A dialogue on trade and development in South Asia
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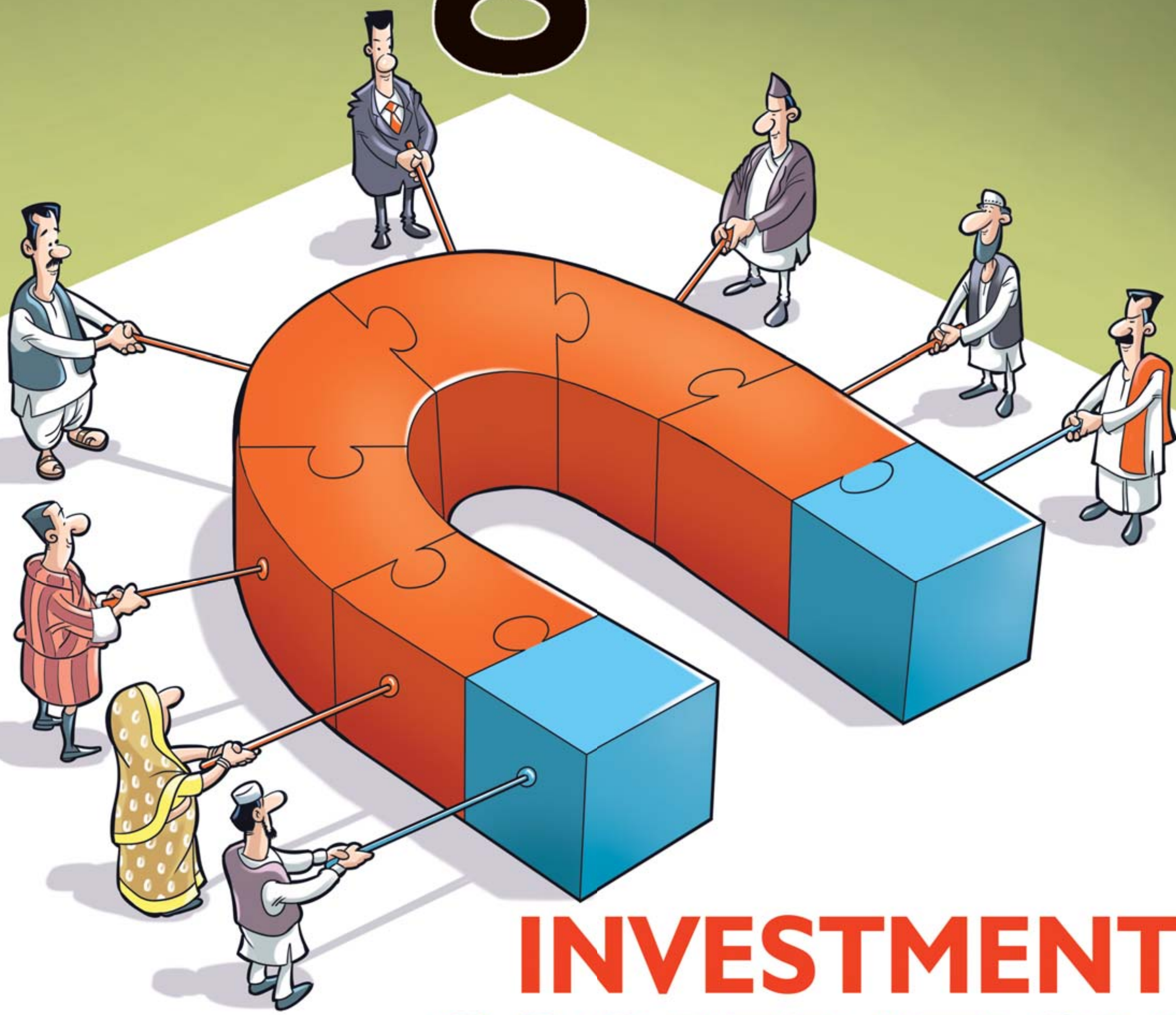
TRADE insight



INVESTMENT COOPERATION

FOR DEEPER ECONOMIC INTEGRATION IN SOUTH ASIA

TRADE AND INVESTMENT | BREXIT IMPACT ON SOUTH ASIA | AUSTRALIAN LESSON ON ABS

A dialogue on trade and development in South Asia
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TRADE insight

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editors' note

Conclude SAARC investment pact

SOUTH Asia remains without a mechanism for cooperation on investment issues. Regional integration efforts under the South Asian Association for Regional Cooperation (SAARC) have mainly concentrated on trade. However, there are positive integration initiatives such as the South Asian Free Trade Agreement (SAFTA), SAARC Agreement on Trade in Services (SATIS), and the establishment of SAARC Chamber of Commerce and Industry (SAARC CCI). These can also be taken to mean that investment cooperation in the region is on the horizon. The draft SAARC Agreement on Promotion and Protection of Investment completed in 2007 is proof of that silver lining.

Following economic reforms that started in the 1980s, South Asia has seen substantial increment in total annual Foreign Direct Investment (FDI) flows. Even so, this is only a very small chunk of the global FDI pie— only around three per cent. From US$11 billion in 2005, global FDI inflows had increased to US$39 billion by 2014. India remains the largest beneficiary (US$34 billion in 2014) of that phenomenon. There has also been some FDI outflow from the region. Here, too, India remains the main source. The outflow increased from US$3 billion in 2005 to US$10 billion in 2014, in which India remitted-out 97.7 per cent of that amount. Meanwhile, intra-regional FDI inflows to South Asia is estimated to be rather small, less than five per cent, of the total cumulative FDI in the region. What is disheartening is that the regional share of Indian outward investment has declined continuously, from 4.5 per cent in 2003-04 to less than 1.5 per cent in 2011.

Several factors are cited as impediments to trade and investment integration in South Asia. A lack of functional economic corridors; insufficient resources and infrastructure; existence of border-related conflict territories; sluggish trade facilitation reforms; high non-tariff barriers, including travel restrictions; and above all, lack of political will to deepen and implement SAFTA, SATIS and bilateral free-trade and investment agreements. Successful investment cooperation also requires complementary policies in improving transport and logistics, reducing transaction costs and boosting investments from local small and medium enterprises (SMES) which is lacking in South Asia.

Bilateral investment treaties (BITs) signed by South Asian countries mainly focus on attracting investment from outside SAARC. Only a few of these BITs are within the region. What must be noted is that obsession with BITs may not be complementary to regional investment cooperation. They may even prove to be counterproductive for regional investment deals, especially when one country is benefiting at the expense of the other. Still, there is no doubt that BITs are good for investment promotion, but regional initiatives are even better and must be pursued with greater priority in the interest of regional economic integration. Regional orientation of investment transcends the sectoral approach to cover the entire gamut of economic activities. It complements individual country efforts to meet resource gaps, increase trade, boost industrialization, strengthen infrastructure development and contribute to overall regional prosperity and poverty alleviation. Bilateralism is rather mired in the vortex of individual national interests while regionalism seeks prosperity for all.

Enormous opportunities exist for investors to integrate investment—through direct investment and via value chains—in South Asia. A proposal has come right from the horse's mouth, SAARC Chamber of Commerce and Industry (SAARC CCI). This regional body has envisioned intra-regional industrialization by establishing SAARC Industrial Parks to create regional value and supply chains to strengthen the South Asian SMEs. Better still, SAARC member states can conclude the draft SAARC Agreement on Promotion and Protection of Investments, the cornerstone for investment promotion and protection in South Asia. ■

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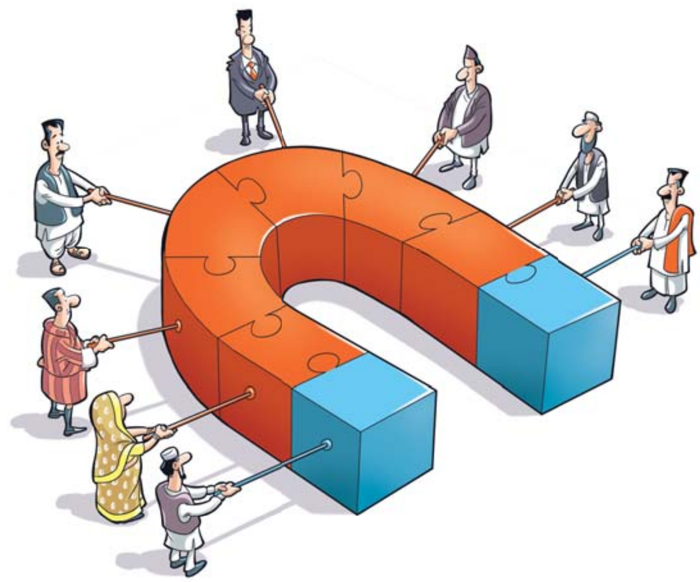

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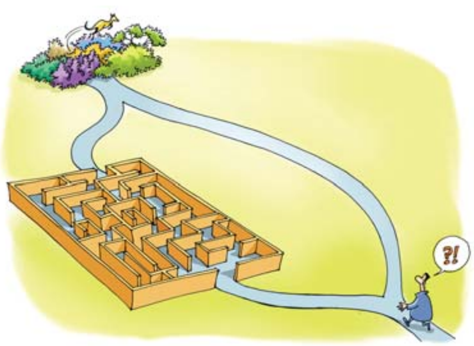

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India-Bangladesh waterways transit inaugurated

INDIA and Bangladesh inaugurated a waterways transit facility in Dhaka on 16 June 2016. In a first for New Delhi-Dhaka relations, a vessel carrying Indian goods from Kolkata, consigned for Tripura, marked the official transit to India's north-east via the inland waterways of Bangladesh.

The vessel from Kolkata, carrying a thousand tonnes of iron rods, was received at Ashuganj Port in Bangladesh by Mr. Shahjahan Khan, the Bangladeshi shipping minister, and Dr. Mashiur Rahman, adviser to the prime minister of Bangladesh.

www.thedailystar.net

The opening is part of the Indo-Bangladesh Protocol on Inland Water Transit and Trade signed by the prime ministers of the two nations last year. The transit would reduce the transportation cost substantially to carry goods from rest of India to the country's north-east as the distance reduces from about 1,700 km via Siliguri in north Bengal to about 500 km via Bangladesh *(www.thehindu.com, 18.06.2016).* ■

New standard to tackle food loss, waste

SEVERAL United Nations (UN) agencies and other international groups have launched a global standard to measure food loss and waste. This new voluntary standard was announced during the Global Green Growth 2016 Summit in Copenhagen, Denmark, in early June.

The new Food Loss and Waste Accounting and Reporting Standard (FLW Standard) is intended for use by governments, businesses and others to measure food loss and waste in a more consistent manner across the board.

The evolution of this FLW Standard was the result of a collaboration between the Consumer Goods Forum, the UN Food and Agriculture Organization (FAO), the European Union funded Food Use for Social Innovation by Optimising Waste Prevention Strategies (FUSIONS) project, the United Nations Environment Programme (UNEP), the World Business Council for Sustainable Development (WBCSD), WRAP (The Waste and Resources Action Programme), and the World Resources Institute.

According to a 2013 FAO report, 1.3 billion tonnes of food is lost or wasted every year. This has contributed 3.3 billion tonnes of greenhouse gas emissions that directly exacerbate climate change, according to the UN agency.

The new standard, while aiming for consistency, also has built-in flexibilities which, proponents say, will allow users of this system to adapt it to meet their respective goals. For example, regarding definitions, entities can determine which components they consider to qualify as food loss and waste in their "inventory"—for instance whether it includes both food and inedible parts.

By increasing the availability of information regarding the exact amount of food waste, as well as by pinpointing its sources, private and public entities will aim to set a "practical baseline" in order to begin working towards food waste reductions. *(www.ictsd.org/bridges-news, 28.06.2016).* ■

Bangladesh gets AIIB's first loan for power project

ASIAN Infrastructure Investment Bank (AIIB) has approved its first four loans totalling US$509 million to finance four projects including one for Bangladesh.

The Board of Directors approved the loans on 24 June, within six months of the Bank's launch. Three of the four projects, except the Bangladeshi one, are co-financing operations involving the World Bank, the Asian Development Bank (ADB) and UK Aid.

The bank, formally launched in January, is being seen as an alternative to the World Bank, where the United States and Japan dominate. Bangladesh is among AIIB's founding members.

Bangladesh will receive US$165 million for the Power Distribution System Upgrade and Expansion Project. The project is designed to expand electricity coverage by providing 2.5 million new service connections in rural areas. It includes an upgrade of two grid substations and conversion of 85 circuit-km overhead distribution lines into underground cables in northern Dhaka.

The other AIIB projects are: a US$216.5 million loan for a National Slum Upgrading Project in Indonesia, expected to be co-financed by the World Bank; a US$100 million loan to finance the Shorkot-Khanewal Section of National Motorway M-4 in Pakistan, co-financed by the Asian Development Bank (ADB) and UK aid and a US$ 27.5 million loan for the Dushanbe-Uzbekistan Border Road Improvement Project in Tajikistan, co-financed by the European Bank for Reconstruction and Development (EBRD) *(www.bdnews24.com, 25.06.2016)*. ■

SAARC committee to address labour migration issues

THE South Asian Association for Regional Cooperation (SAARC) delegates have drafted a "Plan of Action for Cooperation on Labour Migration" with an agreement to form a technical committee to look into the seven different issues of labour migration from the region.

The technical committee will look into improving the justice mechanism and rapid response, establishing a mechanism for information exchange, ensuring fair and ethical recruitment and formulation of standard employment contracts and minimum wages for workers migrating from the region.

Other key issues like strengthening pre-departure orientation for migrant workers, developing a framework for skill qualification and maximizing the development potential of migration will also be guided by the technical committee once the plan of action is implemented.

The Plan of Action for Cooperation on Labour Migration will be passed by the 19th SAARC Summit to be held in Islamabad, Pakistan in 2016.

However, the proposed Plan of Action does not address any issues of migrant workers within the region *(www.myrepublica.com, 06.05.2016)*. ■

Bangladesh, Nepal sign MoU to eliminate trade barriers

BANGLADESH and Nepal have agreed to boost bilateral trade by eliminating technical trade barriers between the two nations. Bangladesh Standards and Testing Institution (BSTI) and Nepal Bureau of Standards and Metrology (NBSM) signed a Memorandum of Understanding (MoU) to this effect in Dhaka on 11 May 2016.

A consensus was reached on Bangladesh providing duty-free access to 100 items and Nepal reciprocating with 50. The MoU would remove the need for Nepal to re-certify BSTI-certified goods and BSTI to re-certify goods certified by NBSM for quality compatibility.

According to Bangladesh's commerce ministry, Bangladesh's exports to Nepal amounted to US$25.05 million and import to US$11.50 million during the 2014-15 fiscal year *(www.bdnews24.com, 11.05.2016)*. ■

Bangladesh farmers slam WTO policy to cut subsidy

LEADERS of Bangladeshi farmers' unions have slammed the World Trade Organization's (WTO) policy to cut agricultural subsidies.

Bangladesh's Agriculture Ministry has been providing extension support to the agriculture sector but WTO's 10th Ministerial Conference held in 2015 decided to abolish subsidies on farm exports. WTO wants to end subsidies in developing countries by 2018.

The unions including farmers, fishermen and similar organizations held a demonstration against the decision. *(www.thefinancialexpress-bd.com, 09.04.2016)*. ■

UN calls for greater support to LDCs; adopts new declaration in Turkey

A MAJOR United Nations (UN) meeting focusing on the world's least developed countries (LDCs) concluded on 29 May 2016 in Antalya, Turkey, with a call for greater support to the world's most vulnerable nations, and the adoption of an outcome document paving the way for further concrete action and progress in the years to come for the LDCs.

The three-day meeting, co-organized by the Government of Turkey and the UN, reviewed progress made by the world's 48 LDCs since the adoption of the Istanbul Programme of Action (IPoA) in 2011.

At this Midterm Review, challenges and opportunities were considered in addition to recommendations for the next five years of implementation, taking into account the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction and the Paris Agreement.

The meeting brought together around two thousand participants including high-level UN officials and representatives from government, international and regional organizations, civil society and the private sector.

A number of initiatives were announced, including the appointment of a "governing council" for the Technology Bank for LDCs, which will support access to and better utilization of science, technology and innovation.

The meeting adopted a Political Declaration, in which participants highlighted how LDCs have experienced some recent progress in areas including reduced child and maternal mortality rates, gender parity in education and parliaments, access to the internet and mobile networks.

The meeting insisted that, even after graduation, LDCs need to continue being recipients of the Official Development Assistance (ODA) because that is a very important cushion that they need. A financial pledge made by development partners to allocate the equivalent of 0.2 per cent of their Gross National Income (GNI) to LDCs was reaffirmed at the conference.

Another strong message in Antalya was that much more needs to be done to build productive capacity in agriculture, manufacturing and services, so that LDCs can work towards lifting themselves out of the category.

There are 48 LDCs which comprise more than 880 million people (about 12 per cent of world population), but account for less than two per cent of world GDP and about one per cent of global trade in goods *(www.soualigan-ewsday.com, 29.05.2016).* ■

India announces new IPR policy; resists pressure to amend law

INDIA has announced a new intellectual property policy, speeding up the online registration of patents and trademarks. But it has resisted pressure from the United States (US) and other Western countries to amend its patent laws.

The policy will make the Department of Industrial Promotion and Policy the agency in charge of regulating intellectual property rights (IPR) in the country.

India's strained patent and intellectual property administration has failed to keep pace with growing technological advances. Global pharmaceuticals players have often complained about India's price controls and marketing restrictions.

The new policy will try to safeguard the interests of rights owners with the wider public interest, while combating infringements of intellectual property rights.

Indian Finance Minister Arun Jaitley said India would retain the right to issue so-called compulsory licenses to its drug firms, under "emergency" conditions, and would not immediately need to change patent laws that were already fully World Trade Organization (WTO) compliant. "Compulsory licences are already provided in our patent law. That existing provision will continue," Jaitley said after the cabinet approved national IPR policy on 12 May 2016.

In April 2016, the US Trade Representative kept India, China and Russia on its "Priority Watch List" for inadequate improvement in IPR protection.

India, however, says, it is party to the Trade-Related Aspects of Intellectual Property Rights (TRIPS), a WTO agreement that sets minimum standards for intellectual property regulation. "IPR policy reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement," a government statement said *(www.http://in.reuters.com/, 14.05.2016).* ■

Bangladesh pushes to set up SAARC food and seed banks

archive.dhakatribune.com

BANGLADESH'S Prime Minister Sheikh Hasina has underscored the need for speedy materialisation of the initiatives taken for setting up South Asian Association for Regional Cooperation (SAARC) Food Bank and SAARC Seed Bank during the Third Meeting of SAARC Ministers of Agriculture held on 7 April 2016 in Dhaka.

She urged the South Asian leaders to promise food and nutritional security so that no one dies of starvation in the region. The prime minister also requested the policymakers to formulate policies for the SAARC Seed Bank to ensure participation and empowerment of farmers in the seed sector.

Bangladesh has always been keeping regional cooperation high on its foreign policy agenda, she said and added that there is no alternative to regional initiatives to eradicate poverty and hunger from South Asia.

Chaired by Agriculture Minister Begum Matia Chowdhury, the programme was addressed, among others, by Minister for Agriculture and Farmers Welfare of India Mr. Radha Mohan Singh and SAARC Secretary General Mr. Arjun Bahadur Thapa *(www.dhakatribune.com, 08.04.2016).* ■

Visakhapatnam declared as second gateway port for Nepal

VISAKHAPATNAM Port has been declared as the second gateway port for Nepal, after Kolkata-Haldia.

The movement of traffic-in-transit between Port of Visakhapatnam and Nepal will be in sealed containers and in full rake only and the cost of transhipment will be borne by the consignor/consignee.

Visakhapatnam Port has the deepest container terminal among major ports with a permissible draft of 15 metres and a length overall (LOA) of up to 320 metres. Most of the transit cargo of Nepal will be from China. The terminal can act as an ideal gateway for east-bound cargo. Handling of cargo will be advantageous in terms of ocean freight and liner detention, traders say.

