

# DISCUSSION PAPER

## **T**rade Justice A South Asian Perspective

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The authors are affiliated with Citizen Consumer & Civil Action Group (CAG), Chennai. Mr Shyamal Shrestha and Mr Shivendra Thapa of SAWTEE edited this Discussion Paper.

## List of acronyms

AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture
ATC	Agreement on Textiles and Clothing
CENTAD	Centre for Trade and Development
CUTS	Consumer Unity and Trust Society
EC	European Commission
EU	European Union
FAO	Food and Agriculture Organisation
FIPs	Five Interested Parties
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
ITCB	International Textiles and Clothing Bureau
LDCs	Least Developed Countries
MDGs	Millennium Development Goals
NAMA	Non-Agricultural Market Access
NGOs	Non Governmental Organisations
NTBs	Non Tariff Barriers
OECD	Organisation for Economic Cooperation and Development
PPMs	Process and Production Methods
PSEs	Producer Support Estimates
REACH	Registration, Evaluation and Authorisation of Chemicals
S&DT	Special and Differential Treatment
SAWTEE	South Asia Watch on Trade, Economics & Environment
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
US	United States
VERs	Voluntary Export Restraints
WTO	World Trade Organisation

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# Executive summary

The Trade Justice movement has become increasingly visible in its role of highlighting the widening gap between many of the stated objectives of the world trading regime and the global reality of growing inequalities. There are sufficient studies and realities that prove the fact that the benefits of the international trade system have largely gone to/been felt by those who already 'have', while failing to benefit the 'have nots'.

The remit of the trade justice movement is wide and includes several issues of concern to developing countries and least developed countries. This paper looks at five key issues that concern developing countries, from a "trade injustice lens" – (1) agricultural protectionism; (2) the increasing use of non-tariff barriers; (3) the abuse of trade remedy measures; (4) the non-application of Special and Differential Treatment provisions and; (5) the absence of democratic processes in the World Trade Organisation with a view to understanding the potential implications and benefits of implementing trade justice aspects, particularly in the context of South Asia.

The discussion paper argues that developing countries need to take active part

in the negotiations in order to protect their interests and should not allow themselves to be divided by developed countries. Although the interests of all developing countries may not always be aligned, they do need to develop common strategies at least for the purpose of negotiations, to pre-empt developed country efforts to continue to deny potential benefits from trade.

The trade justice movement does provide an avenue for this common strategy to be developed, though South Asian countries may not necessarily agree with all the priorities of the trade justice movement. In particular, the "linkages" issue may not be as simple to appreciate for South Asian countries, which have seen labour and environment standards being used as protectionist measures by developed countries.

However, this is not to say that the issues are not genuine. More effort needs to be made to collate concerns and strategies, and to assess the benefits and limitations of applying trade justice principles in these countries. There is scope for much ground to be covered, and for South Asian countries to be able to gain more than they have on these critical aspects of international trade.

## Chapter 1

# Introduction

The Trade Justice movement was started by a group of international non-governmental organisations (INGOs) and religious organisations (Christian Aid, 2004a) to voice their concerns over trade injustices within the multilateral trading system. The movement specifically seeks to respond to the current “crossroads” that the international trade system stands at. In one direction, lie politically difficult and complex choices concerning equity, sustainability and poverty eradication, which could make the trade system work for people, especially the disadvantaged. The other direction offers the easier options to stick with the *status quo*, ignore complex problems and pursue trade liberalisation as an end in itself. However, there is also the acceptance today that this latter approach could exacerbate current inequities and bring the trade system to its knees.

The Trade Justice movement demands that the international trade regime be changed fundamentally, to succeed and benefit all. It accepts that the world needs international trade rules but challenges the current rules since these have favoured the narrow commercial interests of the most powerful trading nations and transnational corporations, at the expense of the wider public interest, smaller economies and small enterprises.

The movement recognises the increasing gap between many of the stated objectives of the global trading regime and the global reality of growing inequalities and environmental degradation. It argues that the benefits of the international trade system have gone to those who already have the most, while many of the poorest have failed to benefit fully and some have even been made poorer.

The Trade Justice movement finds faults with the WTO trade agreements for prioritising liberalisation and deregulation in the private interest over national (and potentially international) regulation in the public interest. It asks the international community to make the trading system reflect the concerns of civil society and work for poverty eradication and sustainable development. It also asks governments to adopt a new approach in the trade negotiations launched in Doha and marks the beginning of a new era in trade policy-making, which puts the needs of people and the environment at its heart (Christian Aid, 2004b).

From 10-16 April 2005, trade campaigns were organised across the world for trade justice in which over 10 million people, from thousands of civil society organisations from more than 70 countries participated. The ‘Global Week of Action’ 2005<sup>1</sup> witnessed special church services, a global fast for trade justice, public debates, concerts, mass rallies, nationwide petitions, and farmers’ hearings. The event was planned to strengthen the Millennium Campaign launched for the achievement of the Millennium Development Goals (MDGs).

The Trade Justice movement broadly focuses on the MDGs, i.e., addressing extreme poverty in its many dimensions including income, hunger, disease, lack of adequate shelter, and exclusion, while promoting gender equality, education, and environmental sustainability. The ‘Global Week of Action’ sought to both tell stories of those who are suffering as a result of inequitable international trade as well as put forward alternatives to the current trade system, and demonstrate the scale

*The Trade Justice movement demands that the international trade regime be changed fundamentally, to succeed and benefit all*

of the global movement for trade justice.

The movement thus challenges the rhetoric of development as contradicting the reality that developing countries' markets are being forced open for the Northern corporations (Hilary, 2005).

In summary, the Trade Justice movement seeks to ensure that economic globalisation and trade liberalisation promoted by the World Trade Organisation (WTO) enable all countries, especially the developing and Least Developed Countries (LDCs) to capture the gains of integration into the global economy.

This paper reviews the current issues in the areas of (1) Agricultural liberalisation; (2) Use of non-tariff barriers (NTBs); (3) Use of trade remedy measures; (4) Application of Special and Differential Treatment (S&DT) provisions and; (5) Democratic processes in the WTO, with a view to understanding the potential implications and benefits of implementing trade justice aspects, particularly in the context of South Asia.

These five issues have been identified keeping with their importance for the South Asian region and the obvious trade 'injustice' facing this region. It is well known that with 'significant change', multilateral trade in agriculture stands to benefit South Asian countries the most. But agriculture continues to be a stumbling block in WTO negotiations and the fruits of multilateral trade have been difficult to identify. It is accepted today that the collapse of the Cancún Ministerial of September 2003, was to a large extent due to disagreements on agriculture between developed and developing countries. The latter have repeatedly held the former responsible for failing to address their calls for elimination of export subsidies and

substantial reductions in domestic support and tariffs. The issue, put simply is to move to agricultural liberalisation, from agricultural protectionism.

The second and third issues – those of the use of NTBs and trade remedy measures – are equally critical for South Asian countries since these measures are often used by developed countries to restrict imports from developing countries. South Asian exporters are confronted by a variety of innovative and emerging restrictions, making exporting to northern markets expensive and time consuming. Similarly, anti-dumping procedures, safeguards and countervailing measures have been increasingly used against developing-country exporters. Unlike agriculture, where the injustice is blatant, NTBs and trade remedy measures are often latent and covert methods of protectionism, aimed at denying developing countries much of the promised fruits that the multilateral trade process was to deliver.

The repeated non-application of S&DT provisions has also severely crippled the possibility of developing countries catching up with the developed countries. The Doha mandate on S&DT, seen as a significant step for multilateralism, has not seen any movement with increasing reluctance among developed countries to implement S&DT.

Apart from the specifics of the above Agreements, the lack of 'multilateralism' in the negotiating process and the method of conducting WTO business itself is conspicuous with its bias against countries with low or limited resources and expertise on international trade. Other than Sub-Saharan Africa, South Asian LDCs and small developing countries are the hardest hit by this inability to effectively negotiate or implement WTO Agreements.

*It is accepted today that the collapse of the Cancún Ministerial of September 2003, was to a large extent, due to disagreements on agriculture between developed and developing countries*

## ISSUES FOR COMMENTS

- How can South Asian countries use the Trade Justice movement arguments to strengthen their negotiating power at the WTO?
- How can South Asian countries modify the perspective of the Trade Justice movement to make it more relevant?
- How can South Asian countries use trade justice for achieving the Millennium Development Goals?

# Agricultural liberalisation - Limiting market access

Agriculture has been one of the most protected sectors in developing and developed countries alike mainly due to issues of food security and domestic supply, which also makes it a highly politically sensitive issue. In developing economies (including most South Asian countries), agriculture is an integral part of the economy, employing a large portion of the workforce and contributing significantly to Gross Domestic Product (GDP). Its contribution to national economy as a percentage of GDP is 40 in Nepal, 23 in Bangladesh, 25 in India and Pakistan, 22 in Sri Lanka, and 38 in Bhutan. More importantly, South Asia is a region of small farmers, whose incomes are low and subject to volatility. Therefore, the impact of international trade on agriculture is a key area of concern in South Asia.

Agriculture also forms the major component of merchandise exports from these countries. On the one hand, there is very little organisation, domestic support or export subsidies for agriculture in South Asian developing countries. On the other hand, the agriculture sector of the developed world has been characterised by a high level of protection, which has contributed significantly to distortion in agricultural trade. Farming in these countries is large scale, and ownership resides with either corporations or wealthy farmers. This pattern is matched by the distribution of farm subsidies, with the top quarter of farmers receiving 90 percent of total United States (US) subsidies and the top quarter of European Union (EU) farmers receiving 75 percent of farm subsidies.

Although the share of South Asia in agricultural trade is very small (only India and

Sri Lanka have a favorable trade balance in agriculture), the impact of trade is not (Verma, 2005). Asia's share of agriculture exports worldwide is 13.3 percent as compared to the 59.1 percent share of developed countries (UNCTAD, 2004a) but cheap imports from abroad, the economic clout of multinational corporations, the increasing inability of state governments to use appropriate trade and state policy measures to ensure food security and rural development, affects the lives of millions of small farmers in South Asia. The limited opportunity for exports in agriculture itself is a direct result of dumping and high trade barriers in developed countries that are in existence even after the Agreement on Agriculture (AoA) came into force in 1995.

