

A dialogue on trade and development in South Asia

Vol. 1, No. 4, 2005

● **TRADE** ●

# insight

# WHAT WILL HONG KONG ACHIEVE

COMMON LDC AGENDA | DEVELOPMENT DIMENSION | AGRICULTURE NEGOTIATIONS

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## Hong Kong: Expectations and Realities

**THE** 148 Members of the World Trade Organisation (WTO) are meeting in Hong Kong during 13-18 December 2005, in a bid to bridge the gap between them to complete Doha Round negotiations by the end of 2006. However, the Draft Ministerial Text issued on 26 November indicates that the Hong Kong Ministerial will fall far short of expectations.

Divergent positions exist among Members on the five issues being negotiated under the July Package (JP). In particular, there are sharp differences between the developing countries led by G-20 and G-33, and the developed countries, mainly the European Union (EU) and the United States (US). The bone of contention is the reluctance of the developed countries to open their agricultural markets for the developing countries. The haggling on the specifics of the formula for reduction in domestic support and market access is an attempt of the developed countries to continue to protect their markets and distort agricultural trade. The disagreement on the coverage of products that will be allowed to be considered "sensitive products" and exempted from tariff reduction commitments is also a reflection of their protectionist intent.

While the interest of the developed countries in agriculture is to protect their markets, their main interest in non-agricultural market access (NAMA) is to open the developing country markets for their industrial products. The very fact that the Draft Ministerial Text talks about tariff reduction under Swiss formula in the case of industrial products and a linear formula in the case of agricultural products exposes the "intention" of the developed countries. The debate on "less than full reciprocity for the developing countries" also reflects this. The Draft Text itself indicates that Members are far away from achieving full modalities on NAMA.

Services is another area where progress has been tardy. It is unlikely that the Hong Kong Ministerial will be able to finalise the date for submission of final draft schedules and an end date for negotiations. Negotiations on trade facilitation (TF) seem to be the least controversial of the five issues being negotiated. The assurance of technical assistance to the least developed countries (LDCs) for implementing TF measures makes it the least resistant issue for the LDCs too.

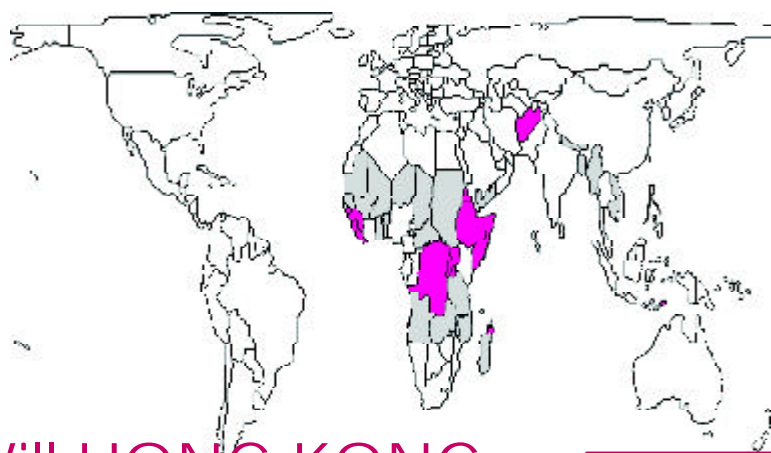
Special and differential treatment (S&DT) provisions are yet to move beyond rhetoric. The Draft Text acknowledges that substantial work still remains to be done to make the S&DT provisions "precise, effective and operational". The Text reveals that WTO Members are yet to look into different proposals, including five from the LDCs that seek to strengthen Agreement specific S&DT provisions. This is ironic since the Doha Round of negotiations is called the "Doha Development Round".

Though it is laudable that Members are considering binding duty-free and quota-free market access for LDC exports, the lack of commitment for strengthening their supply-side constraints and partial coverage of products are likely to dampen the benefits of preferential market access. The failure of the Integrated Framework (IF) to address supply-side constraints has been identified and the Text recommends an enhanced IF. Rhetoric apart, it is difficult to see how the new IF is going to be more effective than the old one.

These developments in the negotiations are worrying for the developing countries as the Hong Kong Ministerial is unlikely to help the Doha Round to become truly "developmental". If the Ministerial fails, Members will have a difficult task ahead to complete the Doha Round by December 2006. ■

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## Will HONG KONG address LDC concerns?

**LDC FOCUS 8**

In order to negotiate as a bloc in the Hong Kong Ministerial, the LDCs have adopted a "common LDC agenda" but it remains to be seen whether or not their concerns would be addressed.



## What will HONG KONG achieve?

Will the Hong Kong Ministerial succeed in moving the Doha Round forward?

**COVER FEATURE 13**



## Will the Hong Kong Ministerial truly address the "development dimension"?

As matters stand today, the "road to Hong Kong" looks as bumpy as the "road to Cancún" as far as development dimension is concerned.

**DEVELOPMENT DIMENSION 30**

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

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Many countries have been able to use trade as a means for rapid and balanced economic growth and poverty reduction. Therefore, people must be well-informed about issues relating to linkage between trade, economic growth and poverty reduction. In the absence of good quality publications that deal with such linkage in South Asia, the initiative taken by SAWTEE to publish a regular magazine *Trade Insight* is praiseworthy.

*Puspa Sharma, Programme Officer,  
Forum for Protection of Public Interest  
(Pro Public), Kathmandu*

I enjoyed reading the third issue, especially the piece on regional trade arrangements. The South Asian countries are opening up their economies for accelerating economic growth through enhanced regional trade and investment. Attempts have also been made to encourage intra-regional trade through South Asian Free Trade Area (SAFTA). Despite greater attention on regional trade expansion, there has been little progress: intra-regional trade is only 5 percent of total trade. Moving the process of regional economic integration forward requires reduction in trade barriers, harmonisation of customs procedures and tariff structures, improving transparency of trade and investment policies, collectivism, and effective implementation of SAFTA.

*Dr Musleh-ud Din, Chief of Research,  
Pakistan Institute of Development  
Economics, Islamabad*

Congratulations! *Trade Insight* is a quality publication. When regional trade arrangements (RTAs) continue to proliferate, the cover feature on RTAs was timely. Today, RTAs have emerged as vital avenues of trade liberalisation. However, you have to improve the distribution and marketing system of the magazine. An indicative price, proper distribution along with increased quality and coverage will not only help sustain it but also make it accessible.

*Shiv Raj Bhatt, Programme Officer,  
Nepal Window II Trade Related Capacity  
Building Project, UNDP, Kathmandu*

*Trade Insight* is one of the more promising trade publications to have recently passed my way. The topics are timely and relevant, the writing is cohesive and fluid, and the layout – while needing some improvement – is consistent with what one would expect from a good regional publication. For future issues, I suggest to include more brief news and op-eds, using relevant graphs and tables. I think these changes will make the advocacy of *Trade Insight* stronger in the future.

*Mac Glovinsky, Trade & Investment  
Research Assistant, UNDP Regional Centre,  
Colombo*

In the third issue, most articles proved to be interesting food for thought – in particular, the articles on the regional trade arrangements, South-South Cooperation and North-South bilateral trade arrangements. It is also insightful to learn your view on a two-track

approach of regionalism and multilateralism. I found the article on Millennium Development Goal 8 also useful.

*Maaïke de Loor, Programme Officer,  
South Asia, Novib/Oxfam Netherlands,  
The Hague*

I read the third issue and found it very interesting. In particular, I liked the Trade Disputes section, which carried a lucid account of the textiles dispute between China, the European Union and the United States. It provided useful facts and figures. This section should be made a permanent feature. I suggest you to look at some legal dimensions of the dispute/case currently existing in the World Trade Organisation.

*Prabhash Ranjan, Research Officer,  
Centre for Trade and Development  
(Centad), An Oxfam GB Initiative,  
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Geneva, 25 November 2005

Dear Mr. Dahal,

Thank you very much for your letter dated 4 November congratulating me for my new appointment here at the WTO, and for sending copies of your *Trade Insight* publications with which I am very familiar and I would like to take this opportunity to congratulate you for such a good quarterly.

I would be very pleased to meet you at the Ministerial Conference. Please do not hesitate to contact me to arrange a meeting.

Looking forward to meeting you in Hong Kong.

Yours sincerely,

  
 Alejandro Jara



## Sixth WTO Ministerial in **HONG KONG**

**DELEGATES** from 148 Members of the World Trade Organisation (WTO) are convening in Hong Kong during 13–18 December 2005 for the Sixth Ministerial Conference. However, they are not expected to make a breakthrough on most agreements due to continued differences over modalities of the issues being negotiated.