India and Nepal signed the agreement in February to provide additional transit facility to Nepal through the Visakhapatnam Port.

The agreement allows cargo transport through the rail route connecting Visakhapatnam-Jogbani or/and Visakhapatnam-Birgunj. In addition to the rail route, four road routes have also been identified. The agreement facilitating transport of EXIM cargo through the Visakhapatnam Port is a historic milestone *(www.thehindu.com, 21.06.2016).* ■

India can gain from regional power trade

REGIONAL trade in electricity can spare India from investing in 35,000 MW coal-fired energy estimated to cost US$26 billion over the next 25 years, according to a World Bank study covering all South Asian nations, except the Maldives.

Larger benefits will accrue through a reduction in fuel cost and 6.5 per cent cut in greenhouse gas emission. The savings should come through replacement of thermal power with hydro-electricity to be sourced mostly from Nepal, followed by Bhutan and Afghanistan.

The study by World Bank economists, Mr. Michael Torman and Mr. Govinda Timilsina, expects Nepal to add 52.1 GW (giga-watt) in 2040, over and above the existing 1 GW. Bhutan will add 9.1 GW and Afghanistan 3.6 GW.

Citing examples of such regional trade in other parts of the world, the study points out that cooperation would bring dividends to everyone. India stands to gain more because of its size and contribution.

The region currently has a combined generation capacity of 325 GW. Of the total, India shares 276 GW; Afghanistan 1 GW; Bangladesh 16 GW; Bhutan 4 GW, Nepal 1 GW; Pakistan 25 GW and Sri Lanka 3 GW.

In the absence of cooperation, Pakistan should increase power production by seven times to meet its demand in 2040, Bangladesh by 4.3 times, Sri Lanka by 3.7 times and India by 2.8 times. The capacity addition will come mostly through coal-fired utilities, requiring a total investment of US$859 billion *(www.thehindubusinessline.com, 28.06.2016).* ■

Can South Asia

?

Asish Subedi

How is South Asia likely to be affected by Indian Prime Minister Narendra Modi's "Make in India" campaign? The question is intriguing, but attempting to foretell the results of any 'politically loaded' economic policy is walking a dangerous road. Nonetheless, one can hazard some speculation based on conventional arguments.

All economic policies are political decisions on economic matters. But political campaigns take it one notch down the political alley if only to eke out commitments from implementing agencies and seek popular support for their success. This is done by including the emotional dimension as well, because campaigns necessarily bring the masses into the picture, not just the policy and implementation circles. While this may appear to be vote bank politics for some, one may even argue that this is a way charted out by India to remain dry from the morass of the 2008 financial crisis that much of the world finds itself mired in. Those closely watching the Indian scene may see other factors too at play in the campaign formulation e.g. national rejuvenation/revival or seeking a "respectable" position in the world arena.

At the outset, it is necessary to understand that this is a "make in India" campaign and not a "make in South Asia" one. When nationalistic fervour is solicited to build the domestic economy, there is little that the surroundings can do but keep a wary watch. Had the policy required regional resources, the neighbourhood would have surely sat up in all attentiveness, but this is not the case. Modi's pitch suggests utilising the unemployed domestic resources with help from international capital and technology, both factors not in surplus in the whole of South Asian region.

It is not that external linkages to domestic value chains have not been envisaged by the policy formulators. There is much media reportage on the intended targets of "Make in India", most notably the realms of hi-tech defence sector and modern technology in general.

But this narrow focus for the policy may not be adequate to bring about widespread changes as it would limit investments not only regarding foreign investment in general but investment from South Asia in particular. In any case, foreign investment is said to be an existing problem area in India, the regulations reportedly being too restrictive for outsiders to deal with even after adopting openness. However, with judicious use of its procurement needs, the nation could still invite foreign companies to make their products in India, or use its huge market leverage to invite tech producers and service providers to its soil.

South Asian neighbours can contribute little to "Make in India" in the present regional context.

Given the occasional public exhortations of Indian officialdom on the externalities of the "Make in India" policy, it is certain that South Asians will be the least of its beneficiaries. What is clear is that even if India does decide to pursue such regional linkages, it will need to put in a lot of effort even for miniscule gains in developing those South Asian linkages.

What if all the processes involved in manufacturing a product or providing services could be broken down to see if other countries have a comparative advantage in these process bits? Some positive changes to South Asians could accrue if they have a comparative advantage in some of the processes in the value chain.

Such arguments are based on mere wishful thinking. South Asia suffers from brick-and-mortar issues of trade and manufacturing—customs officials stopping goods at their whims, transport connectivity very poor or non-existent, haphazard and double taxation, cumbersome procedures, just to name a few of the problems—that go against the spirit of trade. The all-important question still is: would India benefit by sourcing out processes along such value chains to its South Asian neighbours? Even if it did, intra-South Asian trade itself is embarrassingly low to even talk about subtle comparative advantages in value chain processes.

Looking at it from the perspective of other South Asians, if all value chains are focused on manufacturing in India, then the value chain economics must be forcefully bent to suit this goal, rather than allowing economics to dictate which parts of the value chains these countries best fit in. Why would any country bend its rules to make anything in India, rather than make it themselves, especially when the economics, or even politics, does not warrant that?

The problem with South Asia's individual country comparative advantages is that there may be little they can contribute to "Make in India" in the present regional context. How would Bangladeshi garments, Sri Lankan tea or Nepalese noodles contribute to Indian manufacturing? And, setting up shop there at the cost of their own unemployment or under-employment of resources? This is a hard one, indeed.

India's existing "Act East" policy could come in handy to some extent here, especially regarding external value chain linkages. In consumer electronics, India could rely on its own software strengths to produce items that could use hardware from other manufacturers like China. While the Indians may enjoy some spillovers from East Asian successes through deliberate policy designs, the same cannot be said about South Asia as a whole until the South Asians gear up to do the same through some kind of intra-regional set-up e.g. "Make in South Asia" arrangement. There is not much about the Indian policy indicating similar integrations among regional manufacturers and service providers. Remember, South Asia still suffers from poor trading infrastructure and overly focused national and bilateral concerns. In a region where bilateralism and the national primacy undermine all regional efforts, there is little to garner from regional contributions, especially to help a national campaign of one particular country.

"Make in India" deals almost wholly with India's domestic value chains except in cases where externalities benefit Indian manufacturing. Even for such externalities India will have to work very hard to be able to come to terms with the conditions that make those externalities commit themselves to help out India. At the moment investors and unemployed resources elsewhere appear to be promised a place in the Indian value chain by the "Make in India" policy.

How far the reform will go and the "Make in India" campaign will go in bearing the fruits that the Indians seek is still too early to tell. As regards the South Asian neighbours, they could be mere bystanders hoping that some of those trickle-down effects will make their own picture look brighter someday. ■

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'Make in India' but focus on manufacturing, not services

India is set to have the world's largest working-age population by 2020. The rise in the working population will not automatically translate into economic growth momentum as the country's capacity to generate enough jobs and utilize labour efficiently remains in doubt. In order to efficiently utilize its demographic dividend, India should be realistic in addressing its employment issue and focus more on developing its low-end industries to create more jobs. In 2015 India added the fewest organized-sector jobs in seven years across eight important industries and that as much as 97 per cent of the population is expected to work in unorganized sectors by 2017 that offer no formal monthly salary or social security benefits.

There has long been a myth in India that the world's fastest growing economy could skip being a manufacturing base and move directly into a sustainable growth model relying on services. According to the Economic Survey 2015-16, the services sector contributed almost 66.1% of its gross value added growth in 2015-16, becoming the important net foreign exchange earner and the most attractive sector for Foreign Direct Investment inflows. This resulted into a renewed focus on the services sector in India. This argument, however, not only pushes back against the "Make in India" initiative, but it also, in practice, may lead India into a trap where its huge population dividend cannot materialize. The services sector absorbs only about a quarter of the labour force in India despite the fact that it accounts for more than half of GDP. On the other hand, manufacturing accounts for about 15 per cent of the country's GDP and employs 11 per cent of the labour force, a job absorptive capacity that is greater than the services sector.

For the sake of creating more jobs to accommodate the growing working population, India should not neglect the manufacturing sector, especially low-end labour-intensive industries. This could also help absorb a large number of workers who are employed in unorganized sectors. China lifted millions of people out of poverty in the last three decades by focusing on developing its own manufacturing industry. Whether India's fast pace of growth can persist depends on how quickly it realizes that the feasible route to inclusive growth is not by skipping past industrialization but by relying on the manufacturing industry to create more jobs, reduce poverty and create a middle class that can drive consumption. ■

Source: Adapted from the Global Times[1]

Note

1 Shengxia, Song. 2016. "To harness the population dividend," *Global Times*, August 30, 2016, accessed September 10, 2016, http://www.globaltimes.cn/content/1003579.shtml.

Trade-investment links get increasingly intricate

Given the rising importance of MNEs and GVC networks for economic and social upgrading, it is important to understand the more sophisticated trade-investment linkages.

Sanjay Kathuria and Ravindra Yatawara

The traditional investigation of the trade-FDI (foreign direct investment) nexus in the mid-1980s was based on whether they were substitutes or complements. However, the fragmentation of production into global value chains (GVCs) and the growth of preferential trade agreements have transformed the global business landscape rendering such analysis too simplistic.

Technological advancements in transportation in the mid-19th century reduced trade costs and facilitated international trade in goods. Today, information and communications technology (ICT) advancements have made trade of previously non-tradeable services possible and allowed firms to locate production plants across borders.

Facilitated by trade and FDI policy liberalization, production today involves the flow of intermediate goods and services across internationally fragmented production processes. Multinational enterprises (MNEs) play the role of chief organizer or coordinator of these global value chains. The MNE may engage actively in different chain activities—usually of high strategic value and profitability such as design and branding. Here, services play an increasingly important role in value added trade of manufactured products—termed the servicification of manufacturing. Today, GVC trade related to MNEs is estimated at 80 per cent of global trade.[1]

As MNEs and intra-firm trade have grown, the focal point of trade analysis has shifted from countries and industries to firms. Emerging empirical regularities from detailed firm-level customs and foreign affiliate data from the late 1990s led to new theories of heterogeneous firms (often differentiated by productivity) in global markets. These theories better explain stylized facts such as the rarity of trading firms and foreign investors among national firms and that a few firms account for the majority of exports and multinational production (MP).[2] The findings suggest that exporters and affiliates of foreign firms are larger, more productive and pay higher wages than non-exporters and domestic firms. These theories also better explain the relationship of trade liberalization and foreign investment to increases in aggregate industry productivity.

Among heterogeneous firms facing fixed costs of foreign market entry, it is the most productive firms that enter internationalization as they make sufficient profits to cover these sunk costs. Only the most productive firms will opt to invest abroad as the fixed costs of FDI entry are larger than the fixed costs of exporting.

The latest research on multiproduct firms show that firms engage along multiple international margins.[3] These firms and their networks appear to be larger than initially estimated. A granular analysis highlights that individual firms matter and a few firms may drive aggregate variation in trade and investment flows, even national comparative advantage.

It is important to understand the more sophisticated trade-investment linkages to initiate strategic policy initiatives required to participate in GVCs and maximize the benefits of such participation for shared prosperity.

A simple framework

A simple integrated framework of MNE decision making within a GVC is useful to understand new thinking on trade and FDI linkages. Decision making in a global firm has many dimensions:

i) *Production location decision* – where and how many locations;
ii) *Exporting decision* – the markets to serve and the products to supply;
iii) *Sourcing decision* – the intermediate goods to import and their source.
iv) *Ownership decision:* Sometimes called the "internalization" or "make or buy" decision, an MNE has to decide whether an activity is performed inside the boundaries

of the firm (at home or abroad) or though contracting with outsiders (outsourcing).

For example, let us take a value chain with four parts: *i) R&D, design, network coordination, branding (R); ii) Intermediate goods production (I); iii) Assembly activity (A); and iv) Distribution/retail sales (D).* These activities may be carried out in different locations, but would involve incurring sunk entry costs, fixed costs and certain variable frictional costs.

Assuming that the Headquarter (HQ) location handles the first range of activities, then the associated frictions would be:

i) *Trade costs (t)* – of getting final products to consumers, including transportation, tariffs, non-tariff measures, and trade facilitation

ii) *Intermediate trade costs* (η) – of getting intermediates to assembly plants[4]

iii) *Multinational production (MP) costs* (τ) – representing efficiency losses of fragmenting production, and include costs of technology transfer based on intellectual property (IP) protection and coordination costs

iv) *Multinational sales (MS) costs* (λ) – of translating a brand's success in home markets to foreign markets[5]

As shown in Figure 1, the specific location decision of an MNE involves a trade-off between *cost advantages versus frictions*, conditional on the assembly location. A firm would want to locate assembly where inputs are cheapest or cheap intermediates are close (to save on intermediates trade costs). But it also wants to be close to consumers (to minimize trade costs) and close to HQ (to minimize MP costs). The export market location is based on the demand in each country and a desire to minimize MS frictions.[6]

Beyond traditional approach

In order to serve a particular market, global firms have a variety of options in setting up their value chain, and the realized strategy reflects the outcome of comparing relative profits. The differing impacts on trade and investment flows across MNE strategies addressing the substitutability and complementarity of exporting and FDI is schematically represented in Figure 2.[7] Assume three countries (H, F1, F2), and that the goal is to *serve the home (H) and a foreign market (F2).*

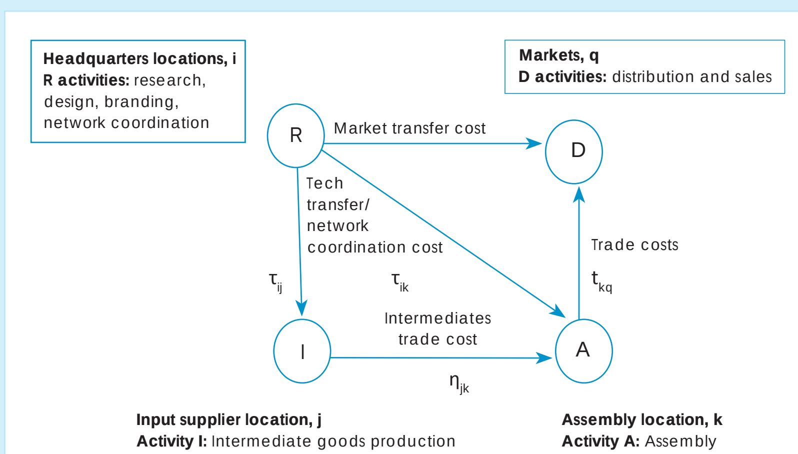
Traditional Horizontal FDI – The firm chooses to save on trade costs by replicating the production process in the foreign consumer market (F2) rather than by exporting from home. A firm faces the *proximity-concentration trade off*—that is a firm weighs the net savings in trade costs (incorporating additional production costs) from FDI against the net gains of scale economies from single location production at home (and having to pay export trade costs). This type of FDI is associated with "market-seeking FDI" such as the case of tariff-jumping FDI, and would result in *FDI replacing export flows – thus being a substitute to trade.*

Traditional Vertical FDI – A firm choses to minimize costs by setting up different stages of production in different countries according to comparative advantage, for example, driven by factor price differences. To invest in vertical FDI, the cost advantage in producing intermediates abroad would have to be greater than the sum of new trade costs of importing intermediates and the coordination MP costs of dealing with a fragmented production process. This is the efficiency-seeking FDI or resource seeking FDI associated with GVCs. For example, Intel is mainly engaged in vertical FDI, with the skilled-labour-intensive part of the production process (e.g. wafer production) located in developed countries, and the unskilled-labour intensive part (e.g. assembly and testing) located in developing countries. All production facilities are fully owned by Intel. As in Figure 2, vertical FDI boosts export of final goods, import of intermediate goods and services trade for production (technology transfer/flow of ideas), network coordination and monitoring. Thus, it complements trade.

Noted however that gross exports data reflect double counting of intermediate products trade, once when they enter as imported components and again as the embedded value in final goods exports. This has led to the development of "value-added" trade data for more accurate trade analysis.

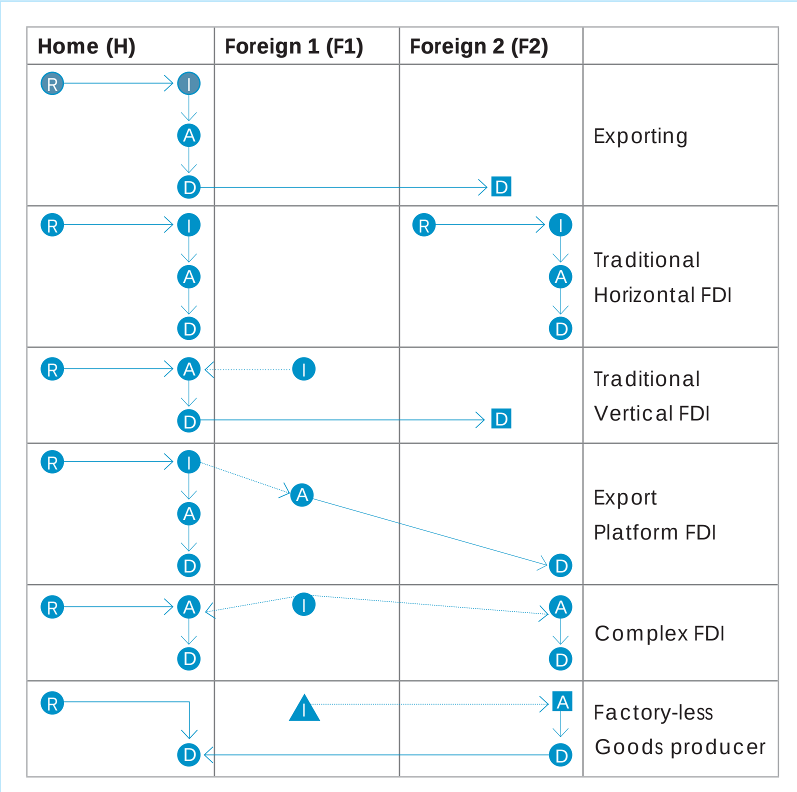
Export platform FDI ('Bridge' MP) – A firm fragments production by setting up final goods assembly operations in a foreign market to serve a third market, with no sales in the FDI host country. The cost competitiveness may reflect horizontal reasons-domi-

Figure 1
Multinational location options and frictions



Source: Adapted from Head and Mayer (2015)

Figure 2
Internationalization strategy options for serving consumer markets at home and foreign locations



Notes: Activities R - research, design, branding, network coordination, I - intermediates goods production, A - assembly, D - distribution and sales
○ *Ownership by "Home" firms: a circle in F1 or F2 represents FDI*
△ *Ownership by F1 - foreign firms: A triangle at Home or F2 represents FDI*
□ *Ownership by F2 - foreign firms: A square at Home or F1 represents FDI*
Trade in final goods ⟶
Trade in intermediate goods ⋯>
Trade in services not displayed to avoid clutter of figure. Cross-border services trade (either trade in ideas, technology transfers flows, management, marketing, network coordination) occurs between R-I (F1), R-D (F2), (vertical FDI); R-A (F1), R-D (F1) (platform FDI); R-I (F1), R-A (F2), R-D (F2) (complex FDI), R-I (F1), R-A (F2), R-D (F2) (factory-less goods producer)

nated by low trade costs between the host and the final consumer market (as in Figure 2), or be driven by efficiency-considerations (vertical) of the platform location. Platform FDI is associated with higher final goods exports of the global firm but they would be originating from the foreign location and home exports would now be only intermediates. This kind of FDI is associated with MNEs investing in peripheral member countries of a preferential trade agreement (with relatively lower factor prices) to serve the richer economies within the union, as with FDI in the European Union's Eastern European late entrants. Similarly, apparel investors from India, Pakistan and Sri Lanka produce certain basic product lines in Bangladesh where labour is cheap and access to the EU is duty-free, while other more skill intensive product lines are produced in the investor home country.

