necessarily create employment.

The labour force participation rate (LFPR) in South Asia has been historically lower than those in sub-Saharan Africa, East Asia and the Pacific. According to *Human Development in South Asia 2003: The Employment Challenge*, published by Mahbub ul Haq Human Development Centre in 2004, LFPR in South Asia has declined from 76.6 percent in 1980 to 73.6 percent in 2001. Much of this decline is caused due to the impact of macroeconomic and trade policies, which in turn, in the present context, are affected by the WTO.

The rates of growth of employment in Bangladesh, India and Pakistan have failed to keep pace with the growth rates of labour force and GDP. Sri Lanka's employment growth rate has also failed to match its GDP growth. In Nepal, employment growth rate seems to have been more than growth

rates of both labour force and GDP. But with a huge chunk of the South Asian population in India and Pakistan, any improvement seen in other South Asian countries are offset by the poor performance in these two countries.

Besides, the sectoral distribution of employment reflects the overwhelming importance of agriculture, which accounts for over half of the employment in the region. The share of agriculture in employment varies across the region ranging from 22 percent in Maldives to 79 percent in Nepal. Globalisation, *per se*, has not helped this sector to perform better in terms of employment. The subsidisation of the agricultural sector in the post-WTO period by developed countries has been felt hard by South Asian countries. This has subsequently affected the quality of employment.

One of the important features of South Asian population is its young age. There is a high incidence of unemployment and underemployment among the youth in South Asia. But here is an advantage. The relative youth of South Asia provides the region with an opportunity to fill the skill gaps that are rapidly emerging in Europe, Japan and North America – the regions of the world that are now moving into a phase of development variously called post-industrialisation or post-modernisation. But restrictions by the developed countries on the movement of natural persons (mode 4 of General Agreement on Trade in Services) have severely circumscribed the ability of South Asian countries to effectively utilise the potential of their young population.

Besides, it was expected that removal of quotas in developed country markets would result in rapid growth in export of textile and clothing from South Asian countries and hence increased employment. As labour cost in South Asia is among the lowest in the world, it makes them competitive in this sector. However, the gains from the Agreement on Textiles and Clothing (ATC) is likely to be temporary. Most of the producers in Bangladesh and Nepal are likely to close down due to competition from more efficient producers from countries like China and Thailand.

These evidences suggest that South Asian economies have not been able to adopt appropriate policies to benefit from their integration into the multilateral trading system in terms of generating employment opportunities. Therefore, time has come that they design their macroeconomic and trade policies in a way that helps them reduce unemployment levels. The three key sectors in which they have comparative advantage – agriculture, textiles and services – could still lead to export-led growth followed by rapid increase in employment. The *mantra* they should take into consideration is: Markets do not work on their own. ■

(Mr Dahal is Research Associate at SAWTEE)

Magnitude of employment challenges

- South Asia is a hugely populated region with 1.4 billion people, 60 percent of whom are in the working age group
- Labour force participation is only about 66 percent of working age population
- Employment growth rates are lower than both GDP and labour force growth rates
- Agriculture is the predominant employer, although this sector has been suffering from lack of investment and low productivity since the Green Revolution during the 1960s
- One third of South Asia is in poverty; and, about half of the population – in four large countries – is illiterate

Poverty trap: Our Future Our Responsibility

By merely resetting goals and crafting 'good' recommendations, will the poverty issue receive the treatment it ought to, questions Ms Prashamsa Gadtaula

Our Future Our Responsibility – a publication of the SAARC Secretariat – brings together the reflections of South Asian countries on fights against poverty and suggests measures for future action in the context of achieving the Millennium Development Goals (MDGs). Good writing and presentation, proper editing and comprehensible English make the publication a good reading for all. It gives out a clear picture of where South Asian countries are heading, or need to go, in terms of dealing with rampant regional poverty.

As mentioned in the book, the publication is a deliberate outcome of effort, dedication and preparation. In November 1992, the Independent South Asian Commission on Poverty Alleviation (ISACPA) was constituted, which had presented a report titled *Meeting the Challenge* to deal with the scourge of poverty in South Asia. However, even with the passing of a decade since ISACPA was constituted, South Asia continues to be blighted by poverty – with almost 40 percent of the global poor residing in the region.

Commensurate with the changes brought in by globalisation, among others, it was felt necessary to develop new action-oriented strategies taking into account national, regional and global changes that took place in the last decade. The publication is the outcome of the re-constituted ISACPA by the Heads of State/Governments in Kathmandu. Apart from looking into the causes of high incidence of poverty, this report has outlined a poverty reduction strategy attuned to the experiences and realities of the new century.

The report is divided into two parts and is split into nine chapters. The first part of the report deals with the context and comprises five chapters. The thrust of the first part is on the newer realities surrounding South Asia. For instance, the benefits of globalisation to a large extent have been limited mostly to urban areas and a small segment of rural population. The first part justifies the need to address the issues of poverty and looks into the extent and magnitude of the problem. According to the report, 37 percent of the population in South Asia live below the line of absolute poverty, as defined by the UN taking the 'dollar-a-day' income benchmark.

The first part also outlines some key challenges in reducing the poverty incidence. The challenges as described include mainstreaming the poor in the context of social heterogeneity, sustainable livelihoods, youth employment, among others. Besides, the part also contains cases of

best practices, providing a rich selection of home-grown success stories. "The best practices so documented can be replicated in the region for improving South Asia's development potential", the report suggests.

Unlike in the first part, the second part of the report looks into the course of action that South Asia needs to take. *Road Map Towards a Poverty Free South Asia* gives a preminent plan of action for the solution to the staggering poverty engulfing South Asia. As a part of the action plan, the report has reset its poverty reduction goals in its regional agenda. These targets are in line with the MDGs but seem over ambitious (See the Chart).

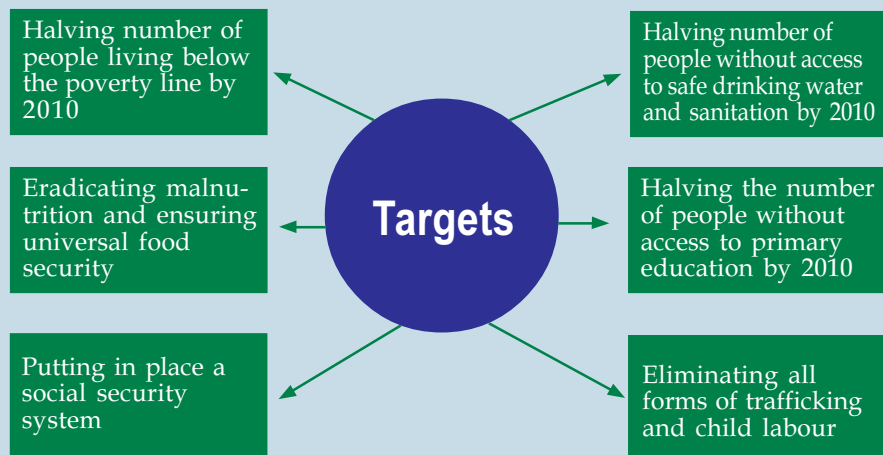
All the targets are well supported by a strategic framework. Chapter eight of the report titled *Towards an Action Plan* has given a logical framework for achieving the objectives along with the strategies and the dates from which the reforms are to be initiated. And ritualistically, the report finally makes 'operational recommendations' for achieving the the 'reset' targets.

The ISACPA report has clearly laid the way to achieve a poverty free South Asia, which though not impossible, depends on the implementation of the strategies and priorities outlined in the report. Unfortunately, the South Asian experience is replete with an excess of 'policies on paper' and poor record of implementation. This does bring to fore the question of whether or not the South Asian governments would work as per the suggested 'road map' – which is based on the goals that are more ambitious than the MDGs. An ideal South Asia has been envisaged. But by merely resetting goals and crafting 'good' recommendations, will the poverty issue receive the treatment it ought to? This question is bound to arise in every reader's mind. ■

(Ms Gadtaula is Programme Associate at SAWTEE)



Targets reset by the ISACPA



BIMSTEC: More than just a radar 'blip'

By including all possible areas for cooperation under the BIMSTEC umbrella, leaders of the seven Asian nations, in essence, have pledged to tread an ambitious path

Leaders of seven Asian nations at a summit in Bangkok held in July expressed their commitment to use their inherent strength to become more than just a 'small blip' on the world's radar screen. Such commitment was made during the first summit-level meeting for the forum renamed as the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), which groups Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand.

A declaration issued at the conclusion of the summit gives due recognition to the potentialities of multi-dimensional cooperation within the region. It expresses commitment of the Asian leaders to the founding objectives and principles of BIMSTEC to assess the challenges and opportunities for economic cooperation in the region and to strengthen BIMSTEC's ability to find ways and means to realise those challenges and opportunities effectively and efficiently.

The declaration builds upon the conviction that geographical location of BIMSTEC members can provide a sound basis for mutually beneficial cooperation, and that regional and sub-regional cooperation would contribute to efforts towards global free and fair trade being pursued under the multilateral trading regime. Besides, it also rests upon the fervour of community that will lead to economic and social development of the entire region.

Leaders during the summit endorsed the start of talks for a free trade area (FTA) by 2017. However, the declaration makes it apparent that BIMSTEC aims at more than a mere FTA and deals not just with goods, but includes services and investment as well. It also extends to broader cooperation in areas such as tourism, culture, information and communication technology, education, health, environment, biotechnology, energy, etc. This, in essence, resembles the features of a broad economic union, of course sans common fiscal and monetary policies and a common currency.

In essence, leaders of the seven Asian nations have pledged to tread an ambitious path. By including all possible areas for cooperation under the BIMSTEC umbrella, leaders have not just envisaged to liberalise trade, but also to grow as a group and as a formidable coalition. Unfortunately, though the leaders might have dreamed a perfect Asian grouping, little do they seem to realise that the countries in the region differ signifi-

cantly in terms of their level of development, which is likely to pose a significant problem towards achieving the targets. Besides, reciprocity in virtually all aspects of cooperation may not be possible in such a group where members have diverse interests.

Nonetheless, some decisions taken during the summit are noteworthy, and can be termed as bold and laudable. One such decision relates to the mode by which travel within the region for business purposes, exchange programmes and tourism could be facilitated. The members agreed to launch a BIMSTEC Business Travel Card/Visa scheme for the purpose, and this is truly remarkable decision. This decision can go a long way in promoting cross-border trade and investment through better business relations.

Besides, an important issue taken up by the summit relates to infrastructure in the region. In the absence of efficient modes of communication and transportation, realising full potentials of liberal economic regime would truly be a difficult task. The declaration views that infrastructure is necessary to facilitate tourism, trade and investment and accordingly, it agrees to strengthen and accelerate cooperation for developing concrete regional project proposals such as the ongoing negotiations on road linkages between the member countries.

Besides, the declaration also asserts to accord priority to projects that could be clearly conceptualised, adequately funded and effectively implemented, with well-defined goals and tangible results relevant to the needs of the people in the region, based, as far as possible, on internal financing from within the BIMSTEC countries. These assertions relating to infrastructure development and project implementation, though the structure and the nature of the projects remain undefined, should not merely be confined to rhetoric.