WTO Director General Pascal Lamy summed up the existing scenario in the Draft Ministerial Text on 26 November. The Text is based on the Reports by the Chairs of the respec-

tive negotiating groups to the Trade Negotiations Committee (TNC). Earlier, he told heads of delegations on 10 November that informal meetings of a number of ministers in recent weeks had not been able to bridge differences, thus requiring Members to “recalibrate” their expectations from the Hong Kong Ministerial Conference. He stressed the need to maintain the ambition of the Doha Round, and for Hong Kong to mark a step forward in successfully

completing the talks by December 2006.

The Draft Reports by the Chairs of the Committees on Agriculture, Non-Agricultural Market Access, Services, Trade Facilitation, Development Dimension and Rules were submitted to the TNC on 21–22 November.

These Reports take a stock on the progress made hitherto and suggest that further progress is entirely dependent upon Members, some of who have suggested a meeting early in 2006 to move the Doha Round forward (WTO, 24.11.2005; BWTND, 25.11.2005; WTO, 29.11.2005). ■



WTO  
OMC

**HONG KONG**

**05**

## US and CHINA reach **TEXTILES** pact

**UNITED** States (US) Trade Representative Rob Portman and Chinese Minister of Commerce Bo Xilai signed a pact in Washington on 8 November that will place quotas on Chinese textiles and clothing (T&C) exports to the US until the end of 2008.

The agreement, which will enter into force on 1 January 2006, was the result of five months and seven rounds of negotiations during 2005. The US already has put in place import limits on 19 types of Chinese T&C products under the “textile-specific safeguard” clause that is part of China’s terms of accession to the World Trade Organisation (WTO). The clause allows countries to restrain the annual growth of T&C imports from China to 7.5 percent if they are found to be causing market disruption. The new agreement covers 34 product categories, including the 19 currently subject to safeguard quotas. Furthermore, the US successfully retained the right to use the safeguard mechanism for T&C categories not covered by the agreement, so long as it “exercises re-



straint” in doing so.

The deal is expected to address concerns of retailers, consumers, and producers in both countries by bringing predictability to the market, and thus avoiding the disruption that can be caused by unilateral safeguard quotas. The agreement broadly limits growth in Chinese clothing imports to 10 percent in 2006, 12.5 percent in 2007 and 15 percent in 2008, though the growth limits vary for different types of clothing. For textile products, the rates are 12.5 percent in 2006 and 2007 and 16 percent in 2008. The US had originally asked for the limits to be 7.5 percent for the duration of the agreement. Notably, for the 19 products currently under safeguard pro-

tection, the extent of import growth now allowed in 2006 is actually lower than the 7.5 percent increase that would have been permissible had safeguards been renewed, while for 2007 the level is about the same and for 2008 slightly higher.

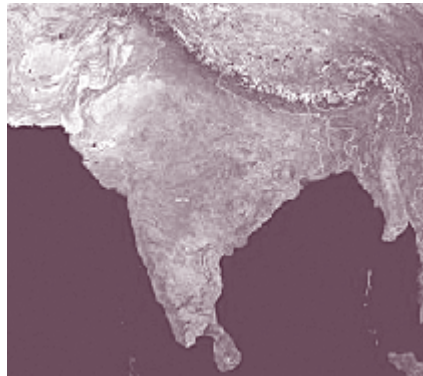
The accord provides for avoiding overshoots – a source of great confusion during the European Union’s imposition of limits on some Chinese textile exports – by giving US retailers two months to prepare for the new quotas. US manufacturers, US retailers and Chinese producers have hailed the agreement. However, some sections of the US industry are apprehensive that the agreement does not solve the problem but only postpones it. They have urged the US and other textile exporters to “come together” on the issue in the ongoing Doha Round trade talks at the WTO. Trade in T&C came under WTO disciplines on non-agricultural market access since 1 January 2005, when textiles quotas expired (BWTND, 9.11.2005). ■

## South Asian economies MORE OPEN but SLOW GROWTH

**A** World Bank report highlights that South Asian economies are becoming more open and business-friendly in a bid to attract foreign companies but most countries in the region still need to cut a lot of red tape.

*Doing Business in 2006* was released on 13 September and ranks 155 economies worldwide — a first by the Bank — based on the openness of their business environment. The report tracks a set of regulations on starting and operating a business, rules for trading in goods and services and the time and cost of meeting various government requirements. However, it does not track macroeconomic policy, quality of infrastructure, currency volatility, investor perceptions or crime rates. The rankings of the South Asian economies (in ascending order) are: The Maldives (31), Nepal (55), Pakistan (60), Bangladesh (65), Sri Lanka (75), Bhutan (104), and India (116).

In another report, the World Bank has forecast low growth for South



Asia for 2006. In its annual *Global Economic Prospects* report for 2006, the Bank estimates gross domestic product (GDP) growth in South Asia at 6.9 percent in 2005, up from 6.8 percent in 2004. For 2006, regional GDP is expected to slow to 6.4 percent. The slowdown is due to the increased political instability in Bangladesh and Nepal; flooding in Bangladesh; the after-effects of the tsunami in the Maldives and Sri Lanka and the October earthquake in Pakistan.

This year's *Global Economic Pros-*

*pects* under the theme "The Economic Implications of Remittances and Migration" also forecasts that economic growth in developing countries will slowdown to 5.9 percent in 2005, and to 5.7 percent in 2006, down from 6.8 percent in 2004. Developing economies will continue to grow at historically very high rates, and more than twice as fast as high-income economies.

At the global level, high oil prices, capacity constraints and gradually rising interest rates are the key factors that have been dampening the global expansion. In South Asia, where government budgets have absorbed much of the shock of higher oil prices, the financial burden is expected to be passed to consumers in the form of higher prices and taxes.

The report also forecasts South Asia to receive US\$ 32 billion in remittances in 2005. The report states that international migration can generate substantial welfare gains for migrants and their families, as well as their origin and destination countries, if policies to better manage the flow of migrants and facilitate the transfer of remittances are pursued (*THT*, 17.11.2005; *AP*, 14.9.05). ■

## BIMSTEC narrows down differences

**TRADE** experts from seven South and South East Asian countries belonging to Bay of Bengal Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) have narrowed down differences on rules of origin and decided to lower the negative list to 20 percent of total tradable items from earlier agreed 25 percent.

In the eighth meeting of the Trade Negotiations Committee (TNC), which concluded in Dhaka in the second week of October, Members also agreed on setting up a permanent high-level body to oversee and review the enforcement of the accord once it is finalised. The specific mechanisms as to who will be represented in the body and how will it function are still to be decided. Differences exist on providing derogation on general rule of value addition and special deroga-

tion to specified list of products for the least developed country Members, viz., Bangladesh, Bhutan, the Maldives and Nepal.

The group has finally agreed to exchange the list of products, which they will subject to fast track of tariff liberalisation. Although such exchange was scheduled before the eighth round, it has not still happened due to additional time sought by few of the Members.

The TNC also decided to hold a separate sub-group meeting for trade facilitation and customs cooperation in future negotiations. As for the negative list, in which products will be exempted from the tariff liberalisation programme, the TNC decided not to allow it to exceed 20 percent of total tradable items. The TNC – the technical body of BIMSTEC – has been as-

signed to finalise the framework agreement for trade in goods by the end of 2005, so that it could come into effect from July 2006.

Besides envisaging a free trade area (FTA) on trade in goods, Members have agreed to enforce the FTA agreement on trade in services and investment from July 2007. The FTA on trade in goods would be implemented under the "fast track" and "normal track" of trade liberalisation. Under the fast track, Members would slash the tariffs directly in a range of 0 percent to 5 percent as agreed upon, while in the "normal track", they will follow a gradual tariff liberalisation programme. BIMSTEC Members include Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand (*TKP*, 18.10.05). ■

## SAFTA issues resolved

**THE** twelfth round of meetings of the Committee of Experts (CoE) on the South Asia Free Trade Area (SAFTA) has resolved all outstanding issues, paving the way for implementation of the pact from 1 January 2006 for South Asian Association for Regional Cooperation (SAARC) Member States. The CoE, which met in Kathmandu during 29 November - 1 December 2005, was able to resolve the three issues – sensitive list, rules of origin and revenue compensation mechanism.

