

From Doha to Hong Kong Issues for South Asia

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INTRODUCTION

Multilateral trade negotiations under Doha Development Agenda (DDA), which resumed after the collapse of the Fifth Ministerial of the World Trade Organisation (WTO) in Cancún in September 2003, culminated in the General Council (GC) meeting in July 2004 that adopted 'July Package' (JP). Subsequent meetings have met with little success as far as reaching agreements on various issues under DDA is concerned. JP has set end July 2005 as the deadline to arrive at 'first approximations', i.e., broad consensus on five issues: agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension. The success of the Sixth WTO Ministerial in Hong Kong to be held from 13-18 December 2005 depends on successful talks among members. Developing countries, including those in South Asia, have a high stake on the successful completion of the Ministerial.

This briefing paper analyses the issues being negotiated under JP and other issues under DDA with a view to identifying South Asian priorities for the Hong Kong Ministerial. It also deals with the concerns that these countries have in relation to further negotiations on such issues and suggests the governments to take a proactive and unified stance during future negotiations.

BACKGROUND

The Fourth Ministerial in Doha in November 2001 made a breakthrough in the WTO talks with the launch of DDA under a new round of multilateral trade negotiations. Four years later, talks on concluding the Doha Round remain tenuous and are the priority of the Hong Kong Ministerial. The Fifth Ministerial in Cancún was supposed to provide a platform for a mid-term review of the progress made in DDA. However, not only a sharp division complicated talks over the agricultural and Singapore issues but multiple groupings with entrenched positions were formed. Though the Cancún Ministerial failed amidst these irreconcilable differences, a Ministerial Statement was issued, making it clear that in those areas where a high level of convergence was reached, members would continue to work for an acceptable overall outcome.¹

JULY PACKAGE

In the Ministerial Statement at Cancún, it was agreed to resume negotiations in Geneva by 15 December 2003. They resumed only in March/April 2004 and culminated in the adoption of the 1 August GC Decision (WT/L/579) – JP – which sets the stage for negotiations among members during the run-up to the Hong Kong Ministerial and beyond. It identified five priority areas for further ne-

gotiations: agriculture, NAMA, services, trade facilitation and development dimension.

Agriculture

After being virtually neglected through decades of rapid trade liberalisation, agricultural trade policy – market access, domestic support and export subsidies – has become the most contentious topic in trade negotiations. In fact, the lack of progress in agricultural reform has led to several missed deadlines in the latest round of negotiations promoted by the WTO, putting DDA at risk.² Agriculture remains a deal maker or deal breaker; unless there is a significant progress on agricultural negotiations, discussions on other issues are not likely to make any headway. Annex A of JP contains modalities for negotiations on agriculture, the contours of which are discussed below.

Market Access

Market access refers to gradual reduction and elimination of tariffs on internationally traded goods. Members agreed to use a tiered formula, classifying tariffs into various bands for subsequent reduction from bound rates, with higher tariffs being cut more than lower ones. The actual modalities – the number of bands, threshold for defining bands and type of tariff reductions within each band – remain subject to negotiations,

BRIEFING PAPER

APU and South Asia Watch on Trade, Economics & Environment (SAWTEE)



PO Box: 19366
254 Lamtangeen Marg
Baluwatar, Kathmandu, Nepal
Tel: 977-1-4415824/444438
Fax: 977-1-4444570
E-mail: sawtee@sawtee.org
Web: www.sawtee.org

BOX 1

SPECIFIC ISSUES ON AGRICULTURAL MARKET ACCESS

In order to address other concerns, decisions were also made on the following three issues:

- Sensitive Products: Developed as well as developing countries can designate an 'appropriate number' of tariff lines to be treated as sensitive without 'undermining the overall objective of the tiered approach'.
- Special Products (SPs): Only developing countries will be able to designate SPs for more flexible treatment, based on criteria of food security, livelihood security and rural development needs.
- Special Safeguard Mechanism (SSM): Developing countries will also have recourse to SSM to take measures against sudden import surges.

which must lead to 'substantial improvement' in market access for all products.³ Annex A also addresses the issues of tariff rate quota, tariff escalation, and tariff simplification and exceptions to them are given in Box 1.