Until and unless a clear and focused programme of cooperation is in place and appropriate formal institutional mechanisms established, jointly and within each member country, for effective coordination and implementation of targets envisioned during the summit, BIMSTEC would be a non-starter. Unfortunately, no decisions were made on how such formal institutions and mechanism would be established. As of now, it can only be hoped that BIMSTEC does not remain a mere blip in the world's radar screen. ■

BIMSTEC, in essence, resembles the features of a broad economic union, of course sans common fiscal and monetary policies and a common currency

BIMST-EC



SAARC: In need of bureaucratic will

Political commitment to SAFTA should be complemented by bureaucratic will to move forward, writes Mr Milan Mani Sharma

When Head of States from seven South Asian countries convened in Islamabad for the 12th summit of SAARC, they had a point to prove to the world: they have the will and the political commitment to cast away individual differences and rivalry and move forward to the much-talked economic integration. But the bureaucracy of the respective members, which is represented in the SAFTA committee of experts (CoE), has a different story to relate. Even through two years and six rounds of negotiations prior to the signing of SAFTA framework accord, it had failed to forge consensus on the most crucial matters of the accord. And the progress in the post-summit period has not been satisfactory either.

When the 12th summit endorsed the SAFTA accord framework, SAARC members, namely, Nepal, India, Bangladesh, Pakistan, Bhutan, Sri Lanka and Maldives, were yet to converge on issues relating to: a) Rules of Origin (ROO), b) sensitive list, c) technical assistance for LDC members, and d) revenue compensatory mechanism for LDCs. But when leaders asked the CoE to settle all outstanding issues and finalise the SAFTA agreement within two years, they overlooked one simple fact – the inherent differences and the slow pace of their own bureaucracy that had earlier forced SAARC to twice miss the deadline for the finalisation of the SAFTA draft treaty accord.

This is what the reality of SAARC has been. The pace of leaders and bureaucracy rarely match. Besides, the differences in the size of economy and scale of growth have been making the journey for a free trade area (FTA) tough. Since the conclusion of the summit early this year, the CoE has already met four times – first in Kathmandu in February, second in Islamabad in May, third in Colombo in June and fourth in Thimpu in August. The speed at which the CoE has been meeting can be tagged ‘satisfactory’. But when it comes to tangible outcomes, the CoE has reached nowhere. The differences have once again slowed down SAFTA’s pace.

Even after four rounds of negotiations in the post-summit period, the outstanding issues under SAFTA are essentially left as they were. Two of the issues – ROO and sensitive list – constitute the bone of contention, for these would determine the functioning of SAFTA. The CoE is yet to finalise modalities and start negotiations on the sensitive list. Likewise, it still remains undecided whether or not to discuss ROO on a product-to-product basis as agreed earlier. These show that SAFTA negotiations are yet to kick off in real terms.

The SAARC Secretariat official argue that the CoE has already worked out a negotiation plan and can gear up negotiations at will. But

there are few lackadaisical sides in the negotiation plan of the CoE, which raise doubt over effective outcome in a scheduled timeframe. One such issue is that SAARC members have agreed to negotiate on sensitive list and ROO prior to negotiations on revenue compensatory mechanism. This has one fundamental flaw. Concerns of revenue compensation mechanism are directly related with that of sensitive list. Obviously, sensitive list of each member country, especially LDCs, would include revenue-sensitive items. This concern of LDCs can only be addressed and negotiations on sensitive list eased only after a mechanism to compensate revenue loss is adopted.

Hence, the first priority of the CoE should have been to make clear the mode, degree and areas of revenue compensation. This would have helped convince LDCs and turn their focus on mere industry-sensitive products. This would have helped them satisfy with relatively small sensitive list, ultimately easing negotiation on it. Such change in priority would also have helped furthering negotiations on ROO. Unfortunately, the appointment of an independent consultant to study and propose feasible modalities for revenue compensatory mechanism is yet to take place.

Besides, the approach taken by the CoE to first develop a bulky sensitive list and cut its size to an agreeable size later is another point that indicates members are finding it tough to shed ‘positive list’ approach mentality. The difference in industrial base and economic status of individual members is likely to make it very tough for the CoE to achieve the target of bringing the sensitive list down to some five to 10 percent limit. The CoE should have adopted the reverse approach instead.

On the other hand, members are yet to settle issues like harmonisation of standard, reciprocal recognition of certification, simplification and harmonisation of customs clearance, transit facilities for efficient intra-SAARC trade, removal of barriers to investment and development of communication systems and transport infrastructure, which are crucial for effective enforcement of SAFTA. Technical assistance to LDCs is another matter that needs serious and proper consideration if SAFTA is to take true shape. The SAARC bureaucracy needs a better focus on these matters. What SAARC needs, at this juncture, is a strong bureaucratic will. ■

(Mr Sharma is Economic Journalist at The Kathmandu Post)



Technical assistance to LDCs is a major issue that needs serious and proper consideration if SAFTA is to take true shape

Agreement on Textiles and Clothing

Though Europe and North America will remain the largest garment importers even after the quota phase out, many LDCs will lose guaranteed markets

The issue of textiles is one of the hardest-fought issues in the WTO system. The issue has been present in the world trading system since the days of the GATT. Till the end of the Uruguay Round (UR), trading issues relating to textile and clothing were negotiated bilaterally and governed by the rules of the Multifibre Arrangement (MFA). MFA was a framework for bilateral agreements or unilateral actions that established quotas limiting imports into countries whose domestic industries were facing 'serious damage' from rapidly increasing imports.

The quotas were the most visible feature in the MFA. These quotas provided for the application of selective quantitative restrictions (QRs) when surges in imports of particular products caused, or threatened to cause, serious damage to the industry of the importing country. They conflicted with GATT's general preference for customs tariffs instead of measures that restrict quantities. They were also exceptions to the GATT principle of non-discrimination, i.e., treating all trading partners equally because they specified how much the importing country was going to accept from individual exporting countries.

On 1 January 1995, MFA was replaced by the Agreement on Textiles and Clothing (ATC), which sets out a transitional process for the ultimate removal of such quotas. The quotas are to be removed under the 10-year schedule. The system of import quotas that has dominated textiles and clothing trade since the early 1960s is being phased out.

By 1 January 2005, the sector is to be fully integrated into normal GATT rules. This is happening gradually, in four steps, to allow time for both importers and exporters to adjust to the new situation. Some of these products were previously under quotas. In particular, the quotas will come to an end, and importing countries will no longer be able to discriminate between exporters. The ATC ultimately will itself no longer exist: it's the only WTO agreement that has self-destruction built in.

The ATC is a transitional instrument, built on the following key elements: (a) the product coverage, basically encompassing yarns, fabrics, made-up textile products and clothing; (b) a programme for the progressive integration of these textile and clothing products into GATT 1994 rules; (c) a liberalisation process to progressively enlarge existing quotas (until they are removed) by increasing annual growth rates at each stage; (d) a special safeguard mechanism to deal with new cases of serious damage or threat

thereof to domestic producers during the transition period; (e) establishment of a Textiles Monitoring Body (TMB) to supervise the implementation of the Agreement and ensure that the rules are faithfully followed; and (f) other provisions, including rules on circumvention of the quotas, their administration, treatment of non-MFA restrictions, and commitments undertaken elsewhere under the WTO's agreements and procedures affecting this sector. Besides, the TMB also deals with disputes under the ATC. If they remain unresolved, the disputes can be brought to the Dispute Settlement Body.

The integration process laid down in ATC stipulates how members integrate the products (fabrics, clothing, made-up textile products and tops and yarns) into the rules of GATT 1994 over the 10-year period (See the Table).

Each importing member decides itself which products it will integrate at each stage to reach these thresholds. The only constraint is that the integration list must encompass products from each of the four groupings: tops and yarns, fabrics, made-up textile products and clothing.

Concurrent with the integration process, there is a programme for liberalising the existing restrictions, that is, for enlarging the bilateral quotas carried over from the former MFA on 1 January 1995 until such time as the products are integrated into GATT, at which time the quotas terminate.

Another key aspect of the ATC is the provision for a special transitional safeguard mechanism intended to protect members against damaging surges in imports during the transition period from products, which have not yet been integrated into the GATT and which are not already under quota. This clause is based on a two-tiered approach - first, the importing member must determine that total imports of a specific product that is causing serious damage, or actual threat thereof, to its domestic industry and second, it must then decide to which individual member(s) this serious damage can be attributed.

While nobody can predict correctly what picture would global textiles and clothing market have after 2005, there are some indicators of potential winners and losers of the quota phase-out. Many countries including Bangladesh will lose their existing markets with 1.8 million workers losing their jobs. Though Europe, North America and the USA will remain the most important garment markets, with the end of quota phase, however, many LDCs will lose guaranteed markets.

Countries like Bangladesh, Cambodia and Nepal, with a comparatively heavy share of garment exports in total merchandise export need to attempt to keep at least part of their present market, or else will face disaster with higher unemployment and higher level of poverty. ■

Quota phase out schedule under ATC

Stages	To be phased out by	Integration process*
First	1 January 1995	Not less than 16 percent was integrated
Second	1 January 1998	Not less than a further 17 percent was integrated
Third	1 January 2002	Not less than a further 18 percent was integrated
Final	1 January 2005	All remaining products (amounting up to 49 percent of 1990 imports into a member) will stand integrated and the Agreement terminates

* The integration by member(s) of products of that member's total 1990 imports of all the products

General Agreement on Trade in Services

The most important criticism levelled against GATS is that it fundamentally alters the balance of rights and responsibilities between the states and corporations

The General Agreement on Trade in Services (GATS) is the first multilateral trade agreement to cover trade in services, which was originally agreed at the end of the Uruguay Round (UR) in 1994, and came into force with the establishment of the WTO on 1 January 1995. This agreement is in the nature of a framework agreement and aims to progressively liberalise trade in services.

The GATS has three elements: the main text containing general obligations and disciplines; the national schedules, which list individual countries' specific commitments to provide access to their markets; and annexes dealing with rules for specific sectors.

The **general obligations and disciplines** of GATS cover all services except services provided in the exercise of governmental authority, in the air transport sector and air traffic rights.

Services can be provided in many ways and GATS has defined four ways in which service can be traded. They are known as 'modes of supply' (See the chart):

Most significant of these general disciplines is the principle of most favoured nation (MFN) treatment, i.e., non-discrimination between members. MFN applies to all services, but some special temporary exemptions have been allowed. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing "MFN exemptions" alongside their first sets of commitments. They are currently being reviewed as mandated, and will normally last no more than 10 years.

Specific commitments are the outcomes of negotiations and they are undertaken by individual members in specific sectors of services. Commitments in specified sectors are made in 12 broad categories, namely, business, communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, health-related and social services, tourism and travel-related services, recreational, cultural and sporting services, transport services, other services not included elsewhere. All these specific commitments are inscribed in the 'schedule' of the particular member and are 'bound'.

Members may select the areas in which they wish to make commitments and in each of these areas make commitments in three aspects: i) market access, ii)

national treatment; and iii) other commitments. When a sector is left out it means no commitments on market access have been made.

The national treatment principle calls for treatment of foreign suppliers of members on no less favourable terms than what is offered to domestic suppliers. GATS permits derogation from this requirement but again only if the conditions and qualifications have been inscribed in the schedule.

Members may enter into other types of commitments, e.g., those involving competition policy, or qualifications, standards or licensing in respect of trade in services.

As trade in services is very much diverse, the **GATS annexes** reflect some of the diversity in terms of movement of natural persons, telecommunications, financial services and air transport services.

GATS requires that governments publish all relevant laws and regulations, and set up enquiry points within their bureaucracies for transparency. And the governments have to notify the WTO of any changes in regulations that apply to the

services that come under specific commitments.

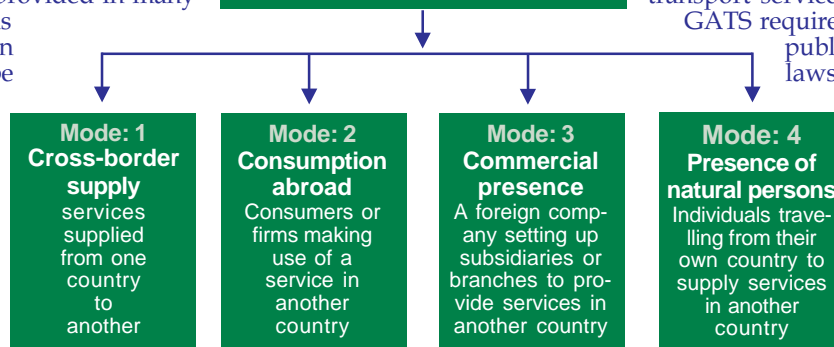
GATS does not require any service to be deregulated. Commitments to liberalise do not affect governments' right to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit.