SAARC nations have agreed to an average of 13 percent to 20 percent of total trading products for the developing Member States under the sensitive list. On the rules of origin, they agreed for “regional cumulation” provisions under general rules of origin, while the developing Member States will provide derogation of 10 percent to the least developed country (LDC) Member States for products identified under the product specific rule. Under the regional cumulation provision, Member States decided that the goods must have 20 percent local or 50 percent regional content to be considered as produced in the region. In revenue compensation mechanism for

the LDCs, they agreed to retain this flexibility only for the first four years of SAFTA enforcement. It is reported that the formula to calculate revenue loss and ways of compensation have been agreed upon. The issue of technical assistance to the LDCs was resolved during the eleventh round of CoE in Kathmandu in October 2005. The CoE will forward the finalised draft to the Ministerial Council through SAARC Secretariat for final endorsement.

Adopted in January 2004 at the Twelfth SAARC Summit in Islamabad, SAFTA seeks to cut tariffs only on goods and phase-out most tariff barriers by 2016. The agreement provides for India, Pakistan and Sri Lanka to slash customs duties to 0 percent to 5 percent by the beginning of 2009 to exports from Bangladesh, Bhutan, the Maldives, and Nepal, the organisation’s LDC Members.

The original seven Member States are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. During the Thirteenth Summit held in November in Dhaka, Afghanistan’s accession was also approved (*THT*, 14.11.2005 and 02.12.2005; *TKP*, 02.12.05). ■

## WTO membership: Saudi Arabia and Vietnam

**THE** World Trade Organisation’s (WTO) General Council concluded, on 11 November 2005, negotiations with Saudi Arabia on the terms of its membership. Saudi Arabia will be formally admitted as the the WTO’s 149th Member in the Hong Kong Ministerial in December 2005.

However, Vietnam is unlikely to join the WTO at the forthcoming Ministerial, according to the country’s ambassador to the WTO, Ngo Quang Xuan. Vietnam has met most of the WTO’s accession requirements and has concluded negotiations with 21 WTO members — including the European Union, Japan and Canada — but it still has to finish talks with other Members, including the United States.

Vietnam, which had set a target of joining WTO by the end of this year, now hopes to join the world trade body before the conclusion of the Doha Round negotiations, expected to be completed by 2006 (*BWTND*, 09.11.2005; *AP*, 23.10.2005). ■

## APEC summit calls on EU to make concessions

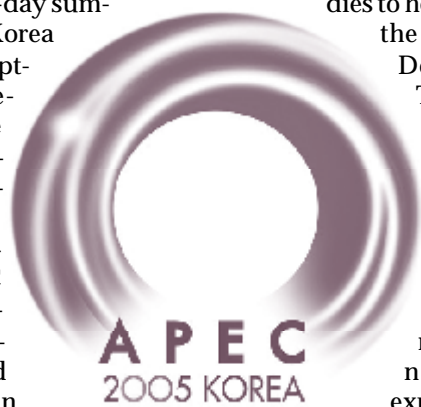
**LEADERS** from Asia Pacific Economic Cooperation (APEC) countries wrapped up their two-day summit in Busan, South Korea on 19 November, adopting two joint statements, including one which calls for concerted efforts to facilitate free trade.

Regarding free global trade, the 21 APEC leaders issued a special stand-alone statement, urging World Trade Organisation (WTO) Members to resuscitate the stagnating Doha Round and conclude them by the end of 2006. On 18 November, the leaders called on the

European Union (EU) to make concessions on the issue of farm subsidies to help move forward the WTO’s stagnant Doha Round talks. The leaders want the EU to offer bigger cuts in tariffs on agricultural products and individual European countries to reduce or eliminate agricultural export subsidies.

The APEC leaders also agreed on the so-called “Busan Roadmap to the Bogor Goals”, which outlines key priorities and frameworks

for high-quality regional trade and free trade agreements. The Bogor Goals specify the APEC objectives for eliminating developed Members’ trade and investment barriers by 2010, and those of developing Members by 2020. Under the roadmap, APEC Members are to further lift trade barriers and reduce trade transaction costs by an additional 5 percent by 2010 (*YN*, 21.11.2005). ■



### NEWS SOURCES

AP: Associated Press  
BWTND: Bridges Weekly Trade News Digest  
TKP: The Kathmandu Post  
THT: The Himalayan Times  
WTO: World Trade Organisation  
YN: Yonhap News



# Will HONG KONG Address LDC CONCERNS?

Failure of the Hong Kong Ministerial to address the LDC issues will not only marginalise the LDCs but will also raise a question on the promises of the Doha Round.

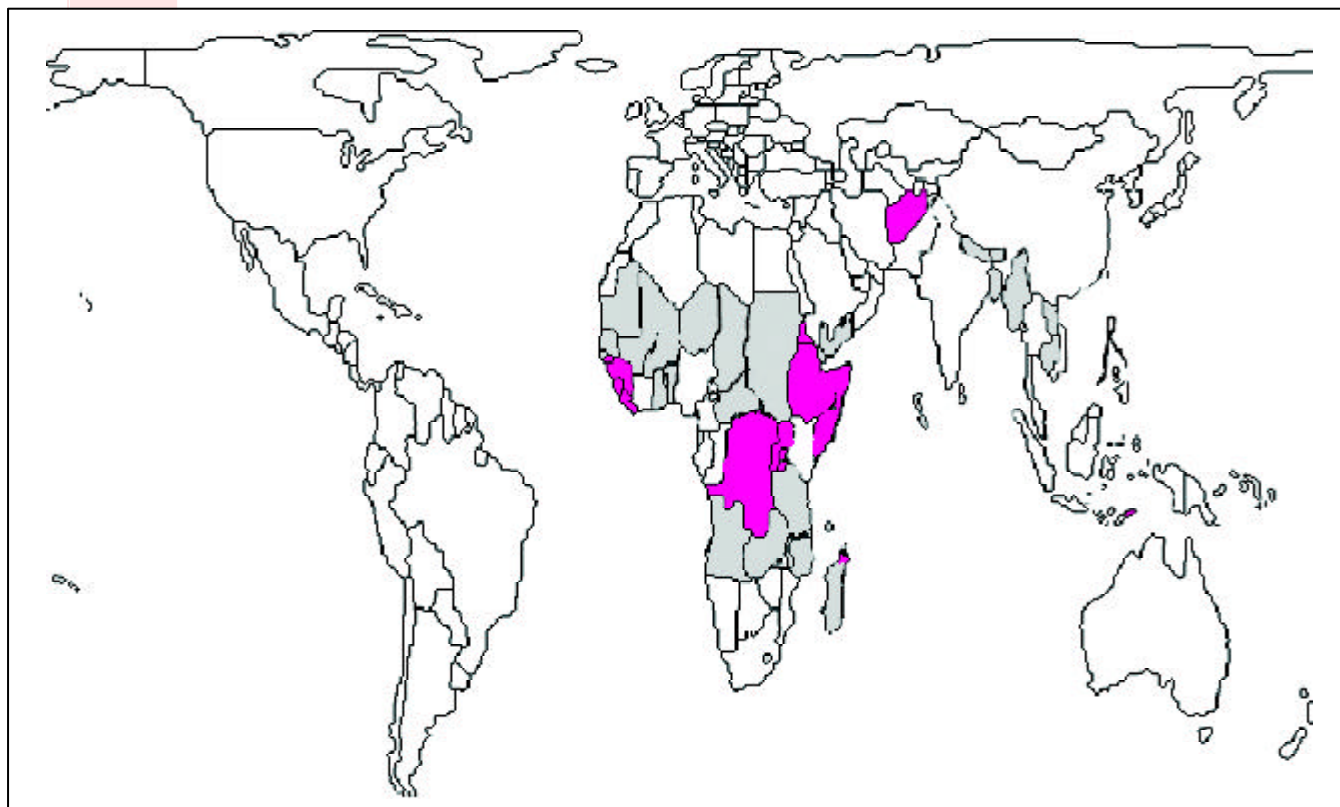
The 148 Members of the World Trade Organisation (WTO) will be meeting in Hong Kong during 13-18 December for the Sixth Ministerial Conference. The Ministerial is being held to discuss the Doha Round issues taken up by the July Package (JP), which was adopted by WTO members in August 2004. The five issues taken up for negotiations under JP are: agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension.