However, even within this scenario, as the Trade Justice movement states:

*With the right policies and incentives, agriculture can provide safe and nutritious food for the population; a livelihood for large numbers of people, both directly and indirectly; habitat for wildlife; and a range of land management and environmental services.*

Strong political farm lobbies in developed countries have ensured that several years after the Uruguay Round, exports from developed countries have actually increased. Between the periods 1980–1990 and 1990–2000, while agricultural exports from developing countries to other developing countries increased from 3.6 percent to 7.8 percent, their growth rate to developed countries declined from 3.4 percent to 3.3 percent. The declines were mostly in grains, coffee, cocoa, tea, sugar, and textile fibres; and were attributed to such factors as price declines, high rates of protection and expanded production

*The limited opportunity for exports in agriculture itself is a direct result of dumping and high trade barriers in developed countries that are in existence even after the Agreement on Agriculture (AoA) came into force in 1995*

in industrialised countries (World Bank, 2003).

In fact India's submission on "Market Access" to the WTO Committee on Agriculture points out that:

*There seems to have been more exports from the developed countries into the markets of developing countries. The FAO reports that for developing countries, 'On the whole, a common observation was the asymmetry in the experience between the growth of food imports and the growth of agricultural exports. While trade liberalisation had led to an almost instantaneous surge in food imports, these countries were not able to raise their exports.'*<sup>2</sup>

In all three areas of AoA<sup>3</sup>, there have also been loopholes and clever interpretation/ manipulations by developed countries so that even today a high degree of protectionism exists in the agriculture sector of these countries.

This protectionism is despite the obvious one-sided nature of the AoA at the time of the Uruguay Round, eloquently described in an Oxfam paper:

*By any standards, the AoA was an act of considerable generosity to the EU and the US. Under the Aggregate Measure of Support (AMS) reduction commitments, both retained the right to provide around US\$ 80 billion in subsidies, in addition to unlimited Green Box and Blue Box payments. Moreover, the reference years chosen as benchmarks for measuring domestic support and export subsidy reductions were marked by low prices and historically high levels of export subsidisation. In other words, the base period subsidy was abnormally high, minimising the real cuts required. In the case of export subsidies, a rollover provision allowed countries to carry forward unused subsidy allowances. In effect, export subsidy rights could be accumulated during periods of high prices"* (Watkins, 2003).

This allowed for huge disparities in the rate of subsidisation between commodities and over time. In the case of domestic subsidies, AMS reduction commitments were aggregated across all commodities, thereby making it possible to reduce commitments in some areas while raising them in others.

To increase market access, the AoA agreed on an average 36 percent tariff reduction with a 15 percent minimum for each tariff line across all tariff lines for developed countries. However, the reduction was on a non-weighted basis, meaning all tariff lines would be treated as equal. Thus, for example, for a "sensitive" product with a 100-percent tariff, the cut need be no more than the minimum 15 percent to 85 percent, whereas for non-threatening import products facing a low tariff of two percent, one could generously concede a reduction of 50 percent by just lowering it to one percent.

As India pointed out:

*OECD governments reduced high tariffs on sensitive products (such as products which they produced) by a smaller percentage, while reducing low tariffs by a larger percentage. The FAO found that few developing countries took advantage of this possibility of reducing low tariffs by high amounts, in contrast to developed countries.*<sup>4</sup>

Another key factor for improving market access was 'tariffication', which calculated tariff equivalents of non-tariff import barriers and converting them to fixed tariffs. During the process of tariffication, countries were expected to calculate internally the tariff equivalent of existing trade barriers. This, of course, provided enough space for ambiguity in determining the price gap. Developed countries have managed to inflate the value of their NTBs so as to fix their bound tariff at an indefensibly high level. These 'dirty tariffs' are a huge impediment to market access. For instance, the EU has bound tariffs on average at about 61 percent above the actual tariff equivalents, and the US at about 44 per cent. Similarly, Canada imposes a tariff of 360 percent on butter, the EU a tariff of 213 percent of beef; Japan levies 388.1 percent tariff on wheat products and US 44.4 percent duty on sugar (SAWTEE, 2001).

One of the most insidious practices in the agricultural sector has been tariff escalation, where tariffs are increased from

*Developed countries have managed to inflate the value of their NTBs so as to fix their bound tariff at an indefensibly high level*

raw material to intermediate and final stages of production. This clearly discourages developing countries from increasing exports of value-added products to developed countries “almost in a sense signaling that their place remains where it was defined in the days of their colonial past” (Modwell, 2004).

Figure 2.1 below shows the level of tariff escalation in the ‘Quad’ countries and regions (viz. Canada, the EU, Japan and the US) in 2003.

It is evident that though providing market access was one of the agreed principles of the AoA, developing countries have been prevented from accessing developed country markets.

The provisions on domestic support

were meant to identify and reduce those supports to farmers that directly affected international trade. The total domestic support /AMS (annual level of support expressed in monetary terms for all forms of support measures where government funds are used to subsidise farm production and incomes) is to be reduced by 20 percent for developed countries and 13 percent for developing countries.

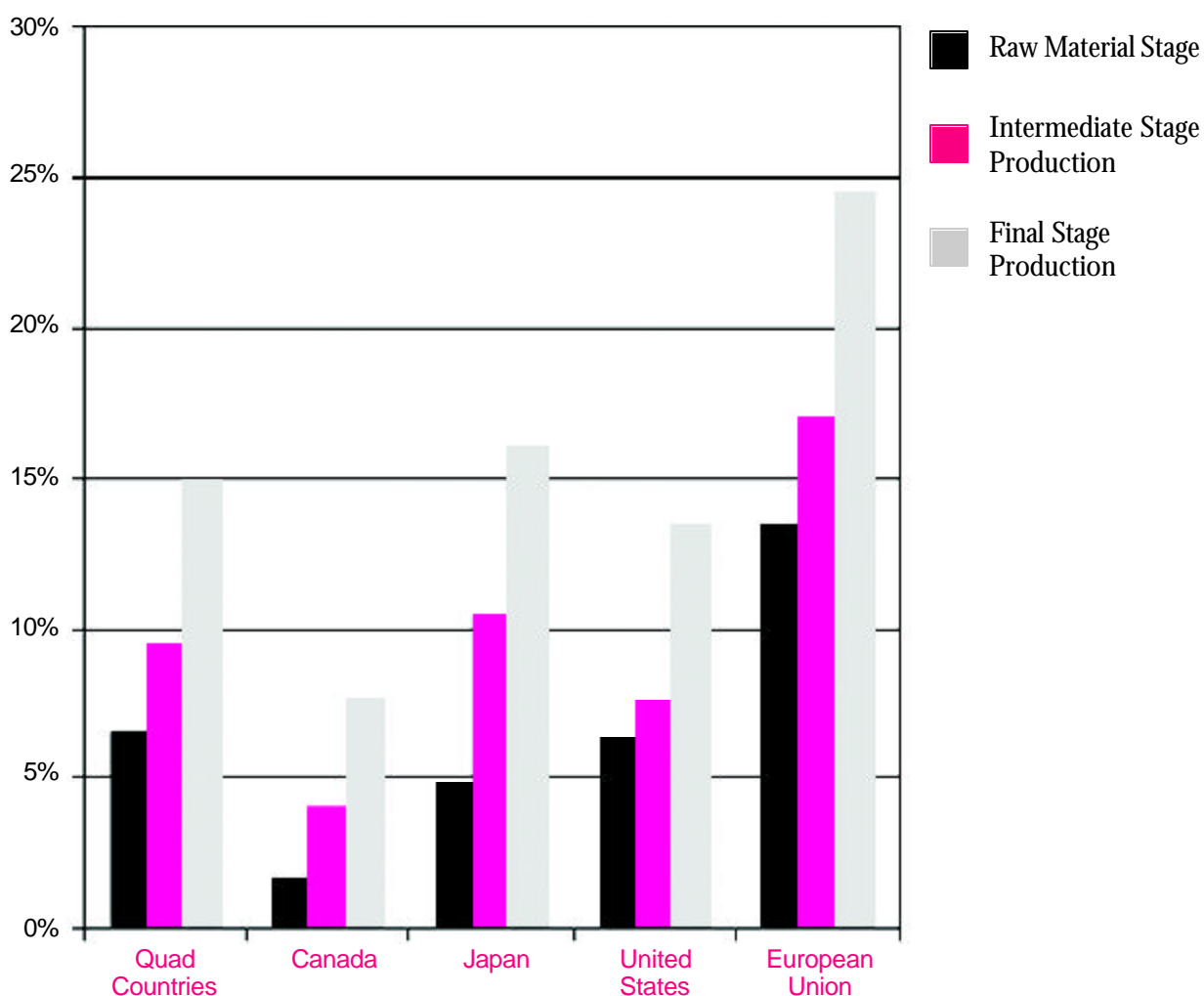
But domestic support continues to be an area with the highest levels of misrepresentation and ambiguity. According to a World Bank report:

*During 1995-98, WTO members used 42 percent of the budgetary expenditure and 64 percent of the volume allowed for export subsidies,*

*One of the most insidious practices in the agricultural sector has been tariff escalation, where tariffs are increased from raw material to intermediate and final stages of production*

FIGURE 2.1

Escalating Tariff Rates in Developed Countries, 2003  
(As percentage of F.O.B. value)



with the EU accounting for 90 percent of all OECD export subsidies.<sup>5</sup>

According to the United Nations Development Programme (UNDP), OECD countries provide about US\$1 billion a day in agricultural subsidies. About 50 percent of Organisation for Economic Co-operation and Development (OECD) spending on agricultural support occurs in the EU and almost 40 percent in Japan. In the US, agricultural support rose to US\$ 28 billion in 2000 (CENTAD, 2005). Table 2.1 highlights the worldwide support to the agricultural sector for the period 1986-2000.

*What is ironic is that most developing countries, by contrast, had previously little or no domestic or export subsidies*

This is not to say that the developed countries deliberately violated the provisions of the WTO. On the contrary:

*... under the Uruguay Round Agreement on Agriculture, the US and the EU, along with other industrialised countries, agreed to cut overall support to agriculture by 20 per cent ... both parties have complied with the letter of the agreement. Yet, average overall government support as measured by the Producer Support Estimates (PSE) rose from an average level of US\$ 238 billion in 1986-1988 (the reference period for subsidy reductions) to US\$ 248 billion for 1999-2001. How did rich countries comply with the subsidy-cutting requirements of the AoA while increasing real support levels? (Watkins, 2003).*

How developed countries managed to do this was by increasing their domestic subsidies under the “blue box” and “green box” measures, both of which are permitted by the AoA. Thus, the total domestic support did come down by 20

percent, but the support to producers in the OECD countries went up. An OECD report observes that:

*While overall levels of producer support for the OECD average have not declined significantly after the Uruguay Round, notable changes in the composition of policy instruments have taken place. This is an important development, because these policy measures have pronounced distorting effects on production and trade. In other words, while the overall level of support has not been greatly reduced after the Uruguay Round, it can still be said that some progress has been made, in the OECD area, towards liberalising international agricultural trade (OECD, 2002).*

This increased support in PSE clearly cancels out any reductions in the AMS subsidies. Further evidence of this ‘trade injustice’ is available in a study of production costs in developed countries and the world prices for staple commodities as rice, corn and wheat. For example, in 2000, the world price of wheat was £73 a tonne, the production cost of UK wheat was £113 a tonne, while the UK wheat price was £70 a tonne. Thus the selling price in the UK was £43 below the production cost. The UK farmer could sell below the production cost because of the direct payment subsidy paid by the British government (Khor, 2002).