Once a government has made a commitment to open a service sector, it must not normally restrict money being transferred out of the country as payment for services supplied (current transactions) in that sector except when there are balance of payment difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

Over the years GATS has been subject to huge criticism. The most basic and important criticism levelled against GATS is that it fundamentally alters the balance of rights and responsibilities between the states and corporations. Once a decision to liberalise a sector has been made, it is effectively irreversible. This threatens the ability of governments to regulate sectors that have huge public interest dimensions.

As GATS covers a vast range of sectors, a single standard set of WTO rules is, therefore, too simplistic, particularly when applied to many different countries, with different social and cultural histories and at different stages of development. Further, because the basic services that are essential for the poor and for development are included within its remit, GATS may result in vital public services coming under the control of foreign corporations. ■

MODES OF SERVICE DELIVERY UNDER GATS



Why do rich not take UNCTAD seriously?

The US and the EU view that UNCTAD should focus on capacity building, rather than on policy analysis, writes Mr Pradeep S Mehta

Ever since the WTO came into being in 1995, the UNCTAD has been under attack from the rich countries for doing excellent work for the developing countries in the international trading system.

First, let us take a look at UNCTAD's history. Often people have wondered as to why it is called a 'conference', an anomaly, which no one has corrected till now. It is not just a conference but also a UN body like many others, such as the UN Environment Programme. It is a derivative of the first conference, which was held in 1962 in Geneva.

At that meeting nearly 4,000 official delegates from 119 countries, along with representatives of numerous international organisations had participated with a view to looking at the linkages of

trade and development. It was, perhaps, the largest international event ever held on any subject. In the 1990s, many more international meets did take place with a larger audience.

UNCTAD, more than a 'conference'

However, the first conference decided to make it into a permanent forum with a review meeting to be held after every three years. But one does not know as to why a proper name was not adopted. UNCTAD has become a standing body, and more than a "conference". While it continues to do good work of providing policy analyses and capacity building to developing countries, it has become an unwieldy bureaucracy. As a result, some have even interpreted it as "Under No Circumstances Take Any Decisions".

Humour apart, in the run up to the UNCTAD XI, there was quite a tussle between the North and the South about the Declaration. The US and the EU felt that UNCTAD should focus on capacity building, rather than on policy analysis. However, the South felt differently. And the Sao Paulo Consensus that emerged carried both the issues as UNCTAD's agenda. But refrain was sounded at the Sao Paulo meeting.

The British Minister for Trade and Investment, Mr Mike O' Brien clearly hinted that UNCTAD is not an alternative negotiating forum. He said, "UNCTAD should avoid doing what other (WTO) institutions are doing. We need institutions focussed firmly on their core mandate". Further, he reiterated that UNCTAD is not a negotiating forum and should focus on technical assistance, capacity building, policy consulting and provide scope

for thoughtful discussion

Even at earlier meetings, refrain had been sounded. During the UNCTAD IX meeting at Midrand, South Africa, Mr Harriet Babbitt, a Deputy Administrator at USAID, had said, "An operational role for UNCTAD in trade negotiations would involve a confusion of institutional roles and a diversion of limited resources to activities for which UNCTAD is not the best suited organisation."

The rich countries have not only tried to curb UNCTAD's role in the international trade arena, but over time have continued to show their increasing indifference. One can see that from their participation at the meetings. While most developing countries send their Cabinet-level ministers to UNCTAD meets, participation of ministers of equal rank from OECD countries has been declining. During the three earlier UNCTAD meetings in 1992, 1996 and 2000, only 12 of the 28 rich countries sent Cabinet ministers. In 2004, the figure dropped to half, i.e., only six.

Stronger UNCTAD

Why does the South want a stronger UNCTAD? A good answer is available in what a senior government of India official said at the UNCTAD IX conference, "If there are new issues, they should be subject to very careful examination and analytical work in UNCTAD on all the implications, and the balances of advantages and disadvantages analysed and disseminated to the people interested in it. There should be a complete embargo on new issues in the WTO agenda unless it has been subject to very careful examination in UNCTAD". As usual, this reflects the North-South conflict of interest in directing the future work of UNCTAD. The North's attitude towards UNCTAD has evolved due to several reasons.

For example, UNCTAD has always been critical of the IMF and the World Bank policies. When both the Bretton Woods twins were trying to be more legitimate, UNCTAD issued a report in late 2002 criticising their new approaches to reduce poverty in Africa.

The UNCTAD research reports also have often criticised the blatant exaggerations of the merits of liberalisation, freer trade and deregulated capital markets, all of which the West swears by *a la* the Washington Consensus. Hence, most developed countries have identified UNCTAD as being an organisation, which primarily caters to needs of the South, and one that has been providing a balanced platform for both the North and the South. ■

(Mr Mehta is Secretary General of CUTS, Jaipur. The article is adapted from *The Hindu Business Line*, 3 August 2004)



While UNCTAD continues to do good work of providing policy analyses and capacity building to developing countries, it has become an unwieldy bureaucracy

Underutilisation of trade preferences The case of Bangladeshi textiles

Though Bangladesh is entitled to enjoy all the facilities under GSP and EBA, the rate of utilisation of the trade preferences is surprisingly low, writes Md. Golam Robbani

The Generalised System of Preference (GSP) was first proposed by UNCTAD in 1968 to offer special trade preferences to developing countries. In order to implement the system, a waiver was required from Article I of the GATT, which prohibits discrimination. The waiver was granted in 1971 by adopting the so-called 'enabling clause' which allows developed countries to establish individual GSP scheme on non-discriminatory, non-reciprocal and autonomous basis.

The European Community (EC) was the first to initiate a GSP scheme in 1971. It is widely believed that the GSP has rendered substantial benefit to developing countries. The 'Everything But Arms' (EBA) initiative offered by the EC in 2001 has granted duty-free and quota-free market access to exports of virtually all products manufactured in LDCs (with exceptions for arms and ammunitions; and exceptions for banana until 2006 and sugar and rice until 2009). Expiry date and 'graduation' clause are not applicable to products under EBA. The only requirement is that such products should comply with the Rules of Origin (ROO) set by the EC. Obviously, EBA is the most favourable trade regime for LDCs.

Bangladesh, being an LDC, is entitled to enjoy all the facilities under GSP and EBA. However, though lucrative in theory, the rate of utilisation of the trade preferences is surprisingly low. During 1996-2000, average utilisation rate of EU-GSP on HS chapter 61 and 62 (garments) was below 50 percent. The utilisation rate depends on the willingness and capacity to utilise a facility like GSP. The willingness is driven by the benefit out of such facilities compared to the cost of compliance; and the capacity depends on the options at hand given the stringency of the rules of compliance. It should not be surprising, however, that strict ROO requirement is the main reason for the low utilisation of EU-GSP by Bangladesh.

The EU-GSP for textiles provides 20 percent reduction in 'most favoured nation' (MFN) tariff of about 12.5 percent. As a result, the rate of preference is not only insufficient but also erodes with any slight reduction in MFN tariff. It seems apparent that businesses consider their effort of complying with associated rules more costly than the benefits. This is plausible if one considers the time and effort, let alone the under-the-table payment to bureaucrats, required for GSP certification.

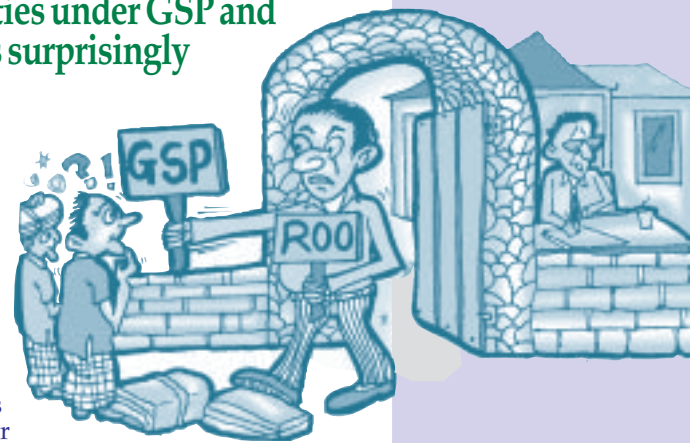
Besides, reliance on GSP is risky as well, as it is subject to further scrutiny by EU customs

authorities at the border. It is hard to forget the disgraceful incidence of 1995 when EU authorities discovered numerous fake GSP certificates issued in favour of Bangladeshi exporters. This kind of incidents increases the risk factor for even genuine traders. SAARC cumulation could not be an answer to this, because, according to industry experts, SAARC cumulation offers less than two percent benefit, whereas imports from outside SAARC offer five to seven percent of the value of fabrics. As a result, it appears that it is still beneficial to import from outside of SAARC (e.g. from China).

In addition, Bangladesh also suffers from supply side bottlenecks in utilising EU-GSP. This is particularly evident from the fact that, for products in chapter 62, the EU ROO requires two-stage transformation: yarn to fabric and fabric to garments. That means GSP facilities are not allowed for garments manufactured with imported fabrics. The difference in utilisation rate in HS chapters 61 (knit garments) and chapter 62 (woven garments) reveals this. During 1996-2000, the GSP utilisation rate was about 50 percent in the case of HS chapter 61, whereas it was slightly above 10 percent in the case of chapter 62. The pick import of fabrics from outside SAARC for chapter 62 and parallel low utilisation rate in that segment indicate that Bangladesh cannot comply with ROO requirement for items in chapter 62. Besides, Bangladesh imported 65 percent of cotton fabrics from China in 2001. This also reveals the limited scope of SAARC cumulation arrangement.

However, the rate of utilisation can improve if some modifications are done in ROO for future GSP cycles. Besides, less stringent, simple and transparent ROO would serve the very purpose of the GSP better. Mutually beneficial common position by garments exporters and textiles manufacturers in Bangladesh is of vital importance in attaining better result out of GSP/EBA facilities in days to come. ■

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



The rate of GSP utilisation can improve if some modifications are done in ROO for future GSP cycles

Dispute settlement A long road ahead

The Dispute Settlement Understanding is hardly exempt from the geo-political realities of various nations, writes Bharath Jairaj



Of the various 'improvements' that the WTO made over the GATT system, one that is often spoken about is the Dispute Settlement Understanding (DSU). As is well documented, the dispute settlement system used by the earlier GATT regime relied on 'positive consensus' and on diplomacy and good faith of its members. This system was changed by the rules-based WTO system, which worked on the premise of 'negative consensus'.

To ensure improved enforcement of their decisions, the DSU sought to provide for a range of punitive and penal measures including mandatory monetary compensation against non-compliant country whenever necessary. The DSU could also authorise the suspension of concessions or other obligations as well as authorise other retaliatory and cross-retaliatory measures, which could vary, depending on the situation.

However, the DSU is hardly exempt from the geo-political realities of various nations. For example, in the enforcement of a Dispute Panel/Appellate Body (DP/AB) ruling, it is nearly impossible and entirely insignificant for a nation such as Bangladesh to impose trade sanctions on a superpower such as the US. On the other hand, it is easy for the US to impose trade sanctions and indeed influence nations such as Bangladesh, or even India, with little or no consequence to its own economy.