As agreed under JP, the present timetable to accomplish the Doha Round is the end of 2006. Currently, Members are engaged in hectic negotiations to come to agreements on these issues. However, progress has been tardy and speculations have been made that the

Hong Kong Ministerial will fail to establish consensus among Members on all the issues taken up for negotiations. In the light of such speculations, the concern is: whether Members can reach consensus on some of these if not in all issues in the Hong Kong Ministerial? They must be aware of the fact that if they fail to come to agreements on any issue, the Ministerial will meet the fate of the Cancún Ministerial, which was inclusively concluded in September 2003.

The Cancún Ministerial made it explicit that the power to set the rules of multilateral trade is no more merely with the developed country Members. It is encouraging that the developing and least developed countries are gradually asserting themselves and are coming to negotiate as a block. They have been more actively pursuing their interests in the negotiations by forming groups/alliances and putting their positions as a block. Examples are the declarations of the G-20 and least developed country (LDC) Trade Ministers. It is obvious that these groups will not make it easy for the developed countries to push their agenda on any issue unless benefits to them from such agenda are assured.

In order to negotiate as a bloc in the Hong Kong Ministerial, the LDCs, in particular, have already adopted a common position on LDC agenda in the Fourth LDC Trade Ministers Meeting in June 2005 in Livingstone, Zam-





bia. They have clearly stipulated their positions on the five issues taken up for negotiations under JP, keeping in consideration the Hong Kong Ministerial.

With regard to market access, the LDCs have asked for binding commitment on duty-free and quota-free market access for all their products to be granted and implemented immediately, on a secure, long-term and predictable basis, with no restrictive measures introduced. If WTO Members, including the developed and developing, are concerned about better integration of the LDCs into the multilateral trading system, there should not be any disagreement for such binding. Also, the issue of market access has been recognised by the global community in the Millennium Declaration of 2000. The Declaration, in the Millennium Development Goal 8, has clearly mentioned that there should be concrete efforts for securing and enlarging market access opportunities for the LDCs if their share in international trade has to be increased.

In the case of agriculture, they have called for “a credible end-date for the elimination of all forms of export subsidies and significant reduction of all forms of trade distorting domestic support, while taking into account all Special and Differential Treatment (S&DT) provisions and recognising the need for transitional measures that will offset the negative, short-term effects of removal of subsidies in terms of reducing or removing LDCs' preferential margins into the markets of developed countries”.

In the case of services, the LDCs have demanded that there should be full market access and national treatment to the LDCs in the sectors and modes of supply of export interest to them, including less-skilled and non-professional services providers under Mode 4 of General Agreement on Trade in Services on a temporary and contractual basis. They have also called for easing the procedures for the movement of natural persons, including in the case of qualifications and visa requirements, administrative practices and economic needs tests.

With respect to S&DT, they have asked for the full implementation of the S&DT provisions, and to make them “more precise, effective and operational”. They have also called for the adoption of new special and differential measures to take into account the problems encountered by the LDCs and address meaningfully the S&DT proposals.

Indicating that there is a need for “Aid for Trade” as an additional, substantial and predictable financial mechanism for them,

the LDCs have expressed their commitment to put their house in order. Such aid is indeed important for the LDCs to strengthen their supply-side and infrastructure capacity, diversify trade and address adjustments challenges and costs for the effective integration of the LDCs into the international trading system.

They have also stipulated that there is a need to strengthen the effectiveness of the Integrated Framework (IF), *inter alia*, by a significant resource increase, including through other initiatives. They have mentioned that IF is important not only to build up their supply-side capacity, and technological and physical infrastructure but also to support them to diversify their production and export base. Likewise, they have called for binding commitments on targeted and substantive technical assistance programmes to enhance their capacity, *inter alia*, to meet sanitary and phytosanitary measures, standards requirements, rules of origin and other non-tariff measures in the importing countries.

In the case of trade facilitation, they have demanded for operationalising the flexibilities agreed in the Modalities for Negotiations on Trade Facilitation, which, *inter alia*, stipulates that LDC Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. In this respect, they want “full and faithful implementation of the Modalities for Negotiations on Trade Facilitation that ensure adequate financial and technical assistance and capacity building including support for infrastructure development of the LDCs, through coordinated and sustained flow of funding that also address cost implications of proposed measures affecting LDCs”.

Besides these interests, there are also other issues on which the LDCs want agreements from their counterparts. However, at a time, when Members are themselves finding it difficult to come to agreements on issues being negotiated, there is little possibility for the LDCs to see any breakthrough on issues of their interest in Hong Kong. Failure of the Hong Kong Ministerial to address the LDC issues will not only marginalise the LDCs but will also raise a question on the promises of the Doha Round and the credibility of the multilateral trading system. ■

*(Prepared on the basis of the LDCs' Livingstone Declaration and the recent negotiations at the WTO)*

When WTO Members are finding it difficult to come to agreements on issues being negotiated, there is little possibility for the LDCs to see any breakthrough on issues of their interest in Hong Kong

# Liberalisation in Nepal: Bridging the geographical hierarchy

The issue is not the beneficial impact of liberalisation but the limited extent of it and the asymmetric gains across regions in Nepal.

**Devesh Roy**

Nepal has the lowest per capita income, highest dependence of population on agriculture and second highest income poverty rate in South Asia. How far should policy pundits be comfortable with these realities? At least, the “Washington Consensus” school of thought should be uneasy with a “trailing Nepal”. Nepal should be their poster boy; having liberalised extensively during the 1980s and 1990s on both domestic and external fronts. On an average, Nepal has the lowest tariffs in South Asia and has taken several steps to downsize its public distribution system in food and remove subsidies.

This scenario where the lowest per capita income country in South Asia is also the most liberalised economy makes it an interesting case for debate, and for researchers, a grave matter for introspection. The current political turmoil has definitely accounted for poor outcomes but given the long time period since the advent of reforms, it is imperative that researchers look for explanations beyond the insurgency.

The issue is not the beneficial impact of liberalisation but the limited extent of it and the asymmetric gains across regions in Nepal. It is easy to hide behind the veil of the missing counterfactual. Pro-liberalisation pundits might argue the outcomes could be worse without reforms. At an aggregate level, the outcomes from liberalisation seem to have worked but to a limited extent. Aggregate indicators of food sufficiency (for e.g., per capita food availability and extent of malnourishment) show improvement since liberalisation.

The key to understanding the outcomes from liberalisation is a distinctive feature of Nepal: the hierarchical geography. The three geographical regions, viz., the mountains, hills and plains (the *Terai*), belong to three exclusive economic tiers. The concentration of economic activity, the manufacturing base, the level of agricultural production, and access to markets have all been ordered with the *Terai* occupying the highest tier and the mountains, the lowest. In the backdrop of this, the government and the donors alike have failed to appreciate the interplay between “at border” and “within border” policies. The trade

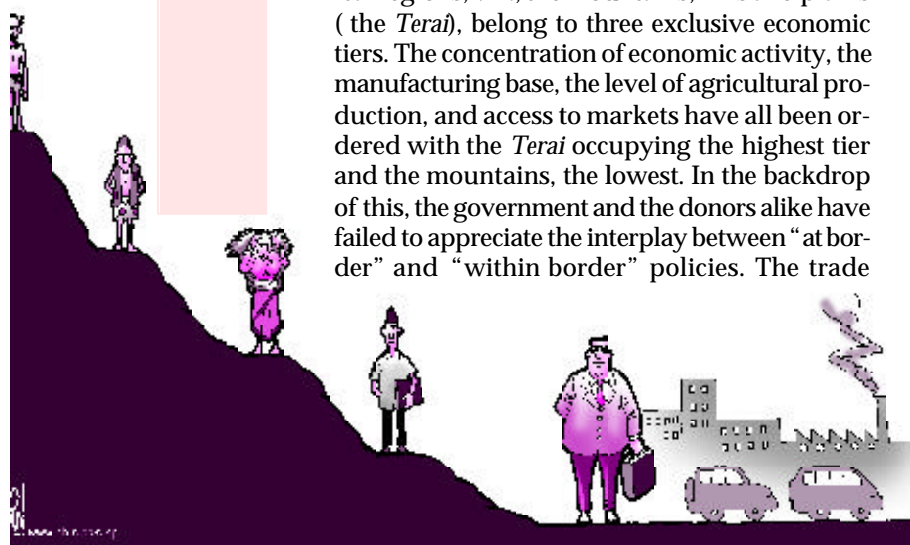
economist’s premise of welfare gains from international integration has a lurching assumption of spatial integration of the domestic markets. International integration implies that the price signals received by Nepali producers and consumers are same as their foreign counterparts. Spatial integration implies that the price signal received by the Nepali producers and consumers is independent of their coordinates within the country. Owing to geography and at times due to policy, perfect spatial integration is more of a goal than a reality. In Nepal’s case, the lack of spatial integration across these hierarchical regions is colossal. As a result, the fruits of liberalisation have been shared as unevenly as the prior distribution of economic well-being across different regions. It has also accounted for miniscule gains for the country as a whole.