Complex FDI: A complex FDI strategy involves both vertical and horizontal FDI. For example, efficiency considerations lead to FDI for intermediates production in F1 (vertical FDI) and the replication of assembly operations in the destination market (F2) by setting up an assembly to avoid final goods trade costs (horizontal FDI). While the overall trade value for the global firm is ambiguous and may in fact drop, there is a clear *compositional effect with trade only in intermediates and services products.* This resembles the investment patterns of car manufacturers that may invest in assembly plants in large markets, like Ford Motors in China, and globally source their inputs.

Implications of the ownership issue and non-equity relationships: All the cases considered so far include MNEs setting up fully-owned greenfield investments in foreign countries, but in reality the GVC network is a complex mix of affiliates and arms-length suppliers with differing contracting strategies. Typically, arguments in favour of keeping activities within the boundaries of the firm through FDI are based on a) the high transactions costs in the contracting environment, and b) the need for relationship specific investments to be made by the foreign contracting party. The contracting of arms-length input suppliers from F1 in a complex strategy could be readily represented by F1-national ownership of intermediates ("I" within a triangle). The net trade implications of non-ownership versus ownership of a complex strategy are ambiguous, but they are more similar as the MP frictions gets lower.

Non-equity cross-border relationships have gained in importance. Greater technology transfer (through better IP protection), services trade and sophisticated contracting could be a substitute for FDI as a mode of generating knowledge spillovers. Some analysts highlight the importance of this *trade-investment-services-IP nexus.* For example, the Bangladesh apparel industry developed from a technical and marketing partnership between a local firm and a South Korean garment manufacturer.

Factoryless Goods producers/GVC coordinators: "Factory asset light" strategies are prevalent in some GVCs, such as with Apple, which relies on Foxconn for assembly in China of outsourced components, while headquarters in the USA are active in design, development and branding, and there may be ownership of retail stores at home and abroad.

Greenfield FDI versus mergers and acquisitions (M&As): Much of FDI is through M&As and may be motivated by standard horizontal/vertical reasons, by a 'strategic asset seeking' incentive such as intellectual property or by a competitor-reducing motivation. A firm investing to gain technology and brand recognition, such as Tata's purchase of Jaguar Land Rover, could be represented in our diagram by the purchase of "Home" (H) owned research and branding ("R") and distribution ("D") in the "factoryless goods producer" scenario by an F2-national firm. (FDI flows from F2 to H and a rectangular ownership box reflecting F2 ownership overlays the circle reflecting "Home" ownership).

In practice, firm behaviour does not conform purely to our analytical constructs, and, for example, horizontal investors may also export to third markets. Empirical analysis using detailed data of American MNE affiliates estimate that 72 per cent are horizontal sales (to host market), 8 per cent is vertical (sales to United States) and 20 per cent is export platform (sales to third parties).[8] However, horizontal FDI appears to be less important for Japanese MNEs which are more GVC-oriented.

Dynamic effects and other trade-FDI linkages

Which comes first—trade or investment? There are many instances that trade has led to increased FDI, like in the case of Belgian firms, but analyses of firms from Norway, France and Germany, do not find that exporting is a prerequisite for FDI. Additionally, horizontal investments today may lead to exporting to third markets in the future. Other work has found that FDI has led to an increase in quality, sophistication and complexity of goods exported by a nation, particularly in the quality of exports of host input suppliers to MNEs.[9]

Granularity: The granularity issue highlights the impact of large MNEs on national and foreign aggregate data and their ability to even transform a nation's comparative advantage, like Intel in Costa Rica and Samsung in Vietnam. The key for the host economy is to coordinate the development of local support industries, not just in sectors like packaging services but also the manufacturing of more advanced components.

New analyses of the micro-foundations of the trade-investment nexus provide many new insights to policy makers and analysts. Trade and FDI are often jointly-determined parts of a complex competitiveness strategy. Compositional aspects of trade are important—not just between final and intermediate goods, but also in the inclusion of services trade. Further, sophisticated contracting with unrelated parties directly affects the ownership decision. The importance of a few large firms in affecting national comparative advantage and dynamic considerations is also relevant.

However, much of the empirical findings are from Organisation for Economic Co-operation and Development (OECD) MNEs and their affiliates abroad. Detailed analyses of South Asian firms are scarce. Data access strategies with appropriate confidentiality measures need to be designed to get researchers in the region and outside to pursue analysis of the South Asian nature of the trade-investment nexus.

The limited amount of intra-regional trade in South Asia is reinforced by, and reinforces, even more limited intra-regional investment. Even though India has opened up its market to all least developed countries in the region, exports from these countries have not been impacted significantly. Therefore, foreign investment in both directions would help. For example, Indian investment in Bangladesh's garments sector could lead to exports of garments from Bangladesh to India and other countries, as well as increased exports of yarn and fabric from India to Bangladesh. In this low trade-investment equilibrium, pioneering South Asian investors are discovering the opportunities in the neighbourhood, with horizontal, vertical and platform motivations and creating an incipient growth of a regional value chain. An ongoing World Bank research programme is seeking to better understand and draw lessons from the process of intra-regional investment in South Asia. ■

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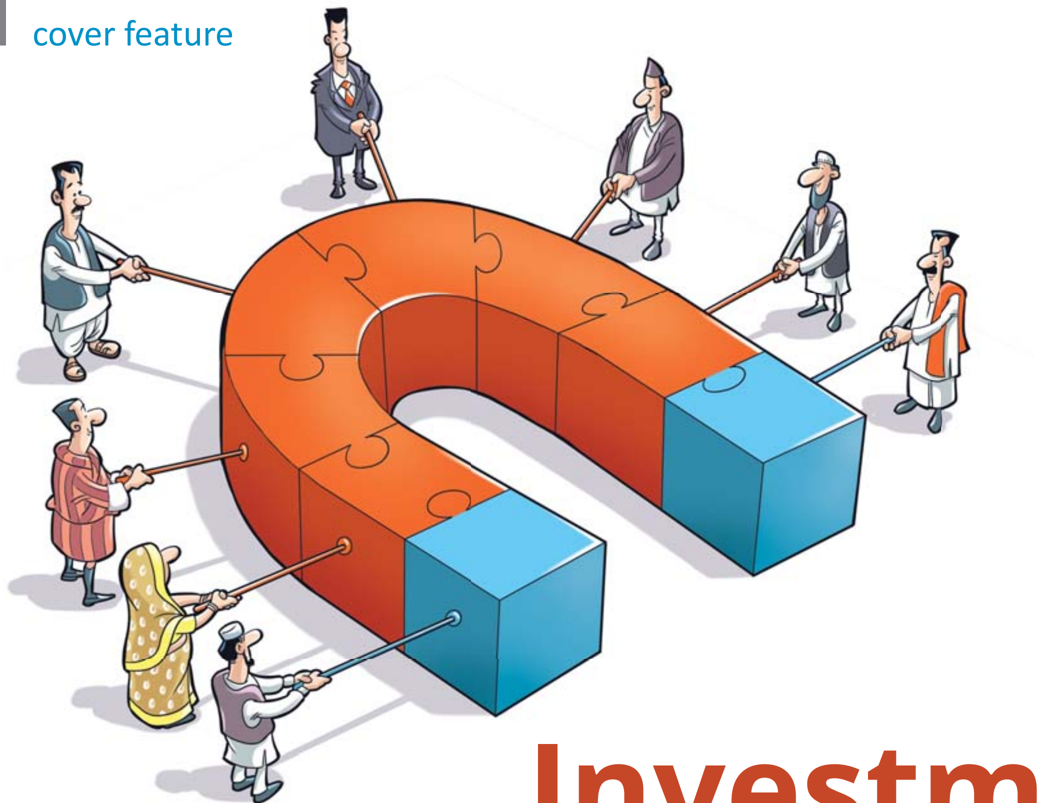
Notes

1. UNCTAD. 2013. World Investment Report 2012.
2. Multinational production (MP) is measured by foreign affiliate sales while FDI captures cross-border capital flows (as well as re-invested earning and intra-firm lending).
3. Bernard, A., Jensen, J. B., Redding, S. J., and Schott, P.K. 2015. "Global Firms". NBER Working Paper. Melitz, M. J., and Redding, S. J. 2014. "Heterogeneous Firms and Trade"; Antràs, P., and Yeaple, S. R. 2014. "Multinational Firms and the Structure of International Trade". Both in Handbook of International Economics Fourth Edition, edited by G. Gopinath, E. Helpman, and K. Rogoff. Elsevier. Amsterdam.
4. These are assumed equal for simplicity here but are often modelled with lower trade costs for intermediate goods.
5. Head, K., and Mayer, T. 2015. "Brands in Motion: How frictions shape multinational production". CEPR Discussion Paper No. DP10797. http://ssrn.com/abstract=2655483. Accessed: 9 September 2016.
6. For simplicity of exposition we omit the decision on the number of export products to each market, and the number of intermediate product imports, but these are readily added to the framework.
7. A somewhat symmetric case may be done for importing.
8. Garetto, S. , Oldenski, L., and Ramondo, N. 2016. "Life-cycle Dynamics and the Expansion Strategies of US multinational firms". NBER Working Paper No 21776.
9. For example: Bajgar, M., and Jovorcik, B. 2016. "Climbing the Rungs of the Quality Ladder: FDI and Domestic Exporters in Romania. http://users.ox.ac.uk/~econ0247/Romania.pdf. Accessed: 12 September 2016.



Investment cooperation

for deeper economic integration in South Asia

Indra Nath Mukherji and Subrata Kumar Behera

Attempts at regional integration under the auspices of South Asian Association for Regional Cooperation (SAARC) have mainly concentrated on trade integration. The main vehicle for this has been South Asian Free Trade Area (SAFTA). The SAFTA Agreement, signed in 2004, came into force on 1 January 2006 and the Trade Liberalization Programme commenced on 1 July 2006.

During the initial years of SAARC's functioning, not much attention was given to facilitating investment flows whether intra- or extra-regional. It was expected that with the expansion of the regional market through trade liberalization, investments would flow in automatically. Investment-led trade was not under consideration then.

In an increasingly inter-connected global economy, more than 70 per cent of trade is in intermediate goods and services. Hence, integration with global value chains (GVCs) today will determine future trade and foreign direct investment (FDI) patterns as well as growth opportunities.

An Organisation for Economic Co-operation and Development (OECD) report[1] has said that trade policy needs to reflect this new reality, particularly the growing international interdependencies that are driven by increasing fragmentation of production. It highlights the key role played by other forms of market access, especially investment, and the importance of complementary policies to leverage gains from investment. Further, the report notes the need for environmental, social and governance frameworks if GVCs are to create robust development benefits. Strengthened regulation, its enforcement and capacity-building support to local firms for compliance can be important.

Investment cooperation under SAARC

Attempts to foster regional investment cooperation can be traced back to the Seventh SAARC Summit in Dhaka

(1993). SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters was signed at the 13th SAARC Summit in Dhaka (2005). The Agreement for Establishment of SAARC Arbitration Council (SARCO), also signed during this Summit, was another step in the direction of investment cooperation among SAARC member states. SAARC Agreement on Trade in Services (SATIS), signed at the 16th SAARC Summit in Thimphu (2010), is yet another initiative to promote investment cooperation among SAARC member states.

The text of the draft SAARC Agreement on Promotion and Protection of Investments was completed by the Seventh Meeting of the SAARC Sub-Group on Investment and Arbitration, held at the SAARC Secretariat on 29 November 2007. This Sub-Group has yet to finalise the text for endorsement by SAARC authorities.[2]

According to Table 1, global FDI inflows in South Asia (SA) increased from US$11 billion in 2005 to US$39 billion in 2014—an impressive increase by 3.5 times. The success in drawing FDI in the region has however been quite uneven. India has been by far the largest recipient of FDI. In 2014, it attracted US$34 billion. This was 4.5 times the 2005 figure of US$7.6 billion. While Bangladesh, Sri Lanka and Maldives were less successful, the performance of Pakistan, Afghanistan, Bhutan, and Nepal was quite dismal. Both in terms of value and growth of FDI, India vastly outperformed its neighbours in the region while Afghanistan, Nepal and Bhutan attracted less than one per cent.

Table 2 shows FDI outflows from SA during the 2005-14 period. Outflows from this region increased from US$3 billion in 2005 to US$10 billion in 2014. It is clear that India was by far the largest contributor, accounting for 97.7 per cent of the total outflows from this region.

A study by the United Nations Conference on Trade and Development (UNCTAD) reveals that the value and share of intra-regional FDI in total FDI inflows are much lower in developing regional groupings compared to developed regional groupings. In SA, intra-regional FDI is very low, just like intra-regional trade. During the 2003-2005 triennium, FDI inflows to the region was US$39.7 billion, which increased to US$71.6 during the 2009-2011 triennium. In relation to total FDI attracted by the region, the share of intra-regional investment increased modestly from two to three per cent.[3]

Figure 2 shows how FDI, as per cent of GDP, improved from a negligible value in 1985 to over three per cent in 2008 (prior to the onset of the global financial crisis), before declining to 1.5 per cent in 2011.[4]

Figure 1

FDI inflow in South Asia: 2005-14 (million US$, share)

Source: UNCTADStats, Aug 2016

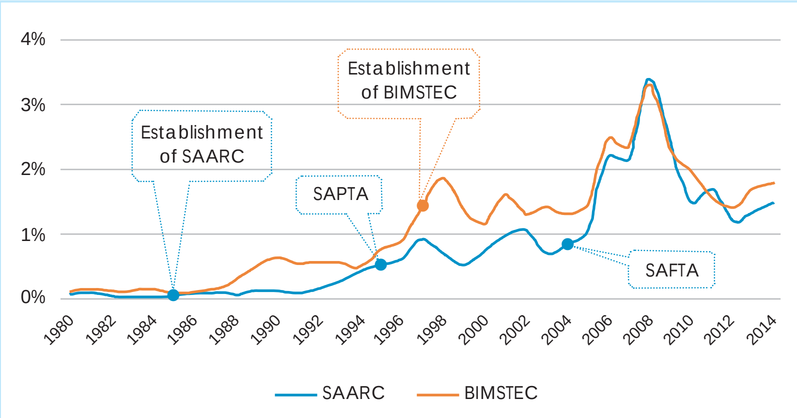
Table 1

FDI inflow in South Asia (million US$ at current prices)

Country	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Afghanistan	271	238	189	94	76	211	83	94	69	54
Bangladesh	845	792	666	1,086	700	913	1,136	1,293	1,599	1,551
Bhutan	6	72	40	10	26	76	29	49	14	32
India	7,622	20,328	25,350	47,102	35,634	27,417	36,190	24,196	28,199	34,582
Maldives	73	95	132	181	158	216	424	228	361	333
Nepal	2	-7	6	1	39	87	95	92	71	30
Pakistan	2,201	4,273	5,590	5,438	2,338	2,022	1,162	859	1,333	1,865
Sri Lanka	272	480	603	752	404	478	956	941	933	894
Total	11,293	26,272	32,577	54,666	39,374	31,420	40,076	27,751	32,579	39,340

Source: UNCTADstat, Aug 2016

Figure 2
FDI flows to SAARC and BIMSTEC as a percentage of GDP, 1980-2014



Source: Calculated from UNCTADstat, Aug 2016

Investment regimes

Table 3 presents Logistics Performance Index (LPI) of SA countries. It is well established that most SA countries (except Bhutan and Nepal) have LPI far below the best performing country. In terms of LPI, SA countries rank low among 189 countries that form the universe for the assessment.

In terms of ease of doing business, SA countries are similarly ranked poorly as may be seen in Table 4.

The next criterion for assessing the investment regime in SA is to examine foreign equity ownership patterns across sectors. Restrictions on foreign equity ownership vary considerably across the SAARC member states. Afghanistan and Bangladesh permit full equity ownership to investors across all sectors. India offers the same for mining oil and gas, electricity, health care and waste management. Equity restrictions apply in agriculture, forestry, telecom, banking, insurance, transport, media, construction, tourism and retail. Pakistan offers full equity participation in all the specified sectors, excluding banking, insurance, transport and media. Sri Lanka offers full equity participation in all specified sectors excluding mining, oil and gas, electricity and media (Table 5).

Capital account convertibility is another prerequisite for investing abroad. While most SA countries have undertaken current account convertibility, none of them have undertaken full capital account convertibility. As the balance of payment position of SA countries is not strong, they have taken a cautious approach to capital account liberalization. While Islam *et al*[7] characterise India and Pakistan's capital account as largely liberalized, the authors consider Bangladesh and Sri Lanka as partly repressed.

Until recently, India had Sri Lanka, Bangladesh and Pakistan on the negative list for inward investments. However, in 2006 and 2007, India permitted FDI from Sri Lanka and Bangladesh. The Indian announcement on 1 August 2012 to allow FDI from Pakistan has given yet another fillip to the total opening up of the country to allow free flow of capital from all countries in the region.[8]

Bilateral investment treaties

In 1959, Germany and Pakistan signed the first Bilateral Investment Treaty (BIT) in the world marking the beginning of a new era. Currently, the international legal system that governs international investment flows consists of more than 3,000 BITs and other international investment

Table 2
FDI outflow from South Asia (million US$ at current prices)

Country	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Afghanistan	1.5	0	0	71.6	80.9	71.7	70.2	65	0	0
Bangladesh	3.3	3.6	21	9.3	29.3	15.4	13.04	43.37	33.73	44.46
Bhutan	–	–	–	–	–	–	–	–	–	–
India	2,985	14,285	17,234	21,142	16,058	15,947	12,456	8,486	1,679	9,848
Maldives	–	–	–	–	–	–	–	–	–	–
Nepal	–	–	–	–	–	–	–	–	–	–
Pakistan	44.0	109.0	98.0	49.0	71.0	47.0	35.0	82.0	212.0	121.0
Sri Lanka	38.0	29.0	55.0	61.7	20.0	42.5	60.0	63.9	65.1	66.8
Total	3,072	14,427	17,408	21,334	16,259	16,124	12,634	8,740	1,990	10,080

Source: UNCTADStats, Aug 2016

agreements (IIAs) such as treaties with investment provisions (TIPs). In recent years, however, a large number of countries have faced costly international investment treaty claims on matters of economic policy, financial stability and environmental and health regulation. This in turn has sparked many governments to rethink and revisit their current BIT regimes.[9]

In the absence of a comprehensive multilateral agreement on investment, cross-border investment flows are currently governed by bilateral and regional investment treaties along with investment chapters in free-trade agreements (FTAs). BITs have emerged as the primary source of international investment law to protect and promote cross-border investment flows.[10]

Table 6 presents the current status of SA countries participating in BITs/TIPs. By the end of 2014, SA countries had entered into 203 BITs worldwide, of which only 11 were in the SA region. The region had 41 TIPs, of which one was not in force.

Afghanistan had three BITs, none of which were with SA. It had four TIPs. Bangladesh had 30, of which seven were not in force. Within SA, Bangladesh had two BITs, one each with India and Pakistan. It had four TIPs, one of which is not in force. Bhutan had no BITs, only two TIPs. India had as many as 84 BITs, of which ten were not in force and two were terminated. It has two BITs in the region—one with Bangladesh and one with Sri Lanka. It has signed a BIT with Nepal, but is not yet operational. Maldives has only two TIPs. Nepal has signed two BITs, one with India (as noted above), and the other with Maldives. None of these are operational yet. Pakistan has signed 51 BITs globally, of which 21 are not in force. It has two BITs, within the region—one with Sri Lanka and the other with Bangladesh. The latter has not come into force. Pakistan has seven TIPs while Sri Lanka has 29 BITs worldwide, of which four are not in force and one has been terminated. Within the region, Sri Lanka has two BITs, one with India and the other with Pakistan. It has five TIPs.