The DSU Review: A 1994 Ministerial decision mandated that DSU rules be reviewed by 1 January 1999. The review started in 1997 and got its first extension till 31 July 1999, but there was no agreement. It was not until November 2001 at Doha that DSU review came back on the agenda. This negotiation was to be concluded by May 2003, but was subsequently extended to May 2004. The negotiations, however, could not be completed.

Over this period, several countries submitted proposals on a range of issues aimed at strengthening the DSU. Most proposals came after the Doha Ministerial. Like at most other discussions on international trade law, the US, EU and to some extent Japan, continued to show their dominance in the discussions.

The issues plaguing the DSU: Of the issues that have come up repeatedly over the last few years, the critical ones have been on 'sequencing' and improved implementation of DP/AB decisions, increased transparency in DSU proceedings and special and differential treatment (S&DT) for developing countries and LDCs. However, no agreement has been reached on any of these issues. Some of the proposals, counter proposals and responses that have been filed

during the DSU review have been listed below.

Transparency in DP/AB proceedings:

Meetings on this issue have normally ended in heated arguments on whether dispute settlement proceedings should be transparent. The EU and the US in particular feel that non-governmental actors should be allowed to submit unsolicited *Amicus* briefs to the DP/AB and observe the proceedings as well. However, a majority of WTO members, especially developing countries strongly oppose this idea, stressing on the inter-governmental nature of the WTO.

Sequencing of retaliation measures: On the issue of 'sequencing', the question was whether a 'compliance panel' must first review the implementation measures adopted by the losing country before authorising retaliatory measures by the winning country. The US was initially against sequencing and wanted to initiate immediate retaliation. However, the US bilaterally worked out a process with the EU. It appears that countries are now adopting a case-by-case approach and following this new procedure. However, there is no formal agreement on this approach.

Improved implementation of DP/AB decisions:

The US and Chile proposed that countries be allowed to agree to delete certain portions of the DP/AB reports, if desired, arguing that this could lead to quicker and easier implementation of decisions. However, countries that see this proposal as affecting the independency and effectiveness of the DP/AB and indeed the predictability of the trade system have opposed this.

S&DT for developing countries and LDCs:

On the issue of S&DT for developing countries and LDCs, Zambia speaking for the LDC group has asked for 'the deciding panel in any case involving developing countries involve at least one developing country'. Developing countries have proposed the option of 'collective retaliation' to overcome the difficulty faced by smaller countries in enforcing decisions against the larger countries. However, developed countries have not agreed to these requests.

In May 2004, countries agreed to a further time extension for the DSU review, this time not placing any deadline for results. It is thus apparent that the DSU has made little or no progress, besides changing to a 'rules-based' system and adapting to this change. It is also increasingly apparent that the review of the DSU will not see progress since countries are unable to agree on which direction the DSU should be headed. ■

(Mr Jairaj is Managing Trustee of CAG, Chennai)

It is easy for the US to impose trade sanctions and influence nations such as Bangladesh, or even India, with little or no consequence to its own economy

Technology transfer under TRIPS

It seems developed countries are systematically sidelining most of the issues of significance to LDCs, including the issue of technology transfer under TRIPS

Technology transfer and diffusion can contribute to economic development via productivity growth it ensues. However, developing countries lag behind in the technology frontier and confront the issue of how best to bridge the technology gap. They not only have limited capacity to generate technology, but also lack the requisite infrastructure and legal mechanisms to make best use of the acquired technology. The fact is they are likely to remain net importer of technology in the foreseeable future. A sound, affordable and workable mechanism of international technology transfer is, therefore, the need of the hour.

The process of technology diffusion or transfer, regardless of the channel by which it occurs, is neither automatic nor costless. There are two channels through which technology transfer occurs, namely direct channel such as trade in technology, joint venture, licenses and FDI and indirect channel such as international trade in goods and services, movement of labour and imitation. Open trade policies are critical for developing countries to make technological advancement. But openness is not sufficient – there needs to be absorptive capacity and ability to adapt foreign technology, both of which are related to human capital endowments and investment in research and development (R&D) intensive industries.

In the past, some developing countries like South Korea made extensive use of national policy tools such as screening and choosing investors that were more willing to transfer technology. This might not be possible in the current era of 'race to the bottom' policy pursued by a number of developing countries to attract investment. Moreover, investment agreement could also severely circumscribe the ability of host countries to make technology transfer a mandatory requirement for foreign investors. Though such agreement is not yet included in the WTO, it has been included in various bilateral agreements signed by developing countries with the developed ones.

In this context, a multilateral mechanism to facilitate technology transfer is clearly the only viable option. However, how that is going to happen is far from clear. One way of doing it is to strengthen various agreements within the WTO. Unfortunately, this process is not likely to move forward in the desired direction. Among the various WTO agreements that deal with the issue of technology transfer, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is the major one, which contains explicit provisions relating to international technology transfer.

Article 7 of TRIPS, which lays down the very objective of the Agreement, notes that IPRs should

contribute to the promotion of technological innovation and the transfer and dissemination of technology. Similarly, Article 8.2 recognises that countries may wish to adopt policies to prevent the abuse of IPRs by rights holders or the use of practices that 'adversely affect the international transfer of technology'.

Finally, Article 66.2 of the Agreement requires developed countries to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDCs in order to enable them to create a sound and viable technological base.

However, given the fate of the implementation aspects of the well-intentioned provisions, there is no reason to be optimistic about this provision. This has probably led some commentators to argue that multilateral efforts to identify actions that governments should pursue to encourage international technology transfer are largely of a best endeavour nature.

Due to the growing realisation of the need to bridge the gap between technology producers (North) and technology takers (South) and the imperatives to implement Article 66.2 of TRIPS, paragraph 11.2 of the Declaration on Implementation Related Issues and Concerns adopted at Doha Ministerial Conference reaffirms that the provisions of Article 66.2 of TRIPS are mandatory. Ministers also agreed that the TRIPS Council shall put in place a mechanism for ensuring monitoring and full implementation of the obligations in question.

Developed countries were asked to submit detailed reports on the practical aspects of the incentives provided to their enterprises for the transfer of technology in pursuance of their commitments under Article 66.2 prior to the end of 2002. Besides, it was mandatory

for such submissions to be subject to review in the TRIPS Council and with the condition that information shall be updated by members annually.

To date, Australia, Canada, the European Communities and their member states, Japan, New Zealand, Norway and Switzerland have provided the information requested. The TRIPS Council, through its Decision of 19 February 2003, stated that members from developed countries would present a new detailed report on the incentives they have provided or plan to provide every three years.

It seems developed countries are systematically planning to sideline most of the issues raised by developing countries under the Implementation Related Issues and Concerns. The fact that the recently adopted decision of the General Council dated 31 July 2004 mentions of postponing the deadline for reviewing the progress and taking appropriate actions on implementation related issues and concerns until July 2005 is a testimony to this. ■



Has Doha Development Round

The Doha Development Round (DDR) is now out of intensive care unit. WTO members on 31 July agreed on a framework package, thus bringing the DDR back on track. The DDR had stalled following the failure of the Cancun Ministerial last September. Members then had set 15 December 2003 as the deadline to agree on a negotiating framework package, but had to extend it to 31 July 2004 in the wake of differences. While most WTO members welcomed the text of the General Council (GC) decision as a positive development, they acknowledged that the text simply lays down the basic pillars and a 'framework' for conducting future talks.

The package emphasises the need to push ahead talks in five areas, namely agriculture, non-agricultural market access (NAMA), development issues, trade facilitation and services. Regarding existing commitments in the rest of the Doha Mandate, including intellectual property, dispute settlement rules and environment, the agreement simply reaffirms continuing negotiations. Acknowledging the limited progress made so far in the DDR, members postponed the 1 January 2005 deadline for concluding the talks to an as-yet unspecified date, at least until the sixth Ministerial to be held in Hong Kong in December 2005.

Agriculture

Agriculture has always been a 'bone of contention' in international trade negotiations. The 31 July text adopted a framework for future agriculture negotiations as a separate Annex, and this is being looked upon as a considerable breakthrough by developing countries. Annex A outlines a number of crucial understanding, particularly those relating to substantial reduction in domestic support and revocation of export subsidies. However, to what extent developing countries can gain out of this package is a subject of close scrutiny.

A critical look at the framework, however, reveals that much remains to be done, and poses a question if at all the decision would tangibly favour developing countries. With regards to reduction in domestic support, paragraph 6 of the framework states that members would 'make a substantial reduction in the overall level of its trade distorting support from bound levels'. Though the text is only a framework and not an agreement, *per se*, yet keeping the extent of reduction in domestic support undefined leaves room for developed and developing countries to clash again and see another dead end in negotiations.

Likewise, paragraph 17 assures phasing out of all forms of export subsidies. Sweet as it may sound, and which is why developing countries hailed the 31 July text, but the lack of a deadline to phase out all subsidies is a completely new ball game, where tough negotiations are likely to follow. A deadline or a timeframe, say three to five years, for elimination of subsidies should have been set, which would have given the whole text a completely new meaning. Besides, there are no supportive past experiences to believe that the assurance of 31 July will actually be translated into reality.

Non-agricultural market access

NAMA too has been a very contentious issue under the WTO agenda. Annex B of the 31 July text contains the framework for establishing modalities in market access for non-agricultural products. However, it contains only the initial elements for future work on modalities by the

negotiating group on market access. The text affirms that additional negotiations would be required to reach an agreement on the specifics of some of the elements, such as the formula for tariff reduction, the issues concerning the treatment of unbound tariffs, the flexibilities for developing countries, the issue of participation in sectoral tariff components and trade preferences.

Despite the formulation of a framework for negotiations, any tangible progress on NAMA seems a far cry. Paragraph 2 of the Annex states - "We reaffirm that negotiations on market access for non-agricultural products shall aim to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers". Clearly, there is no deadline on when such negotiations would begin or conclude. Under Annex B, there is only one deadline dealing with the notification of non-tariff barriers (NTBs). As per paragraph 14, all WTO members would have to make notifications on NTBs by 31 October 2004. The rest of the assurances as provided for by the text looks like mere 'best endeavour clauses'. These bode tough future negotiations.

31 July text on DDR revival

Major issues	The July text mandated work programme
Agriculture	Substantial reduction in overall level of trade distorting support. Blue Box support not to exceed five percent of agricultural base. Elimination of all forms of export subsidies by the end of 2004. Initial offers to be submitted as soon as possible. Submission of revised offers to be done by May 2005.
Services	Members to intensify their efforts to conclude the negotiations within their respective mandates and deadlines. Review the progress in negotiations by Sixth Ministerial Conference.
NAMA	Framework for establishing modalities in NAMA for market access. Additional negotiations mandated to reach agreement. In order to finalise the modalities, the Negotiating Group shall continue to work consistent with the mandate of para 16 of the Doha Mandate.
S&DT	The GC instructed CTD to review all Agreement on Trade Facilitation. CTD instructed to make recommendations on the parameters of the Doha Mandate. CTD asked not to overlap meetings, as far as possible.
Singapore Issues	Negotiations on competition, investment and trade facilitation. Negotiations on trade facilitation mandated to clarify the issues. Collaborative efforts among the IMF, OECD, UNCTAD, WTO, making technical assistance and capacity building.
Implementation Related Issues and Concerns	The GC instructed the TNC, negotiating bodies, and other relevant bodies to find solutions to outstanding implementation issues. The Director General is instructed to continue his work on implementation and also asked to report to the TNC and the GC regularly. The GC shall review progress and take any appropriate action.
Technical Assistance to LDCs	In order to provide enhanced trade related technical assistance to low income developing countries in transition, the GC encourages the improved coordination with other agencies. The GC shall review progress and take any appropriate action.

merged from intensive care unit?