A study by John Cockburn (2004) clearly shows this asymmetric gain across regions. The *Terai* reaps the majority of gains while the mountains are the worst-off. The study is based on a computable general equilibrium model where the exclusive effect of liberalisation can be filtered out. Household surveys reinforce the geographically categorical distribution of poverty.

Having not invested in spatial integration, the fruits of liberalisation that rely on private sector working efficiently on “true” price signals are not an option for the government. Consider the liberalisation related to the downsizing of the Nepal Food Corporation. The private sector has not assumed the role that the government had envisioned. The government created a potential for the market but has not supported it with spatial integration policies such as creation of physical and marketing infrastructure.

To critics, the liberalisation process might seem a case of policy ineffectiveness. The reality is that the limited and asymmetric impacts are themselves a result of government failure in spatially integrating markets. Much of the policy attention from donors has been devoted on reducing policy-induced price distortions and not on enhancing spatial integration of the domestic markets. In a sense, the relative importance of the latter has been undermined in policy. The project on linking the regions by a pulley has long been in the pipeline but has not been implemented. These policy changes can have clear first order effects given that Nepal has set most of its border and many of within border policies in order. It is the remaining homework that donors and policymakers need to do in the future. ■

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Over the coming decade aid has the potential to play a central role in realising the ambition set out in the Millennium Declaration. But realising the potential of aid will depend on donors combining increased support with fundamental reforms in aid governance." Thus observes the *Human Development Report 2005*, which adopted International Cooperation at a Crossroads as its theme for the year.

Much of the aid comes through the bilateral route, with a large amount being channelled through inter-governmental organisations (IGOs). Another mode is through "trilateral development cooperation" where aid flows through institutions in third countries for being applied to development projects in poor countries. This can be an important component of reforms in aid governance.

Trilateral development cooperation has its genesis in the Bandung Conference held in 1955, when leaders of 29 developing countries met to promote collective self-reliance as a political imperative. A Working Group on Technical Cooperation among Developing Countries (TCDC) was established by the United Nations General Assembly in 1972. In 1978, developing country leaders gathered at Buenos Aires to formulate a Plan of Action (BAPA), conceptual framework and programmatic goals, which the United Nations General Assembly subsequently endorsed.

Trilateral development cooperation received a major boost in 1993 at the Tokyo International Conference on African Development (TICAD). Since then, it is known as TICAD process in which Japanese resources are used to promote exchanges between Asian and African countries. In 1999, the eleventh session of the High Level Committee on the Review of TCDC resolved that South-South cooperation should be viewed as a complement and not a substitute for North-South cooperation. This effectively means that the committee was of the view that a North-South-South cooperation was needed. This also led to the increased recognition of trilateral

# Trilateral Development Cooperation A Way Forward for AID Reforms?

Pradeep S Mehta and  
Nitya Nanda



development cooperation.

On 1-2 February 2005, the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD) and the United Nations Development Programme (UNDP) jointly organised the Forum on Partnership for More Effective Development Cooperation (FPMEDC) in Paris to promote greater dialogue and mutual understanding among the world's principal providers of development cooperation. For the first time, the Forum

brought together OECD members with a wide range of non-OECD governments and institutions involved in development cooperation and South-South initiatives. The Forum agreed that South-South and triangular cooperation could improve aid efficiency and effectiveness in emphasising ownership and inclusive partnership.

Trilateral cooperation takes a broad-based approach that promotes partnerships with various actors, including traditional donors, multilateral agencies, private sector, academic institutions and civil society organisations. Hence, trilateral cooperation does not necessarily mean involvement of three partners only. It is a form of partnership where three or more groups of actors are involved: donors, technical assistance providers and the recipients.

Development cooperation has traditionally been bilateral in nature even though the donors very often used services of private agencies or non-governmental organisations (NGOs) in their home countries. This led to the emergence of several large NGOs mainly based in developed countries such as CARE, Oxfam and Actionaid, to name a few. Some of them do attract support from other donor governments. Thus, a form of trilateral cooperation started involving developed country donor, developed country technical assistance providers and developing country recipients.

This form of cooperation was extended when some developed country donors started involving agencies and experts from other developing countries. This was done through both involvement of other developing country governments, private sector or NGOs.

Another form of trilateral cooperation takes place when developed country donors engage IGOs for technical assistance. This ought not to be confused with the arrangement when developed country donors channel their funds through IGOs. An example in this regard could be the United Nations Conference on Trade and Development's (UNCTAD) project on capacity building on trade policy issues in India supported by the United King-



dom's (UK) Department for International Development (DFID).

Capacity building requirement is not an issue affecting developing countries only. There are requirements for sensitisation and capacity building in developed countries as well because their stakeholders also need to understand developing country perspectives.

Bilateral assistance programmes have very often been criticised for their tied nature. Aid is often tied to the donor country's provision of goods and services. For example, it has been reported that in 1999, 71.6 percent of United States (US) bilateral aid commitments were tied to the purchase of goods and services from the US. Tied purchases of goods and services usually led to recipient countries paying higher prices. On an average, a developing country expert costs one-third of experts at prevalent international rates. Trilateral cooperation can thus be a cost effective way of promoting development cooperation. The problem can be more complex in the provisioning of technical assistance and consulting services as concerns have often been raised that the type of technical assistance or services offered may not be appropriate to the recipient country's needs. Moreover, with a number of donor countries coming to a country with their own type of technical expertise, it can create problems for the recipient country, as there can be much confusion and duplicity. Trilateral cooperation can resolve such problems.

Another issue related to tied aid is that when the donors tie up with local (donor's home country) technical assistance providers, there is a possibility that monitoring by the donors may get relaxed as they are likely to develop alliances. A third country provider of technical assistance is far less likely to develop such a relationship with a donor and hence monitoring is likely to be more rigorous. Hence, trilateral cooperation may bring greater accountability in implementing development programmes.

Many successful development models and tools have been developed in the developing world. Bangladesh is an example of a least developed

country, which has significant expertise and experience in micro credit, population and rural development. Such expertise and experience is being utilised in other developing countries through trilateral development cooperation. Similarly, Bangladesh Centre for Advanced Studies is executing poverty related projects in India and Afghanistan with the financial support of western donors.

### CUTS and trilateral development cooperation

Consumer Unity & Trust Society (CUTS) International, a network institution of SAWTEE, which is based in India, is engaged in capacity building on trade, competition, consumer protection and investment issues in several developing countries under the trilateral development cooperation framework. CUTS is implementing a project under the same framework in several African countries. The project aims at building the capacity of stakeholders on competition and regulatory issues. The Norwegian and British governments have supported the project. Apart from CUTS, Third World Network is another developing country-based NGO engaged in such activities.

In order for sensitisation and capacity building of the stakeholders in developed countries on issues of developing countries, CUTS International is also conducting some programmes in the developed world through trilateral development cooperation. Sweden has been assisting CUTS to conduct sensitisation seminars in the rich countries on different issues concerning multilateral trade.

It is well-recognised now that importing technologies, policies and legal practices from developed countries may not be appropriate for most developing countries. It may be better for them to draw these from advanced developing countries. In fact, ignoring this reality has cost many developing countries, especially in Sub-Saharan Africa, dearly as they implemented the "Washington Consensus" agenda.

Trilateral development cooperation can be an effective way of bringing "appropriate intermediate technology" and "appropriate intermediate policy" to developing countries while taking the help of developed countries in meeting the financial resource needed.

There may, however, be some pitfalls as well. Trilateralisation of development cooperation may dilute the political support base and thus the interest of the domestic constituency in overseas aid. There are problems even among several developing countries that might thwart the process. Moreover, there may be unwillingness among certain sections of policymakers and other important stakeholders to accept "intermediate technology" or "intermediate policy", who may be in favour of leap-frogging. The lure of trips to rich countries among sections of bureaucracy and the political establishment may also sabotage the process. Nevertheless, these problems are not insurmountable and the risks associated are rather meagre compared to the expected benefits.