India's BIT with Bangladesh came into force with effect from (w.e.f) 7 July 2011 and with Sri Lanka w.e.f 13 February 1998. Similarly, with Nepal the BIT was signed on 21 October 2011, but is yet to be ratified. Sri Lanka's BIT with Pakistan came into force w.e.f 5 January 2000. Meanwhile, Pakistan signed a BIT with Bangladesh on 24 October 1995, but this never came into force.

It can thus be seen that, in several cases, BITs have been signed, but are yet to come into force. Most BITs of SA countries are with the rest of the world and not among themselves. Given the changing global environment, considerable changes have occurred in the content and scope of BITs. Thus, they need to rethink and revisit a "new generation" BITs.

Table 3
South Asian LPI

Indicators	Rank	Distance to frontier (DTF)[5]
Afghanistan	174	28.9
Bangladesh	172	34.86
Bhutan	21	95.49
India	133	56.45
Maldives	137	55.87
Nepal	60	81.6
Pakistan	169	38.11
Sri Lanka	90	70.7
South Asia	–	57.75

Source: Logistics Performance Index database, World Bank, Aug 2016

Table 4
Ease of Doing Business Indexes for South Asian countries[6]

Indicators	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
Ease of Doing Business Rank	177	174	71	130	128	99	138	107

Source: Ease of Doing Business database, World Bank, Aug 2016.

Table 5
Foreign equity ownership indexes (100 = full ownership) across sectors in South Asia

Region/Economy	South Asia	Afghanistan	Bangladesh	India	Pakistan	Sri Lanka
Mining, oil & gas	88	100	100	100	100	40
Agriculture & forestry	90	100	100	50	100	100
Light manufacturing	96.3	100	100	81.5	100	100
Telecom	94.8	100	100	74	100	100
Electricity	94.3	100	100	100	100	71.4
Banking	87.2	100	100	87	49	100
Insurance	75.4	100	100	26	51	100
Transport	79.8	100	100	59.6	79.6	–
Media	68	100	100	63	37	40
Construction, tourism & retail	96.7	100	100	83.7	100	100
Health care and waste management	100	100	100	100	100	100

Source World Bank, Trading Across Sectors 2016

Table 6
Investment related agreements (BITs/TIPs) by South Asian Countries (2014)

	Bilateral Investment Treaties (BITs)				Treaties with Investment Provisions (TIPs)	
Country	Total	Not in Force	Terminated	with SA countries	Total	Not in force
Afghanistan	3	0	0	0	4	0
Bangladesh	30	7	0	2 (India & Pakistan)	4	1
Bhutan	0	0	0	0	2	0
India	84	10	2	3 (Bangladesh, Nepal-Not in force & Sri Lanka)	14	0
Maldives	0	0	0	0	2	0
Nepal	6	2	0	2 (India-Not in force & Maldives-Not in force)	3	0
Pakistan	51	21	1	2 (Bangladesh-Not in force & Sri Lanka)	7	0
Sri Lanka	29	4	1	2 (India & Pakistan)	5	0
South Asia	203	42	4	11	41	1

Source: Investment Policy Hub, UNCTAD, August 2016

The international investment agreement (IIA) regime is undergoing change and the developments in India are no exception. India has decided to terminate about 57 BITs whose initial duration has expired, or is soon to expire, and to issue joint statements for the ones in force.[11] Reform of the IIA system has swept many countries, including Australia, South Africa and Indonesia. Changes are likely in the European Union (EU) as well.[12]

In the 1990s, following its economic reforms, India signed a number of BITs. And, like most countries, it did not fully understand the consequences. In 2012, India lost an investor-state arbitration dispute to Australia-based White Industries. White Industries started the proceedings under the India-Australia BIT and through the 'most favoured nation' (MFN) clause took advantage of the more favourable investor protection in the India-Kuwait BIT.[13]

Consequently, India's new BIT model of 2015 excludes the MFN clause, taxation, compulsory licences and intellectual property rights from its purview. Further, it refines what is implied by "fair and equitable" compensation on the basis of new definition of what constitutes "investment".[14] More importantly, on the controversial provision of investor-state dispute settlement (ISDS), it requires investors to pursue domestic courts for at least five years before resorting to international fora.[15] Due to changes in jurisprudence and experiences gained by the member states during the following years, the SAARC Sub-Group must reconsider the text in the light of these changes.

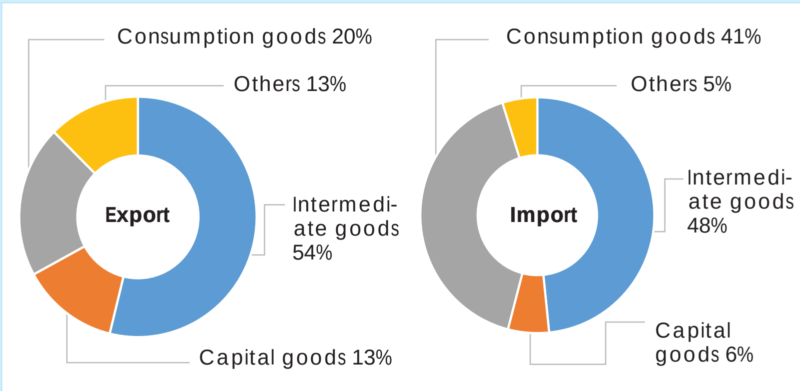
In a recent paper, Abdin (2015) analysed the top ten sectors attracting FDI in SA countries. Investment attraction in textile, clothing and readymade garments is a common interest among the manufacturing sectors of Bangladesh, India, Sri Lanka and Pakistan. They want to do so to cater to the domestic market and also for exports. Similarly, telecommunications and Information technology are sectors in which most member states have attracted FDI. Bhutan, India, Bangladesh, Sri Lanka and Maldives have been attracting FDI in the tourism sector as well.[16]

SA countries could better coordinate their promotional activities for attracting FDI. Not all member states are equally competitive in each sector. For instance, in the case of garments, Sri Lanka may attract more FDI in the high end of the market, while Bangladesh is more competitive at the lower and middle ends. In tourism also, joint tour packages between member states would be more effective.

Intra-industry trade (IIT)[17] and its links with value chains provide opportunities for FDI in SA. While

Figure 3

Composition of India's trade with South Asian countries in 2015



Source: UNCOMTRADE Database, August 2016. Based on UNSTAT classification.[19]

IIT offers an opportunity to increase the scale of production through joint ventures, to meet the demand of each other's markets (horizontal integration), integrating it with value chains offers a possibility of linking up with suppliers at different stages of the production cycle. This is done to improve efficiency and competitiveness of the end product (vertical integration).

Table 7 shows that in 2015 India had IIT on 1,201 products, 342 of which had an IIT index value exceeding 25 per cent. Thus, considerable opportunities exist for India to partner in joint ventures with its neighbouring countries in the region.

Illustrations of India's IIT with its neighbours in selected products are presented in Table 8. Figure 3 shows composition of India's trade with its neighbouring countries by basic economic categories. It shows that by far the largest component consists of intermediate goods. This clearly demonstrates a possibility for investors from both India and the neighbouring countries linking up in value chains to produce more value added products for each other's markets.

Research has demonstrated that there are possibilities for increasing intra-regional trade by linking it with supply chains in two major sectors (i) textiles and clothing and (ii) food processing industry.

In textiles and clothing, Banga (2014) found a significant scope for developing supply chains using production networks across the borders of SA countries. Many of the products identified as inputs in the potential supply chains can be sourced from the region, without undermining competitiveness, as these inputs are globally competitive.[20]

An UNCTAD-ADB study has identified processed food and beverages as a sector where the region's global exports and imports have grown rapidly during the 2000s. Intra-regional exports in this sector have increased from two per cent in 1990 to 23 per cent in 2011. This reflects the growing competitiveness of the region in agricultural products and is therefore a fertile ground for exploring potential intra-regional supply chains.[21]

Investment treaties are key

In the globalized world of today, trade-led investment needs to be underwritten by investment-led trade. Both need to work in tandem. In this context, a favourable investment area, both bilateral and regional, is called for. In the immediate scenario, the unfinished task of concluding bilateral investment treaties—those that have been signed, but are yet to be ratified—needs to be concluded.

The enactment of regional treaty on Promotion and Protection of Investment, being deliberated in SAARC Summits and in its Sub-Group on Investment and Arbitration for so long now, has to be executed. Being late in signing has given enough time to this grouping to reflect on the emerging jurisprudence over these years as also to learn from the experience of other countries/regional groupings. Since today's FDI recipients could be the investors of tomorrow, a middle path

Table 7

India's IIT with South Asian neighbours (2015)[18]

Country	No. of matched products (IIT)	No. of products having IIT value of 25% and above
Afghanistan	22	4
Bangladesh	286	84
Bhutan	46	16
Maldives	48	10
Nepal	200	54
Pakistan	182	59
Sri Lanka	417	115
South Asia	1201	342

Source: Calculated from UNCOMTRADE Database, Aug 2016.

Table 8

Potential intra-industry trade joint ventures with India

Country	Industries
Bangladesh	Fish processing, portland cement, integrated textile mills.
Bhutan	Non-alcoholic beverages, fruit juice
Nepal	Floor coverings, flat rolled products of iron, animal feed, plastics, edible nuts
Sri Lanka	Parts n.e.s of machinery, plastic storage containers

Source: Calculated from UNCOMTRADE Database, Aug 2016

www.maldiveshighcommission.org

must be found between the competing interests of investors to protect their investments and the right of the governments to regulate in the public interest. India has a long experience in dealing with BITs and its experience in this regard—as reflected in its model BIT template—could be leveraged to the advantage of all member states of SAARC while finalising their bilateral and regional investment treaties.

Moreover, enormous opportunities exist for investors to integrate both horizontally (via IIT) as well as vertically (by linking with supply chains) in SA. However, success in this direction will require complementary policies in improving transport and logistics services, reducing local transaction costs across the region, attracting intra-regional and extra-regional FDI as well as investments from local small and medium business enterprises. ■

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Notes

1 OECD, WTO and World Bank Group. 2014. Global Value Chains: Challenges, Opportunities, and Implications for Policy. https://www.oecd.org/tad/gvc_report_g20_july_2014.pdf . Accessed: 11 September 2016.

2 The SAARC Secretariat. 2015. Status Note on Economic and Financial Cooperation as on 22 January 2015. http://www.saarc-sec.org/areaofcooperation/detail.php?activity_id=50. Accessed: 11 September 2016.

3 UNCTAD. 2013. Investment, Enterprise and Development Commission Multi-Year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-building and Sustainable Development, Geneva, 28–30 January. http://unctad.org/meetings/en/SessionalDocuments/ciimem4d2_en.pdf.

4 *ibid*.

5 Distance to frontier (DTF) is the gap between a particular economy's performance and the best practice, and serves as basis for the ease of doing business rankings. An economy's distance to frontier is reflected on a scale from 0 to 100, where 0 represents the lowest performance and 100 represent the frontier. The Logistics index is composed of time for and cost of obtaining border and documentary compliance for both exports and imports.

6 World Bank ranks 189 countries for these indicators. The ranking is based on ten point criteria: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency.

7 Islam, Md. Ariful et al. 2014. "Convertibility of Capital Account: A Comparative Analysis". Business and Economic Research Vol 4 No 1.

8 Indian Council for Research in International Economic Relations. 2012. Liberalizing India-Pakistan Investment Flows. India-Pakistan Trade Newsletter. October. http://indiapakistantrade.org/data/ICRIER%20India%20Pakistan%20Newsletter%20for%20web%20upload.pdf. Accessed: 13 September 2016.

9 Singh, Kavaljit, and Burghard Ilge. 2016. Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices. http://www.bothends.org/uploaded_files/document/Rethinking_BIT_Book.pdf . Accessed: 13 September 2016.

10 *ibid*.

11 Mehta, P. S. 2016. "Bilateral investment pacts haven't worked". The Hindu Business Line, August 24. http://www.thehindubusinessline.com/opinion/columns/bilateral-investment-pacts-havent-worked/article9026733.ece. Accessed: 14 September 2016.

12 *ibid*.

13 *ibid*.

14 investment is defined as "enterprise-based" in place of "asset-based"

15 Model Text for the Indian Bilateral Investment Treaty available at https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf.
See also Singh, Kavaljit, and Burghard Ilge. Note 9.

16 Abdin, MdJoynal. 2015. Foreign Direct Investment (FDI) in SAARC Countries. Global Journal of Management and Business Research. C Finance Volume 15 Issue 8:13-20. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2660625. Accessed: 14 September 2016

17 Intra-industry trade refers to the exchange of similar products belonging to the same industry. The term is usually applied to international trade, where the same types of goods or services are both imported and exported. For precise definition see APTIAD Interactive Trade Indicators Available at http://artnet.unescap.org/APTIAD/iti_home.aspx

18 Calculation is based on SITC 4 classification

19 http://unstats.un.org/unsd/tradekb/Knowledgebase/Intermediate-Goods-in-Trade-Statistics.

20 Banga, Rashmi, and A Razaaque, M. A. 2014. "Building regional supply chains in SA: The case study of the textiles and clothing sector". In Regional Integration in South Asia : Trends, Challenges, and Prospects edited by Mohammad A Razzaque and Yuvendra Basnett, 89. The Commonwealth Secretariat. London.

21 UNCTAD and ADB. 2015. Food Security in South Asia: Developing Regional Supply Chains for the Food Processing Industry. http://www.adb.org/sites/default/files/publication/189217/south-asia-food-processing.pdf. Accesed: 18 September 2016.

Obstacles to South Asia value chains

Countries that are engaged in value chain show enhanced access to the global economy, better production and employment and relatively more sophisticated technologies.

Vaqar Ahmed and Asif Javed

Domestic firms establish foreign production units to overcome tariff restrictions, obtain cheap inputs and minimize logistics expenditures. This helps firms build access bigger markets. Countries also want to make use of practices that give them comparative advantage in terms of cost effective production methods and quality enhancement. Global supply chains make it possible to use inputs, production techniques and processes in different countries. This is termed as the 'flying geese' model.[1]

A global value chain (GVC), also involving the distribution aspect, spreads beyond international borders. Countries that are engaged in GVC show enhanced access to the global economy, better production and employment levels[2] and relatively more sophisticated technologies[3].

The Organisation for Economic Co-operation and Development (OECD) reports that participation in GVCs brings stability in the performance of small and medium enterprises (SMEs) and enhances the development of their business.[4] Foreign Direct Investment (FDI) can help SMEs attain further access to technology, international markets and skills. Technological improvement and human capital growth also come as spillovers of taking part in GVCs.

Value chains mutually benefit businesses and parties involved in the process. Rice value chains between Bangladesh and India have helped farmers increase their income.[5] Similarly, India imports textile and clothing from Bangladesh, which are used to manufacture high-end final goods.[6] There are studies that show that supply chains have helped the growth of industry e.g. growth of the fashion industry in Pakistan, after implementing e-commerce and Electronic Supply Chain Management (E-SCM)[7]. Others have witnessed sales growth, on-time order management and delivery schedule.

Value chains constraints

There are supply-side constraints to the growth of value chains in South Asia. Logistic services help in trade and production expansion and also assist in developing productive capacities. However, countries in South Asia are slow to bring about innovation in logistics management. India has performed better in the World Bank's Logistic Performance Index (LPI) compared to other countries (Table 1) in the region.

Indicators explain that South Asian countries are lagging behind in almost every aspect of business service delivery (Table 2). Costly transportation also exerts pressure on traders. Road, rail, air and port operations entail larger direct and indirect costs vis-à-vis peer regions.[10] It is evident that export costs are increasing over time, instead of declining, (Table 3). All countries face increasing per container costs. And, this reduces the profit margins for both producers and exporters. Similarly, the import cost has also gone up recently (Table 3).

Table 1
Infrastructure for business, 2014

Countries	Logistic Performance Index Score (1=low, 5=high)	Customs score	Infrastructure score
Afghanistan	2.07	2.16	1.82
Bangladesh	2.56	2.09	2.11
Bhutan	2.29	2.09	2.18
India	3.08	2.72	2.88
Maldives	2.75	2.95	2.56
Nepal	2.59	2.31	2.26
Pakistan	2.83	2.84	2.67
Sri Lanka	2.70	2.56	2.23

Source: World Development Indicators[8]

Table 2
Doing Business in South Asia

Indicator	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
Ease of doing business	177	174	71	130	128	99	138	107
Starting a business	34	117	91	155	48	105	122	98
Dealing with construction permit	185	118	79	183	41	78	61	77
Getting electricity	156	189	50	70	141	131	157	81
Registering property	184	185	51	138	171	72	137	153
Getting credit	97	133	79	42	126	133	133	97
Protecting investors	189	88	115	8	134	57	25	49
Paying taxes	89	86	28	157	128	124	171	158
Trading across borders	174	172	21	133	137	60	169	90
Enforcing contracts	172	188	50	178	95	152	151	161
Resolving insolvency	160	155	189	136	135	86	94	78

Source: Doing Business Report 2016[9]

The time needed to export has also not decreased much (Table 4). Unnecessary delays have the tendency to destabilize trade relations between countries. Lengthy documentation requires more time and resources and acts as a barrier for entry of new firms and SMEs in regional trade and investment. It is evident from the table that Sri Lanka is the most efficient with the least number of documents required for export and import (see Figure on page 23).

Perceptions from the ground

In 2014, Sustainable Development Policy Institute (SDPI) conducted key informant interviews with business communities in Bangladesh, India, Pakistan and Sri Lanka. The process involved 70 firms and respondents. They included Chief Executive Officers (CEOs) of firms engaged in trade in South Asia, CEOs of manufacturing enterprises and senior management of firms having basic knowledge of cross-border trade and investment.

The key findings were that the most important barriers to value chain integration include: a) a lack of functional economic corridors; b) existence of border-related conflict territories across South Asia; c) sluggish reforms towards trade facilitation; d) a lack of political will to deepen and implement South Asia Free Trade Agreement (SAFTA) and other bilateral free-trade agreements (FTAs) and e) high non-tariff barriers (including travel restrictions) which in turn are preventing transfer of skills and technology.[14]

The survey points towards the private sector advocating more expedient reforms to promote value chains across South Asia. Businessmen have some concrete proposals for the governments of the region. First, they recommend that border-related conflict territories should be declared areas of free investment and trade prospects. The Durand Line, Baraibari, Daikhata-Dumabari, Kalapani, Lathitila, Muhuri Char and Pyrdiwah are such zones.

Second, the respondents demand a reduction in costs associated with trade documentation and transport. Customs posts, sea and dry ports are still not automated in most countries, which is an obstacle for the South Asian Association for Regional Co-operation (SAARC) Single Window operation. The dispute resolution mechanism is also vague, thus forcing firms to avoid participation in value chains at a broader level.

Third, deepening of existing trade agreements in the region is urgently required. Extensive FTAs, that incorporate trade in services and cross-border investments, is the need of the hour. SAARC meetings to review the progress of SAFTA repeatedly acknowledges this important issue.