Development issues

The 31 July text has taken up development issues much more flexibly than any other earlier WTO text. Besides, the text is in strong favour of developing countries, and recognises the 'development dimension' of various negotiating issues. It deals with a number of pertinent issues such as special and differential treatment (S&DT), technical assistance to LDCs and implementation related issues and concerns, apart from the issues of livelihood and food security, among others. S&DT related provisions as outlined in the Annex are relatively much stronger than earlier texts. Besides, the text has laid 31 July 2005 as the deadline for completion of the review of all agreement-specific proposals made by developing countries.

In the case of implementation issues, however, the text is very weak. Despite a July 2005 deadline, the text relating to implementation issues speak of 'appropriateness', thus diluting the whole essence of the agreement. Likewise, in the case of technical assistance, the GC simply reaffirms that developing countries, and LDCs in particular, should be provided with enhanced trade

related technical assistance. Unfortunately, the language is too weak to bind developed countries to compulsorily provide weaker countries with the necessary technical assistance. Similarly, the language concerning issues of developing countries such as food security, livelihood concerns, rural development, etc., is also of a best endeavour nature. The paragraph dealing with these issues states - "These particular concerns...should be taken into consideration, as appropriate, in the course of...negotiations." Such language, regrettably, will again pave way for developed countries to wriggle out of the commitment that they make.

Trade facilitation

Trade facilitation is the only issue under the Singapore issues that has been taken up for further negotiations. The other issues - competition, investment and transparency in government procurement - have been kept out of the DDR, obviously due to the pressure of developing countries. It may be recalled that developed countries' stubbornness to negotiate on the Singapore issues during the Cancun Ministerial had caused its derailment. The elimination of the three Singapore issues from the DDR in this backdrop can be viewed as a big victory for developing countries.

The focus of negotiations under trade facilitation, as is outlined in modalities for negotiations on trade facilitation in Annex D of the July text, is on the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building. However, here too, neither a deadline has been set, nor binding language used. For example, paragraph 6 of Annex D states that developed country members will make every effort to ensure support and assistance related to the nature and scope of the commitments made during negotiations on trade facilitation.

Services

Annex C of the 31 July text outlines the actions necessary to take forward negotiations on trade in services. The text merely reaffirms that negotiations would be carried out to further liberalise trade in services. The text has a very weak and non-binding language with regards to mode 4 of GATS, i.e., movement of natural persons. This is one of the most important areas where developing countries could make true gains. The text downplayed the importance of mode 4 negotiations to developing countries by merely stating that "Members note the interest of developing countries...in Mode 4". In the lack of specific guidelines and binding language, not much progress on this issue can be expected.

Conclusion

Given the past experiences of developed countries having time and again duped developing countries, it might come as no surprise if negotiations on the above issues do not move forward as expected. Though the 31 July text stipulates deadlines for some specific issues, such as S&DT, question remains if the agreed work would be completed within the deadline. This is more so given the slippage of past deadlines on a number of occasions. ■

<p>porting support from bound level, but no deadline stipulated gricultural production during a historical period e end of the Doha Round but no deadline stipulated 2005</p>
<p>negotiations under GATS Articles VI:4, X, XIII and XV with their Ministerial</p>
<p>finalised but only with initial elements ment on the specifics of these elements g Group is instructed to address these issues in a manner ha Declaration</p>
<p>specific proposals and make recommendations incorporation of S&DT into the architecture of WTO rules within ossible, to ensure participation of developing countries in discussions</p>
<p>ransparency in government procurement kept out of the Doha Round ify and improve aspects of Articles V, VIII and X of GATT 1994 TAD, WCO, the World Bank, and the WTO emphasised for g more effective and operational</p>
<p>and other WTO bodies to redouble their efforts to find appropriate consultative process under para 12 (b) of the Doha Declaration no later than May 2005 ppropriate action no later than July 2005</p>
<p>cal assistance and capacity building to developing countries and particular to LDCs, the Council welcomes and further r agencies, including integrated framework and the joint</p>

Lessons from developing countries Competition, competitiveness and development

Given the level of research conducted, the book is a huge storehouse of knowledge, and is in fact 'a must read for all', writes Ms Neelu Thapa

For the past four decades, UNCTAD has been dealing extensively with competition issues. The unveiling of a new book on competition issues during UNCTAD XI held in Sao Paulo, Brazil through 11-18 June is a part of this extensive process. Apparently, *Competition, Competitiveness and Development: Lessons from Developing Countries* is a publication brought out following intensive researches in different developing countries. The book, among others, focuses on policy options available particularly to developing countries during the process of preparing, adopting and implementing competition laws and policies.

Divided into five sections, the core of the book contains sector-specific and country-level case studies, clearly elucidating the impact of competition at sectoral level, or the effect, both positive and negative, that competition regimes have had at the country level. Nonetheless, the book also focuses on prerequisites for development oriented competition policy implementation, and argues how competition policies can or cannot work as stimulus for enterprise development. Specific examples have been cited to highlight the impact of competition policy, the effect of competition regime on supply capacities at the firm level and the export competitiveness of the products manufactured by these firms.

Above all, it is clear that the book aims at raising awareness and enhancing expertise among a wide range of stakeholders - including public policy officials, competition authorities, private sector consumer organisations and the civil society about competition issues. Detailed case studies presented in the most interesting and reader-capturing manner makes the book a prized possession. In fact, given the apparent level of research conducted, the book is a huge storehouse of knowledge, and is in fact 'a must read for all'.

The book sheds light on the competition regimes of different countries, varying across in terms of the level of development. The countries taken up for case studies consisted of advanced developing countries such as South Korea, Brazil, Peru, Thailand and South Africa to LDCs like Nepal, United Republic of Tanzania and Zambia. The book has successfully substantiated and supported the issues that have been raised with experiences and examples from a wide range of countries.

The case of Nepal makes it clear that as development is the priority for most LDCs, the focus while formulating competition policy and law should be on 'development dimension'. Likewise, the case of Thailand shows

how a badly designed law and faulty implementation can work adversely. This shows that it is just not enough to have a competition law, other policies and conditions should complement it.

The chapter on Brazilian regulatory agencies' influence on the development prospects of the Brazilian economy tries to explain the relationship between sectoral performance and regulatory design. This has been done through constructing an independence index and an index of regulatory effectiveness. The status of beer industry in countries like Peru, Argentina, Venezuela, Panama, Bolivia, Ecuador and Guatemala shows that despite these countries having competition laws and policies, they have been unable to prevent high levels of concentration in this sector.

The book describes competition policy as a stimulus for enterprise development taking the examples of countries like South Africa and Zambia. The South African and the Zambian cases are good examples of the role that competition authorities can play to address the development issues of small and medium enterprises while remaining within the sphere of public interest. Likewise, the book cites the examples 'Korean Miracle', which was achieved primarily by crafting a law commensurate with the development needs of the Korean economy. In addition, the study of Tanzania shows how export performance can be improved through prudent competition policies.

Supported by many cases, some of which are elucidated above, the book highlights the prerequisites for successful implementation of competition policy and law in developing countries. Besides, despite all positive and negative experiences of countries taken up for case studies in the book, the book has a simple message - 'It is important to have a competition policy and law to complement other growth and development endeavours'.

The reason why this book can be recommended as a 'must read' is because of the clarity in the issues that have been covered. The book makes a good reading not just to a competition-ignorant reader, but also to someone who is well versed with issues of competition policy and law. Well researched examples contained in the book would make perfect sense to what the book is trying to say. Edited by Philippe Brusick, Ana Maria Alvarez, Lucian Cernat and Peter Holmes, the book can go a long way in enhancing a reader's knowledge and perception of competition issues. ■

(Ms Thapa is Programme Officer at SAWTEE)



The book sheds light on the competition regimes of different countries, varying across in terms of the level of development

Building support for competition regulation The importance of consumer interest

All sectors of the economy should be encouraged and given the means to understand competition and consumer regulation, opine Mr Howard Hollow and Mr Robin Brown

It is important to distinguish competition regulation from competition policy. Competition policy determines which sectors of an economy should be exposed to competitive markets, while competition regulation controls anti-competitive practices. When appropriately applied, and with effective regulation, competition policy can promote structural adjustment and encourage economic efficiency and productivity. This ultimately contributes to enhanced consumer welfare and poverty alleviation through sustainable development. Essentially competition regulation seeks to ensure that consumers and small businesses also benefit from the implementation of competition policy.

However, for competition regulation to be fully effective it must be supported by comprehensive consumer/fair trading regulations. Such laws ensure that the efficiency gains brought about by effective competition policy reforms pass on to end users – small business and consumers – and are not appropriated through deceptive and unfair practices. Competition and consumer protection policies combine to promote overall community welfare.

In many jurisdictions, the link between competition and consumer regulation is well recognised, and the same regulator administers competition and consumer/fair trading regulations. Such an arrangement is of considerable benefit to the regulator as well as the broader community. The benefits include cost saving, expertise being most efficiently used and reduction in the risk of regulatory capture.

All sectors of the economy should be encouraged and given the means to understand competition and consumer regulation. Key decision makers and opinion leaders in the government (politicians, the bureaucracy and the judiciary), business (and their professional advisers) and civil society organisations (CSOs) need at least some knowledge of the basic principles of such laws; and the rights and obligations and remedies they provide. They must also be aware of the detriments of competition law and how these can be best handled and accommodated in any economy. Benefits needs to be multiplied and detriments minimised.

The introduction of a competition regulation necessitates capacity building of the regulator to implement and administer the legislation. There is often also the recognition of the need to enhance the capacities of the government, business and their professional advisers. There is, however, a dearth of appropriate education for civil society and the community.

A competition regulation must encompass activities to involve and nurture civil society, consumer and other relevant public interest groups. This is important because a constituency for competition regulation cannot be artificially generated. Civil society can play an important role in supporting the regulator. It can counterbalance business claims on public interest issues. It can extend the eyes and ears of the regulator, stimulate it into action on occasions and lobby with the government (and the regulator) for enhancement of the law.

Enhancement in the technical capacity of CSOs will ensure their participation in the competition law debate. They would then be able to objectively contribute to the process of developing that law and in a position to inform their constituents of the rights and responsibilities the law provides.

An important component of increasing the technical skills of civil society is the involvement of international organisations that possess those requisite skills. Such groups are able to provide on going advice and assistance to civil society, particularly in the early stages of introduction of the law. With the internet and other means such as video conferencing, experts domiciled on other countries can provide training and advice. This is a cost effective way of supporting and developing civil society and even regulators.

In order to involve all stakeholders in the development and implementation of the law, regulators/policymakers should have a strategy in place to develop a culture of consultation with civil society and other stakeholders. However, this is not always a natural or easy thing to do. For the purpose, stakeholders may be engaged by the regulator in a variety of ways such as formal consultancy committees, addressing civil society groups or small business associations, etc.

Broader education for the community also contributes to enhanced welfare. Education on consumer rights contributes to empowerment of consumers and protection of consumer rights. For instance, consumers and their representatives need to be equipped with necessary skills to pressure business to become more competitive so that business will not only be able to cope and profit from globalisation, but also improve its goods and services for the greater benefit of consumers. ■

(Mr Brown and Mr Hollow are associated with Foundation for Effective Markets and Governance, Australia)



Policymakers should have a strategy in place to develop a culture of consultation with civil society and other stakeholders

FDI and economic development

FDI depends on the availability of adequate infrastructure, appropriate labour, per capita income and economic growth of a country

There is a lot of hype surrounding FDI and its relationship with development. One of the factors said to be bringing about contrasting impacts of FDI on economic development in different countries is the quality of FDI they receive. Nagesh Kumar, in *Globalisation and the Quality of Foreign Direct Investment*, argues, "...the literature has, however, tended to treat FDI as a homogeneous resource, benefiting the recipients in the same manner, and neglected any potential differences in the quality of FDI received".