Leaders of 106 countries from Africa and Asia, representing about three-fourths of humanity, met in Indonesia for the Afro-Asia Summit in April 2005 to reinvigorate the spirit of the 1955 Bandung Conference. However, the issue of trilateral development cooperation did not receive adequate attention. This may be due to the fact that the leaders were too overwhelmed by the spirit of Bandung I when the global reality was quite different. Despite the fact that big Asian countries like China and India are taking significant strides in providing aid to other developing countries, the need for assistance from developed countries cannot be ignored. One important departure in Bandung II was, however, the fact that the role of all stakeholders in South-South cooperation has been explicitly recognised as against Bandung I, when only government level cooperation was envisaged. ■

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# What will HONG KONG achieve?

Shyamal Krishna Shrestha



**D**ark clouds hover over the fate of the Sixth World Trade Organisation (WTO) Ministerial Conference, scheduled for 13–18 December 2005 in Hong Kong due to the lack of convergence among Members on core issues under the Doha Round, viz., agriculture, industrial tariffs and services, among others.<sup>1</sup> Reflecting these differences, WTO Director General (DG) Pascal Lamy has opined that expectations from the Ministerial need to be “recalibrated”.<sup>2</sup>

Thus, at this current stage, the Doha Round of multilateral trade negotiations (started at the Fourth

WTO Ministerial in Doha in November 2001 to be originally completed by December 2005) has reached an impasse wherein any breakthrough would depend greatly upon concessions that Members are willing to make for the sake of the multilateral trading system. It is particularly disappointing that the European Union (EU) and the United States (US) are not willing to concede much ground for the developing countries, including the least developed countries (LDCs), in crucial areas such as agriculture but continue to link any reform with reciprocal concessions by the latter

on lowering industrial tariffs.<sup>3</sup> For the moment, the trade stalemate begs the question as to whether the Doha Round – also known as Doha Development Agenda (DDA) – can be completed by the extended deadline of December 2006.

It is pertinent to recall that the existing 148 Members were supposed to reach “first approximations” of a deal by 31 July 2005, and having been unable to do so, resumed talks in September. However, their inability to agree on modalities subsequently makes it clear that instead of being a milestone, the Hong Kong Ministerial

may prove to be a non-event, save for some minor issues like accession of new Members and routine statements.

### Draft Ministerial Text

In accordance with the procedure set out at the General Council meeting in October and the meetings of the Trade Negotiations Committee (TNC) in September and October, the WTO DG introduced the Draft Ministerial Text for the Sixth Ministerial Conference at an informal meeting of heads of delegations on 26 November at WTO Headquarters in Geneva. Although the Text is a “first draft”, it reflects the culmination of trade negotiations undertaken since the GC Decision of 1 August 2004 or the July Package (JP). The sectoral issues are put in Annexes A – F; which address agriculture, non-agricultural market access (NAMA), services, rules, trade facilitation, and special and differential treatment (S&DT). Although the entire Text highlights continuing divergence, it may still be worthwhile to note the commitment made by Members towards Declarations and Decisions adopted at Doha. However, whether these commitments will translate into realities is yet to be seen. The following sections summarise the negotiations carried out hitherto, depicting the gaps between ambitions and realisations.

### Agriculture

After being virtually neglected through decades of rapid trade liberalisation, agricultural trade reform package – consisting of domestic support, export subsidies and market access – has become one of the most contentious issues in trade negotiations. In fact, the lack of progress in agricultural reform has led to several missed deadlines in the latest round of negotiations, putting DDA itself at risk. It is widely recognised that unless there is significant progress on agricul-

tural negotiations, discussions on other issues are not likely to make any headway. Annex A of JP contains modalities for negotiations on agriculture with regard to domestic support, export competition and market access.<sup>4</sup> The 22 November Draft Text underlies that: “much remains to be done in order to establish modalities and to conclude the negotiations”.<sup>5</sup>

**Domestic Support:** JP includes targets for the reduction of domestic support and specifies that Blue Box levels (the most trade distorting subsidies) would be capped.

In case the Agreement on Agriculture (AoA) is implemented from 2007 onwards, Members would be required to reduce their overall trade-distorting support by 20 percent in the first year itself, comprising the final bound total aggregate measurement of support (AMS), the permitted *de minimis* levels and the permitted Blue Box levels.

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. The reduction would be made under a tiered formula that cuts subsidies progressively: higher levels of trade-distorting domestic support being 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.

Currently, there is agreement with regard to three bands for overall cuts by the developed countries. The thresholds for them (in US\$ billion) are 0 – 10; 10 – 60 and >60. The cuts would be in the order of 31 percent – 70 percent for the first band; 53 percent – 75 percent for the second band and 70 percent – 80 percent for the third band.

On product-specific *de minimis*

and non-product-specific *de minimis*, there is a zone of engagement for cuts between 50 percent – 80 percent for the developed countries. Members are of the view that there should be no cut in *de minimis* for the developing countries. However, for those developing countries with no AMS, there should be no cut. For those developing countries with an AMS, it should be less than two-thirds of that for the developed countries.

There is no consensus on reducing Blue Box subsidies although one proposal sought to limit the current 5 percent ceiling to 2.5 percent. Regarding AMS, there appears to be convergence that the top tier should be US\$ 25 billion and above (subject to between 70 percent – 83 percent cut). Divergence persists over the ceiling for the bottom two bands: between US\$ 12/15 billion and US\$ 25 billion (subject to 60 percent – 70 percent cut); and below US\$ 15 billion/US\$ 12 billion (subject to 37 percent – 60 percent cut).

**Export Competition:** JP reflects agreement among Members 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 encompasses 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.

The Draft Ministerial Text sets 2010 as the end date for elimination of all forms of export subsidies. Members have suggested adopting the principle of “front-loading” or accelerated elimination for specific products, particularly cotton.

**Market Access:** Market Access refers to the gradual reduction and elimination of tariffs on internationally traded goods. Members agreed







such mechanism should be of a temporary nature.

**Cotton:** JP had called to address the cotton issue within the agriculture negotiations in relation to all trade-distorting

for certain tariffs lines and perhaps none for others".<sup>7</sup>

The Annex also specified that flexibilities for the developing countries would 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 [ ] percent of tariff lines provided they do not exceed [ ] percent of the total value of a Member's imports". The bracketed figures are open to negotiations. The NAMA framework stipulated that the non-*ad valorem* duty should be converted into *ad valorem* ones, making 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 suggests that newly acceded countries may not be required to undertake any major tariff cuts as they have already made extensive market opening commitments. 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. The developed countries maintain around an average of 3.8 percent tariff on manufactured products and the developing countries either maintain very high bound tariffs or have not bound a significant portion of their tariff lines at all.

Although these recommendations laid down a clear road map towards industrial trade liberalisation, Members have hitherto been unable to establish full modalities given the lack of agreement on various elements in the NAMA framework, including the formula, paragraph 8 flexibilities and unbound tariffs.<sup>8</sup>

The only achievement is that as in agricultural market access, there has been agreement on converting

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 – are subject to negotiations, but which must ultimately lead to "substantial improvement" in market access for all products.

Members agreed on *ad valorem* equivalents and have arrived at a working hypothesis of four bands for structuring tariff cuts. The bands and the range of tariff cuts (in brackets) are as follows: Band 1 of 0 percent – 20/30 percent (20 percent – 65 percent); Band 2 of 20/30 percent – 40/60 percent (30 percent – 75 percent); Band 3 of 40/60 percent – 60/90 percent (35 percent – 85 percent) and Band 4 of greater than 60/90 percent (42 percent – 90 percent). Although there has been considerable convergence on adopting a linear-based approach for reductions within those bands, Members have not yet formally given up their divergent positions so there is a need to narrow the extent of remaining divergence. Further, convergence remains elusive on the issue of sensitive products as proposals extend from as low as 1 percent to as much as 15 percent of tariff lines. Differences also persist with regard to what constitutes special products and the operationalisation of Special Safeguard Mechanism. However, for the latter, it is agreed that any

policies affecting the sector in all three pillars of AoA. The Draft Ministerial Text only reaffirms commitment to ensure prioritisation of the cotton issue and to establish modalities, which are in full conformity with the terms of JP.