Upon initiatives by 'five interested parties', viz, Australia, Brazil, the European Union (EU), India and the United States (US), key WTO members agreed on the modalities of agricultural tariffs during the Paris 'mini-ministerial' in May 2005. They reached a preliminary compromise on how to convert 'specific' agricultural tariffs based on quantities imported into *ad valorem* equivalents, i.e., tariffs mentioned in percentage and based on the price of the product. Members had been caught up in disagreement over the conversion process for months; settling the matter was essential for agricultural negotiations to proceed. However, the tariffication modality still needs to be agreed to by the WTO's full membership.

Domestic Support

JP included targets for the reduction of domestic support and specified that 'Blue Box levels' will be capped. In the first year of implementing the Agreement on Agriculture (AoA), it is required for members to reduce their overall trade-distorting support by 20 percent, comprising the final bound total aggregate measure of support (AMS), the permitted *de minimis* levels and the permitted 'Blue Box levels'. The reduction will be made under a tiered formula that cuts subsidies progressively: higher levels of trade-distorting domestic support are subject to greater reduction.

The Annex also caps product-specific AMS at average levels, based on a methodology to be agreed, for preventing circumvention of obligations through transfer of subsidies between different support categories. However, even the 20 percent reduction would not change the existing levels of support significantly as the reduction would be made from bound rather than applied levels.⁴

Export Competition

Members reached an agreement to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on export measures with equivalent effect by a credible end date. JP also includes, within its

ambit, export credits and credit guarantees or insurance programmes. Trade-distorting practices of exporting public enterprises and the provision of food aid, not in conformity with operationally effective disciplines to be agreed in order to prevent commercial displacement, are also to be disciplined.

Non-Agricultural Market Access

NAMA negotiations are being conducted under the background of high overall tariffs prevailing in developing countries on industrial products and high tariffs on developing country exports in developed countries. The NAMA framework sets the stage for the pursuit of tariff cuts according to a non-linear formula and the reduction or elimination of non-tariff barriers (NTBs). Its level of specificity, however, is low reflecting many issues where progress in the negotiations has been limited.⁵

Annex B of JP asks WTO members to continue working on a non-linear formula applied on a 'line-by-line basis' on non-agricultural products. However, it emphasises the 'special needs and interests' of developing countries, including through less than full reciprocity in reduction commitments, and provision of leeway to insist on only linear cuts for certain tariff lines and perhaps none for others.⁶

The Annex also specifies that flexibilities for developing countries will include applying 'less than formula cuts' to upto a certain percentage of tariff lines, or keeping "as an exception, tariff lines unbound, or not applying formula cuts for upto [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a member's imports". The bracketed figures are open to negotiations.⁷ The NAMA framework 'contains the initial elements for future work on modalities' leaving the formula for tariff reduction, the issues concerning the treatment of unbound tariffs, the flexibilities for developing country participants, the issue of participation in the sectoral tariff component and the preferences for future negotiations. It has also addressed the issues of NTBs and requested members to make notifications of NTBs by 31 October 2004.⁸

It is stipulated that the non-*ad valorem* duty should be converted into *ad valorem* ones. This is expected to make tariff protection transparent for exporting countries, which face higher level of protection when prices of their exports fall. Since most developing countries still have a substantial portion of their industrial tariffs unbound, they are expected to bind substantial portion of their tariff lines. Annex B also appears to suggest that newly acceded countries may not be required to undertake any major tariff cuts as they have already made extensive market opening commitments.