Countries seek FDI because of its potential benefits often by competing fiercely through financial, fiscal and other incentives. The most often cited benefit of FDI is that it can supplement a shortfall in domestic savings. Countries, which do not have a domestic resource crunch, may seek FDI for other potential benefits.

An effective development strategy

The aim of attracting FDI should fit into a country's overall development strategy. It is also necessary to encourage domestic investment, along with FDI, to increase its total investment. East and South East Asian countries, which are said to have experienced a favourable effect of FDI on economic development, took steps to increase domestic as well as foreign investment. Further, foreign companies may be reluctant to invest in an economy if domestic investors themselves are reluctant.

Regulation of foreign, as well as domestic, investment is another major element in the development strategy of any developing country. FDI, however, is neither a necessary nor a sufficient condition for economic growth and development: higher FDI may not imply faster economic development. A lot depends on the strategies a country adopts to attract FDI.

Can FDI cause 'mal-development'?

It is often alleged that FDI causes 'mal-development' by impoverishing developing countries. The potential costs of FDI are:

- negative impact on balance of payments, if it increases import of raw materials and inputs and remittances of royalties and dividends;
- inaccurate transfer pricing, if the products, which are imported by foreign affiliates from parent companies, are overvalued and exports to the parent company are undervalued;
- adverse impact on unemployment, if it reduces domestic investment or replaces domestic monopolies by foreign companies; and
- transfer of outdated or environmentally harmful technologies.

By itself, FDI is unlikely to make much of a dent in poverty situation. Government initiated programmes, which improve social safety nets and redistribute income and profits, have proved to be more useful for this.

How to maximise benefits?

The relative cost and benefit of FDI depend on

whether or not the economy has a sound investment climate. An investment environment is said to be a sound one if the country has the following:

- A sound macroeconomic environment, which depends on monetary and fiscal policies and conditions such as stability of interest rates and status of fiscal accounts;
- Appropriate institutions, which depend on the existence of effective legal and regulatory structures, including a competition authority and investment promotion and facilitation institutions; and
- Adequate basic infrastructure, which implies adequate supply of power, water, land, transport and communication.

These factors could be considered as the 'right conditions' to ensure that FDI has beneficial effects on an economy. There is, however, no single winning formula for maximising benefits from FDI, in that there is no single set of right conditions for all countries.

Which comes first: FDI or development?

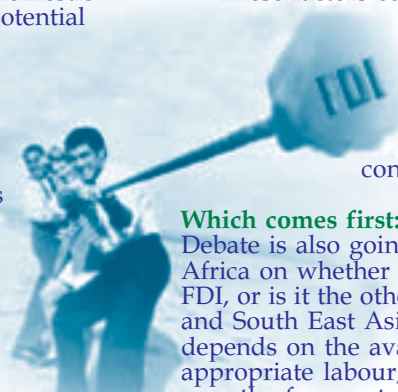
Debate is also going on in countries such as South Africa on whether growth and development follows FDI, or is it the other way round. Experience of East and South East Asian economies suggests that FDI depends on the availability of adequate infrastructure, appropriate labour, per capita income and economic growth of a country. It is also said that these countries were able to achieve high economic growth because of high FDI flows. FDI and development, it seems from the evidence, have a symbiotic relationship. One induces the other and vice versa. Therefore, an effective development strategy for developing countries would be to undertake measures for economic reforms and governance as well as to attract FDI at the same time.

Conclusion

Given below is a summary of the measures that could be taken to improve the investment climate of developing countries:

- defining the country's development priorities first and then channelising FDI;
- implementing poverty reduction and income redistribution measures along with FDI liberalisation measures;
- putting in place a regulatory structure to prevent corporate mal-practices;
- promoting FDI having deep linkages with the local economy;
- developing an investment environment;
- refraining from opening up the economy to allow more FDI than that it can absorb;
- disseminating information and building the capacity of its citizens; and
- conducting research and outlining a clear country position on FDI before committing themselves to any agreement relating to investment at the WTO. ■

(An abridged text of CUTS-CCIER briefing paper 2/2003 written by Ms Sanchita Chatterjee)



Comparative performance in FDI

Why China beats India?

The disparity between China and India's FDI performance can be attributed to the different strategies taken by these countries, writes Ms Elen Shrestha

China and India, the frontrunners amongst developing nations, have been surging forward with quite a spectacular rate of economic growth. So how do these two 'economic powerhouses in the making' fare in terms of attracting FDI? According to 1999-2001 UNCTAD's FDI Performance Index, China was ranked 54th while India was placed 122nd. FDI flow comprised 3.2 percent of China's GDP while in case of India it was a mere 1.1 percent. A quick glance at these comparisons makes it apparent that India vis-à-vis China is still struggling in terms of attracting FDI. What accounts for this difference in FDI performance?

The foremost reason could be the superiority China has over India regarding basic economic determinants of FDI inflows such as total and per capita income, literacy rates, and FDI-conducive physical infrastructure, among host others. Furthermore, one needs to acknowledge better FDI-friendly policies, easier FDI procedures and flexible labour laws adopted by China in addition to its stronger consumer purchasing power that have proved decisive in making China a hot FDI destination. However, India enjoys comparative advantages in technical human resource power and English language abilities. This has led India to specialise in the exclusive field of Information and Communication Technology evident from India being the key location where almost all US and European information firms are based. On the other hand, China has succeeded in taking a whale's share especially in the market of hardware design and manufacturing. China has become a popular hub for major electronic giants - LG Electronics, Sony, Nokia and Microsoft are some names.

The disparity between China and India's FDI performance can also be attributed to the different strategies taken by these countries. China has focussed on export-oriented approach while India has long been pursuing an import-substitution policy for attracting FDI. The Chinese approach has proved advantageous in terms of more FDI inflows. Besides, it has also helped make round-tripping phenomenon (investment by non-resident Chinese) a huge success, the practice of which in the Indian scenario is so insignificant that it is analogous to being non-existent. The ramifications do not end here, internalisation (physical presence of foreign companies in FDI destination country), an occurrence as a result of domestic market imperfections, has proved to be a boon for China. But internalisation by large multinational firms in India is yet a far cry from reality.

Against the backdrop of China's accession to the WTO, it has taken a noteworthy step in further liberalising the service sectors, which would invariably give it a competitive edge in enhancing its investment environment. Under this context, it is believed that China would come out as a potential winner in attracting

FDI in industries such as leasing, storage, warehousing, wholesale and retail trade, advertising and multimodal transport, etc. Following suit, India also has been making a conscientious effort to become a FDI-friendly destination. Increasing foreign equity ownership and establishing special economic zones like that in China are good examples in this regard. Besides, the Indian budget for 2004-05 (year ending 31 March) proposed to raise the sectoral cap for FDI in telecommunications, civil aviation and insurance.

The stark divergence in population, behaviour, attitudes and networking capacities between Indians and Chinese living abroad also come into play for China's better FDI performance. Chinese abroad tend to surpass their Indian counterparts not only in numbers but also in proportion of investment in their homeland. This is explained by the phenomenal round-tripping success in China. If round-tripping is excluded, FDI inflow into China for 2002 would come down by almost US\$ 12 billion.

India and China are likely to attract more FDI in days to come. In a nutshell, with further globalisation and trade facilitation, FDI would be pivotal in determining long-term economic development of both these countries. China would definitely be a force to reckon with. Nevertheless, given India's FDI related reforms, and other economic factors, India is also likely to induce a potential investor into China to give second thoughts. ■

(Ms Shrestha is Intern at SAWTEE)

Comparative indicators for India and China

ITEMS	YEAR	INDIA	CHINA
FDI inflows (million dollars)	1990	379	3,487
	2002	5,518	52,700
Inward FDI stock (million dollars)	1990	1,961	24,762
	2002	41,525	4,47,892
Growth of FDI inflows (annual, %)	1990	-6.1	2.8
	2002	-10.0	12.5
FDI stock as percentage of GDP (%)	1990	0.6	7.0
	2002	8.3	36.2
FDI flows as percentage of gross fixed capital formation	1990	0.5	3.5
	2001	5.8	10.5
FDI flows per capita (dollars)	1990	0.4	3.0
	2002	5.3	40.7
GDP (billion dollars)	1990	311	388
	2002	502	1,237.2
Real GDP growth (%)	1990	6.0	3.8
	2002	4.9	8.0

Source: UNCTAD.2003. FDI/TNC database: IMF, World Economic Outlook Database.

Demystifying trade and environment

If the linkage between trade and environment is to be drawn at the satisfaction of all, a number of actions seem necessary, both at the domestic as well as international level

Environment has, over the last few years, emerged as a contentious and debated issue under the WTO regime, resulting in a critical divide between the North and the South. The divide exist despite the fact that over a hundred countries, both developed and developing, a decade back in Brazil, had agreed upon the need for a treaty linking environment policies to economic issues. Though the 31 July decision of the General Council makes no mention of developing modalities to negotiate the linkage between trade and environment, a question needs to be answered: 'What is the divide all about?'

The core issue here, on one hand, is that of environment protection and, on the other, that of market access. Developed countries seem to be according more priority to environment, whereas the developing countries seem more concerned about market access. This, however, does not mean that market access to developed countries and environment protection to

developing countries are any less priorities. Developed countries want environment protection to be an integral part of trade policies, while the developing bloc perceives such integration as potential barriers to their market access opportunities.

Over the years, a large number of environment agreements were signed. As of now, there exists about 200 EAs, out of which 20 contain trade restrictive measures in order to achieve environmental objectives. Examples are the Basel Convention on the Transboundary Movement of Hazardous Waste, the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Montreal Protocol on Substances that Deplete the Ozone Layer. The common measures used to restrict trade include bans, quotas and notifications.

Thus, given the importance of both environment protection and market access, a rational analysis of the concerns of developing and developed countries shows that both have valid justification. No wonder why the developed and developing countries both seem to recognise that there does exist intricate linkage between trade and environment. First, there is increasing realisation that trade liberalisation and growth of global trade would cost heavy environmental damage, which supports the idea of actually linking trade and environment. But at the same time, fact remains that expanding environmental regulations has only provided developed countries with leeway to enforce new trade barriers.

So that gives rise to another question: 'How

will the delicate balance be achieved?' Little thought on this question would inextricably drive us to the conclusion that some mechanism needs to be developed, whereby, on one hand, the environment is protected, whereas on the other, the concerns of developing countries are addressed – meaning that environment standards do not, in essence, become trade barriers.

If the current divide is to be bridged, efforts must be undertaken by both warring sides to see where they can converge. If the linkage between trade and environment is to be drawn to the satisfaction of all, a number of actions seem necessary, both at the domestic as well as the international level. On the domestic front, governments might need to provide incentives to industries that are adopting environment-friendly technologies. Or in extreme cases, the government may even be required to enforce strict environmental norms.

At the international level, the first thing to be done would be an effective transfer of technological know-how from the North to the South, which can limit or prevent the degradation of the environment and depletion of natural resources. Essentially, this means the need on the part of the developed countries to provide technical and financial assistance to countries unable to meet the minimal internationally accepted environmental norms

The second necessary action could be providing preferential treatment to those products that are eco-friendly. However, care needs to be taken to ensure that the margin of preference offsets the cost of complying with the minimal set of environmental standards. And such a margin could also come as an incentive to adopt environment-friendly technologies to countries that are harbouring the so-called 'dirty industries'. However, low tariffs under the present global trading regime can actually make setting a viable margin of preference for the beneficiary country a difficult task.

Thirdly, the use of environmental standards as trade remedy measure should be discouraged. That is not to mean that environmentally 'unfriendly' products should be allowed entry into any importing country. Rather, efforts must be undertaken to see that the exporting country receives the necessary technical know-how and support to upgrade their products as well as standardise their products processing measures.