What is ironic is that most developing countries, by contrast, had previously little or no domestic or export subsidies. This is unfair in the sense that countries distorting the market in the past are allowed to continue distorting it up to a substantial extent, whereas those that had re-

**TABLE 2.1**

**Estimates of worldwide support to agriculture, 1986-2000**

	1986-98	1998-00	1998	1999	2000
Producer Support Estimate	236.4	257.6	253.7	273.6	245.5
of which					
Market price support	182.4	170.2	170.1	182.1	158.0
General Services Support Estimate	41.6	57.1	58.9	57.0	55.5
Total Support Estimate	298.5	340.5	339.1	355.9	326.6
Total value of production (at farm gate)	559.2	651.0	668.3	653.1	631.6

*Source: Extracted by authors from tables in Organisation for Economic Co-operation and Development, Agricultural Policies in OECD Countries 10 Years after the Uruguay Round: How Much Progress? OECD, Paris, 2002.*

frained from doing so in the past are to-  
tally prohibited from using these measures  
in the future (Das, 1998). Since develop-  
ing countries have no provision for sub-  
sidies, the only protection for their farm-  
ers is through tariffs, which are to be pro-  
gressively reduced according to the AoA.  
There is a great imbalance in a situation in  
which developed countries with very high  
domestic support are able to maintain a  
large part of their subsidies (and in fact,  
raise their level) while developing coun-  
tries with low subsidies are prohibited  
from raising their level beyond the *de*  
*minimus* amounts.

Thus, costs are maintained at artificially low  
levels by developed countries and produc-  
tion at artificially high levels. Surplus prod-  
ucts are dumped on markets of other

countries. Figure 2.2 refers to production  
and dumping with regard to US wheat.

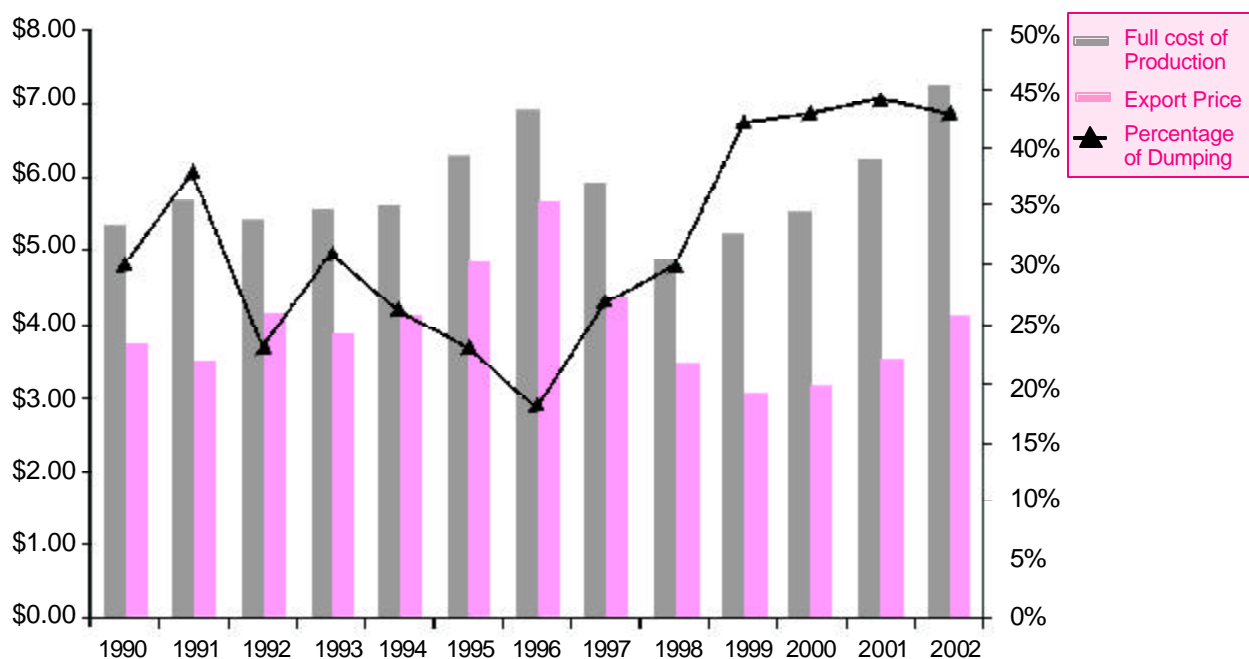
The effect of trade distortion in agricul-  
ture on small and marginal farmers has  
been particularly severe. As a seven-year  
study by the Pesticide Action Network  
Asia and the Pacific that examined cases  
in India, Pakistan and five south east Asian  
countries states:

*Seven years after the AoA, small farmers are  
not experiencing the prosperity promised by the  
agreement's proponents. For millions of small  
farmers and peasants, the result has been the  
entrenchment of poverty, destruction of liveli-  
hoods, increased burdens and for many it has  
literally meant empty stomachs. In villages in  
India, a shift from food to cash crops led to  
higher food prices, lower employment and in-  
come and lower food consumption among mar-*

*The effect of trade distortion  
in agriculture on small and  
marginal farmers has been  
particularly severe*

Figure 2.2

### Full Cost of Production Vs. Export Price for Wheat, and Percentage of Dumping, United States, 1990-2002



Notes: Cost of production and export prices in US\$ per bushel. 1 metric tonne = 36.74 bushels.

Percentage of dumping calculated as the difference between the full cost of production and the export price, divided by the full cost of production.

Source: US Dumping on World Agricultural Markets, Institute for Agriculture and Trade Policy, Cancun Series, Paper No.1, 2003, available at: [www.trageobservatory.org/library/uploadedfiles/US\\_Dumping\\_on\\_World\\_Agricultural\\_Markets\\_Febru.pdf](http://www.trageobservatory.org/library/uploadedfiles/US_Dumping_on_World_Agricultural_Markets_Febru.pdf)

*ginal farmers and landless women workers. In Pakistan, privatisation policies increased the cost of agricultural production, leaving more people without access to land.”<sup>6</sup>*

The Doha Development Round was seen as a boost for developing countries and LDCs. It was hoped that a time-bound negotiation process, which included setting targets for tariff reduction, elimination of export subsidies and reduction in domestic support would address the most crucial concerns of these countries. The Doha Ministerial Declaration committed to “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support”. But it did not give a time frame for phasing out or rates of reduction. Therefore, there has been no improvements in market access or benefits of S&DT provisions for developing countries. With extreme political clout in developed countries and a strong stand by developing countries, all the Doha Round deadlines for agricultural talks were missed. Thus the stage was set for the failure of talks at Cancún. Although the Cancún Ministerial ended without achieving any substantial success, an important development occurred with the formation of the G-20, a group of 20 developing countries led by India and Brazil, which were united to counter the powerful coalition between the EU and US. It is encouraging that at the Cancún Ministerial, the G-20 bloc displayed solidarity in demanding specific reductions in each of the three areas of the AoA.

In an attempt to correct the collapse of trade talks at Cancún, WTO members met in Geneva in July 2005 and agreed on the ‘July Package’ (WTO). These negotiations have been celebrated as a ‘historic breakthrough’ and signal the way forward for the WTO. A major gain for developing countries was the agreement (in principle) of developed countries to reduce export subsidies. However, upon closer examination of the agreement, “commitments” by the rich nations were left vague and no timetable or amounts were agreed upon. More importantly, the

deadline for these commitments is to be decided at a later date.

With regard to market access, developed countries introduced the “sensitive products” list that would enjoy special treatment in relation to the standard tariff-cutting formula. Through this measure, countries have significant protection for their “sensitive products”. This has clearly been introduced to benefit developed countries that cannot use the “special products” category detailed in the S&DT provisions. There is legitimate reason for concern that the model of “sensitive products” will have a significant impact on limiting market access for developing countries.

It has been a decade since the implementation of the AoA, and this is a sufficient period of time to understand the implications of the WTO and liberalised trade on agriculture in South Asia. However, South Asian countries have spent most of this time contesting and disputing trade measures proposed by other countries instead of developing strategies to enhance their competitiveness.

Since agriculture is extremely important for South Asian countries with regard to food security, employment and GDP it is imperative that they take not just a defensive but offensive role in negotiations on AoA. The United Nations Conference on Trade and Development (UNCTAD) estimates that low-technology countries are losing out US\$700 billion per year in export earnings due to developed world protectionism (UNCTAD, 1999). The World Bank estimates that income gains for developing countries to the extent of US\$ 400 billion by 2015 could be achieved if the Doha mandate of removing distortions on agriculture is achieved.<sup>7</sup>

To achieve these ends, the developing countries must campaign for a rapid decrease in protectionism and the right of developing countries to formulate and implement measures that can ensure a level playing field in agricultural negotiations. What is called “special and differential” may be better referred to as “equitable and non-injurious” treatment.

*With extreme political clout in developed countries and a strong stand by developing countries, all the Doha Round deadlines for agricultural talks were missed*

The “July approximations” were originally supposed to be fairly well developed outlines of an eventual deal to be adopted at the WTO’s Hong Kong Ministerial Conference in December 2005. However, they have ended up being, at best, a tenuous consensus with progressive Agreements that are riddled with loopholes and loose time frames, if at all.

At the “mini-ministerial” meeting at Dalian, China in July 2005, the EU and US agreed to use a compromise framework proposal on farm tariff reduction from the G-20 group of developing countries as a starting point for continuing the talks. Given that the negotiations are now taking place with the so-called five interested parties (FIPs), i.e., Australia, Brazil, the EU, India, and the US; along with Switzerland, Japan, China, and Indonesia, it is possible that they might be able to flesh out different aspects of the framework set out by the G20 (BRIDGES, 2005).