Similar to the agricultural text (though not mentioned in the agricultural section), duty free and quota free market access to least developed country (LDC) products have been left at the discretion of the developed country participants and 'other' participants, without any agreed deadline. Developed countries maintain around an average of 3.8 percent tariff on manufactured products and developing countries either maintain very high bound tariffs or have not bound a significant portion of their tariff lines at all. For example, some developing countries and LDCs in Africa have bound less than 1 percent of their industrial tariffs. While binding coverage for

industrial products in Cameroon and Tanzania is 0.1 percent, the corresponding figures for Mozambique and Togo are 0.5 percent and 0.9 percent respectively. Among South Asian countries, Bangladesh has bound only 3 percent of its industrial tariffs, Sri Lanka has bound 28.3 percent and the corresponding figure for Pakistan is 37 percent.⁹

Services

When the General Agreement on Trade in Services (GATS) was prepared during the Uruguay Round (UR), members of the General Agreement on Tariffs and Trade (GATT) were allowed to choose the sectors for liberalisation. They also agreed that there would be further liberalisation in this sector in a progressive manner, like in agriculture. In the run-up to the Doha Ministerial, the notion of reciprocal commitments emerged. While developed countries wanted to see hitherto protected sectors in the developing countries liberalised, the latter wanted to see hitherto protected mode of service delivery liberalised.

Accordingly, DDA mandated negotiations on trade in services with a view to promoting the economic growth in all trading partner countries. Following this mandate, the focus of services negotiations has been on bilateral request-offers. J P, too, supports this mandate and aims to achieve progressively higher levels of liberalisation with no *a priori* exclusion of any services or mode of supply. Since the offers submitted, so far, had not been upto the expectations of the members, J P set the deadline to submit revised offers as May 2005, which passed without members making satisfactory offers.

Trade Facilitation

Despite the potential benefits, developing countries are unable to independently undertake trade facilitation measures that could help them overcome supply side bottlenecks and enhance efficiency. The inclusion of this issue for negotiations in DDA, "subject to explicit consensus on the modalities of negotiations", had created a sharp division between the North and the South in the run-up to Cancún Ministerial. Within J P, it is the only Singapore issue in which members reached an agreement to conclude negotiations as a part of Single Undertaking under DDA. Annex D of J P states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, V III and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit."¹⁰

Substantive negotiations have started with several submissions made on Articles V III and X by WTO members. The debate, so far, focuses on the scope of transparency requirements, the scope for special and differential (S&D) treatment, the costs of trade facilitation and the required technical assistance in the case of developing countries.¹¹

Development Dimension

Implementation related problems in relation to the WTO agreements and S&D treatment have been discussed ever since DDA was launched. Box 2 highlights some development dimension issues as set forth by the Doha Declaration. However, there has not been significant progress in most issues. J P calls for the review of all outstanding agreement specific proposals and reporting to the GC for clear recommenda-

tions on decisions. The Committee on Trade and Development was instructed to report to the GC "as appropriate" on all other outstanding works, such as a mechanism to monitor the implementation of S&D obligations and the incorporation of S&D treatment into the architecture of WTO rules.

Among the issues agreed for negotiations by J P, trade facilitation is the only issue that provides a leeway to developing countries not to implement their part of commitments in the absence of technical assistance. On agriculture, S&D provisions are mostly related to higher transition period and lower level of reduction coefficients. The language on S&D provisions is non-binding and depicts best endeavour nature.¹² Moreover, though the LDCs are not required to participate in any reduction commitment, the non-binding language relating to duty free and quota free access¹³ has further weakened their bargaining position in their efforts to obtain such facility from the developed countries. According to Annex C of J P titled *Recommendations of the Special Session of the Council for Trade in Services* "Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to LDCs". This language is meaningless to the developing and least developed countries as there is a vast difference between "shall strive to ensure" (existing text) which is not mandatory and "shall ensure" which would have been mandatory. As far as services are concerned, members, as per the text, "note the interest of developing countries as well as other members on Mode 4, i.e. movement of natural persons". However, noting the interest and actually making a commitment to liberalise the same are two entirely different things.

BOX 2

DEVELOPMENT DIMENSION ISSUES IN THE DOHA DECLARATION

- Mainstreaming trade into the national development and poverty reduction strategies;
- Implementation of WTO commitments;
- Coordinated delivery of technical assistance;
- Long term funding for WTO technical assistance;
- Market access and export diversification; and
- Endorsement of Integrated Framework for Trade Related Technical Assistance as a viable model for LDCs.