Fourth, both public and private

Table 3
Cost to export and import (US$ per container)

Country	Cost to export					Cost to import				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
Afghanistan	3545	3545	3545	4645	5045	3830	3830	3830	5180	5680
Bangladesh	1070	1115	1175	1203	1281	1305	1370	1430	1437	1515
Bhutan	2230	2230	2230	2230	2230	2505	2505	2330	2330	2330
India	1005	1045	1070	1332	1332	1105	1150	1200	1462	1462
Maldives	1550	1550	1550	1625	1625	1526	1526	1526	1610	1610
Nepal	1960	1960	1975	2295	2545	2095	2095	2095	2400	2650
Pakistan	611	660	660	765	765	680	705	705	1005	1005
Sri Lanka	590	590	595	595	560	695	695	725	725	690

Source: World Development Indicators[11]

Table 4

Time to export and import (days)

Country		2010	2011	2012	2013	2014		2010	2011	2012	2013	2014
Afghanistan	Time to export	74	74	74	81	86	Time to import	77	77	77	85	91
Bangladesh		29	29	29	28.6	28.3		37	37	37	37.6	33.6
Bhutan		38	38	38	38	38		37	37	37	37	37
India		17	16	16	17.1	17.1		20	20	20	21.1	21.1
Maldives		21	21	21	21	21		22	22	22	22	22
Nepal		41	41	41	42	40		35	35	38	39	39
Pakistan		21	21	21	21.7	20.7		18	18	18	19.4	18.4
Sri Lanka		21	21	20	20	16		19	19	19	17	13

Source: World Development Indicators[12]

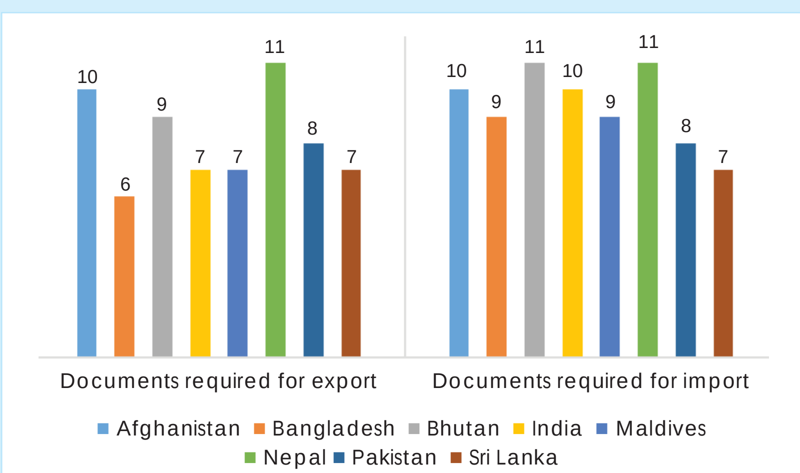
sectors have to work together in order to make value chains competitive—or complementary—with regard to China and East Asia. A collective platform that includes public-private partnerships to develop trade, investment and value chains can be beneficial.

Finally, a more up-to-date assessment is required regarding non-tariff measures that may be hurting value chain cooperation in the region. The SAFTA Commerce Minister's committee may discuss such an assessment and take appropriate actions. ■

Dr. Ahmed is Deputy Executive Director and Mr. Javed is Consultant, Sustainable Development Policy Institute (SDPI), Islamabad. This article is built on their recent paper "Strengthening South Asia Value Chain Prospects and Challenges".[15]

Figure

Number of documents required for trade, 2014



Source: World Development Indicators[13]

Notes

1 Serieux, J. 2012. "Productive Integration of LDCs into Regional Supply Chains; The Case of South Asia". UNCTAD.

2 Banga, R. 2013. "Measuring Value in Global Value Chains". UNCTAD Background Paper No RVC-8.

3 Ahmed, V., A.Q. Suleri, and A. Javed. 2015. "Strengthening South Asia Value Chain Prospects and Challenges". South Asia Economic Journal September 2015 vol. 16 no. 2 suppl 55S-74S.

4 OECD. 2008. "Enhancing the Role of SMEs in Global Value Chains". OECD.

5 Reardon, T., B. Minten, K. Z. Chez, and L. Adriano. 2013. "The Transformation of Rice Value Chains in Bangladesh and India: Implications for Food Security". Asian Development Bank Working Paper Series No. 375.

6 De, P. and A. Saha. 2013. "Logistics, Trade and Production Networks: An Empirical Investigation" Research and Information System for Developing Countries RIS-IDP No. 181.

7 Khan, S., Y. Liang and S. Shahzad. 2014. "Adoption of Electronic Supply Chain Management and E-Commerce by Small and Medium Enterprises and Their Performance: A Survey of SMEs in Pakistan" American Journal of Industrial and Business Management, 2014, 4, 433-441.

8 http://lpi.worldbank.org/international/scorecard/column/254/C/LKA/2014#chartarea

9 http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB16-Full-Report.pdf

10 Ahmed, V. and S. Shabbir. 2016. "Trade and Transit Cooperation with Afghanistan: Results from a firm-level survey from Pakistan". Sustainable Development Policy Institute Working paper 153.

11 http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.EXP.COST.CD&country= and http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.IMP.COST.CD&country=

12 http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.IMP.COST.CD&country=

13 http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.EXP.DOCS&country= and http://databank.worldbank.org/data/reports.aspx?source=2&series=IC.IMP.DOCS&country=

14 Ahmed, V., A.Q. Suleri, and A. Javed. 2015. "Strengthening South Asia Value Chain Prospects and Challenges". South Asia Economic Journal September 2015 vol. 16 no. 2 suppl 55S-74S.

15 *ibid*.

South Asia ready for FDI promotion

The "SAARC Investment Promotion and Protection Agreement" has been drafted, but is yet to be signed by the member countries.

Khondaker Golam Moazzem

During 2010-2015, Foreign Direct Investment (FDI) grew by 31 per cent in Asia, 24 per cent in Africa, 0.27 per cent in Latin America and 16.7 per cent in Europe. Within Asia, South Asia (SA) achieved the second highest growth rate (44 per cent during 2010-2015), after East Asia's 58 per cent. It increased from US$31.42 billion in 2010 to US$48.43 billion in 2015 in SA. The major share of this investment went to India[1] mainly due to the lack of a conducive business environment in the region for the proportional distribution of FDI.

SA countries have followed relatively liberal FDI policies since the 1980s to promote foreign investment.[2] However, unlike other regions, no regional investment cooperation mechanism has been developed in SA. In the official regional cooperation discourse, the issue of investment has largely been overshadowed by the issue of trade. After the operationalization of the South Asian Free Trade Area (SAFTA) in 2006, investment related issues have received more attention in the South Asian Association for Regional Cooperation (SAARC) process. The "SAARC Investment Promotion and Protection Agreement" has been drafted, but is yet to be signed by the member countries. The "SAARC Agreement on Trade in Services (SATIS)", if operational, would facilitate service related investment. In contrast, the South-East Asia region has made considerable progress on investment cooperation under the Association of Southeast Asian Nations (ASEAN) mechanism.

FDI liberalization to national treatment

Most FDI policies of the region emphasize the post-establishment phase by offering fiscal incentives in the form of income tax holidays and exemption of import duties for raw materials, intermediate products and capital machinery. Repatriation of invested capital in some cases is subject to conditions. Countries are less supportive of foreign investors during the pre-establishment phase and this is reflected in the provisions they make for investment. The major provisions regarding the pre-establishment phase include sectoral prohibitions, investment caps, screening requirements, minimum capital requirements and locational issues. In general, post-establishment treatment is less varied compared to that of pre-establishment treatment. Compared to SA, FDI regimes in ASEAN are more homogenous, both in the pre- and post-establishment phases.

Bilateral Investment Treaties (BITs) signed by SA countries mainly focus on attracting investment from outside SAARC members (Table 1). By 2012, SA countries had signed BITs with 105 countries—33 by India, followed by Pakistan and Nepal with 23 each. However, only a few of these BITs are within the region. As a part of promotion and protection of FDI, BITs generally provide similar treatment to local investment, particularly at the post-entry level. The major provisions include compensation in case of expropriation of investment and repatriation of investment earnings. The provisions generally exclude their automatic extension in the case of formation of a free trade area or other forms of international agreement. Despite the numerous BITs, investment flow is not so robust from their BIT partner countries.

Most SA countries have double taxation treaties (DTTs) included in, or alongside, their BITs. Besides, various other agreements have been signed by these countries to facilitate foreign investment, including with Multilateral Investment Guarantee Agency (MIGA), the International Centre for Settlement of Investment Dispute (ICSID), the World Intellectual Property Organization (WIPO) and the Overseas Private Investment Corporation (OPIC). Once adopted, the "SAARC Investment Promotion and Protection Agreement" will be an additional measure for regional cooperation in economic and financial matters. However, SA countries should draw lessons from the ASEAN Comprehensive Investment Agreement (ACIA) regarding the kind of provisions to be considered for promoting and facilitating investment.

SA has experienced increased FDI in services following liberalization of the sector.[6] Investment in the service sector would further rise once SATIS, signed by member countries in 2010, comes into operation. The telecommunications and financial sectors are now open for foreign investment in India, Pakistan and Sri Lanka. FDI is allowed in hotel management services in Bangladesh. Nepal allows FDI in the insurance, telecommunications and hotel sectors. FDI in services in Sri Lanka is concentrated in business services, retail, health, banks, consulting and telecommunications. Under SATIS, commitments of SA countries vary considerably. As per the agreement, ten service sectors are to be opened- including accounting and auditing, maritime transport, management consultancy, financing, computer and software, education, audio-video, construction consultancy, data or technical testing and courier services. Nepal has committed to liberalize 11 service sectors, while Sri Lanka has only committed to open two sectors: tourism and travel services.

During the 1980s and early 1990s, initiatives for FDI promotion in SA were limited, mainly because of relatively low levels of movement of capital across the world. With the rise in global FDI flow in the late 1990s, it began courting developed countries to invest in the region. However, the SAARC process has made little progress so far. The draft agreement on promotion and protection of investment has long been pending adoption since 2011 due to minor issues. SAARC lacks an independent body to deal with investment-related issues. The Inter-Ministerial Committee for trade is entrusted with discussing and deciding on investment-related cases. But more time is devoted to discuss trade. Such arrangement makes investment cooperation dependent on progress made on trade integration within the region. A separate SAARC organizational group needs to be established.

Future regional investment cooperation should give due attention to a number of issues. First, any initiative for regional cooperation should consider promotion of extensive production networks within and outside the region. Secondly, FDI in SA has targetted regional domestic markets, mainly by investing in domestic market-oriented manufacturing and services-related industries. Hence, intra-regional trade has relatively limited role in promotion of intra-regional FDI in SA. Third, foreign investors from outside the region dominate FDI in most SA countries and, therefore, promotion of intra-regional investment should be equally considered. Finally, with the rise of global FDI, SA countries need to further liberalise their capital accounts allowing both intra- and inter-regional capital flows. The 17th SAARC Summit held in 2011 appears to have realized this. It had stressed the need for a regional flow of financial capital along with the promotion and protection of investment.

Principles of cooperation

SA countries should consider regional investment cooperation beyond the 'traditional' framework that focuses heavily on intra-regional investment. The institutional framework for investment should cater to the multi-dimensional aspects of investment cooperation, both within and outside SA.

Prospecting for regional investment cooperation in SA should be based on five key principles:

a) SA countries cooperate under the framework of open regionalism, emphasizing both intra-regional and extra-regional investment;
b) Promotion of intra-regional investment needs to be facilitated with appropriate home and host country measures. Member countries should endeavour to ensure that political barriers do not create bottlenecks in promoting long-term investment relations within the region;
c) Regional investment cooperation should focus on development of a common market, simultaneously with trade integration, non-tariff barriers (NTB) reduction, regional connectivity and development of physical infrastructure and regional value chains;
d) Strong domestic regulatory frameworks need to be harmonized with

Table
Bilateral Investment Treaties signed by South Asian countries

Country	1980	1990	2000	2011
Bangladesh	1	8	12	19 (0, 3)[3]
India	0	0	13	33 (1, 4)
Nepal	0	2	3	4 (0, 3)
Pakistan	2	7	15	23 (1, 4)
Sri Lanka	4	16	20	23 (2, 4)
Afghanistan				3
Total	7	33	63	105

Source: Banga (2003)[4], Moazzem (2013)[5] the regional investment framework; and

e) Country-specific sector priorities should be taken into account in building regional supply chains and the necessary support measures should be provided.

More specifically, regional investment cooperation should incorporate the following aspects:

Institutional mechanism for regional investment cooperation: SA should draw lessons from ASEAN with regard to investment promotion. The institutional framework for investment cooperation should be similar to ASEAN's regarding the principle of open regionalism. Private sector initiatives, with the support of governments, should include formation of a South Asia Industrial Joint Venture (SAIJV), Brand-to-Brand Complementation Schemes and a South Asia Industrial Cooperation scheme.

Country-level operational issues for investment cooperation: SA countries should reduce and, where possible, eliminate restrictions on regional and foreign investors seeking entry to national priority sectors. National and most-favoured-nation (MFN) treatment provisions should be extended to investors from all countries of the region. They should ensure protection of intra-regional investment in the same manner as protection is given to other countries under various BITs. Protection should address issues concerning repatriation of investment assets and earnings from investment, expropriation compensation, equity limits, minimum foreign capital requirements and screening of investment.

Domestic regulations should be consistent with current regional agreements on investment and to the rights and obligations of the member countries. This provision should also apply to investors from outside the region. SA should establish a more effective dispute settlement mechanism by strengthening the SAARC Arbitration Council (SARCO). The settlement procedure should include reference to the judicial, arbitration and administrative body of the state where the investment has taken place. Each country should ensure transparency and consistency of investment-related regulations with other member countries.

Investment in the service sector would rise once SATIS, signed in 2010, comes into operation.

Facilitation of investment procedures: Investment procedures need to be simplified—the application and approval process must be streamlined; cross-border customs regulations need simplification; information on investment-related rules and regulations need to be disseminated among the member countries; the institutional regulatory frameworks need strengthening; an effective regional financial and banking network must be established to facilitate transactions; trade-related barriers must be resolved including NTBs, sensitive lists, connectivity problems and conflicting rules of origin.

SA countries should facilitate sectoral investment issues by: taking measures to promote investment in national priority sectors; specifying foreign equity caps and conditions; and giving priority to SA based investors by maintaining flexibility with respect to investment regulations and conditions.

Promotion of intra-regional investment: Measures for promoting intra-regional investment during the pre-establishment period should include:

- establishment of an investment-friendly environment for the promotion of all forms of intra-regional investment;
- promotion of production networks among member countries and extension to multinational corporations (MNCs);
- recognition of skill/training provided in other member countries;
- sharing of technology among region-based investors;
- exchanges of information on existing and required technology for sector investment; and
- development of networks of potential investors in selected sectors.

Fiscal and monetary measures to promote intra-regional investment include establishment of a commercial regional investment fund. Double taxation treaties (DTTs) must apply to regional investors to further facilitate intra-regional investment.

Promotion of extra-regional investment: Capital accounts of SA countries should be liberalized gradually, consistent with their financial stability requirements and national agendas. FDI designed to advance efficiency should be promoted in support of regional value chains and extension to global value chains. Home-country measures are required for encouraging investors/MNCs to invest in less developed regions of SA. ■

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Notes

1. Moazzem, K.G. 2015. "Enhancing FDI Flow in South Asia: Framework for Regional Cooperation". *The SARCist.* http://thesarcist.org/Opinion/90. Ac*cessed: 27 September 2016.*
2. Sahoo, Pravakar. 2006. "Foreign Direct Investment in South Asia: Policy, Trends, Impact and Determinants". ADB Institute Discussion Paper No. 56. Asian Development Bank Institute. Manila.
3. Figures in the parentheses indicate number of bilateral investment treaties and double taxation treaties (DTTs) signed in South Asia.
4. Banga, R. 2003. "Impact of Government Policies and Investment Agreement on FDI Inflows" ICRIER Working Paper 116. New Delhi.
5. Moazzem, K. G. 2013. Regional Investment Cooperation in South Asia: Policy Issues. Commonwealth Secretariat, London.
6. Raihan, S et al. 2008. "Domestic Preparedness for Services Trade Liberalisation: Are South Asian Countries". Prepared for Further Liberalisation. CUTS International. India.

Trade may be bad news for climate

Chatura Rodrigo

The use of container carriers and jet engines has significantly reduced transportation time and cost.

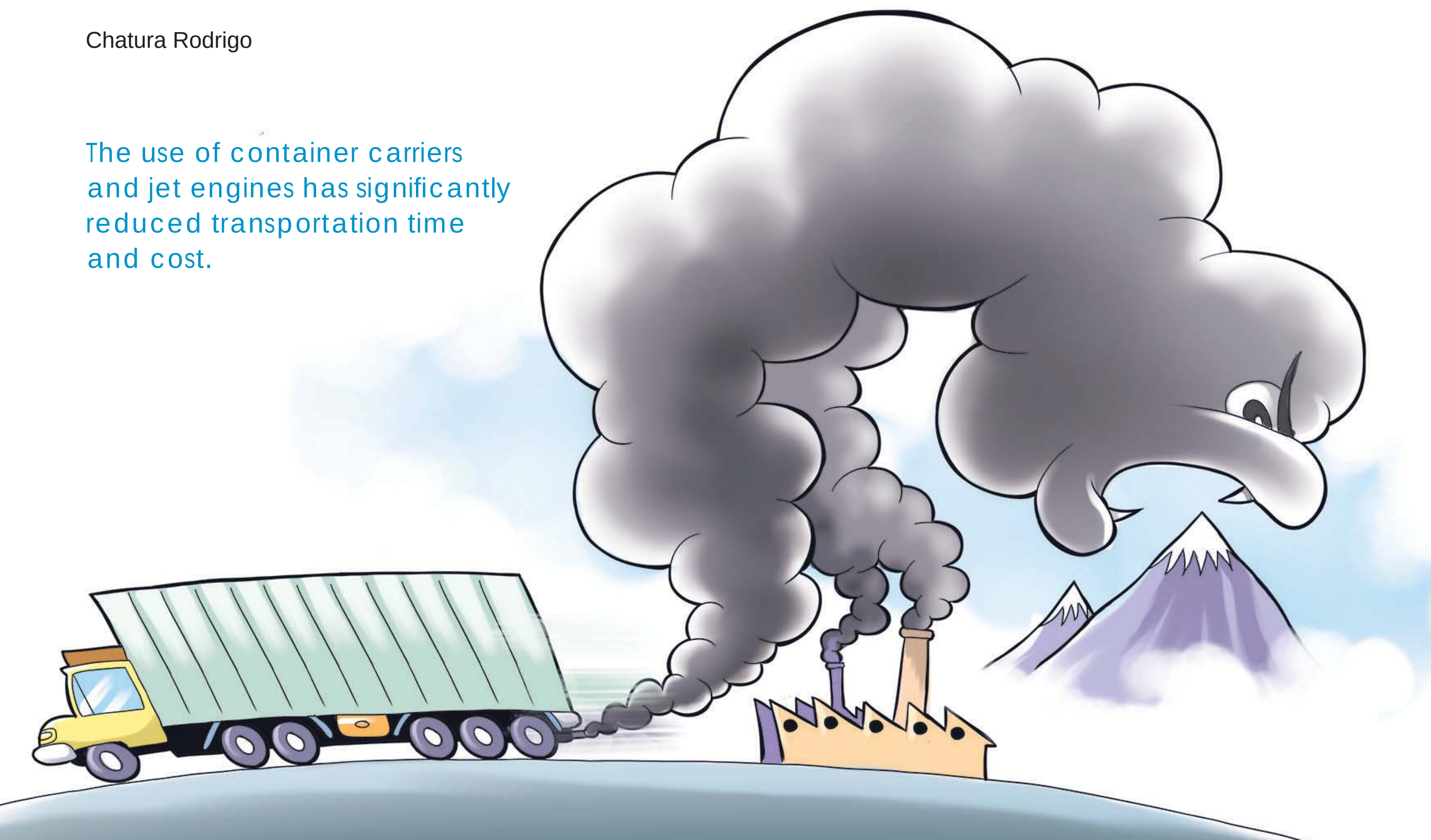
Whether climate change is real or not is no more a debate. Scientific evidences and studies have proven that climate change is real and its impacts are being perceived by all. Economists have begun to link climate change with Gross Domestic Product (GDP) and Human Development Index (HDI). Since climate change is turning out to be one of the biggest development challenges of the 21st century[1], action to mitigate its impacts needs to be taken at different levels—national, regional and global[2].

The continuous increase in the production of greenhouse gases (GHG), population growth, increased urbanization, deforestation and industrial growth fuelled by polluting industries are at the forefront of blame takers as the drivers of climate change. However, there are also unexplored candidates. "International trade" is one of them.[3] This article explores the linkages between international trade and climate change.