As such, agriculture liberalisation or rather the lack of it, is probably the most

contentious issue today in world trade negotiations. In lieu of these severe imbalances, and the fact that today, more than ever before, South Asia is better informed about the inequalities of the international trading system and relatively better equipped to make specific demands at the WTO, the mission of the Trade Justice Movement is more relevant than ever. The specific priority areas identified by the movement with regard to agriculture include the need to avoid encouraging unsustainable production and dumping, while providing greater flexibility for poorer countries to use trade measures to pursue food security and rural development goals. ‘Win-win’ solutions should be prioritised, including eliminating export subsidies and supports, improving market access for the poorest countries, and reorienting domestic support towards achieving specific environmental, animal welfare and rural development objectives. Agricultural trade rules should not prevent measures to promote more sustainable agriculture.<sup>8</sup>

*As such, agriculture liberalisation or rather the lack of it, is probably the most contentious issue today in world trade negotiations*

## ISSUES FOR DISCUSSION

- How can South Asian countries develop a cohesive policy with regard to agricultural negotiations that can benefit developing economies and LDCs alike?
- What internal policies can South Asian countries develop to ensure their economies are resilient to impacts of international trade in agricultural commodities?
- How can South Asian countries promote sustainable agriculture and protect their small farmers from the onslaught of commercial farming in the developed world?

# The politics of non-tariff barriers

**A**lthough tariffication and subsequent reduction of non-tariff measures is one of the central principles on the basis of which the WTO functions, non-tariff measures in the form of 'rules' such as anti-dumping and 'standards' such as sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) that are known to impact market access, continue to be prevalent in the multilateral trade system today.

It is argued that in the post-GATT era, developed countries realised the relative futility of tariff-based instruments to protect the interest of domestic interest groups and began using non-tariff rules or standards-based measures to serve protectionist demands. This did not allow exporting countries from the developing world to translate their comparative advantage in the trade of specific commodities and services into competitive advantage (CUTS, 2000).

Evidence suggests that there is indeed an inverse correlation between tariff barriers and NTBs in the sense that as tariff barriers have gone down globally, the incidence of NTBs has been exhibiting an upward trend. Though some of the NTBs are arguably imposed to achieve legitimate policy objectives such as protection of plant, animal and human health and prevention of consumer deception, they have been, more often than not, misused for protectionist purposes (Adhikari, 2004).

On the issue of textiles, an area of comparative strength for South Asian countries, a recent UNCTAD study has concluded that:

*So far, developing countries have borne the brunt*

*of a restrictive, managed, discriminatory, discretionary and non-equitable trading system (UNCTAD, 2004b).*

The study found that while tariffs do not block market entry, they can make it prohibitive when NTBs are also implemented. These can effectively block market entry for exporters who are unable to comply with complex and stringent internal regulations and standards. Compliance with NTBs are almost always difficult and costly for exporters.

One example of an elaborate and complex trade-restrictive NTBs is the new system called Registration, Evaluation and Authorisation of Chemicals (REACH) that has been proposed in the EU. If adopted, the REACH legislation could make EU textiles and clothing firms subject to a procedure of registration, evaluation, authorisation and restriction for a large number of chemical substances. A report from the US Department of Commerce noted that some 30,000 chemical substances would be subject to this measure and that the US textile industry would be widely affected, as technical requirements and testing procedures would be complex, time consuming and costly. Given that even the world's most industrialised country would encounter significant costs and difficulties in complying with REACH, the extent of the impact on developing country industries could be severe. In addition to technical market entry barriers, anti-competitive practices of dominant firms in the sector also give rise to significant market entry barriers. For example, developing country clothing producers encounter difficulties in entering developed country markets unless they are accepted as suppliers

*Compliance with the non-tariff barriers are almost always difficult and costly for exporters*

by firms controlling major distribution networks (Chakravathi, 2004).

In addition to the above, apparel retailers in the major importing countries are criticised by their labour unions and non government organisations (NGOs) for exploiting the poor labour conditions in exporting developing countries. Apparel retailers thus impose tough labour conditions on their suppliers through private codes of conduct. These private sector standards are not limited to labour conditions, but cut across sectors and disciplines.

An example is the imposition of EureGap<sup>9</sup> standards on producers seeking to sell agricultural and other products to European supermarkets. Developing countries have pointed out at recent meetings before the WTO's TBT Committee that the EurepGap requirements are tougher than the EU government requirements and severely impede trade. The EU however declined from interfering, claiming that their private sector organisations say they reflect consumer demand. They further state that the Eurep standards are not being claimed as EU standards, and

that any concerns about such standards should be raised with the organisations concerned.<sup>10</sup>

Critics argue that this EU argument fits perfectly with the "plan" developed by former EU Trade Commissioner and present WTO Director-General Pascal Lamy during the current round of Doha negotiations (Malcolm, 2004). Pascal Lamy had argued that EU could well "shut out imports which violate the 'collective preferences' of the EU". "Collective preferences", as defined by Lamy, "are the end result of choices made by human communities that apply to the community as a whole". In Europe's case, these include 'multilateralism, environmental protection, food safety, cultural diversity, public provision of education and healthcare, precautions in the field of biotechnology and welfare rights'. Defending various unilateral imposition of NTBs by the EU, Lamy argued that: "a country cannot be accused of protectionism just because it applies specific health, plant health or technical rules on access to its market" (Malcolm, 2004). Box 2.1 highlights a case wherein the EU applies stan-

*Defending various unilateral imposition of NTBs by the EU, Lamy argued that: "a country cannot be accused of protectionism just because it applies specific health, plant health or technical rules on access to its market" (Malcolm, 2004)*

## BOX 2.1

**Case Study:** The EU has been known to champion the inclusion of several environment (including animal welfare) related standards in production. For example, on PPMs (processes and production methods), the EU has been developing both standards for product related (where the PPMs affect the physical characteristic of the final product) and non-product related PPMs. Animal welfare is an example of a non-product related PPM issue, which means that meat products are generally not distinguishable according to the level of animal welfare in production. Policy measures related to non-product related PPMs are generally considered to fall outside SPS and TBT and thus potentially conflict with WTO principles.

However, since animal welfare is a huge prior-

ity in the EU and since the EU animal welfare standards for farm production, transport of farm animals and slaughter are much higher than in other meat producing countries exporting to the EU (particularly developing countries), the EU could impose these standards on exporting countries by one of three methods: seeking labelling of products (either voluntary or compulsory), differentiated import tariffs and differentiated consumer taxes.

In this case, although the ostensible aim of the measures is to increase levels of animal welfare in meat production in the EU and countries exporting to the EU, they will almost certainly affect trade flows, especially since they are not being accompanied by technical assistance to help developing country producers achieve these high standards of animal welfare.<sup>1</sup>

<sup>1</sup> A recent study argues that if the EU is taken to the Dispute Panel over such an imposition, the EU could defend these measures by arguing that: (a) meat products with higher standards of animal welfare are not "like" other meat products; (b) such measures are permitted under the SPS Agreement as "necessary" to protect animal health and/or the TBT Agreement as the "least trade restrictive means" of achieving the goal of improving animal welfare; or (c) the measures are necessary and justifiable under Article XX GATT. D.J.F. Eaton, J. Bourgeois and T.J. Achterbosch "Product differentiation under the WTO: An analysis of labelling and tariff or tax measures concerning farm animal welfare", Agricultural Economics Research Institute (LEI), The Hague, June 2005

dards pertaining to animal health.

It is thus evident that labour standards along with environment, rules of origin, safeguards and anti-dumping are some of the NTBs that can be put in place for protectionist purposes. This is despite the fact that one of the acknowledged causes for the failure of the Seattle Ministerial Conference of the WTO in 1999, was the polarisation between the North and South on the issue of incorporating labour and environmental standards, popularly known as 'linkages', into trade accords. In the words of former US President Bill Clinton:

*I know that the words 'labour' and 'environment' are heard with suspicion in the developing world when they are uttered by people from the developed world. I understand that these words are codes for rich-country protectionism* (Economic Times, 2000).

In its submission to UNCTAD X at Bangkok, India argued that:

*Ironically we saw the world up side down at Seattle: while developing countries were pleading for freer trade, developed countries were seeking Trojan horses to hide their protectionist intentions. By bringing non-trade issues like core labour standards, Seattle has failed and WTO process has become an object of strong criticism, both in the*

*developing and the developed world* (UNCTAD, 2000).

Similarly, Pakistan argued that:

*It is essential that politicians in the advanced countries confront this 'new protectionism' rather than pander to the power of partisan interests* (UNCTAD, 2000).

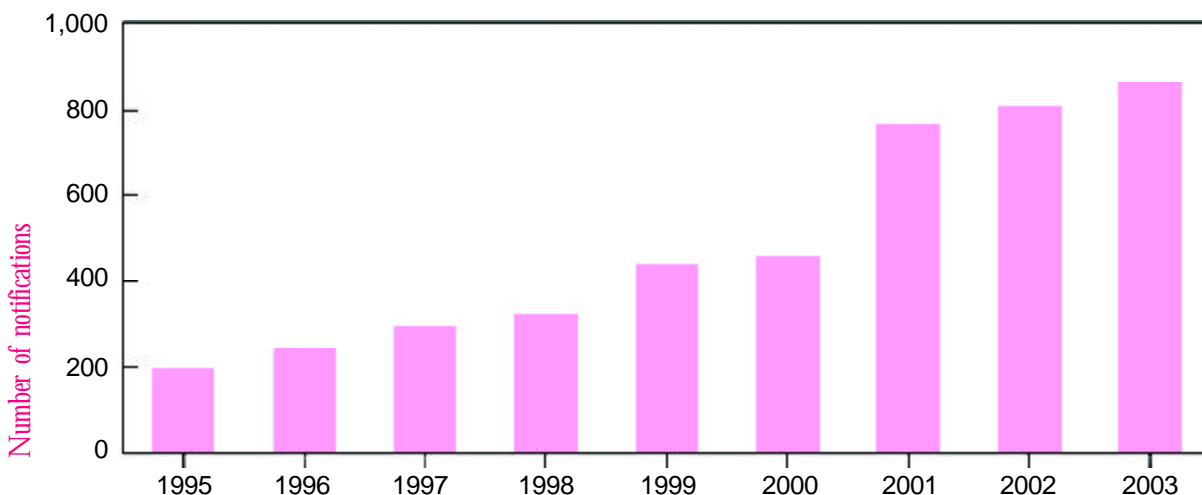
However, so far no comprehensive exercise has been undertaken to discuss and document the concerns of various factions of civil society, governments and respective constituencies on the different aspects of the 'linkages' issue (CUTS, 2000).