Note: Adapted from the Doha Declaration (between paragraphs 38 and 43)

Other Issues

The exclusion of some other issues by J P does not negate their importance. Therefore, these issues are briefly dealt with in the following paragraphs.

TRIPS Agreement

The issue as to whether countries with Trade Related Aspects of Intellectual Property Rights (TRIPS) compliant patent

regime can export generic drugs manufactured by using compulsory license to countries without sufficient manufacturing capacity still begs clarifications. Also, members are divided on whether to include a mandatory requirement to disclose the source of origin of genetic resources and associated traditional knowledge while applying for patent. Should the members decide to include such a requirement, what should be the modalities for prior informed consent and benefit sharing is also being discussed in the TRIPS Council.

Another vital issue is the possibility of initiation of trade dispute even if there has been no violation of the TRIPS Agreement. While the Dispute Settlement Understanding (DSU) allows initiation of such complaints in the case of other 'covered' agreements, Article 64.3 of TRIPS has provided initial exception to this rule. This exception was extended for two years by DDA. Due to the failure to reach consensus on it during Cancún, its future remained uncertain. JP then laid all speculations to rest by explicitly extending the moratorium until the Sixth Ministerial.

Trade and Environment

Though the *demandeurs* would have liked to initiate negotiations on trade and environment issues, trade ministers agreed to conduct negotiations on only three areas: a) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); b) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and c) the reduction or, as appropriate, elimination of tariff barriers and NTBs on environmental goods and services.¹⁴

Ministers also instructed the Committee on Trade and Environment in pursuing their work to give particular attention to: a) the effect of environmental measures on market access issues; b) the relationship with the relevant provisions on the TRIPS Agreement; and c) labeling requirements for environmental purposes.¹⁵

Since a majority of WTO members were not keen on pursuing negotiations on these issues, it is not likely to reach too far. Only the negotiations on environmental goods have seen some movement with few countries proposing lists of environmental goods although many developing countries have yet to put forward their positions.¹⁶ JP also made a passing remark on environmental issues by reaffirming members' commitment to continue negotiations in line with the Doha mandate.¹⁷

Trade, Debt and Finance

Developing countries are concerned about the access to trade finance for enhancing their trade performance. The *demandeurs* for examining this relationship between trade, debt and finance are countries seeking ways to reduce their external debt burden and those that have experienced financial crises.¹⁸

Ministers agreed in Doha to examine this relationship and of any possible recommendations on steps to be taken within the WTO mandate in order to contribute to a durable solution regarding external indebtedness of developing countries. The main objective was to strengthen the coherence of international trade and financial policies with a view to safeguarding the multilateral trading system from financial

and monetary instability. It was also agreed that the GC should report to the Cancún Ministerial on progress in the examination. However, the GC could not prepare any recommendation. Neither has JP mentioned anything other than urging the GC and other relevant bodies to "report in line with their Doha mandate to the Sixth Ministerial Conference".

Trade and Technology Transfer

Since developing countries felt that technology transfer provisions contained in various WTO agreements have not materialised, they demanded negotiations on this issue. The Doha Declaration stipulated: "We agree to an examination, in a Working Group under the auspices of the GC, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The GC shall report to the Fifth Session of the Ministerial Conference on progress in the examination".

Besides, the Declaration on Implementation Related Issues and Concerns contained a language to reinforce the mandatory nature of Article 66.2 of TRIPS (dealing with technology transfer) and urged the developed countries to submit the progress made. The Working Group on Trade and Technology Transfer (WGT TT) will now have to present its recommendations during the Hong Kong Ministerial.¹⁹

Dispute Settlement

Problems were encountered in relation to time taken to settle the dispute and implementation of remedies proposed by the Dispute Settlement Body. Though it was decided during the UR that the review of DSU would be conducted from 1999, this could not take place. Therefore, DDA agreed to negotiations on improvements and clarifications of the DSU. It was also decided that the DSU review and negotiations on this issue would not form a part of single undertaking. However, two deadlines post Doha Ministerial have been already missed. Although no new deadline for the settlement of this issue exists, there are a number of proposals.