Cotton is a vital crop for many developing economies (especially in Africa and Latin America) in terms of livelihoods. Developed countries are blamed for distorting cotton trade through domestic support, export competition and market access.<sup>6</sup>

#### **Non-agricultural Market Access**

NAMA negotiations were conducted in the background of high overall tariffs prevailing in the developing countries on industrial products and high tariffs on developing country exports in the developed countries. The NAMA framework of JP in Annex B sets the framework 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. Members had to continue work 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 the developing countries, including through less than full reciprocity in reduction commitments, and provision of leeway to insist on only linear cuts

non *ad valorem* duties to *ad valorem* equivalents. Regarding the non-linear formula, there has been some progress as Members have been focusing on a "Swiss formula" although two variations remain: a formula with a limited number of negotiated coefficients and another where the value of each country's coefficient would depend on the average tariff of bound rates of that Member, thus leading to multiple coefficients. The two variants of the Swiss formula would also determine how other issues like tariff peaks, tariff escalation and high tariffs would be reduced. Developing country Members view the formula to affect a key principle of DDA, which allows them flexibilities to undertake "less than full reciprocity in reduction commitments" as laid down in paragraph 8 of the NAMA framework. Developed country Members feel such flexibilities should be explored through means other than tariff reductions; a proposal rejected by developing country Members.

The issue of dealing with the WTO developing Members, which have not bound most of their tariff lines, has also become a subject of intense discussion. There is a growing consensus that unbound tariff lines should be subject to formula cuts provided there is a pragmatic solution for those lines with low applied rates. Some Members have expressed that their unbound tariff lines with high applied rates are also sensitive and should be given due consideration.

### 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 as in agriculture. They also agreed that there would be further liberalisation in this sector in a progressive manner. In the run-up to the Doha Ministerial, the notion of reciprocal commitments emerged. While the 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.

JP too supports this mandate and aims to achieve progressively higher levels of liberalisation with no *a priori* exclusion of any services

Despite the potential benefits, the developing countries have not been able to undertake trade facilitation measures that could help them overcome their supply-side bottlenecks and enhance efficiency and this issue remains a major concern for the developing countries in the Hong Kong Ministerial as well.

or mode of supply. Since the offers submitted is not upto the expectations of Members, JP set the deadline to submit revised offers to May 2005, which passed without any satisfactory offers being tabled.

Annex C of the Draft Ministerial Text addresses services by reiterating the purpose of achieving a progressively higher level of liberalisation of trade in services with regard to all Modes (1-4) and with appropriate flexibility for individual developing country Members.<sup>9</sup>

In addition to bilateral negotiations, Members have agreed that the request-offer approach should be pursued on a plurilateral basis in accordance with the principle of the GATS and the Guidelines and Procedures for the Negotiations on

Trade in Services, the results of which it suggests should be extended on a most favoured nation (MFN) basis. Perhaps recognising the exclusionary process of such an approach, the Text recommends that such plurilateral talks should be organised to facilitate the participation of all Members while it also calls for due consideration to be given to proposals on trade-related concerns of smaller economies. Moreover, it is suggested that in the course of negotiations, Members develop methods for the full and effective implementation of the LDC Modalities, which is nothing novel as such Modalities are also suggested in various S&DT clauses that litter the DDA text. The developing countries and the LDCs have been promised targeted technical assistance to be provided through the WTO Secretariat, apparently to ensure their effective participation in services negotiations.

### Trade Facilitation

Despite the potential benefits, the developing countries have been 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 the Cancún Ministerial in 2003. Within JP, 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 JP stated that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit". Substantive negotiations have started with several submissions made on Articles V, VIII and X by WTO Members. The debate has, so far, focused on the scope of transparency requirements, the scope for

S&DT, the costs of trade facilitation and the required technical assistance in the case of the developing countries and the LDCs.

Trade facilitation is covered in Annex E of the Draft Ministerial Text.<sup>10</sup> It is revealed that the Negotiating Group on Trade Facilitation met 11 times since its establishment on 12 October 2004 to undertake the mandate contained in Annex D of JP. Members also made contributions towards all areas covered by the mandate, both verbally and in writing. A considerable period was spent on addressing the negotiating objectives of improving and clarifying relevant aspects of GATT Articles V, VIII and X.

The Negotiating Group has recognised the valuable assistance currently being provided in the areas of technical assistance and capacity building to allow the developing countries and the LDCs to fully benefit from the negotiations. Hence, it calls upon developed country Members to intensify their support in a comprehensive manner and on a long-term and sustainable basis, backed by secure funding.

### Special and Differential Treatment

Implementation-related problems in relation to the WTO Agreements and S&DT have been discussed ever since DDA was launched but there has not been significant progress. JP called for the review of all outstanding Agreement specific proposals to be reported to the GC for clear recommendations 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&DT obligations and the incorporation of S&DT into the architecture of WTO rules.

Among the issues agreed for negotiations under JP, trade facilitation is the only issue that provides a leeway to the developing countries not to implement their part of commitments in the

absence of technical assistance. On areas such as agriculture, S&DT provisions are mostly related to higher transition period and lower level of reduction coefficients. The language on S&DT provisions is non-binding and depicts best endeavour nature. Moreover, though the LDCs are not required to participate in any reduction commitment, the non-binding language relating to duty-free and quota-free access has further weakened their bargaining position in their efforts to obtain such facility from the developed countries. According to Annex C of JP 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".<sup>11</sup> This language is meaningless to the developing countries and the LDCs 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 not the same thing.

While recognising the progress made on the LDC Agreement-specific proposals, Annex F of the Draft Ministerial Text categorises S&DT proposals into three main categories. These relate to: i) Understanding in Respect of Waivers of Obligations under the GATT 1994; ii) Decisions on

Measures in Favour of LDCs; and iii) Agreement on Trade-Related Investment Measures. In reality (and as the Draft itself states), substantial work remains to be done with regard to strengthen S&DT and make them "more precise, effective and operational".<sup>12</sup>

### Other Issues

The Draft Ministerial Text also addresses other issues under its ambit such as Implementation; Trade Related Aspects of Intellectual Property Rights (TRIPS) and Public Health; Small Economies; Trade, Debt and Finance; Trade and Transfer of Technology, TRIPS non-violation and situation complaints; E-commerce; LDCs; Integrated Framework; Technical Cooperation; Commodity Issues; Coherence, Aid for Trade; and Accessions.

On all these issues, the Text reaffirms commitments to adhere to the spirit of the Doha Ministerial Declaration, negotiations and reports by the GC to expedite intended actions in these areas. It may be worth noting that there is only agreement on expanding Aid for Trade to help the developing countries, particularly the LDCs, to build the supply-side capacity and trade-related infrastructure.

### Conclusion

The Draft Ministerial Text issued on the eve of the Sixth WTO Ministerial Conference underscores the fact that Members are unlikely to reach substantial agreement on priority issues in Hong Kong. Nevertheless, the Ministerial can be a stepping stone in the right direction provided the spirit of

the Doha Round is preserved for further trade talks after the Ministerial.

Negotiations conducted, so far,

Implementation-related problems in relation to the WTO Agreements and S&DT have been discussed ever since the Doha Development Agenda was launched but there has not been significant progress.



reinforce the view that the ambitious trade liberalisation agenda of the Doha Round, which keeps the interest of the developing countries and the LDCs at the forefront, is not likely to yield results unless the developed countries are willing to make adequate concessions. If negotiations continue along their current trend, it is doubtful that the so-called DDA will bring tangible benefits to the developing countries.