In fact, SPS notifications to the WTO by member countries have steadily increased from 196 in 1995 to 855 in 2003. Figure 3.1 shows the SPS notifications to the WTO. The animal and meat sector accounts for almost two-thirds of the total number of notifications on agriculture. These notifications may signal the imposition of a new procedure, rule, or requirement that may act as a barrier to trade, or the removal of such. Therefore, the increase in the number of notifications in itself does not indicate that SPS measures have been used to restrict trade in high-value products. However, WTO members have formally raised concerns

*I know that the words 'labour' and 'environment' are heard with suspicion in the developing world when they are uttered by people from the developed world. I understand that these words are codes for rich-country protectionism*

Figure 3.1

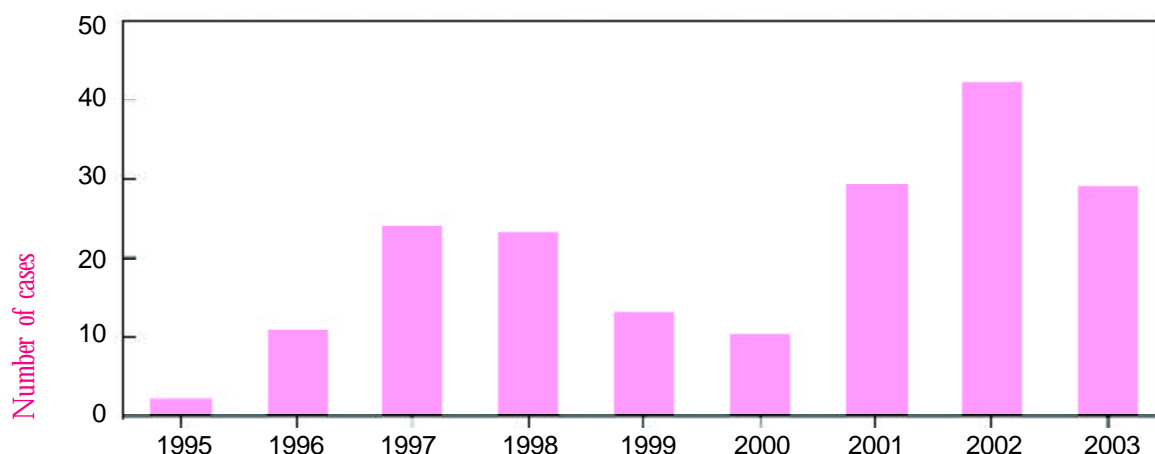
### SPS notifications to the WTO have increased



Source: USDA, FAS, SPS Notification Database. Members Notifications to WTO and Member notification accessed at [www.wto.org/english/tratop\\_e/spis\\_e/spis.e.htm](http://www.wto.org/english/tratop_e/spis_e/spis.e.htm)

Figure 3.2

## SPS trade concerns raised by WTO members



Source: WTO, 2003a.

*It has been agreed that NTBs can consist of national regulatory measures, including for social and environmental purposes, which impede international trade but are not necessarily currently illegal under WTO rules*

that some of the SPS measures may have been designed to restrict trade. These concerns totalled 183 between 1995 and 2003.<sup>11</sup> Figure 3.2 shows SPS trade concerns raised by WTO members.

The Doha mandate seeks to reduce these NTBs [though paragraph 16 is limited to Non-Agricultural Market Access (NAMA)]. After the failure of the Cancún Ministerial, countries adopted the July Framework to work on the Doha Mandate. Paragraph 14 of Annex B to this framework states:

*We recognise that NTBs are an integral and equally important part of these negotiations and instruct participants to intensify their work on NTBs. In particular, we encourage all participants to make notifications on NTBs by 31 October 2004 and to proceed with identification, examination, categorisation, and ultimately negotiations on NTBs.*

Clearly, there is no deadline on such negotiations. Given the past experience it might come as no surprise if Doha 'mandate on NAMA' is dominated by tariffs

and NTBs are passed on to others committees/groups of the WTO, without reduction (Mehta, 2005).

After months of discussions on how to categorise NTBs to trade, talks at the WTO Negotiating Group on NAMA concluded on 10 June 2005 with an agreement to begin actual negotiations. It has been agreed that NTBs can consist of national regulatory measures, including for social and environmental purposes, which impede international trade but are not necessarily currently illegal under WTO rules. As a starting point, a narrow list of specific NTBs has been compiled based on inputs provided by Members. Preliminary categorisation has begun to separate NTB problems that can be resolved in the NAMA negotiations from those that can be resolved through bilateral discussions or that are, in fact, legitimate domestic regulations that should not be challenged on a multilateral or bilateral level. It remains to be seen which NTBs will be dealt with sectorally and which will be dealt with using a horizontal approach.<sup>12</sup>

## ISSUES FOR DISCUSSION

- Is there a need for South Asian countries to take a critical look at improving their labour, environmental and related standards?
- How can South Asian countries develop expertise to enable them to deal with disputes over non-tariff barriers?
- How can South Asian countries collaborate with the Trade Justice movement to mutually appreciate each other's concerns relating to environment, labour and other standards?

# Abuse of trade remedy measures

The array of developed country protectionism stretches beyond agricultural products, to most products and services, especially those where many developing countries have a competitive advantage. Ironically, the legitimate measures for remediation of unfair and trade restrictive practices in the WTO have been used to further curtail fair competition between developed and developing countries. The abuse of trade remedy measures such as anti-dumping procedures, safeguards and countervailing measures are being increasingly used against developing country exporters. Contrary to their design as temporary means to offset unfair competition, these trade defense measures are in practice used as a long-term remedy for various economic difficulties.

As it is well known, dumping takes place when a producer sells a product in a foreign country at a lower price than it does in the domestic market. The levels of proof required in anti-dumping cases have been notoriously low. Evidence of intent of the exporter to drive out competitors by pricing below costs in order to gain monopoly hold on the market, is not needed to prove dumping. To prove dumping, a country needs to establish only three things:

- That imported goods are being sold at 'below normal price'
- That a domestic firm is being injured by these exports
- That the second effect is being caused by the first (Evans, 1994)

Countervailing duties are meant to neutralise the effect of foreign subsidy programmes. Countervailing duties are a

matter of domestic legislation. As in antidumping, countervailing measures take a very simple view of trade remedy, looking into three aspects:

- That the subsidy has been applied
- That injury has been felt by a domestic industry
- That injury has been caused by the subsidy

Instead of instruments to tackle the negative consequences of trade liberalisation, anti-dumping and countervailing measures have become a common tool for developed countries to protect their sensitive domestic industries from import increases or price reductions. As a UNCTAD Report observed:

*Designed as a corrective mechanism, particularly anti-dumping has been hijacked for protectionist purposes. Gradually replacing conventional tariff-based trade barriers, the advancement of these practices jeopardises the benefits of tariff reduction and growing economic integration (UNCTAD, 2001).*

These measures are frequently used in place of safeguard measures, in fact much more than the more demanding safeguards measures.<sup>13</sup> This can be seen from the fact that 95 percent of all anti-dumping cases are related to safeguard aspects with only 5 percent being linked with anti-competitive practices (OECD, 1995).

As traditional trade barriers are being progressively reduced and developing countries aggressively push for their share in multilateral trade, anti-dumping

*The array of developed country protectionism stretches beyond agricultural products, to most products and services, especially those where many developing countries have competitive advantages*

*"Antidumping law has become the most important of the remedies in US law to restrain imports" (Ehrenhaft, 1997)*

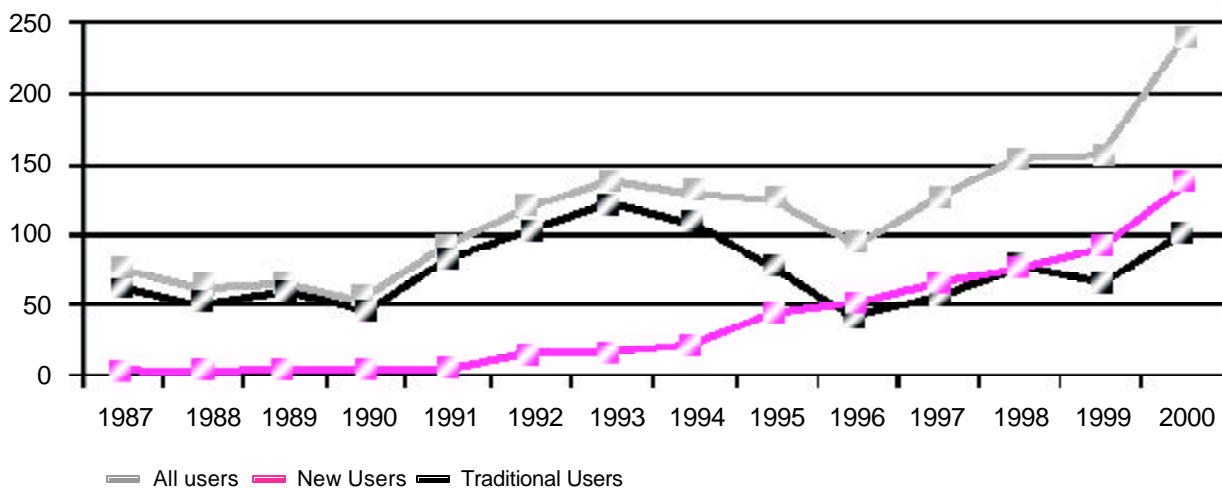
and countervailing measures have become substitutes for protectionist trade barriers. These 'substitutes' are allowed by WTO rules and are therefore 'legal' tools that enable private interests to impose government restrictions on competition. According to a study:

*Antidumping law has become the most important of the remedies in US law to restrain imports (Ehrenhaft, 1997).*

Post-Uruguay Round (UR), there has been a massive increase in the number of anti-dumping and countervailing measures investigations. The number of anti-dumping investigations doubled and the num-

ber of investigations on countervailing measures increased six fold (UNCTAD, 2001). Furthermore, the composition and number of WTO members using contingency measures have changed considerably. Prior to the adoption of the WTO Agreements in 1995, the use of anti-dumping measures was mainly the domain of a few, largely developed, countries such as Australia, Canada the EU and the US. However, since the implementation of the WTO Agreements, the number of countries with anti-dumping laws has increased dramatically. There are now 64 countries with anti-dumping regimes in place<sup>14</sup> (See Figure 4.1).

Figure 4.1  
Total Anti-Dumping Measures



Source: WTO Secretariat, Rules Division Antidumping Measures Database.