Technical Assistance and Capacity Building

A majority of developing countries, in particular LDCs, encounter problems in implementing WTO commitments. Therefore, these countries demanded that the issue of technical assistance and capacity building be discussed under DDA. The Director General was supposed to report to the Cancún Ministerial regarding the implementation and adequacy of technical assistance and capacity building commitments. The December 2002 deadline for the submission of the interim report to the GC was missed. Technical assistance is now limited to organising regional trade policy courses for training government officials under what is known as Technical Assistance and Training Plan. However, developing countries require resources not only to implement WTO obligations but also enhance supply side capacities.²⁰

TOWARDS A COMMON POSITION

All the six WTO members of the region – Bangladesh, India, the Maldives, Nepal, Pakistan and Sri Lanka – realise that DDA offers tremendous prospects for them to achieve their

overarching objective of sustainable development and poverty alleviation. All of them thus have a high stake on the successful completion of DDA. Therefore, it is necessary for them to forge an alliance for the achievement of their common goals.

However, impediments are hindering the prospects of cooperation among South Asian countries to form a common position prior to the Hong Kong Ministerial. First, while larger economies like India and Pakistan are in a position to make reciprocal commitments, LDCs like Bangladesh, the Maldives and Nepal hope to benefit from S&D provisions. Developing countries also feel that the LDCs would be gaining incremental market access at their cost. Second, there are sector specific concerns such as in the case of AoA.

Despite these problems, South Asian WTO members can and should identify the areas of common interest, articulate a common approach and strategy to be pursued in negotiations, and in the process, resolve conflicting interest vis-a-vis regional cooperation.²¹ What is the likelihood of common positions on the issues being discussed as part of JP and other issues under DDA?

Since a majority of South Asian populations depend on agriculture, their interest lies in protecting the agricultural sector from the import of subsidised products of developed countries. While India would gain tremendously from the removal of agricultural subsidies in industrialised nations, Bangladesh, the Maldives and Nepal are likely to lose because of increased food import bill. Tariff and subsidy reduction in India would result in the entire South Asia region making gains. It might thus be in the regional interest to have a common position on the elimination of subsidies in developed countries but maintaining the most favoured nation tariff protection. They could then liberalise tariffs on agricultural products among themselves under South Asian Free Trade Area negotiations.

Similarly, South Asian countries need to develop common positions on reducing tariffs and designating sensitive products, SPs and preparing the modalities for SSM through consultations when submitting proposal in alliance with other groups. A meeting of South Asian Association for Regional Cooperation (SAARC) trade and commerce ministers in August 2001 in New Delhi had also emphasised closer collaboration and consultation amongst the SAARC policymakers and ambassadors to the WTO Secretariat. They were also asked to keep each other abreast of country positions, and interact and discuss pertinent issues.²²

On NAMA, India and Pakistan – both of which maintain high industrial tariffs – will have to undertake higher tariff cuts due to non-linear formula for tariff reduction proposed under the Swiss formula. NAMA negotiations may have some impact on Bangladesh and the Maldives despite their LDC status because they will be asked to bind more than 90 percent of their industrial tariffs. The negotiations may not be relevant for Nepal as it is an LDC and has also bound 99.3 percent of its industrial tariffs at the time of WTO accession. Despite the differences in country positions, South Asian countries should collectively demand for actualisation of “less than full reciprocity principle”.

A liberal services regime along with sufficient infrastructure needs to be complemented by facilitated and favourable ac-

cess to market, technology, information network and distribution channels and market information.²³ South Asian countries need to raise the issue under JP in the negotiation on rules. Given the role of remittances, tremendous gains could accrue to all these countries from the liberalisation of Mode 4 of GATS. Similarly, they should also press for the liberalisation of outsourcing services, covered under Mode 1 (cross-border supply of services using information and communication technology) of GATS.

On trade facilitation negotiations, Nepal may be the only South Asian WTO member with a different approach. Given its landlocked status, the negotiation on transit freedom is crucial to secure transit rights.²⁴ All South Asian countries should be careful to ensure that they need sufficient and targeted technical assistance from their development partners to implement the measures to be agreed. At the domestic level, it is worthwhile for them to conduct studies to map out their technical assistance requirements.