Trade-climate change linkages

Since the 1950s, international trade volume has increased twenty-seven folds on the back of technological innovations and evolution of trade and investment policies. For example, the use of container carriers and jet engines has significantly reduced transportation time and cost. Fuelled by the inputs from Information and Communication Technology (ICT), international trade volume and coverage have increased significantly. Furthermore, countries are vying with one another to open up to the spaghetti bowl of regional, multilateral and bilateral trade agreements.

The impact of trade on the environment can be analysed using three modules: scale, composition and technique. This framework was first used to analyse the impacts of the North American Free Trade Agreement (NAFTA) on environment.[4] Among the three, the "scale" constituent can prove that increased openness brings in more trade opportunities to spur the economic activity of a country. Such economies intensify their production, calling for increased



energy use, which unfailingly leads to higher GHG emissions. If the economy is innovative and uses smart energy technology—mainly renewables—then such emissions can be checked to some extent. Here, even though economic activities and energy use increase, the GHG emission would not be as bad as in countries that depend on traditional hydrocarbons. This is the desired state for all economies, but most countries are seen to carry on with their almost futile struggle to overcome traditional energy consumption habits.

The "composition" component explains the way trade liberalization shapes a country's production mix towards its comparative advantage. Comparative advantage generates economic gains by allowing a country to reallocate its resources to increase production efficiency. The traditional view is to base the comparative advantage on the reallocation of labour and capital resources. However, optimal energy use should also be considered in the equation. If the production is based on added energy use, that extra energy would produce more GHG. Then the opportunity cost of production becomes higher even if the production process is capable of maximizing labour and capital use.

Thirdly, the "technique" module refers to a situation where trade openness leads to increased energy efficiency. Openness generates opportunities for countries to bring in goods that are less harmful to the environment. For example, trade openness allows a country to import energy efficient and less GHG emitting refrigerators and air conditioners. This provides incentives for new entrepreneurs to engage in smart business to develop energy efficient and less GHG emitting appliances. On the other hand, efficient and innovative technologies have a tendency to encourage people to demand better environment quality.

It is apparent that "scale" and "techniques" work in opposite directions. Scale promotes increased GHG emissions—unless the energy production technologies are smart or renewable based—and techniques promote less GHG emissions. The impact of the "composition" module is based on the comparative advantage of a particular country. Therefore, it is hard to determine in advance which module a country is following. In the end, it all depends on the magnitude and strength of each element: scale, composition and technique.

Research shows that 74 per cent of the energy related carbon dioxide emission, comes from land transportation.

Transportation may add fuel to fire

International trade is impossible without transportation. More international trade means more use of transportation, be it by sea, land or air, depending upon many factors. Different modes of transportation result in different levels of GHG emissions.

Research shows that more than 20 per cent of the GHG emitted is from energy use in the transportation sector. Research also shows that most of the energy related carbon dioxide emission, approximately 74 per cent, comes from land transportation. Next is air transportation, contributing 12 per cent of the carbon dioxide emissions. About 90 per cent of total international trade is undertaken via sea.

If one assumes that transportation in global trade has little to do with GHG emissions, one should remember that transportation is only one element in the relationship between international trade and climate change. The total product cycle needs to be explored in order to assess the real impact of international trade on climate change or GHG emission.[5]

Environmental goods and services

Environmental goods and services (EGSs) have the ability to act against the emission of GHG. EGSs related to international trade mainly include smart energy-based goods and tools for generating smart energies. International agreements could provide various incentives by eliminating tariff and non-tariff barriers to promote EGSs. This encourages countries to import environment friendly goods. At the same time, it allows technology transfer for smart energy production.

Trade negotiations of the past have taken many initiatives to promote EGSs under international trade. For example, the Uruguay Round negotiations focused on sewage services, refuse-disposal services and sanitation services, which are listed in the environmental services sector of the Services Sectoral Classification. Other environmental services, which are commonly understood to be covered by the "other" category in this list, attracted limited attention at the time. Among them, services such as "cleaning of exhaust gases" and "nature and landscape protection services" are directly relevant to climate change mitigation measures.

Cleaning of exhaust gases includes emission monitoring and services aiming to control and reduce the level of pollutants in the air mostly caused by the burning of fossil fuels. Nature and landscape protection services entail various services aimed at protecting ecological systems as well as studies on the inter-relationships of the environment and climate. In recent years, these "other" environmental services have expanded as a consequence of increasingly demanding environmental regulations. These services are on the negotiating table and should offer good prospects for new General Agreement on Trade in Services (GATS) commitments within the World Trade Organization (WTO).[6]

A country that engages in successful international trade needs every increase in its use of energy to boost its economy. Therefore, one point of engagement in minimizing the impact of international trade on GHG emission is to promote the use of smart energies. Countries need to look for energy mixes that are favourably inclined towards the use of renewable or smart energies.[7] However, this is not easy for developing or least developed economies since smart energies are expensive. Most of them neither have the capital requirements nor the technological knowhow to diversify their energy mixes. Hence, striking a balance between economic growth that is stimulated by international trade and smart energy use has become increasingly important.[8]

To tackle trade induced environmental impact, analysis of the entire product life cycle is important. Fousing only on a single element such as transportation does not provide a complete picture. In a set-up that promotes international trade, transport sector is responsible for a considerable amount of GHG emission. However, total GHG emission could be minimized if various intervention points in the entire product cycle are taken up. It might not be possible to take the product from point A to point B without using petroleum based energy sources, which is responsible for about 95 per cent of the energy requirement in the transportation sector. However, it might still be possible to produce that product with less GHG emissions.[9]

Over the years, experts concerned about the impact of international trade on climate change have proposed to "consume locally" to eliminate the use of petroleum fuels in transportation. It might be applicable for smaller economies and countries with a lower range of consumer choices and those with less import dependence. But it may not be practical for larger economies with heavy import dependence.[10]

Promoting EGSs is also an important suggestion but smart technologies are expensive. Therefore, in order to promote these goods there has to be enough incentives to create the necessary consumer demand. Trade policies should provide incentives by removing tariff and non-tariff barriers so that more EGSs can be imported to countries that would result in less GHG emissions.[11]

At the same time, economies should consider initiatives such as Certified Emission Reduction (CDM) technologies for energy production, which could be promoted within the global trade regime, especially with trade agreements and Foreign Direct Investments (FDIs). For small economies, implementation of CDM does require technical and physical inputs and those can be incorporated in trade agreements. The pre-requisites of CDMs, therefore, can be accumulated through international trade.[12]

It is also important to allow new concepts such as "Food Miles" to foster. Food miles refer to the distance that food travels from producer to consumer, from 'farm to fork'. But, today, the food miles concept has narrowed down to mean a measure of the climate change footprint of food and focuses typically on transport. Using simple consumer messaging, the concept of food miles is now being used to present local food as climate-friendly and to argue against imported food and long-distance trade.[13] As an indicator of the carbon footprint of food choices, the concept of food miles assumes that food that has travelled long distances is likely to have a bigger climate foot-print than locally produced food, because of the energy used in its transportation. For this reason, many people regard consuming regionally or locally produced food as a climate-friendly alternative to buying imported food.[14] Though this concept is gaining momentum, it is not free from criticisms.

Finally, action against the negative impacts of international trade on the environment needs careful guidance. It is important that national, regional and global trade policies that promote green economies be implemented after close consultation with organizations such as the WTO. Guidance by such organizations will ensure that smaller economies will not be at a disadvantage in mitigating the impacts of international trade on climate change. ■

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Notes

1. World Bank. 2010. World Development Report: Development and Climate Change. Washington, DC
2. United Nations Conference on Trade and Development. 2015. "Trade and Climate Change Policy Beyond 2015".
3. United Nations Environment Program and World Trade Organization. 2012. "Trade and Climate Change, A Report by the WTO and UNEP".
4. World Bank. 2007. "International Trade and Climate Change: Economic, Legal and institutional Perspectives".
5. International Center for Trade and Sustainable Development. 2009. "The Role of International Trade in Climate Change Adaptation". Issue Brief No 4.
6. De Melo, J., and N. A. Mathys. 2010. "Trade and Climate Change: The Challenges Ahead". CEPR Discussion Paper Series 3083. London.
7. Chatura Rodrigo. 2015. "Road to Becoming Energy Independent Country: Can We Deliver?". The Island Newspaper. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=129494. Accessed: 20 September 2016
8. Mattoo, A., A. Subramanian, D. van der Mensbrugghe, and J. He. 2009. "Can Global De-Carbonization Inhibit Developing Country Industrialization?" World Bank Policy Research Working Paper Series 5121. Washington, DC.
9. Panagariya, A. 2010. Climate Change and India: Implications for Policy options. University of Columbia.
10. Aaron, C. 2007. "Trade and Climate Change Linkages". International Institute for Sustainable Development.
11. Lockwood, B., and J. Whalley. 2008. "Carbon Motivated Border Tax Adjustments: Old Wine in Green Bottles?" NBER Working Paper Series w14025. Cambridge, MA.
12. Chatura Rodrigo. 2013. "Sri Lankan Perspective of the Clean Development Mechanism (CDM): Approach towards Climate Change Mitigation". CLIMATEnet Blog, Institute of Policy Studies (IPS) of Sri Lanka. http://climatenet.blogspot.com/2013/01/sri-lankan-perspective-of-clean.html. Accessed: 21 September 2016.
13. Natural Resource Defense Council. 2007. "Food Miles: How Far Your Food Travels Has Serious Consequences For Your Health and the Climate Change". Health Facts.
14. Weber, C. L. and Matthews, H. S. 2008. Food-Miles and the Relative Climate Impacts of Food Choices in the United States. Environment Science Technology 42 (10): 3508–3513.

SAARC Industrial Parks

to deepen South Asian cooperation

Pakistan has already provided 250 acres of land in Faisalabad. Bangladesh has announced that it will establish the park in Chittagong. Bhutan will be providing 50 acres .

Suraj Vaidya

South Asian Association for Regional Cooperation (SAARC) was formed with a vision to alleviate poverty and improve socio-economic conditions of the South Asian community, but it has been unable to achieve the envisaged targets. Despite enormous potential to realise the vision, the region lacks in political commitment to carry out the necessary tasks to the extent that it has negatively affected economic cooperation.

The region has the connectivity potential—whether through rail, road, sea or by air. But, a lot of work, both physical and political, is needed to link the different countries into a vibrant partnership. In the absence of that, SAARC has been regarded as the least effective of economic blocs in the world. As a result, intra-regional trade has been hovering at about five per cent of total trade of the region. This is quite insignificant compared to the potential available and it pales in comparison to other regional economic groupings. It is not that there are no regional trading arrangements. In fact, the South Asian Free Trade Agreement (SAFTA) entered into force on 1 January 2006 after a long and arduous process of evolution from earlier preferential arrangements. Still, the trading scenario is dismal.

The scope of SAFTA has been limited to trade only and this has restricted the room for cooperation. There is no regional investment treaty and the Agreement on Trade in Services (SATIS) is in a state of non-execution. Amongst many other factors for SAARC to be a slow starter on the economic front, the lack of cooperation in the industrial sector, particularly small and medium-sized enterprises (SMEs), is one of the identified areas. Moreover, SAARC members are involved in similar businesses/industries and act as competitors at international and regional markets. There is low level of industrial complementarity in the region which has further restricted the scope of economic cooperation.

saarc.ariananews.af

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As a step towards improving the situation, the SAARC Chamber of Commerce and Industry (SAARC CCI) has envisioned intra-regional industrialisation by creating regional value and supply chains to enable the South Asian SMEs to face and cope with challenges posed by the global economy.

SAARC CCI has taken the initiative to establish a SAARC Industrial Park (IP) in each member nation. Some of them have already designated spots for the purpose. Pakistan has already provided 250 acres of land in Faisalabad. Bangladesh too has announced that it will establish the park in Chittagong. Bhutan will be providing 50 acres and India has pledged to establish a SAARC garment IP in Gujarat. Talks are ongoing with the Nepalese government for allotting land. Afghanistan has also responded positively to the proposal.

The SAARC IP blueprint is a step towards creating advanced industrial infrastructure in the region that would include Export Processing Zones and Science and Technology Parks. These will help develop an export-oriented manufacturing sector, especially if country conditions for foreign investment and imports of raw materials and capital goods are not adequate.

With SAARC IPs across the region, firms can benefit from the resulting economies of scale in terms of land development, construction and other common facilities. This is because the parks offer managed/serviced work space, workshops with collective access to utilities, roads and telecommunications. Other common facilities which could be made available include waste collection, wastewater treatment, tool rooms, testing and quality control facilities, heat treatment and security services. IPs may also provide technical libraries, laboratories, recreation areas and housing facilities for workers. The presence of mixed industries in the parks will also encourage cooperation amongst firms.

The provision of common facilities—including centralised effluent treatment, pollution prevention and energy conservation measures—can be of particular value to SMEs, which often cannot afford these on an individual basis. This is one way in which SAARC IPs can contribute to equitable and sustainable development of the region. Parks with such facilities will not only address the supply constraints of firms, particularly SMEs, they also increase productivity and competitiveness of South Asian industries, especially SMEs.

SAARC IPs will not only promote intra-regional investments and industrialization, they are also expected to aid rapid industrialization of the host countries. They are also expected to help achieve a more balanced distribution of employment and production in the region. These parks will also attract national, regional and international investments, not to mention their contribution in transfer of knowledge and technology.

If these parks are located in small and medium sized towns, they can also increase the economic, productive and employment bases of semi-urban communities. Besides, they will promote decentralisation by preventing or checking excessive concentration in, or growth of, single urban areas, especially large metropolitan cities.

To establish new undertakings, the SAARC IPs will offer incentives to entrepreneurs such as long and short term credit at preferential rates, remission of taxes and duties, low rentals and subsidised tariff for utilities. The use of common production facilities and services alone will allow the entrepreneurs to reduce their cost of production significantly.

Such incentives will not only help attract investment but also invite collaboration in the services sector. There is no doubt that the provision of investment in such parks on mutual/regional basis will deepen intra-SAARC economic cooperation. ■

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Brexit fallout

Trade, investment and South Asia

For 40 years, the UK has been so embedded in the EU that it is an enormous challenge to disentangle it.

Peter Holmes

The United Kingdom (UK)'s referendum result on 23 June came as a shock to commentators all over the world, not least in the UK. Such a result was feared by many but financial, and indeed betting, markets suggested a small majority would opt for the UK to remain in the European Union (EU). The explanation, for what most economists consider to be a damaging outcome, seems to be a combination of factors. There was a desire to reclaim sovereignty, particularly with respect to immigration, but the result was influenced by erroneous claims made by the Brexit camp. For one, the UK budget payments to the EU were shamelessly exaggerated. And, the voters simply did not believe the estimates of the economic costs. Brexiters dismissed experts, Trump style. Regions that had suffered from industrial decline were tempted to believe that this was somehow the fault of the EU. The difficulty of putting new trade arrangements in place after exiting the EU was glossed over.

But the UK has not left the EU, yet. Legally, the referendum was advisory only and the exit is a long process. It has to be triggered by the UK formally notifying the EU, under Article 50 of the Lisbon Treaty, that it wishes to leave. After that, there will be two years to negotiate the withdrawal process, extendable by unanimity. Since nobody knows what "Brexit" means, and there is no precedent to follow, it is very hard to imagine that the negotiations can be completed in two years, let alone the implementation of the outcome.

The new prime minister, Mrs. Theresa May, opposed the Brexit campaign herself, but has put three ministers who favoured it in charge of the negotiations. The most likely outcome is either that some form of free trade arrangement will be made with the EU or that there will be a full break away from the regional organization, where trade with the EU will be based on the World Trade Organization (WTO)'s most favoured nation (MFN) terms.

Bumpy road for Brexit

For 40 years, the UK has been so embedded in the EU that it is an enormous challenge to disentangle it. Much of UK's legislation is derived from EU rules. The UK government has given up all expertise in external trade negotiations. Millions of EU citizens are living and working in the UK, including many in the civil service. Universities in the UK depend on students and research funds from the EU. Farmers in the UK get their subsidies via EU programmes. It is just possible that the Brexit decision will never be implemented.

If Brexit does occur, the UK can seek to join the European Economic Area (EEA) arrangement, just as Norway has done. This is a free-trade agreement (FTA) between the EU and Norway (also Iceland and Liechtenstein). It involves tariff free trade in goods originating in the area and abolition of almost all non-tariff barriers (NTBs) in goods and services. It goes way beyond other FTAs in the world, such as the South Asian Free Trade Area (SAFTA) or even the North American Free Trade Agreement (NAFTA). This gives the UK most, but definitely not all, of the access it currently has to the EU single market. It will also allow the UK to sign other FTAs, but because FTA is not a customs union it will have strict rules of origin. It will require the UK to obey all EU single market rules and pay into the budget. Crucially, the "Norwegian" option includes full free movement of workers. This option would minimise the economic damage Brexit would do to the UK economy, but the loss of sovereignty it would generate—i.e. obey EU rules but lose the vote—is the diametrical opposite of what the Brexiters claimed they would achieve.

Hence, a looser form of FTA seems more likely, but the price of retaining regulatory sovereignty and the ability to block migration is likely to be less market access to the EU, including services. In fact, it is very unclear what the Brexit camp had in mind while campaigning. The campaign appears not thought through and the new government is wisely taking its time to figure out what its strategy should be.

Many Brexiters had said that the UK should forget about establishing special relationship with the EU and concentrate on trade with the rest of the world.

The UK could just trade with the EU on simple WTO MFN membership terms. This would require the UK to pay full EU tariffs and be subjected to NTBs and anti-dumping duties. It would, however, be totally free to sign FTAs with anyone in the world. The United States (US), China and India have been given as examples. Post-Brexit, India and China have indicated an interest in talks. But, US President Barack Obama has said the UK would be relegated to the back of the queue for trade talks. However, no agreement could possibly be signed until all exit procedures have been completed.

Detrimental for trade and investment

All economic analyses suggest that trade will be significantly reduced. The long run growth and gross domestic product (GDP) is likely to be a reduction of up to 10 per cent in the worst, but realistic, scenarios. The fact is that, over the years, the UK has negotiated a uniquely favourable place inside the EU, exempt from some of the most onerous provisions such as removal of passport controls and membership of the Euro, whilst having full and certain access to the EU market for goods and services.

One of the most important issues is the fact that, as a full customs union with a comprehensive legal framework, the EU is able to provide more or less absolute certainty about market access. Investors, domestic and foreign, can therefore invest in projects with significant sunk costs and scale economies with a lower risk premium. There is redress available through the European Court of Justice if any partner fails to comply. In contrast, no form of FTA outside the EU itself can offer absolute certainty of market access. There will be customs borders of some sort when the UK leaves the EU.

Even if the UK joins the EEA like Norway, UK firms will have to comply with EU rules of origin. While technical barriers should be removed within the EU, UK firms still may face problems due to the fact that all technical regulations must be harmonised or mutually recognised. They may have to demonstrate that their products do comply with EU regulations, possibly requiring detailed negotiations for mutual recognition of conformity assessment. This risk poses real challenges for UK firms engaged in value chain activity.

In the debates before the referendum, a point made relentlessly by the "remain" side was the huge uncertainty following a Brexit vote. This applies, first, to what the post-EU deal would be and, secondly, how much uncertainty about market access there would be under alternative outcomes. There is a widespread expectation that there will be a short run macro shock—so far largely seen in the fall in the value of the pound. This is likely to have implications for medium term investment too.

Shattered European dream

The referendum came as a special shock to those of us who felt that Europe had found a unique formula to use economic integration as a way to resolve centuries old political conflicts. The origins of the EU lay in World War II and the wars fought before it. The architects of the EU saw the need for a system that locked the western European countries into free trade and cooperation with each other to prevent mutual animosity. This involves pooling of sovereignty in two dimensions. First, each partner agrees to curtail its ability to create tariff and regulatory barriers against its neighbours in return for an equally binding legal commitment by them. The EU legal framework also acted as an internal economic constitution. For small states—that used to be pushed around by big ones—the replacement of power by law as the way of settling disagreements is obviously attractive.