Free international trade, as espoused by the WTO, and protection of environment need to go hand in hand. However, before any formal deal is struck, it is necessary to completely understand as to how environmental policies interact with trade policies. But given the bitter past experiences on a number of other issues, developing countries were careful enough not to fall into the cajoling of the North. ■



Given the importance of both environment protection and market access, a rational analysis of the concerns of developing and developed countries show that both have valid justification

Correlating health and environment

Policymakers in developing countries could think on programmes to improve the quality of air, water and food to reduce major burden of diseases, writes Mr Amod Pokhrel

Detailed information relating to the magnitude and distribution of diseases and injuries, and their causes, is necessary for improving public health. In the past, efforts to assess the magnitude and distribution of diseases and intervention to control such problems were mainly based on the epidemiological measures such as incidence or prevalence rates of diseases. Those measures did not capture the differential severity of health problems in the society. And due to the lack of comparative measures, intervention mainly focused on curative services.

Of late, leading international agencies like the WHO and the World Bank are putting in efforts to develop a single measure to calculate the burden of diseases and disability in terms of Disability Adjusted Life Years (DALYs), which expresses burden or severity of diseases in a single unit by combining Years Life Lost (YLL) due to premature mortality and Years Lived with Disability (YLD) due to morbidity or disability. This has opened an avenue for policy makers to understand and prioritise public health programmes.

In DALYs, effects of diseases are assigned different weights depending on the age, where higher weight is given to young children and lesser to older people. The weights are different for different categories of disease, disability and death. Over the years, several public health experts have estimated the portions of human mortality and morbidity attributed to different diseases and by various risk factors.

Based on the global burden of disease database of WHO (gathered from different countries around the world) and on the basis of criteria of environmental mediated diseases, experts found the top 10 burden of diseases of environmental origin in the world. They include: acute respiratory infections (ARIs), diarrhea, prenatal conditions, child cluster (measles, pertussis, polio, tetanus, diphtheria), cancer, depression, malnutrition/anemia, heart diseases (ischemic), stroke (cerebrovascular disease) and tuberculosis. WHO also found that DALYs differed significantly between less developed and more developed countries.

The 'environmental burden of disease approach' shows that in less developed countries, ARI has now replaced diarrhea as a major public health burden. According to the WHO, about two billion children (under five years) suffered from ARI in 1992 alone, out of which 4.3 million died. Eighty percent of the deaths were due to bacterial infection of children's lungs, the remainder being the result of viral infections (measles, respiratory syncytial virus, influenza and whooping cough). The WHO estimated that about 800,000 of the deaths were due to neonatal bacterial infections, primarily by *Streptococcus pneumoniae* or *Haemophilus influenzae*. ARI of *Streptococcus pneumoniae* and *Haemophilus influenzae* origin, which are curable, have become highly antibiotic resistant.

The interesting feature of *Streptococcus pneumoniae* is that this bacterium usually inhabits the human lungs and does not usually cause harm to its human host having a strong immunity. However, any condition that weakens a host's immune system could allow the pneumococcal population to explode. Over the last decade, several epidemiological studies have shown a positive correlation between air pollution with ARI morbidity and mortality.

Studies have shown a positive correlation between ARI incidence and children's exposure to indoor air pollution from bio-fuel combustion. Except a study conducted in Kerala, India, which failed to show a relationship between pneumonia and indoor smoke, most other studies conducted in developing countries (India, South Africa, Zimbabwe, Gambia, Nigeria, Malaysia, Papua New Guinea and Brazil) consistently established a correlation between indoor smoke and ARI. A study conducted in Nepal in 1990 even established a dose-response relationship between exposure to indoor air pollution and ARI prevalence in children below two years of age. The mechanism stipulated for this connection is such that

passive inhalation of smoke contributes to ciliary paralysis and depresses immune responsiveness. Ciliary paralysis facilitates the attachment of respiratory bacteria to mucosa, and weakened immunity cannot protect a person from ARI.

These findings suggest that microorganism undoubtedly causes a disease but not everyone

infected progresses to diseases, whether ARI or tuberculosis. Thus the pathway from health to disease is determined not only by bacterial infection but also by a multitude of factors. The growing evidence of correlation between air pollution and infectious diseases such as ARI, on one hand, and antibiotic resistance towards these diseases, on the other, suggests that along with the application of new drug combinations and improvement in treatment programmes, it would also be prudent to explore more thoroughly the roles of environment and socio-economic factors that trigger such diseases.

History of public health in developed countries suggests that part of the decline in prevalence of disease was due to improved environment, sanitation and nutrition. The environmental sanitation measures to prevent diseases were applied in developed countries even before the advent of relevant antibiotics and vaccines. Considering these experiences, policymakers in developing countries could also think seriously on programmes to improve the quality of air, water and food at the household and community level to reduce major burden of diseases including ARI, which is causing huge economic loss from massive death toll of children. ■

(Mr Pokhrel is a PhD Scholar at University of California, Berkeley)



XV International AIDS Conference Calls for more funds and commitment

The themes of the meetings and the thrust of the demonstrations have evolved from a failure to cure the disease to a failure to deliver the many treatments now available

The XV International AIDS Conference, which ended on 16 July 2004 in Bangkok, Thailand after six days of pageantry, speeches from world leaders and demonstrations by activists, was an unrecognisable descendant of the first meeting in Atlanta in 1985.

That first meeting, held four years after the discovery of AIDS, was conducted over three days in the sterile atmosphere that usually characterises the presentation of scientific findings. The participants at that time were trying to decipher the then rapidly emerging but tentative medical findings and seeking ways to detect and treat the syndrome.

The second conference, the largest so far, drew more than 17,000 delegates. Science took a back seat to the concurrent sessions on social, economic, legal, policymaking and other aspects of AIDS. The transformation of the AIDS conferences from austere scientific meetings to mammoth jamborees results from two main factors.

One is that AIDS has become one of the worst epidemics in history, exponentially increasing into a global health catastrophe. Thirty eight million people worldwide are HIV-infected, with 25 million of those in sub-Saharan Africa and more than seven million in Asia. The pandemic has already claimed more than 28 million lives since AIDS was identified in 1981. People can expect to live, on an average, less than 40 years if they are born today in one of seven African countries with a high rate of HIV infection, including Swaziland, Lesotho, Zambia, Malawi, the Central African Republic and Mozambique. HIV infection is growing at record rates in women and young people under 25, who represent over one-third of people living with HIV/AIDS worldwide. Women are currently 48 percent of HIV cases. In the Asia Pacific region, a large increase in AIDS is occurring among women aged 15 to 29 whose husbands have become infected.

Second, the themes of the meetings and the thrust of the demonstrations have evolved from a failure to cure the disease to a failure to deliver the many treatments now available. According to the WHO, an estimated six million AIDS sufferers in poor countries urgently need anti-retroviral drug treatment, but only 440,000 or just five percent are receiving it. The cost of providing such drugs has plunged dramatically because of the development of cheap generic drugs from US\$ 10,000 to US\$ 12,000 per person per year, to as little as US\$ 150 but a number of

obstacles have been placed in the way of making these cheap drugs widely available, in order to protect the profits of major pharmaceutical companies. For instance, Washington does not allow its aid money to be used to buy anti-viral drugs unless the US Food and Drug Administration has approved them. Most generic drugs, which are manufactured in countries such as India and Brazil, have yet to meet these costly and stringent requirements. The WTO rules developed last year allow countries to ignore foreign patents and produce copies of expensive drugs in times of health crisis. But the US is attempting to subvert this limited provision through bilateral trade agreements with built-in patent restrictions. Brazil, one of the biggest producers of generic drugs, has refused to sign a free trade agreement with the US because of this very issue.

Therefore, the participants in Bangkok harshly criticised the Bush administration for doing too little, emphasising a policy of 'abstinence', and also severely restricting the number of government scientists allowed to attend the conference.

Bangkok was chosen as the site of this conference largely to galvanise media attention on Asia and to educate Heads of State and other political leaders on how to prevent Asia from suffering the devastation that has struck Africa. On the final day of the largest-ever

conference on AIDS, Nelson Mandela said he "cannot rest" until the tide against the HIV pandemic is turned. He urged rich countries to inject more cash into the Global Fund, a body created in 2002 to fight epidemics. Kofi Annan, Secretary General of UN joined others in describing AIDS as a weapon of mass destruction and urged the Bush administration to battle HIV as fervently as it has terrorism.

As the pandemic shows no signs of receding, the UN sponsored Global Fund for HIV/AIDS, Tuberculosis, and Malaria, set up 30 months ago, faces a severe funding shortfall. Commitment for 2005 to 2008 amount to just US\$ 2 billion, far below the conservative US\$ 3.6 billion needed to fund projects in developing countries in 2005 alone. According to many civil society groups around the globe, the inadequacy of the present efforts and the response of the major powers to the appeals at the Bangkok conference underscore their indifference to the plight of millions of people around the world. ■

(Compiled from various sources)

The transformation of the AIDS conferences from austere scientific meetings to mammoth jamborees results from two main factors



Advocacy campaign for competition law

SAWTEE is of view that the competition authority should be independent and free from political interferences

With a view to garnering support from a wide range of stakeholders to enact a strong competition law in Nepal, SAWTEE launched a competition campaign in the last week of July. The launching of the campaign came in the wake of the need for Nepal to put in place a competition law within 31 July 2004.

Nepal had committed at the multilateral level to enact a competition law before the end of July 2004. A competition law draft was even prepared by Ministry of Industry, Commerce and Supplies (MoICS), but apparently could not be moved forward for approval, prompting SAWTEE to launch the campaign.

SAWTEE has been advocating on the need for Nepal to implement a strong competition law encompassing the development dimension. The need for a competition law arises not just in the context of open market policies adopted by the government since the early nineties, but more importantly in the context of Nepal's WTO accession.

In its first formal activity, SAWTEE organised a press conference on 30 July, a day before the expiry of the WTO deadline for enactment of a competition law. Almost two dozen media people from both audio-visual and print attended the conference.

During the conference, the media people were apprised on the need for a competition law in Nepal and the consequences of Nepal's inability to enact a competition law by 31 July. The issue was given a very good coverage in all national media, both audio-visual and print.

Though the aim of the campaign was to convince the private sector, civil society and government to adopt the draft prepared by MoICS before the expiry of the 31 July deadline, the campaign was kept alive even after the slippage of the deadline to ensure that government officials do not become complacent.

On 2 August, SAWTEE organised an interaction at Martin Chautari, a well known forum in Kathmandu where pertinent and burning issues are taken up and discussed. Participants at the programme were made aware on the developments taking place regarding competition law.

Besides, SAWTEE is not just actively mobilising the media and civil society for advocating the need to enact a competition law, but is also engaged into consultation with the private sector to gather support, and to this end, a programme on *Competition Law: Why and for Whom* was also organised in collaboration with Nepal Chamber of Commerce (NCC) in Kathmandu on 5 August.

SAWTEE is concerned that petty domestic issues blocked an early enactment of the competition law thus putting a question on



Nepal's intent and capacity at the multilateral level. Reportedly, the draft law was opposed by officials at Ministry of Law, Justice and Parliamentary Affairs. SAWTEE is trying to convince relevant authorities to put the competition law back on the table for approval.

SAWTEE has been advocating for an effective competition law with an independent set up. SAWTEE believes, as does any other proponent of market oriented economic system, that a weak competition law and an accompanying weak competition watchdog would not be able to effectively address issues related to competition.

It is only an independent body with competent personnel that would be able to discharge the functions of an effective competition regulator. If a regulator is not strong and independent enough, it might end up becoming just another dysfunctional entity, examples of which are aplenty in the Nepalese system.