The new users are countries such as Argentina, Brazil, India, the Republic of Korea, Mexico and South Africa, many of which had recently undergone far-reaching trade liberalisation as part of their market-oriented economic reforms.

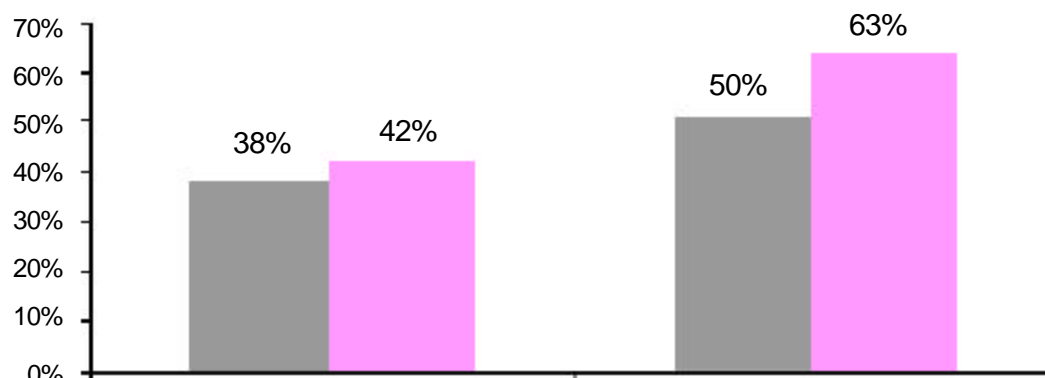
However the 'Quad' (Canada, the EU, Japan and the US) still continue to initiate a significant share of the investigations – 40 percent of anti-dumping (WTO, 1995-1999) and with regard to countervailing measures, investigations continue to be launched largely by de-

veloped countries. The US and the EU initiated two-thirds of all investigations on countervailing measures. Altogether, developed countries were behind more than 80 percent of the overall number of investigations on countervailing measures initiated after the WTO came into existence.

Developing countries continue to be the main target for anti-dumping and countervailing measures. 42 percent of all anti-dumping and 63 percent of all investigations into countervailing measures are

Figure 4.2

### Share of investigations directed against developing countries (1995-1999)



Source: WTO Rules Division Antidumping and Countervailing Measures Database.

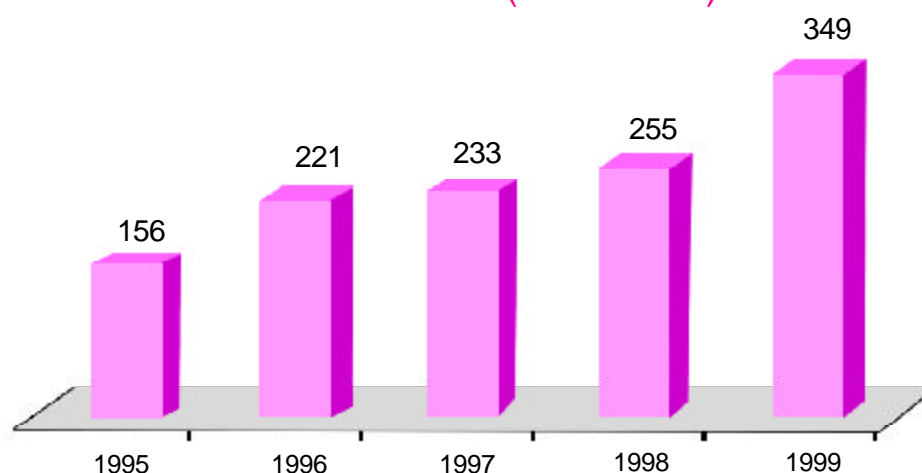
directed against developing countries (See Figure 4.2). Compared to the five years before the WTO Agreements came into force, the frequency for developing countries to be the target of anti-dumping and countervailing measures investigations even increased between 1990–1994, 38 percent of all anti-dumping and 50 percent of all investigations on countervailing measures affected developing countries (UNCTAD, 2001). As can be seen from Figures 4.3 and 4.4, the frequency of these investiga-

tions has increased during the last decade.

However, the percentage of investigations that result in final measures being imposed remains extremely low. Only 36 percent of all investigations on countervailing measures initiated in 1998 and 14.3 percent in 1999 ended with the levying of a final measure. Despite the low success rate of contingency measures, the practice of initiating petitions immediately one after the other for the same product (known as ‘back to back

Figure 4.3

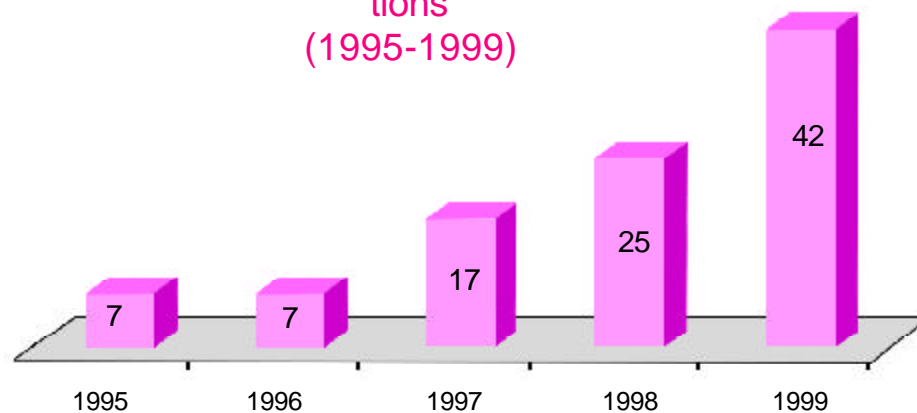
### Increase in Anti-dumping investigations (1995-1999)



Source: WTO Rules Division Anti-dumping Measures Database.

Figure 4.4

### Increase in Countervailing measures investigations (1995-1999)



Source: WTO Rules Division Antidumping Measures Database.

India is one of the countries most frequently affected by both anti-dumping and countervailing measures

petitions') is widespread.

For example, since 1994, the European Commission (EC) has initiated three anti-dumping investigations against import of cotton fabrics (which included unbleached cotton fabrics) from India, the last two being targeted only at unbleached cotton fabrics. These investigations have been carried out back to back, with the termination of one investigation being immediately or almost immediately followed by the initiation of the next.

India objected to this 'back to back petitions' in a submission to the Dispute Settlement Panel stating:

*The repeated recourse to anti-dumping action on an item which is already under quantitative restriction without the EC authorities having ever adopted a definitive determination that imports from India were dumped and caused injury to the EC's domestic industry has resulted in a tangible decline of exports to the EC and, as a result, nullifies or impairs the benefits accruing to India under the WTO Agreement. India requests consultations on this aspect in the light of Article XXIII(i)(b) of GATT 1994 (WTO, 1998).*

India is one of the countries most adversely affected by both anti-dumping and countervailing measures. More than 15 percent of all final measures imposed in anti-dumping and 21 percent of all

measures imposed in investigations on countervailing measures were aimed at India (UNCTAD, 2001).

This recourse to frequent petitions seems to suggest that initiating countries are mainly interested in the process of investigations and not always in the final outcome. An UNCTAD report critiques this pattern:

*Together with the phenomenon of investigations initiated immediately after the termination of a previous one involving the same product (the so called back-to-back investigations), the large number of unsuccessful procedures indicates that investigations are sometimes initiated even if the petitioners presume that these investigations will not lead to the imposition of a final measure. It also demonstrates that access to anti-dumping and countervailing procedures is too easy. These actions appear to be a method of harassment (UNCTAD, 2001).*

Add to this the fact that the EU took an average of 589 days to complete their investigations and a clear pattern seems to emerge (UNCTAD, 2001). Further, US laws allow the anti-dumping duties collected on imports to be given to competing American firms. Certainly there is legitimate concern that this procedure acts as an incentive for domestic industries to lobby harder for inappropriate anti-dumping suits.<sup>15</sup>

In fact, it is an established fact that many

of the anti-dumping filings have significantly hindered foreign exports during the investigation itself. A study found that anti-dumping duties, on average, have caused the value of imports to contract by 30 to 50 percent. Moreover, a potential threat of an anti-dumping action could force a firm to sell the product in question at a much higher price than it would have under normal circumstances. An exporting firm's pricing behaviour to avoid an anti-dumping duty could result in suboptimal use of its competitive advantage. Anti-dumping practices may have adverse effects on the national economy and impose significant costs on the domestic economy by adversely affecting the importing country's price structure and creating difficulty for industries to obtain the supplies they need.

Against this background, the International Textiles and Clothing Bureau (ITCB) member countries have proposed to the WTO that developed country Members implement a grace period of two years after the ATC expiry during which they shall not initiate investigations into imports of textile and clothing products from developing countries. This proposal was based on the Doha Ministerial Declaration and the Decision on Implementation-Related Issues and Concerns. Given the distortions caused by the long-standing managed trade in this sector and the failure to use the transition period provided by the ATC to cushion the impact on protected industries, the restricting countries have a strong moral case in supporting the ITCB proposal and also refraining from using other contingency protection measures motivated by protectionist purposes. Most recently, concerns have been also expressed regarding a possible revival of voluntary export restraints (VERs), which are clearly prohibited by the WTO rules (UNCTAD, 2004b).

Anti-dumping cases are also expensive, technical and time-consuming to handle, especially for LDCs and smaller developing countries. In comparison, safeguard measures are relatively more difficult to invoke even for developed

countries since they act in a blanket, non-discriminatory manner against all imports (from all countries) of a particular product. Currently, developing countries have the benefit of *de minimis* provisions, but it is not clear how safeguard measures will affect this.

However, the numbers of countries applying safeguards has increased in recent years. Between 1995 and 2000, 87 countries notified the WTO that they had initiated safeguard investigations. By October 2003, this number had risen to 100. Safeguard investigations tend to be disproportionately concentrated in a few industries, with agricultural imports accounting for about 35 percent of the 124 investigations initiated since 1995. In fact, during the same period, about 5 percent of all anti-dumping investigations and about 25 percent of all investigations on countervailing measures targeted agricultural imports. Among safeguard investigations that actually resulted in a measure being imposed, the agricultural share increases slightly to 38 percent. Of the 96 investigations that had been concluded by October 2003, 61 resulted in the imposition of a safeguard measure (higher tariff or a quantitative restriction), including 23 that targeted agricultural products.<sup>16</sup>

Studies have shown that in general, a few large private corporates are behind a high percentage of contingency measures, especially anti-dumping. And these measures concentrate on a small number of industries like processed food, chemicals, and steel. This seems to counter the argument that contingency measures are invoked in public interest.