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Small countries know that their technical regulations must be set to allow the import of their major trading partners' goods and make their own goods exportable. Actual sovereignty is not the same as the sovereignty on paper.

Second, the member states agreed to tie their own hands not merely to secure the cooperation of others, but to prevent them doing things on trade and competition that would hurt their own economy. The EU was built on the need to restrain the excesses of nationalism. The basic principle is that the mutual benefits from free trade would motivate the partners to bury their historic differences and work together to build institutions that would ensure long term cooperation. The idea that economic incentives could overcome deep political antagonisms was deeply held in the 1940s. It was reinforced by the support of the US, which made generous Marshall Aid to western Europe conditional on European Cooperation, by German democrats' wish to avoid their country being led astray again by fascism and by the intellectual ideas of the French technocrat Jean Monnet who saw the Common Market as an omelette that could never be unscrambled.

The result of these arrangements in the 1960s was a historically unprecedented era of peace and prosperity in Europe. Trade, which grew faster than it ever had, fuelled growth. Above all, the rule-based system created certainty and confidence, which reduced the risk premium on investment and made it possible for firms to invest in plants to serve the entire European market. The 1992 Single Market plan was designed to pool regulatory sovereignty to further reduce the chances of countries introducing fragmenting technical barriers to trade.

After the cold war, the EU model and the lure of accession, played a huge part in the success of the transition of the central European countries from Soviet satellites to modern democratic market economies. Thus, they did not become marginalised peripheries, but full members of the EU. The capital cities of most central European EU states have caught up with the EU average. This is a historic achievement.

> Regional integration can make a big difference to economic performance. But, it requires a willingness to pool sovereignty.

Unfortunately, one of the most significant economic benefits, migration, has been politically very sensitive. There seems little doubt that the movement of several hundred thousand workers from central Europe to the west has been economically advantageous to all but a small minority. Migrants are typically well-skilled, hardworking and they pay more taxes than they claim in benefits. But, their presence is resented in countries where the taxes they pay have not been used to sustain infrastructure.

Paradoxically the very success of this process led many people to take the benefits for granted and think about the apparent costs.

In the UK, the vote favouring Brexit was very concentrated in declining industrial areas, ones which had lost their industrial backbone in the 1970s and 1980s, but not areas affected by migration or EU import competition.

As a Keynesian economist, I would say that all of Europe has paid heavily for the austerity regime imposed within the Eurozone under German pressure, which the UK did not have to accept as a non-Euro member, but voluntarily adopted it nonetheless. Globalisation has been blamed for what really are the results of disastrous internal macro-policies and unwillingness to offer compensation by winners to losers.

Implications for South Asia

There may well be a move in the orientation of development assistance to Commonwealth countries and old allies in the region. But the new minister at the Department for International Development (DFID) Priti Patel, despite having South Asian roots, is sceptical of development assistance in general. Many in India have welcomed the prospect of closer trade relations with an old friend, but while the UK may declare its willingness to be more open, political reality is sure to kick in. Enthusiasm for FTAs is likely to be tempered by a national anti-dumping regime that will be subject to the need to appease the losers from globalisation, which may of course help Indian investors in the UK. The UK is, in reality, not going to open its doors to much more free movement of persons under the Mode 4 of the WTO's General Agreement on Trade in Services (GATS). The new FTA partners will want to see what deal the UK has with the EU, as no new trade deals can happen till Brexit negotiations are complete.

It is not clear that this experience has lessons for South Asia's own integration. If one can extrapolate in any way, it would be to say this: regional integration really can make a big difference to economic performance, above all by making investors feel certain about market access. But, it requires a willingness to pool sovereignty. The great economist and historian, Charles Kindleberger, suggested once that successful economic cooperation required either a hegemon or a fully accepted rule- based system. It is a hard political challenge persuading countries that it is worth giving up any of their scarce sovereignty. Small countries are zealous to retain theirs and powerful countries feel that theirs should be absolute. The Brexit affair, whose outcome remains far from certain, is a sad lesson for those of us who believe that economic rationality will always prevail over instinctive nationalism. ■

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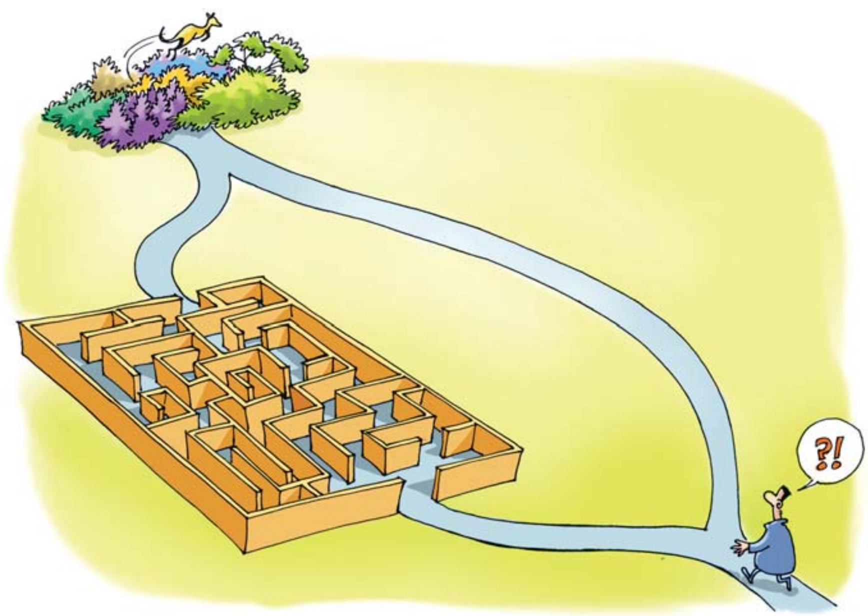
Biopiracy in Queensland

A broken record that needs repair

Given that repeated calls for reform of access and benefit sharing laws have produced minimal success, perhaps it is time for Australia to stop playing a broken record and look for solutions outside of legislation and bureaucracy.

Jocelyn Bosse



Australia is a megadiverse country, so the protection of its biological resources is a significant priority. Following its ratification of the Convention on Biological Diversity (CBD) in 1993, the Commonwealth Government enacted the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBCA) to protect areas of "national environmental significance". In accordance with the federal distribution of legislative powers, State Governments in Australia have also enacted laws for the protection of biodiversity.[1]

Biodiscovery to biopiracy

Genetic or biochemical analysis of naturally-occurring material is frequently used in scientific research to produce commercial products, especially pharmaceuticals. However, the practice—called *biodiscovery*—raises two important concerns.

First, the unrestrained use of native biological resources for scientific or commercial purposes can cause environmental harm and threaten biodiversity. Secondly, living materials and their associated traditional knowledge have been used and, in some cases, patented without the informed consent or appropriate benefit sharing with the indigenous community—termed *biopiracy*. For example, the smokebush plant (genus *Conospermum)* from Western Australia was investigated in the 1980s and patented as a medication for HIV by the United States (US) National Cancer Institute in 1993.[2] Although the healing properties of smokebush were known to local Aboriginal communities for generations, the State Government awarded the Institute an exclusive licence to conduct research into the smokebush, with no financial returns for the traditional custodians from whom the knowledge was obtained.[3]

Acts of biopiracy, similar to the smokebush patents, gave rise to Article 8(j) of the CBD, which requires that parties "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities… and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." The objectives of Article 8(j) were furthered in the 2010 *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.*

Article 8(j) was recognised in Australia under section 3(g) of the EPBCA. Substantive provisions for access and benefit sharing (ABS) with Aboriginal and Torres Strait Islander communities were subsequently included in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth). However, attempts to harmonize legislation in Australia have, in fact, produced a cacophony. The Council of Australian Governments collectively drafted a *Nationally Consistent Approach for Access to and the Utilisation of Australia's Native Genetic and Biochemical Resources* (NCA) in 2002. It sets out guidelines for biodiversity conservation and protection of Indigenous ecological knowledge. Principle 7 of the NCA obliges governments to "recognise the need to ensure that the use of traditional knowledge is undertaken with the cooperation and approval of the holders of that knowledge and on mutually agreed terms." Nevertheless, the legislative response from the State Governments has been deeply fragmented; in most cases, no legislation was produced at all.

Queensland was the first State to enact an ABS law: the *Biodiscovery Act 2004.* It was followed by the comprehensive *Biological Resources Act 2006* in the Northern Territory. Like the Commonwealth laws, and in accordance with the NCA, the Northern Territory's ABS scheme covers the traditional knowledge of Aboriginal and Torres Strait Islander communities, as well as biological resources accessed on State land.[4] Under the Act, the *biodiscovery* entity must obtain prior informed consent from the community. Any benefit sharing agreements must be on mutually-agreed terms.

Western Australia recently enacted the *Biodiversity Conservation Act 2016*. Although the regulation of bioprospecting was debated,[5] ABS rules were ultimately discarded. Section 256(3) of the Act allows scope for future regulations on ABS in the context of a government licencing scheme, but creates no substantive obligations. The other States have not yet implemented biodiscovery laws.[6]

Out of all the ABS legislations in Australia, Queensland's is the most likely to see any significant change soon. The *Biodiscovery Act* is reviewed every five years; the most recent findings were published in the 2009 Report[7] and the next report is due for publication this year. Depending on the findings and government response, the Act may be amended for greater consistency with other laws.

As it currently stands, the Act establishes a permit system, whereby a person can apply to the State Government for a biodiscovery collection authority (BCA) in order to take small amounts of native biological material for biodiscovery research. The BCA application process attracts no fees, but the person must enter into a benefit sharing agreement with the State Government within a year of approval. The agreement limits which commercialization activities can be undertaken, and stipulates the share of benefits—financial or non-financial—to be given to the State.[8]

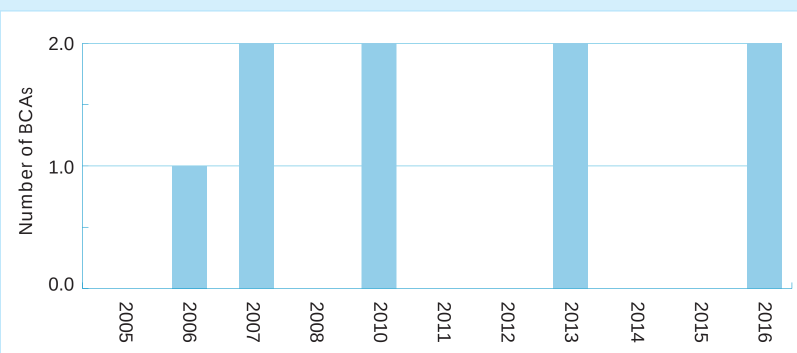
The Queensland Government administers over 26 million hectares of State land covered by the Act. The subtropical State has high biodiversity and strong research institutions—two factors of significant interest for biodiscovery activities, and therefore BCA applications. But, the Biodiscovery Register tells a different story.

The last decade saw the grant of only nine BCAs (Figure). These numbers are surprisingly low. In contrast, at least 45 benefit sharing agreements were registered in the first three years of the Northern Territory legislation.[9] Although it is bizarre that so few BCAs have been issued, two main limitations of the statute may explain it.

'State land' limitation: The coverage of the *Biodiscovery Act* is limited to biological resources obtained from State land, such as parks and reserves. This is narrower than the Northern Territory law, which applies to private land as well and, notably, native title land

Figure

Number of BCAs issued in Queensland (2005-2016)



Source: Biodiscovery Register (as of 31/05/2016) for collection authorities administered by the Queensland Government Department of Environment and Heritage Protection (EHP) under exclusive possession by Aboriginal communities. Though inconsistent with the NCA, Recommendation 3.1 of the 2009 Review suggested that the exclusion of private land be maintained in Queensland. The Review also suggested that Indigenous Land Use Agreements (ILUAs) were the most appropriate means of gaining access to native title land for biodiscovery.

Negotiation of access and benefit sharing: When the Queensland legislation was enacted, the protection of traditional knowledge had been the subject of international discussion for nearly two decades. Nevertheless, the Queensland legislation does not establish any mechanism for access and equitable sharing of benefits with Indigenous communities; the Act solely regulates ABS with the State.

The only mention of traditional knowledge and biopiracy is found in Article 10 of the *Code of Ethical Practice for Biotechnology in Queensland*, which stipulates that "Where in the course of biodiscovery we obtain and use traditional knowledge from Indigenous persons, we will negotiate reasonable benefit sharing arrangements with these persons or communities…" and "We will not commit acts of biopiracy and will not assist a third party to commit such acts." Although Recommendation 3.6 of the 2009 Review suggested that similar provisions be added to the *Compliance Code for Taking Native Biological Material under a Collection Authority*, it did not occur. In contrast, the Northern Territory and Commonwealth laws provide scope for fair and equitable benefit sharing agreements with Indigenous people.

Despite the inconsistencies between jurisdictions, Recommendation 7.1 of the 2009 Review suggested that Queensland should not harmonize with other schemes until after the conclusion of the *Nagoya Protocol*. However, a broader question remains: would that actually benefit traditional knowledge holders in Australia?

US cosmetic company, Mary Kay, was granted a US patent in 2007 for a skin cream made from the extract of the Kakadu plum *(Terminalia ferdinandiana)*, which is part of the traditional knowledge of the Mirarr people in Northern Territory.[11] It appears that the inconsistent Commonwealth laws meant that Mary Kay was able to remove samples of the plum from the country without negotiating with the Mirarr community. Nonetheless, opposition from Indigenous groups probably led to the withdrawal of the Australian patent application in 2011.[12]

The unclear ABS schemes have, to a large extent, been unsuccessful in meeting their objectives: ensuring private returns for Indigenous communities and governments, as well as biodiversity conservation.[13] Thus, ABS legislation might be viewed as more bureaucratic red tape that researchers should seek to avoid—avoidance of which is evidenced by the negligible engagement with the *Biodiscovery Act.*

Broadly speaking, two options seem to be available. The first is full compliance with the *Nagoya Protocol*. Amendments to the Queensland legislation which mirror the laws in the Northern Territory, if coupled

Box

Queensland ABS case study

The traditional knowledge of the Chuulangun Aboriginal community in northern Queensland includes a number of medicinal plant products, particularly from oils and resins of native woody plants. In 2003, the Chuulangun Aboriginal Corporation (CAC) initiated a project with scientists from the University of South Australia (UniSA), with two objectives:

i) To investigate the novel pharmacological actions and chemical compounds of plant species used as traditional medicines; and
ii) To facilitate the preservation and transfer of cultural knowledge about these plants.

UniSA entered into a Collaborative Research Agreement with CAC, which acknowledges the contributions of intellectual property from the community, namely the traditional knowledge about medicinal plant products and their properties. The agreement includes the equal sharing of commercial benefits and ensures that CAC are partners in commercialization decisions.[14] The joint activities are not regulated by any ABS laws; they are solely governed by contract.

The research, led by Dr. Susan Semple from UniSA's Quality Use of Medicines and Pharmacy Research Centre, and David Claudie from CAC, has primarily focused on treatments for inflammatory skin conditions. The plant *Dodonaea polyandra*, known as 'Uncha', has been traditionally used by the Chuulangun community as a treatment for mouth pain, infection of the oral cavity and inflammation.[15]

As well as being recognized as joint authors in several scientific publications about Uncha,[16] David Claudie and George Moreton from CAC were named as joint inventors on a patent application in 2010.[17] While the pharmaceutical development continues, CAC has taken the lead with on-country aspects of the research into collection of plant materials, examination of plant distribution, and analysis of the effects of plant harvesting. As part of the commercialization process, the researchers have sought to adhere to Indigenous ecological practices. The benefit sharing agreement ensures employment opportunities by having members of the Chuulangun community harvest the plants, rather than using Western 'controlled cultivation' methods. This is especially important in the context of Chuulangun spirituality and law, which dictates that only authorized members of the community may harvest Uncha, or it will lose its medicinal effect.

with harmonization across Australia, could have positive implications for Aboriginal communities and would reduce confusion for biodiscovery entities. This, however, would increase the regulatory burden on biodiscovery entities.

The second option is that Australian governments could abandon legislative schemes for ABS in the context of biopiracy and replace them with 'soft' codes and stronger education for Indigenous communities and biodiscovery entities. The removal of bureaucratic ABS laws could allow for individualized arrangements which suit the needs of particular traditional knowledge holders, as well as the nature of the biological research in question. In a similar vein, the 2009 Review did not support additional regulation, but instead recommended improvements to the online information about Indigenous knowledge holders (Recommendation 3.3), an education process about ILUAs and inclusion of a notification system about indigenous occupants under the Compliance Code. As the Queensland law currently stands, ABS agreements with indigenous communities can only occur outside of the legislative framework, commonly in the form of contracts or ILUAs. The extra-regulatory method could reduce transaction costs and yield more benefits for Indigenous communities; a successful example is set out below.

Red tape versus contract

In some respects, successful examples of ABS agreements with Indigenous communities like the UniSA-CAC collaboration (see Box on page 37) illustrate that tailor-made contracts can have more equitable outcomes than 'ticking boxes' under an inadequate legislative scheme. The low engagement with bureaucratic frameworks suggests a reticence to invoke red tape where a personalised contract would suffice. As such, one could argue that education and awareness about ABS would have better outcomes for traditional knowledge holders than the same old song of 'more government regulation'. Nevertheless, it is expected that the upcoming *Biodiscovery Act* review will recommend compliance with the *Nagoya Protocol*, as foreshadowed by the 2009 Review.[18]

> Tailor-made contracts can have more equitable outcomes than 'ticking boxes' under an inadequate legislative scheme.

Like any framework, the *Nagoya Protocol* does not perfectly meet the needs of Indigenous communities, regardless of how consistent the laws are. Although there is little chance of uniform implementation of the *Nagoya Protocol* internationally, it is doubtful that the federal and State Governments will think laterally about the ABS issue. To that extent, the question for Australia is no longer *"Should* Nagoya-compliant ABS legislation be implemented?" but "In what *form?"* ■

The author is student, TC Beirne School of Law, University of Queensland, undertaking dual bachelors of law and plant biology.

Notes

1 Relevant State legislation includes: *Environmental Protection Act 1994 (Qld); Environmental Protection Act 1970* (Vic); *Environment Protection Act 1993* (SA); *Protection of the Environment Operations Act 1997* (NSW); *Environmental Management and Pollution Control Act 1994* (Tas).

2 Kerr, P. 2010. "Bioprospecting in Australia – Sound Biopractice or Biodiversity?" 29(3) *Social Alternatives* 44, 45. Patent US5672607 "Antiviral naphthoquinone compounds, compositions and uses thereof".

3 Biber-Klemm, S., Cottier, T., Cullet, P., and Berglas, D. S. "The Current Law of Plant Genetic Resources and Traditional Knowledge". In *Rights to Plant Genetic Resources and Traditional Knowledge: Basic Issues and Perspectives* editors Susette Biber-Klemm and Thomas Cottier, 98. Centre for Agriculture and Biosciences International. 2006.

4 Collings, N., and Heidi Evans, H. 2009. "Access and benefit sharing: protecting biodiversity and Indigenous knowledge". *Indigenous Law Bulletin* 7(14): 11.

5 Western Australia. 2015. *Parliamentary Debates.* Legislative Assembly, 312-348. February 18.

6 The other States are New South Wales, Victoria, Tasmania and South Australia.

7 DLA Phillips Fox. 2009. *Statutory Review of the Biodiscovery Act 2004 (Qld)* Report No RPB01 / 0475042.

8 *Biodiscovery Act 2004* (Qld) ss 10, 33-34.

9 Holcombe, S., and Janke, T. 2012. "Patenting the Kakadu Plum and the Marjarla Tree". In *Intellectual property and Emerging Technologies* editors Matthew Rimmer and Alison McLennan, 293, 296. Edward Elgar.