On negotiations relating to implementation related issues and S&D treatment, South Asian countries should have a common position to ensure that these issues are expeditiously settled otherwise they should join hands with other countries to block negotiations on other issues. After all, DDA is a single undertaking and nothing can be considered as agreed unless there is an agreement on everything, including development related issues.

South Asian countries should make a sincere effort for common positions on other issues as well. On TRIPS, they should first aim at clarifying the spirit of the Doha Declaration so that countries with limited manufacturing capacity on pharmaceutical products are free to import generic medicines from other countries in order to address their public health concerns. Second, they should develop a position that prevents piracy of their genetic resources and associated traditional knowledge by emphasising on the disclosure, prior informed consent and benefit sharing as pre-conditions for patenting of invention based on genetic resources and/or traditional knowledge. Third, they should insist on extending the moratorium on non-violation complaints under the TRIPS Agreement.

On trade and environment, priority should be given to ensure that environmental standards are not legitimised within the WTO framework as this could be used for protectionist purpose by developed countries. On trade, development and finance, South Asian countries may not have major interest because of their relatively sound macroeconomic fundamentals. Trade and technology transfer is a major issue for South Asian countries as they are net importers of technologies. Therefore, they should make informed intervention at the WGT T T such that their concerns are reflected in the Working Group's submission to the Hong Kong Ministerial.

DSU review might not be a current priority for South Asian countries because of the limited number of disputes these countries are involved in. Technical assistance and capacity building are major issues and they should collectively bargain for binding commitment to particularly help the LDCs in the region. In this regard, the twin priorities are investment in upgrading infrastructure and customs administration.

CONCLUSION

The success of the Hong Kong Ministerial is vital to complete current multilateral trade negotiations under DDA, in which developing countries have a high stake. Despite the failure of the Cancún Ministerial, the agreement reached among members on J P has raised hope. The successful completion of DDA is bound to be a tenuous process. South Asian countries have divergent interests on some issues but that does not preclude the possibility of arriving at common positions on others. Given the limited negotiating resources, there is a need to prioritise the issues on the basis of their importance so as to create better impact on making trade work for people, especially the poor of South Asia. It is also necessary for all the countries to be proactively engaged in the WTO discussions so as to ensure that issues that have not received much prominence in J P, but can affect them, be also addressed.

Endnotes

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- 5 International Monetary Fund and World Bank. 2005. *Aid for Trade: Competitiveness and Adjustment*. Joint Note by the Staffs of IMF and WB. 12 April. Washington, DC.
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- 9 World Trade Organisation. 2005. *World Trade Report 2005*. Geneva: WTO.
- 10 World Trade Organisation. 2004. *Doha Work Programme Decision Adopted by the General Council on 1 August*. WT/L/579, Geneva: WTO.
- 11 See International Monetary Fund and World Bank. 2005. Above note 5.
- 12 For example, the S&D treatment text on Export Competition mentions: "S&D treatment will be granted to developing countries, and disciplines on export support will be developed with consideration of the impacts on least-developed and net food-importing developing countries."
- 13 The actual language is as follows: "Developed Members, and developing country Members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries." See paragraph 4.5 of Annex A of July Package.
- 14 World Trade Organisation. 2001. *Doha Ministerial Declaration*, WT/MIN(01), DEC/1, 20 November 2001, Geneva: WTO.
- 15 Ibid.
- 16 International Centre for Trade and Sustainable Development and International Institute for Sustainable Development. 2004c. *Doha Round Briefing: Environment*, Vol. 3, No. 9, Geneva: ICTSD and Winnipeg: IISD.
- 17 See World Trade Organisation. 2004. Above note 3.
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- 23 See Pandey. 2004. Above note 8.
- 24 See Pandey. 2004. Above note 8.

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian non-governmental organisations (NGOs), South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 11 member institutions from five South Asian countries, namely Bangladesh, India, Nepal, Pakistan and Sri Lanka. Registered in Kathmandu in 1999, the overall objective of SAWTEE is to build the capacity of concerned stakeholders in South Asia in the context of liberalisation and globalisation.

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