It has been established that a large percentage of contingency measures are directed at developing countries, and that even the threat of anti-dumping/countervailing measures/safeguard investigations has a negative impact on the economy of developing countries since their usually weaker economies can be adversely impacted by uncertainty and market fluctuations. Lack of expertise, financial capacities and technical equipment makes it much more difficult for

*Anti dumping cases are also expensive, technical and time-consuming to handle, especially for LDCs and smaller developing countries*

*Clearly the abuse of trade remedy measures is one that developing countries must address proactively if their share of comparative advantage is to be maintained*

LDCs and developing countries to defend their interests in anti-dumping investigation.

It is clear that the abuse of trade remedy measures is one that developing countries must address proactively if their comparative advantage is to be maintained. Due to the complexity of using these measures, many LDCs and developing countries simply do not invoke their right to initiate in-

vestigations. One suggestion is the inclusion of a public interest clause in the Anti-dumping Agreement. The objective of this clause is to ensure that investigating authorities consider anti-dumping complaints in a wider context, taking into account not only the interests of the affected domestic industry, but also the costs of the anti-dumping intervention to the national economy (Aggarwal, 2004).

## ISSUES FOR DISCUSSION

- What is likely to be the impact of safeguard measures on the *de minimis* provisions currently enjoyed by developing countries?
- In what ways can the South Asian countries collaborate to assist each other (especially the LDCs) in defending against trade remedy measures before the Dispute Settlement Body?
- What steps do South Asian countries need to take to bring the abuse of trade remedy measures by rich countries on the priority list of the Trade Justice movement?

## Non-application of S&DT provisions

S&DT provisions largely fall under three categories: (a) Reduction in commitments (such as 36 percent tariff reduction in AoA for developed and 24 percent for developing countries); (b) Trade Preferences (by developed countries to developing and LDCs) and; (c) Declarations of Support (IISD, 2003).<sup>17</sup> The last of these categories comprise a large number of declarations of support for developing countries and LDCs that litter the UR texts. For example, Members are required to review their levels of food aid to ensure that they are sufficient to meet the legitimate needs of LDCs and to give full consideration in their aid programmes to help improve agricultural productivity and infrastructure.<sup>18</sup>

The main problem that plagues the S&DT provisions is the lack of enforceability of these applicable provisions. 'Reductions on commitments' are enforceable to the extent that they can be used as a defence in the WTO dispute settlement mechanism. The legal enforceability of trade preferences is highly questionable and the 'declarations of support' are entirely unenforceable.

The issue of S&DT for developing countries in the WTO has thus become a source of tension in North-South trade relations. The absence of an effective S&DT mandate clearly contributed to the failure of the Cancún Ministerial. While the message is that unless development issues are addressed, WTO negotiations can never really progress, it is the interest of developing countries, including South Asia, to integrate S&DT provisions effectively into WTO agreements.

It is a reality that the world comprises countries at different stages of

development. The rights and obligations of the multilateral trading system cannot be applied uniformly to all of them. Different sets of policies are required to members that are at different levels of development. Without special provisions and differential treatment, LDCs and developing countries will have difficulty achieving economic growth and development. This is especially true of South Asia, comprising of three developing countries and four LDCs, which are constrained by the lack of expertise and finances and have extreme difficulty in even negotiating, let alone implementing trade agreements. Supply-side constraints are most prominent in LDCs and other low-income countries, which are typically primary commodity exporters with high measures of export concentration.

Achieving a more open and fair market for the promotion of development is the mission of the multilateral trading system. Throughout its history though, the GATT and now the WTO has tended to serve the interests of developed countries. Developing countries, due in part to their own lack of initiative and capacity, and in part to deliberate exclusionary mechanisms by the developed world, have not been influential in trade negotiations. Correcting the imbalances of this system was the motivation for the Doha Round. But as all the key deadlines missed, and practically no progress on any issue discussed at Doha, this motivation to address the development aspect seems stilted. However, the Doha agenda at least confirmed that:

*Special and differential treatment shall be an integral part of all elements of the negotiations on agriculture so as to be operationally effective and to enable developing countries to effectively take ac-*

*Without special provisions and differential treatment, LDCs and developing countries will have difficulty achieving economic growth and development*

*count of their development needs, including food security and rural development.*

But what this means in practice will only be determined by the decisions reached in a number of negotiating areas. It does seem that while the principle of S&DT for developing countries has been accepted and a number of related steps taken, trade and trade related negotiations, still seem to start from the premise that the same rules should apply to all. In fact, S&DT treatment has been transformed into statements of good intentions with little concrete content.

The JP agreed upon in Geneva in 2004, was hailed as a triumph for multilateralism but failed to agree on concrete measures to strengthen existing S&DT measures or to provide new measures; or to take decisions on resolving specific problems of implementation of the existing WTO rules. The Geneva decision only sets new deadlines (since the old deadlines have long past) for the issues to be considered and for reports on these issues to be submitted.

The Doha negotiations were launched during the Fourth WTO Ministerial in 2001, with much rhetoric on the need to put developing countries interests at the center. The resolution of the S&DT and implementation issues was in turn at the centre of development issues, and was to be the test of the seriousness with which development is pursued in the Doha work programme. Sadly, the negative aspects far outweighed the positive developments at the July 2004 meeting.

There has been reluctance from developed countries to adhere to the Doha timetable and criticism as to the relevance and theory for S&DT. They have argued that the heterogeneity of developing countries makes the applicability of S&DT impossible in practical terms. It is also held that S&DT is part of the baggage that was dismantled with the liberalisation and globalisation processes and provides an unnecessary “crutch”, which protects inefficiency and hinders adjustment to the requirements of global competitiveness. The argument is that developing countries will benefit much more from free unrestricted trade than from special concessions. It is also argued

that S&DT is trade-distorting and has encouraged the use of unsustainable subsidies.

The argument of heterogeneity is somewhat true, as the needs of developing countries have begun to diverge as their levels of development diverged. Even South Asian countries are no longer negotiating as a single block as we can see from the reaction to the elimination of the ATC and negotiations on AoA. So perhaps there is merit in relooking at our negotiating structure to show greater cohesiveness within the South Asian countries.

This is not to say that S&DT is a permanent strategy for developing countries within the region since there is reason in the argument that:

*If developing countries put their negotiating capital into an ambitious outcome that substantially reduces the distortions in trade through real increases in market access and substantial reductions in trade distorting subsidies they will derive far greater benefits than seeking exemptions and exceptions from the WTO rules (International Policy Council, 2003).*

This means that longer implementation time and less stringent commitments are no longer sufficient to address the needs of developing countries. Developing countries must ask for S&DT that meets their needs and to seek an agreement that provides them real market access into developed and other developing country markets.

Clearly, S&DT cannot encourage the use of unsustainable subsidies simply because only a few of the most developed developing countries can even afford to provide budgetary support or export subsidies. For countries that compete against subsidised commodities in world markets, such reduced commitments are meaningless if developed country export subsidies are still in use. For example, OECD countries give US\$ 1 billion/day on farm subsidy while India gives only US\$ 1/day/farmer as minimum agriculture support. In India, the average land holding per farmer is less than 2 hectares while it is 20 hectares in Europe and 20,000 hectares in the US (Deo, 2004).

*Developing countries must ask for Special and Differential Treatment that meets their needs and to seek an agreement that provides them real market access into developed and other developing country markets*

This is true for the rest of South Asia, which is one of the poorest regions of the world and home to 40 percent of the world's poor surviving on less than US\$ 1 a day (SAWTEE, 2004). Of the seven countries in South Asia, four – Nepal, Bangladesh, Bhutan, and the Maldives – are LDCs while the other three – India, Pakistan and Sri Lanka – are developing countries.

The deadline for reviewing and systematising S&DT agreed by the WTO in Doha in 2001 has been lost. Very little progress was made on S&DT issues, which is “all the more surprising since this is supposed to be a Development Agenda” (Kumar, 2005). Many developing countries are understandably wary of agreeing to yet more new rules with complex effects when binding dispute settlement may result in unexpected costs. The rich countries' reluctance to adhere to the Doha timetable and make positive moves on S&DT simply confirms these fears. But even pragmatically it is clear that if the Doha negotiations are to be concluded, discussions on S&DT must move forward.

The multilateral trading system should be accompanied by flexible S&DT provisions that affords appropriately long or curtailed conditions to adjust to trade liberalisation and real and substantial aid, all of which is implementable under the framework of binding multilateral trade rules. Poorer South Asian countries and LDCs must be supported in generating the sources of revenue needed to compensate for losses incurred as a result of lowering import duties. They must also

be supported in building the human and physical infrastructure they need to benefit from increased market opportunities and in adjusting to erosions of existing trade preferences stemming from multi-lateral negotiations.

As the UN Millennium Project Report notes:

*A real development round is achievable but will require high-level political leadership from both developed and developing countries as part of a coherent policy approach to meeting the Goals (UN Report, 2005).*

While huge disparities in the economic and political might of different players remain, a more systematic application of S&DT will be central to any attempt to make trade work better for the poor countries. Trade rules must allow developing countries, especially the least developed and small, vulnerable economies, to retain the flexibility to shelter vulnerable sectors from competition in order to achieve overall national development goals.<sup>19</sup>

The introduction of a more concrete and usable S&DT regime in the WTO is not going to be an easy task. Implementation costs, trade and development benefits, and impacts of non-implementation on others are all variables that will vary depending on the level of development of the country. What is important is that the assessment of the extent of development or cost and benefit analysis be based on sound analysis and not political bargaining or a trade-off approach.

*While huge disparities in the economic and political might of different players remain, a more systematic application of S&DT will be central to any attempt to make trade work better for the poor*

## ISSUES FOR DISCUSSION

- Will South Asian countries gain by commissioning studies on the costs of ‘non-implementation of S&DT’? Will such studies allow countries to accurately determine the importance of all S&DT provisions as opposed to identifying the critical ones?
- Do developing countries in general, and South Asian countries in particular, stand to benefit or lose by shifting to a graded system of S&DT, where the extent of S&DT will be determined by economic analysis and not political trade-offs?
- What role can South Asian countries play in enhancing visibility of the issues raised by the Trade Justice movement on S&DT at the WTO?

## Democratic processes at the WTO

*I can accept a lot of criticism about the WTO, but the one criticism that I refuse to accept is that this house is not democratic.*

This statement made by former WTO Director-General, Mike Moore at the opening plenary of the Seattle Ministerial has been the subject of much criticism by several developing countries and LDCs (Kwa, 1999).