10 Bull, J. and Shaw, T. 2014. "Implications of Nagoya Protocol implementation in Australia". *Australasian Biotechnology* 24(3): 59.

11 Holcombe, S., and Janke, T. 2012. Note 9.

12 Australian Patent Application 2007205838 "Compositions comprising kakadu plum extract or acai berry extract" filed 19 January 2007; withdrawn 12 October 2011.

13 Lawson, C. 'Patents and Access and Benefit-sharing Contracts: Conservation or Just More Red Tape?' (2011) 30(2) *Biotechnology Law Report* 197.

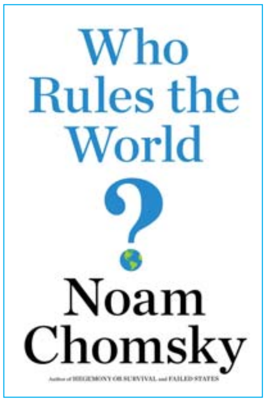
14 IP Australia. 2016. *Chuulangun Aboriginal Corporation and University of South Australia.* https://www.ipaustralia.gov.au/about-us/public-consultations/indigenous-knowledge-consultation/chuulangun-aboriginal-corporation. Accessed: October 1.

15 Simpson, B. S. et al. 2013. "Learning from Both Sides: Experiences and Opportunities in the Investigation of Australian Aboriginal Medicinal Plants". *Journal of Pharmacy and Pharmaceutical Science* 16(2):259, 264.

16 Simpson, B. S. et al. 2012. "Rare, seven-membered cyclic ether labdane diterpenoid from *Dodonaea polyandra*". Phytochemistry 141: 84; Simpson, B. S. et al. 2014. "Polyandric Acid A, a Clerodane Diterpenoid from the Australian Medicinal Plant *Dodonaea polyandra*, Attenuates Pro-inflammatory Cytokine Secretion in Vitro and in Vivo". Journal of Natural Products 77: 85.

17 Australian Patent Application 2010317657 "Anti-inflammatory compounds"; PCT PCT/AU2010/001502; WIPO WO 2011/057332 A1. Inventors: Susan Jean Semple, Bradley Scott Simpson, and Jacobus Petrus Gerber (University of South Australia), Ross Allan McKinnon (Flinders University), David Claudie and George Moreton (Chuulangun Aboriginal Corporation), and Jiping Wang (Monash University).

18 DLA Phillips Fox. 2009. Note 7.



Lonely voice

Title: Who Rules the World
Author: Noam Chomsky
Publisher: Henry Holt and Company, LLC
ISBN: 978-1-250-11431-0

Bhoj Raj Poudel

Noam Chomsky's new book, "Who Rules the World?", is a continuation of his criticism of the American establishment and, in his own words, its 'hegemony' in the post-World War II world order. Chomsky begins the book with a cautionary note on intellectuals. "Before thinking about the responsibility of intellectuals, it is worth clarifying to whom we are referring," he writes. With these words, Chomsky is drawing attention towards those "intellectuals" who remain "silent" about the American establishment's misuse of power. In the rest of the pages and chapters, Chomsky takes up global events happening in the name of countering terrorism, opening trade deals, and globalization.

Chomsky's arguments in the book appear to be just for the sake of criticism, especially when he is framing his arguments against anti-terrorism activities and free trade deals in a similar manner. The book is partly a manifestation of Chomsky's frustration on the way global events are taking shape and partly a series of progressive thoughts that challenges the current rules of the game.

Chomsky does make some convincing arguments in the book with examples and anecdotes that are sufficient to persuade the readers. But, the crucial point is that he fails to present the flip side of the coin—that is, prosperity achieved through trade, investment and co-operation.

Chomsky says that trade agreements such as the "Trans-Pacific Partnership" are being formulated only to ensure rights of investors as opposed to those of the population. And, he does not agree with the "free-trade agreement" reasoning to push the plan through. He claims that the term "free trade" is a misnomer.

He uses the American foreign policy history to demonstrate his point. He picks up President Ronald Reagan's policy to support the apartheid regime in South Africa to say that this was done to increase trade with that country in violation of sanctions imposed by the US Congress. Similarly, he takes up the Clinton administration's decision to continue trading with Haiti despite international sanctions. Chomsky says that the then president of the United States, Bill Clinton, authorised Texaco, an American company, to supply the much-needed oil to the "murderous" military rulers in Haiti. These are just a few examples of how Chomsky lambasts trade deals.

Largely, Chomsky is critical of the American way of dealing with the world. He blames "reckless" American foreign policy for the wars and devastation across the globe. He argues that the relationship between America and any other country is not for building a foundation of democracy, human rights and freedom of speech, but to serve the interests of American "hegemony". However, he does not discuss US support and cooperation that have helped fight poverty and hunger, or spread ideas about the fundamental principles of democracy, human rights and freedom of speech across the globe.

Back in 2003, an Indian writer and activist, Arundhati Roy, wrote an elaborate piece on "The Loneliness of Noam Chomsky" which was published in the Indian daily, *The Hindu*. In that article she had mentioned that "In the 'free' market, free speech has become a commodity like everything else—whether it is justice, human rights, drinking water or clean air. It is available only to those who can afford it, use free speech to manufacture the kind of product and confect the kind of opinion that best suits their purpose. Exactly how they do this has been the subject of much of Noam Chomsky's political writing". Chomsky's new book "Who Rules the World?" is not very different from the way Roy portrayed him back then.

Such oppositional voices might be healthy for a democratic society to thrive, but their contribution in solving problems such as poverty, inequality and climate change, that the world in general is facing, appears vague.

The book—a collection of previously published essays—is divided into almost two-dozen chapters that revolve around issues of anti-terrorism, trade deals, nuclear deals and America's foreign policy. In all those chapters, Chomsky digs into how the American government is trying to contain rising powers such as China and overthrow governments that hinder its exercise of authority. The cases of the Vietnam War, the Afghanistan invasion, and stand-offs against Mexico and Iran prevail throughout the book.

Chomsky's oppositional voice is not new and the book only proves that it is still alive and kicking. Chomsky's earlier work, "Hegemony or Survival: America's Quest for Global Dominance (2004)", mostly echoed the same arguments that this new book carries. ■

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SAARC Arbitration Council


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The adoption of SAARC Arbitration Rules is an encouraging development that could fill the existing void in dispute settlement regarding SAARC.

Apurba Khatiwada

South Asian Association for Regional Cooperation (SAARC) has traditionally relied on informal ways to settle disputes. The SAARC Charter does not have a provision for dispute settlement. Even regional agreements, such as South Asian Free Trade Area (SAFTA) and SAARC Agreement on Trade in Services (SATIS) that govern the intricate regional trade regime in goods and services, only provide non-adversarial and ad-hoc dispute settlement processes. Furthermore, the dispute settlement processes in SAFTA and SATIS offer remedies that are limited to cessation and, strangely, retaliation. Remedies in the form of reparation (both in kind and *in integrum),* satisfaction and compensation cannot be recommended by the SAFTA and SATIS dispute settlement processes.

SAARC Arbitration Council (SARCO) was established in 2010 following the adoption of the SARCO charter during the 13th SAARC Summit in 2005. The subsequent adoption of SAARC Arbitration Rules is an encouraging development that promises to fill the existing void with regard to applicable dispute settlement processes for the implementation and interpretation of SAARC agreements and conventions. However, as no dispute has yet been resolved or submitted to SARCO, or according to the SAARC Arbitration Rules, it is too early to analyse the impact of SARCO on regional integration or on the promotion of better business environment in the region. So far, the SAARC Framework Agreement for Energy Cooperation (Electricity) is the only SAARC convention/agreement that has defined SARCO as the formal forum for the resolution of disputes relating to the interpretation and implementation of the agreement.

Relevance of SARCO

Deepening of regional trade and intra-SAARC investments are bound to increase the importance and relevance of the regional arbitration process. In the area of state-contracts and concessions, where investors are more likely to favour mixed arbitration for the sake of contractual equilibrium, the role of SARCO can be even more significant.[1] In fact, as South Asian judiciaries generally struggle to gain the confidence of investors, arbitration as an alternative form of dispute resolution has traditionally been vital in ensuring a proper investment climate in the region. In the same vein, SAARC members are more likely to choose investor state dispute resolution (ISDR) through SARCO than through an *ad hoc* arbitration for a regional resolution of investment disputes. This, in turn, has the potential of balancing the scepticism countries may have towards ISDR and the confidence of the investors in the dispute settlement process.

Basic features

Jurisdiction: Ratione personae jurisdiction of SARCO is not limited to SAARC members. SARCO can serve as a forum for dispute resolution between parties that agree to submit their dispute to it. Similarly, SARCO also does not exclude jurisdiction over mixed arbitration (arbitration between a person and a state). *Ratione materiae* jurisdiction of SARCO is also very broad as it covers "commercial, investment and other disputes". It incorporates almost every conceivable area of commercial, investment and trade disputes. Further, SARCO has unique responsibilities that go beyond the general functioning of an arbitration institution. It has been tasked with carrying out policy related works such as coordination with national arbitration processes and bodies, promotion of national arbitration processes, assistance with the enforcement of arbitral award and so forth.

Rules: The SAARC Arbitration Rules, modelled along the United Nations Commission on International Trade Law (UNCITRAL) Model law of Arbitration, is SARCO's official rules of procedure. As such, the SAARC Arbitration Rules also relies on party autonomy and conforms to the general principles of arbitration including basic judicial features of arbitral proceedings. Having been modelled on the UNCITRAL model law, the SAARC Arbitration Rules brings a degree of certainty in the procedural aspect of SARCO arbitration. It could thus be useful in gaining the trust of prospective parties to a SARCO arbitration proceeding.

Supervisory jurisdiction of territorial court: The SAARC Arbitration Rules has avoided defining the nature or even the incidence of supervisory jurisdiction of a regular court over SARCO's arbitration proceedings. It is not clear how and in what ways a competent authority or court may interact with a SARCO arbitration process, particularly on the question of maintaining or removing the case from the docket of the court if the dispute was *sub judice* before the parties submitted it to SARCO. Similarly, it is not clear whether it would be legal for a party to request a regular court to issue an interim measure while the dispute is under the SARCO arbitration process. Alternatively, it is not clear what would be the legal consequences of an interim measure issued by a regular court on disputes that are submitted later on to a SARCO arbitration process.

Challenging and annulment of arbitral awards: SARCO and the SAARC Arbitration Rules do not provide conditions for challenging and annulment of an award given by a SARCO arbitral tribunal. Such a state of things can potentially raise questions with regard to the efficacy of the entire SARCO arbitration.[2]

Although the general practice in international commercial and investment arbitration is that the court of the seat of arbitration[3] exercises jurisdiction over an annulment proceeding, the failure to define this rule may result in an overlap of, and possibly conflict with, annulment jurisdictions between SAARC member states. This, in turn, can potentially discourage parties to opt for SARCO arbitration if it threatens to make the outcome of a SARCO arbitration process less certain.

Enforcement: Enforcement of SARCO arbitration awards in a SAARC member state is governed by municipal law of that state. Additionally, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which governs recognition and enforcement of foreign arbitral awards, has been acceded to or ratified by all SAARC member states. It follows, therefore, that the recognition and enforcement of SARCO awards should not invite many controversies. It should be a normal process at the current state of applicable municipal and international law in South Asia.

Furthermore, the SARCO board meeting of September 2015 has initiated the ambitious task of harmonizing law related with the implementation of foreign arbitral awards in SAARC member states. If successful, such harmonization of law could greatly promote the appeal of arbitration in the region. It would also make a more obvious contribution towards regional integration in South Asia region through stronger collaboration.

SARCO has unique responsibilities that go beyond the general functioning of an arbitration institution.

Clarity on jurisdiction

The establishment of SARCO and the adoption of the SAARC Arbitration Rules are positive developments that can certainly contribute to the broad objectives of SAARC. To attract member states, businesses and investors to the SARCO arbitration process, this regional body needs to continue working in the area of dissemination of information related with SARCO and its arbitration rules. Perhaps, continuing to focus on its broader policy objectives of collaboration among SAARC member states on arbitration issues and facilitating the development of arbitration infrastructures across South Asia could also increase SARCO's relevance and thus attract businesses, investors and states towards it.

Be that as it may, a few unclear and missing standards or rules in the SAARC Arbitration Rules could raise concerns against SARCO. Particularly, clarity with regard to supervisory jurisdiction over SARCO proceedings and rules regarding the challenging and annulment of SARCO awards are vital. In the present state, there is a genuine prospect of uncertainty in the finality and implementation of SARCO awards. There is potential conflict and jurisdiction overlap among state institutions and SARCO.[4] ■

The author is a lawyer based in Kathmandu.

Notes

1 Koh, Pearlie M. C. 2000. Enhancing Economic Co-operation: A Regional Arbitration Centre for Asean?. The International and Comparative Law Quarterly Vol 49 No 2: 390-412.

2 SAIPEM S.P.A. v. The People's Republic of Bangladesh. 2009. ICSID Case No.ARB/05/7 June 20 2009.

3 Alternatively, the International Centre for Settlement of Investment Dispute (ICSID) has an internal mechanism to hear challenges against an award and give annulment decisions. See article 52, Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

4 Information on SARCO obtained from their website www.sarco.org.pk.

Validation meeting on export of vegetables and fruits from eastern region of Nepal

SOUTH Asia Watch on Trade, Economics and Environment (SAWTEE) organized a half day validation meeting with an objective of sharing the findings of the research titled "Export of vegetables and fruits from eastern region of Nepal", on 23 May 2016 in Kathmandu.

Presenting the key findings, Mr. Purushottam Ojha, Senior Consultant, SAWTEE, said that the export volume of vegetables and fruits is not significant as compared to their production despite a good market opportunity in India for Nepal's fruits and vegetables, West Bengal in particular. However, the study finds many production and export related barriers which need to be addressed in a collaborative way.

The study finds that Nepal's fruits and vegetables are not competitive as they face a number of internal and external problems such as low scale of production, inadequate extension services and absence of market infrastructure etc.

Obsession with revenues among local government bodies, poor laboratory facilities, insufficient human resource are factors discouraging exports. In spite of all this, the study found prevalence of informal trade of vegetables in the eastern region.

While discussing the promotional measures to increase the production of fruits and vegetables, SAWTEE Executive Chairman Dr. Posh Raj Pandey pointed to their trade-off with the production of cash crops like tea, ginger, large cardamom etc. He suggested that analysis be conducted at the product level, and according to season, to identify specific opportunities in agricultural trade in the region. Considering the ongoing debate on the presence of middlemen in the trade, Dr. Pandey said they contribute in value addition as well.

Mr. Rabi Shankar Sainju, a Ministry of Commerce Joint Secretary, hoped that the findings and recommendations of the study would be useful in formulating plans and preparing the agenda for bilateral negotiation. "As the joint technical committee meeting on trade between Nepal and India is approaching, the issues raised by the study will be taken into consideration during the negotiation," he said.

Similarly, Mr. Pradip Maharjan, Chief Executive Officer of Agro Enterprise Centre, said that the use of technology and implementation of good agriculture practices (GAP) are equally important to tap export opportunities. He urged the government to enter a Mutual Recognition Agreement (MRA) with India regarding test laboratories. He also requested the government to introduce an effective mechanism to ensure that subsidies reach the targeted beneficiaries.

During the discussion, the participants suggested that the government give priority to set up advanced market infrastructures at various locations, develop diversity and improve access to quality seeds and strengthen coordination among the government line agencies. About 30 expert participants—chiefs of various government agencies, former bureaucrats, private sector representatives, academia and researchers—attended the meeting and shared their ideas. ■

SDIP dialogue on sub-regional agricultural value chains

CONSUMER Unity & Trust Society (CUTS) International in collaboration with *Rashtriya Grameen Vikas Nidhi*, Guwahati; SNV, Bhutan and Unnayan Shamannay, Dhaka organised a Sub-Regional Policy Dialogue "Fostering Agricultural Value Chains in Eastern South Asia" on 25 June in Guwahati, India. This event was organised under the Sustainable Development Investment Portfolio (SDIP) supported by the Australian Government's Department of Foreign Affairs and Trade (DFAT).

The workshop brought together government agencies, regulators, private institutions and private players engaged in the agriculture sector to understand and deliberate on how to best harness agriculture value chains and their potential in the sub-region comprising the North Eastern states of India and the neighbouring countries in the Brahmaputra basin.

About 50 participants from various sectors from India, Bangladesh and Bhutan attended the workshop. Additional Chief Secretary, Assam Department of Agriculture Mr. V.B. Pyarelal gave the keynote address emphasising the significance of market led growth strategies as a game changer for agriculture in the region.

Mr. Pyarelal also stressed the need for crop diversification, especially for high value crops, and development of the processing industry to strengthen agricultural value chains. He said that the Assam government is trying to amend regulations for ease of doing business and a single window clearance for entrepreneurs. ■

Economic and Social Survey 2016: Policy implications for Nepal

SOUTH Asia Watch on Trade, Economics and Environment (SAWTEE) and United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) organized a round table discussion on UNESCAP's flagship publication, 'Economic and Social Survey of Asia and The Pacific 2016'. The publication focuses on nurturing productivity for inclusive growth and sustainable development.

Highlighting the slowdown of productivity gains in recent years, Dr. Sudip Ranjan Basu, UNESCAP Economic Affairs Officer, said poverty and inequality, amid a decline in decent employment opportunities, have emerged as key challenges for Asian economies. He also stressed on the need for regional cooperation and integration to foster economic development.

Vice Chairman of National Planning Commission Dr. Yuba Raj Khatiwada, said that Nepal needs to be clear on how to raise productivity of our labour force. For this, he said, we need to find an optimum balance between efficiency and inclusion and also between labour productivity and wages.

SAWTEE Chairman as the Chair of the programme Dr. Posh Raj Pandey suggested prioritising proper implementation of existing regional trade agreements in South Asia, such as the South Asian Free Trade Area (SAFTA) and SAARC Agreement on Trade in Services (SATIS), for the countries to derive benefits from regional growth.

About 30 participants from the government, academia, think-tanks and private sector took part in the round table. ■

SAWTEE partners with SAARC CCI for research

SAWTEE has become a knowledge partner of the SAARC Chamber of Commerce and Industry (SAARC CCI). The latter is the regional body representing the national federations of chambers of commerce and industry of SAARC countries.

A Memorandum of Understanding (MoU) to this effect was signed on 25 June 2016 in Kathmandu to establish a strategic partnership for conducting joint activities.

SAARC CCI has already signed similar MoUs with the network partners of SAWTEE—Sustainable Development Policy Institute (SDPI), Pakistan and Institute of Policy Studies (IPS), Sri Lanka. ■

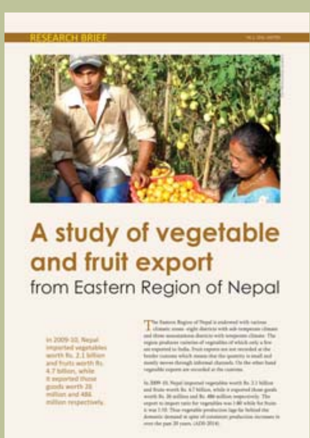
Regional consultation for Integrated Climate Information Management System

INSTITUTE of Policy Studies (IPS) held a regional workshop on "Bridging the Climate Information and Communication Gaps for Effective Adaptation Decisions: An Integrated Climate Information Management System" on 21 and 22 June 2016 in Colombo, Sri Lanka.

The consultation was part of an action research to identify and pilot test a replicable Integrated Climate Information Management System (ICIMS) for vulnerable farming communities in Sri Lanka with potential applications in other developing regions too.

International and local experts in the field shared their inputs during the discussions. ■

Policy Brief: Public Investment in Agriculture : Policy Issues in South Asia
Author: Krishna Prasad Pant
Publisher: SAWTEE



Research Brief: A study of vegetable and fruit export from Eastern Region of Nepal
Author: Purushottam Ojha
Publisher: SAWTEE

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

www.sawtee.org