Nepal has already experienced the failure of few other laws due to the lack of independent and strong authorities. If only a few government officials are asked to implement the competition law, its state would be none other like the Consumer Protection Act, 1998, whose implementation is virtually non-existent presently.

SAWTEE is of view that the competition authority should be independent and free from political interferences. In this vein, it is necessary that the authority envisaged remain not as a mere unit under some ministry or department. The draft has proposed a strong body that is accountable to the Council of Ministers.

SAWTEE believes that it is of utmost importance for investigative and adjudicatory functions under a competition regime to be clearly demarcated. The draft law, which has apparently been shelved for the moment, has clearly awarded the investigative powers to the Competition Commission, while the cases filed under it would be dealt by Commercial Courts that are to be set up progressively.

SAWTEE intends at keeping the campaign alive until a competition law that is commensurate with the present day need is enacted. ■

It is only an independent body with competent personnel that would be able to discharge the functions of an effective competition regulator

Suggestions to protect consumer rights

Forum for Protection of Public Interest (Pro Public), the organisation working for the consumers' welfare since the past 14 years in Nepal, has been nominated to represent the consumer organisation in the Central Investigation Committee formed under the Department of Commerce, Kathmandu.

Nepal has enacted Consumer Protection Act, 1998 but due to its poor implementation, consumer rights are still being violated. Therefore, in the face of various problems relating to consumer protection, Pro Public as a member of the Central Investigation Committee has urged the government to effectively implement the Act. Pro Public, on 27 July 2004, has suggested the Department of Commerce to take various measures to effectively implement the Act and protect consumer rights. Some of the recommendations were:

- Stringent steps be taken to ensure that the consumable goods have label of compulsory ingredients, with the guarantee of the quality.
- The wholesale and retail price are made public.
- The Investigation Authority under the Act be equipped with skilled human resource as well as financial resources, and unannounced inspection of the industries be done on a regular basis.
- It is mandatory that the decision on the petition filed by the consumers be taken on a timely manner.
- Some changes regarding the sample goods presented as evidence would help make the Act more effective like removing the provision of three samples for proof, making the concerned Investigation Authority responsible for the security of the evidence and so on.
- A separate consumer court is required for the cases filed under section 19 and 20 as they are related to basic rights and the very

life of the consumers.

- The steps be initiated by the Department of Commerce and Consumer Protection Agency to introduce consumer education in the school curriculum so as to sensitise the students.
- The participation of the concerned representatives, journalists, citizens and government agencies at the district level under Investigation Authority be ensured. ■

Radio programme on competition

Under SAWTEE's Competition Advocacy and Education Programme (CAEP), a 15 minute radio programme is being aired every Friday from 7.45 PM through Sagarmatha FM, one of the leading electronic media in the country.

The first episode of the programme was aired on 6 July, which focussed on the nature of competition in the telecommunications sector from a consumer's perspective. Similarly, the second episode of the programme focussed on the need for a competition law in the country from a business perspective.

This radio programme targets not merely to inform and educate the stakeholders on issues of competition through debates and information dissemination, but also provides a platform to them, especially to unorganised consumers, to express their grievances and concerns so that they do not become a victim of anti-competitive practices. Each episode of the programme will cover different issues concerning competition and anti-competitive practices.

CAEP is a three year national programme being implemented in Nepal since February 2004. The programme aims to establish a competition culture among a wide range of stakeholders. It has a clear vision that unless competition culture is developed, the competition policy and law would not serve the intended purpose. The programme is being supported by Department for International Development (DFID), Kathmandu. ■

Pro Public, on 27 July 2004, has suggested the Department of Commerce to take various measures to protect consumer rights

Opportunities and Challenges for SMEs in Nepal

The small and medium enterprise (SME) sector plays an important role in the Nepalese economy. The sector constitutes more than 96 percent of the total industrial establishments, contributes about 83 percent in the industrial employment generation by the industrial sector, and shares about 80 percent of the industrial sector's contribution to the national GDP. Yet, the sector today is confronted with multiple barriers and challenges, which have been a concern to all. With Nepal's accession to the WTO, the sector is likely to be in a more vulnerable situation. Though WTO membership is likely to bring opportunities in many areas, there may appear new forms of challenges as well. This clearly necessitates that the Nepalese SMEs are given high priority, and adequately provided with proper safety nets so that they become competitive.

These important issues are the main features of



the recently published book on *WTO Membership: Opportunities and Challenges for SMEs in Nepal*. Published by SAWTEE and Small and Medium Enterprise Development Project (SMEDP), a partnership project of Friedrich Naumann Foundation (FNSt), Germany and Federation of Nepalese Chambers of Commerce and Industry (FNCCI), the book contains seven chapters that deal with SME issues in light of WTO provisions and Nepal's commitment with the WTO.

The book is a compilation of papers presented during the National Seminar on *WTO Membership: Opportunities and Challenges for SMEs in Nepal*. The seminar was organised on 21-22 December 2003 in Kathmandu by SMEDP, Germany and Federation of Nepalese Chambers of Commerce and Industry (FNCCI), Kathmandu, in collaboration with SAWTEE and Federation of Nepalese Cottage and Small Industries (FNCSI), Kathmandu. Edited by Mr Navin Dahal and Mr Bhaskar Sharma, the book also contains the resolution adopted at the seminar. ■

SACSNITI to hold its final meeting

The South Asian Civil Society Network on International Trade Issues (SACSNITI), which was launched in 2000 at Kathmandu, will be holding its final meeting in Islamabad from 17-19 August 2004. The network, which is being supported by International Development Research Centre, Canada is hosted in CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE) at Jaipur, India. One of the main objectives of SACSNITI is to conduct research on international trade issues concerning South Asian countries.

Since its launch, the network has so far published several research reports, briefing papers, viewpoint papers and issue papers. For doing research, the network involved researchers mainly from the South Asian region. The information dissemination and advocacy work have been taking place through organising annual conferences, distribution of published reports to all stakeholders including the trade negotiators.

The forthcoming final meeting is being organised by CUTS-CITEE in collaboration

with Sustainable Development Policy Institute (SDPI), Oxfam GB, Pakistan and SAWTEE. The title of the conference is *WTO Post Cancun Developments: Options for South Asia*.

In the light of July 2004 agreement (See pages 12-13 for detailed analysis) and other developments, which have taken place since the failure of the Cancun Ministerial, the Islamabad conference will aim for cross-fertilisation of views and experiences of various stakeholders, including government officials.

Besides agriculture, the other important issues that will be discussed at Islamabad conference are - regional trade agreements in South Asia; textiles and clothing, particularly the emerging scenario in post-quota phase out from the beginning of 2005; and the future of Singapore issues as WTO members have decided to launch negotiations on trade facilitation whereas the other three issues - competition, investment and government procurement have been kept out of the Doha Work Programme but more importantly they are technically not out of the WTO. ■

The Islamabad conference will aim for cross-fertilisation of views and experiences of various stakeholders, including government officials

SAWTEE, SEJON organise consultation on competition

SAWTEE and Society of Economic Journalists-Nepal (SEJON), Kathmandu jointly organised a two-day consultation on *The Role of Media in Promoting Competition Culture in Nepal* on 23-24 July in Nagarkot.

The objective of the consultation was to raise awareness amongst economic journalists of Nepal on competition issues. The thrust was also to promote a culture of competition and advocate the need for competition policy and law in Nepal.

During the programme, various facets of competition were discussed. Beginning with the basics of competition issues, such as the types and nature of anti-competitive practices prevalent in the market, the consultation delved into the more advanced issues of the structure of a good competition framework and that of development dimension that needs consideration during the process of formulating competition related policies and laws.

The economic journalists were also apprised of the latest developments on competition fronts at the regional and global levels. They were also briefed on the imperative for an effective competition law in the country against the backdrop of Nepal's entry into the WTO.

As an important part of the consultation, economic journalists were asked to comment on the type of competition law that would be necessary in the Nepalese context. They were also requested to present their views on a Competition Act draft that was prepared jointly by Ministry of Industry, Commerce and Supplies (MoICS) and United Nations Development Programme (UNDP), Kathmandu.

Various technical papers were presented during the consultation programme to enhance the knowledge of the economic journalists. The major ones included: *Need for Competition Policy and Law in the*



Context of Nepal's Accession to WTO, Competition Policy and Law for Promoting Economic Development, and A Global Perspective on Competition Policy and Law and the Role of Media, among others.

Over 30 economic journalists representing audio-visual and print media took part in the consultation programme. Fifteen other participants representing government offices and agencies as well as civil society and academia were also present during the two day consultation.

The consultation was organised as a part of SAWTEE's Competition Advocacy and Education Programme (CAEP). Supported by Department for International Development (DFID), the three year programme is being implemented in Nepal since February 2004. The programme aims to establish a competition culture among a wide range of stakeholders, including the government, private and business sector, consumers, civil society groups and media. ■

Briefing papers under PROACT Phase II

Under the Progressive Regional Action and Cooperation on Trade (PROACT) Phase II programme, SAWTEE recently published two briefing papers - *TRIPS and Public Health: South Asian Priorities* and *S&DT: Issues for South Asia*.

TRIPS and Public Health: South Asian Priorities

Trade liberalisation in developing countries, including the South Asian nations, has seen an expansion and consolidation of market share by MNCs based in the North.

South Asian countries are now concerned that such a market phenomenon is taking place in a sector that is critical to public good, namely the health sector. South Asia's highly concentrated population makes disease control extremely difficult and providing treatment to such population is a far greater challenge than providing similar treatment to populations of nations in other parts of the world. Under such circumstances, the TRIPS Agreement of the WTO further poses a serious threat to developing countries' access to medicines, including the countries in the South Asian region.

This briefing paper identifies and examines the key drivers of concerns that countries in South Asia have with respect to TRIPS and public health and discusses the relevance of debates on IPR to the health sector of developing countries in general and South Asia in particular. Its purpose is to support informed and constructive debate among policymakers and concerned stakeholders by clarifying key issues and highlighting the challenges that South Asian countries face in the context of TRIPS and public health.

The paper begins with an overview of the debate on TRIPS and public health. It then looks into the key issues related to public health

under the TRIPS regime, finally moving into the challenges confronted by South Asian countries and the measures that these countries could take to ensure that they are able to effectively mitigate the health challenges posed by the multilateral regime on IPR.

S&DT: Issues for South Asia

S&DT provisions for developing and least developed countries form an important part of the WTO regime. These were born out of a wider realisation by world trading community that a global economic environment is required in which relatively less developed countries could also compete on an equal footing with their developed counterparts.

Part IV of the GATT exclusively sets out S&DT provisions for developing countries. Ministers during the Doha Ministerial had reaffirmed that 'provisions for S&DT are an integral part of the WTO Agreement'.

However, the developed countries have not been able to come to forego what they perceive as their commercial and political interests to turn the Doha mandate into reality.

This briefing paper is an attempt to bring to fore the issues relating to S&DT. It touches the intrigues that have gone in the WTO since the inception of the concept of S&DT as developed countries have been trying to manipulate the S&DT agenda to assure that developing countries pay the highest possible price for whatever is finally agreed.

This paper also aims at provoking debate not just at the South Asian level, but also at the WTO, on how S&DT provisions could be made meaningful for developing countries in general and South Asia in particular. The paper makes an argument that unless S&DT provisions are followed in the true spirit in which they were included within the gamut of the WTO, true benefits of liberalisation and globalisation would not accrue to the developing countries. ■



The TRIPS Agreement of the WTO poses a serious threat to developing countries' access to medicines, including the countries in the South Asian region

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 NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. Registered in Kathmandu in 1999, the overall objective of SAWTEE is to build the capacity of concerned stakeholders in South Asia in the context of liberalisation and globalisation.

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.

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