One of the most talked about ‘advantages’ of the WTO is its potential for democratic decision-making given that every member has one vote and decisions are always taken by consensus, though there is provision for such decisions to be taken by the majority.

However, in reality, there are lists of problems ranging from the lack of transparency and participation to imbalances in decision-making processes (BWTND, 2003). The much touted ‘consensus’ system itself is double-edged in reality. When the major developed countries agree among themselves, an “emerging consensus” is said to exist, and all others are asked to “join the consensus.” Those countries that do not agree are bullied into agreeing. On the other hand, when a majority of developing countries or LDCs agree, but one or a few major developed countries do not, a consensus is said not to exist (Kwa, 2000).

Overloading the agenda for meetings put resource strapped developing countries and LDCs at a disadvantage. Many of these countries have small delegations, and are unable to cope with the issues at hand due to limited resources and capacity. In addition, many developing country members have no permanent mission or staff in Geneva, so they cannot take part in

regular negotiations or lobbying.

What is disturbing is that developing country and LDC representatives are often subjected to pressures from developed countries, including the use of avenues outside of the WTO. Those countries taking positions that the major developed countries do not want can be subjected to pressures or incentives linked to multi-lateral or bilateral aid and more political issues.

At the pre-Ministerial Conference stage, there are complaints that the discussions and negotiations are becoming increasingly Chair-driven instead of Member-driven.<sup>20</sup> Before both Doha and Cancún, the Chairman of the group or the General Council Chairman held bilateral consultations or with a small number of delegations. Many countries are thus excluded. Additionally, there are complaints about the Director-General and WTO Secretariat not being able to maintain “neutrality”, and in fact actively pushing a hidden agenda (Kwa, 2000). Former Director-General Mike Moore was personally campaigning for the launch of negotiations of the Singapore issues before Doha, even though a large number of developing countries were against this. These actions seriously undermine the impartiality of the WTO Secretariat.

The situation is exacerbated by “green room meetings”, i.e., a process of negotiations, which excludes most Members from meetings. In Singapore and at Seattle, almost all the negotiations on the draft Declaration were carried out in the so-called “green Room” exclusive process, where only a few countries are invited and allowed to participate. Security guards stand

*I can accept a lot of criticism about the WTO, but the one criticism that I refuse to accept is that this house is not democratic*

outside the meeting rooms to prevent uninvited Members, including Ministers, from entering. Governments and civil society in developed, developing and least developed countries have repeatedly criticised such exclusive meetings.<sup>21</sup>

Arguably, the most undemocratic of the methods adopted by the WTO are the “mini-ministerials”, where only the major developed countries, a few developing countries, and senior WTO Secretariat officials are invited. There is an increasing tendency for WTO business to be carried out through these “mini-ministerials”.

At the July 2004 negotiations in Geneva, a few countries made key decisions. In particular, the “five interested parties” or FIPs (comprising of Australia, Brazil, EU, India and US) spent time among themselves for a long period during the week, and every other delegation was left waiting for news and for the results. There were bitter complaints from developing countries and even from developed countries like Switzerland and Canada for being left out of the talks.

Developing countries, in general, came under pressure to accept a package, even if it was not to their liking, under the fear that if they objected to any part of it, they would most likely carry the blame for the collapse of the talks and for striking a blow to the multilateral trading system.

As recent as in May 2005, a letter addressed to the Heads of Delegations and the WTO Director-General and signed by 70 civil society organisations from over 50 countries questioned this *de facto* parallel decision-making system as being highly discriminatory against the majority of Members who are not invited and as undermining the multilateral nature of the trading system.

The civil society organisations called for an end to the agriculture negotiations being held amongst FIPs despite the fact that agriculture is such a vital concern for most developing countries.<sup>22</sup> The letter also faulted the WTO for “excluding the majority” and making “a mockery of the claims that this institution is member-driven and democratic.”

One can argue that at least two of the FIPs are developing countries (India and Brazil), unlike the earlier ‘Quad’ system<sup>23</sup>, but there can be no debate that this selective negotiation seriously affects the multilateral nature of consultations.

As a result, recent attempts to arrive at decisions on agriculture or NAMA negotiations failed due to continued lack of transparency and exclusiveness in the negotiating process. The FIPs appear to have lost credibility with several FIP meetings cancelled under pressure from other members of the WTO, who have resented the exclusive nature of the group.<sup>24</sup>

Clearly, the above issues seriously impede the democratic processes that were meant to define the WTO’s decision-making. The Trade Justice Movement takes serious note of this issue and argues that meaningful capacity-building has to go beyond providing technical assistance to negotiate and implement trade agreements and supporting the activities of developing countries and LDCs in Geneva. Equally important are changes to increase the internal transparency of international trade policy-making processes, the development of trade policy-making skills across civil service departments in capitals, analysis to assess the potential impact of trade rules, and measures to facilitate input from civil society.<sup>25</sup>

*Arguably, the most undemocratic of the methods adopted by the WTO are the “mini-ministerials”, where only the major developed countries, a few developing countries, and senior WTO Secretariat officials are invited*

## ISSUES FOR DISCUSSION

- It is inevitable that multilateral trade negotiations will be led by developed countries and, to some extent, by some large developing countries. In this context, how can large South Asian developing countries develop more inclusive processes of consultations that they reflect concerns of developing economies and LDCs alike?
- How can South Asian countries collaborate with civil society groups in their own countries to tackle the issues relating to the limited democratic processes at the WTO?
- How can South Asian countries collaborate with the Trade Justice movement to promote better processes of decision making in the WTO?

# Conclusion

The preamble of the Marakkesh Agreement states that the Members are:

*desirous of entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations and to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalisation efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations.*

However, in reality, very few of these agreements have been mutually advantageous. The developed world has used and abused every single route to ensure that the multilateral trade system works only for them.

It may be noted that even though civil society across nations are united in opposition to inclusion of investment in the mainstream of WTO discussions, it is a divided house on issues pertaining to the linkages between trade and environment, and trade and labour standards. In fact, there exists a sizeable section of civil society, both in the North and the South that strongly believes that such kind of 'linkages' would only accentuate protectionism rather than solve problems if they are discussed on a sanctions-based platform like the WTO. This is an important aspect that needs to be considered in a South Asian context, since trade justice generally accepts that environment and labour issues are important across the board.

However, barring this debate, South Asian countries and civil society groups will do

well to join hands with the Trade Justice movement and seek a complete reform of the trade negotiations taking place today.

The technical and political process following the July Framework has showed little movement in Geneva or at the international level. Furthermore, deep divergences among developed and developing members on key negotiating issues continue. They are the same divergences that shaped the Cancún outcome: on the one hand, developed countries maintaining their agriculture policies, particularly in regard to export subsidies and domestic support; and on the other hand, developing countries are struggling for better access to developed markets and the effective implementation of S&DT provisions in all areas of negotiations.

Specifically, agricultural protectionism by the developed world ranks high on the most unjust aspects of trade injustice practiced today. The injustice is not limited to Southern country consumers, but to Northern consumers too, who pay the price of their countries' protectionism either as consumers through higher prices (since imports of lower cost developing country exports often do not translate into lower cost retail food prices), or as taxpayers through higher taxes spent on direct income aids, or both. Consumers in the South lose as a result of such trade practices as subsidised dumping by Northern producers that causes depresses global farm prices and undermines local food production. The Trade Justice movement rightly seeks to end this protectionism by calling for an end to unsustainable production and dumping, while providing greater flexibility for poorer

*The developed world has used and abused every single route to ensure that the multilateral trade system works only for them*

countries to use trade measures to pursue food security and rural development goals.

The Doha Agenda had raised expectations that it would truly be a Development Round, with the focus on development concerns, and developing countries expected that their concerns would be addressed and the balance of gains would be in their favour. However, it did not turn out that way at all (Kumar, 2005). Developed countries continue to raise barriers at the WTO negotiations and outside as well (Codex Alimentarius, 2005).

Developing countries have been resisting the pressure from developed countries, but are yet to develop a strategy that does more than defend their positions. Furthermore, the current multilateral trading scenario has also been weakened by the proliferation of negotiations of bilateral and regional trade agreements. In most cases, these agreements have proven to be detrimental to the interest of developing countries because they are negotiated under unequal conditions among trade partners and their outcome often brings more obligations than benefits for the most vulnerable in the developing world. The complexity of the existing context induces few optimistic predictions for the WTO Hong Kong Ministerial scheduled from 13-18 December 2005. But the negotiations before the forthcoming Ministerial are crucial opportunities to ease the tensions among developing and developed countries and demonstrate that trade could be used as an important means to achieve sustainable development and as an instrument for achieving the MDGs agreed by the international community.

The attention is now on the Hong Kong Ministerial to see the future of the Doha Agenda. In the words of a candidate for the post of WTO Director-General to succeed Supachai Panichpakdi:

*Developing countries have been resisting the pressure from developed countries, but are yet to develop a strategy that does more than defend their positions*

*I think it would be a disaster for multilateralism if we failed in that Round and this is why I feel that at the end of the day wisdom will prevail. The alternative is a very complicated and dangerous scenario in which I can see not only a proliferation of regional and bilateral agreements of all sorts, which would further erode the non-discriminatory principle, but I also see conflicts arising between regions and protectionism (Castillo, 2005).*

There is growing realisation about the issues being raised by the Trade Justice movement. It is likely that the impetus provided by the movement may help forge some ground in the crucial Hong Kong Ministerial. The EU Trade Commissioner Peter Mandelson accepts that:

*Opening markets unleashes resistance to change and many countries still exhibit an unhealthy brinksmanship, looking for others to "pay" into the trade round before committing anything themselves to the table (Mandelson, 2005).*

The effort made by the Millennium Report will also provide additional assistance for trade justice seekers, since it categorically asks countries to achieve:

*First things first, trying to meet the MDGs is more important than customs valuation (Herfkens, 2004).*

One last word and this is about a 'South Asian perspective' at the WTO. This is often a misnomer since there is no one view among these countries as yet. On the contrary, the agendas of the South Asian countries at the WTO reflect their different priorities. As such therefore, their issues concerning trade justice at the WTO are not necessarily similar.

This lack of a common agenda is likely to only become more distinctive in the future. South Asian countries could do well to develop policy coherence between their own national and regional agendas, and find common ground with other countries (developed or developing) where common interests lie.

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- <sup>24</sup> See [http://www.financialexpress.com/fe\\_full\\_story.php?content\\_id=95539](http://www.financialexpress.com/fe_full_story.php?content_id=95539)
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