What are the main issues in the Doha Round over which there is considerable disagreement? The negotiations have witnessed a stand-off mainly on agriculture between developing countries led by G-20 and G-33 on the one hand, and with the EU and the US on the other. The former group has been insisting that the latter undertake comprehensive policy reforms involving their agricultural sectors by reducing subsidies and tariffs. Reduction of farm subsidies is particularly vital as it provides substantial gains for the developing countries. Developing country farmers suffer huge losses in export earnings as the subsidies in rich nations keep international prices of major agricultural commodities at artificially low levels. They have also been facing adverse terms of trade for decades. However, the EU and the US have stated that any concessions by them on agriculture would have to be matched by reciprocal concessions on the part of the developing countries by opening their markets vis-à-vis steep tariff reduction for industrial goods from industrialised nations.<sup>13</sup> If the developing countries were to resist such a deal any longer, it would seem they were not doing enough to salvage the Doha Round. However, agreeing to such an unfair deal would further jeopardise their economies. Such strategies by the developed countries reflect protectionist intentions as well as their renewed attempts at attracting concessions through pressure tactics. The developing countries would be adversely affected; as they would not witness a rise in their share of

global agricultural trade nor be able to undertake sustainable industrialisation.<sup>14</sup>

It may be reminded that the concept of "development dimension" is an inherent part of DDA; and unfair terms on developing country Members by developed country Members defeat that purpose. The developing countries, thus, have to make concrete efforts

to ensure that the negotiations are turned into directions that can be beneficial to them.<sup>15</sup> The future of the Doha Round hinges entirely upon whether the developing countries and the LDCs can get a fair deal from the multilateral trading system. ■

(Mr Shrestha is Programme Officer at SAWTEE)

## NOTES

- 1 The Economist. 2005. "Dark clouds over Doha", 10 November 2005 (<http://www.economist.com/agenda/PrinterFriendly.cfm>)
- 2 WTO DG Pascal Lamy told a heads of delegation meeting on 10 October that "there is not a sufficient level of convergence among Members on the level of ambition in the key areas of the negotiations" for the chairs of the negotiating groups to put together 'full modalities', meaning that a text with numbers or parameters on all elements" of the 2004 July Package (WT/L/579). He emphasised that this does not mean that Members wanted to lower their level of ambition for the Doha Round as a whole. (See BRIDGES Weekly, 9 November 2005, <http://www.ictsd.org/weekly/05-11-09/story1.htm>)
- 3 For instance, the US has emphasised that its reforms on domestic support is conditional on reduced farm tariffs in other developed and developing countries, as well as substantial trade liberalisation in services and industrial goods. This conflicts with the view of the G-20, composed of 20 developing countries who opine that such liberalisation should be unconditional. It is argued that industrialised nations have taken resort to tariffs and the same policy space must be made to the developing countries, especially the LDCs. For a perspective of developing countries in terms of NAMA negotiations, see Akyuz, Y. 2005. *The WTO Negotiations on Industrial Tariffs: What is at Stake for Developing Countries?* Geneva: Third World Network.
- 4 World Trade Organisation. 2004. *Doha Work Programme: Decision Adopted by the General Council of 1 August*, WT/L/579, Geneva: WTO.
- 5 World Trade Organisation. 2005. *Preparations for the Sixth Session of the Ministerial Conference. Draft Ministerial Text*, 28 October, Geneva: WTO.
- 6 In March 2003, the WTO Dispute Settlement Body set up a Panel to rule on Brazil's claim that eight US measures or subsidies provided to the US producers, users and exporters of upland cotton have caused harm to Brazil's interests. In September 2004, the WTO Panel that investigated the case issued a report overwhelmingly in Brazil's favour. Consequently, the US appealed the case to the WTO Appellate Body. Brazil also made mainly "conditional" appeals on certain aspects of the Panel ruling. On 3 March 2005 the Appellate Body issued its report on the appeal, upholding the Panel ruling on all of the critical points of the dispute. (see [http://www.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/psc9805](http://www.agric.gov.ab.ca/$department/deptdocs.nsf/all/psc9805))
- 7 See WTO. 2004. Above note 4.
- 8 See WTO 2005. Above note 5.
- 9 See WTO 2005. Above note 5. The four modes of supply in the GATS framework are Mode 1 (Consumption abroad), Mode 2 (Cross-border supply of services), Mode 3 (Commercial presence of services providers) and Mode 4 (Movement of natural persons).
- 10 See WTO 2005. Above note 5.
- 11 See WTO. 2004. Above note 4.
- 12 See WTO 2005. Above note 4.
- 13 As mentioned in above note 2.
- 14 Chandrasekhar, CP. 2004. "History as farce", *Frontline*. Economic Perspectives. Vol. 22, No. 24, 19 November–2 December 2005. Chennai: Hindu Group of Publications (see <http://www.flonnet.com/fl2224/stories/20051202003510700.htm>)
- 15 For a recent comment on the trends in negotiations on the Doha Round of the WTO, see Das, BL. 2005. "Bumpy Road to Hong Kong", *Economic and Political Weekly*. October 15. Mumbai.

# Agriculture Negotiations Implications for LDCs

The ongoing negotiations on agriculture have the potential to restrict the policy flexibility of the least developed countries that they need for developing their agricultural sector.

Posh Raj Pandey

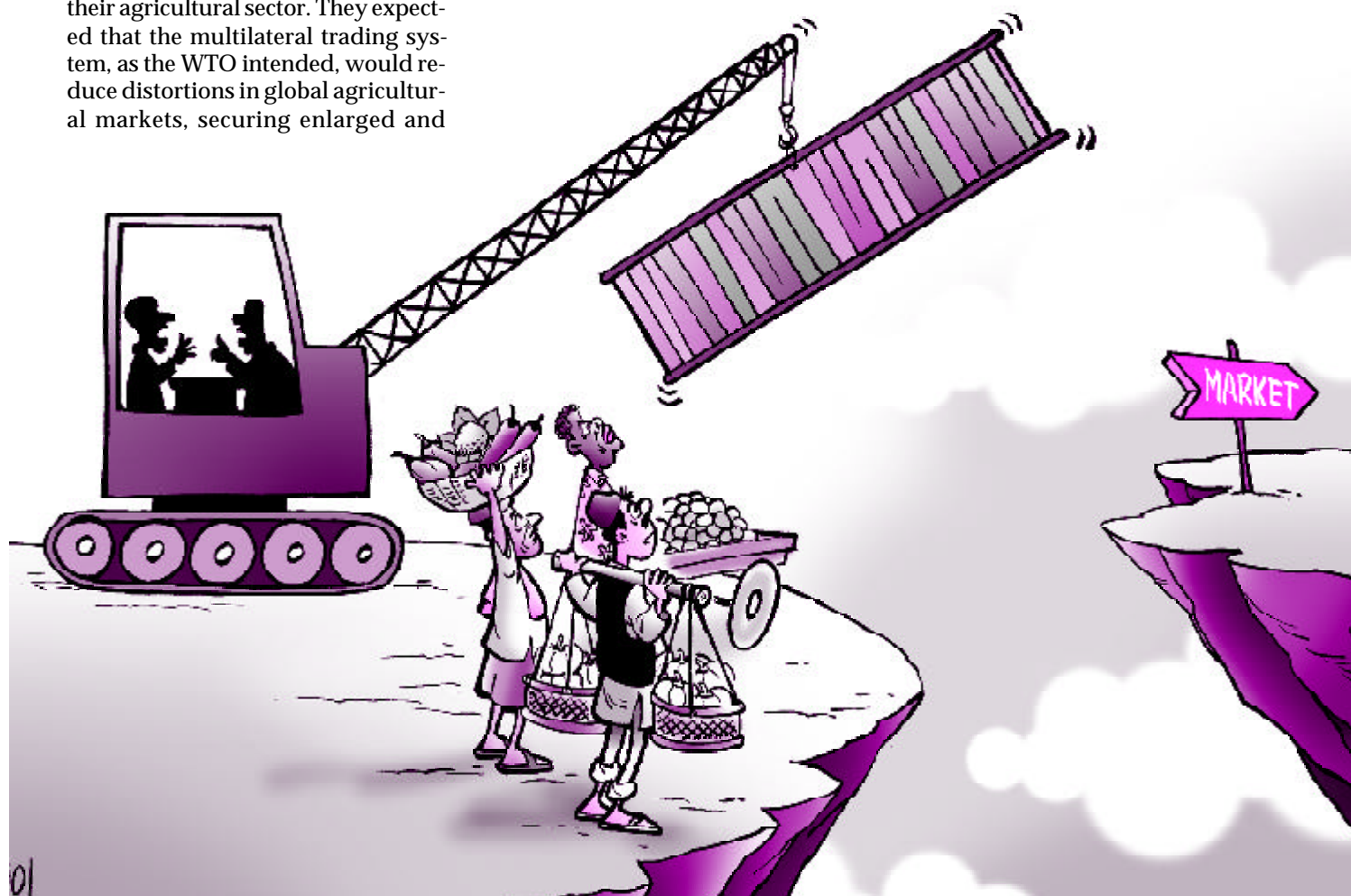
Ever since the World Trade Organisation (WTO) came into being, one of the fundamental issues for the least developed countries (LDCs) has been what the multilateral trading system can provide them to develop their agricultural sector. They expected that the multilateral trading system, as the WTO intended, would reduce distortions in global agricultural markets, securing enlarged and

predictable export markets inclusive of trade preferences for their agricultural products. They also hoped that reforms in international trade in agriculture would not restrict the policy flexibility to support their agricul-

tural sector, which they need for promoting employment, enhancing rural development and ensuring food security. However, after a decade of the WTO, the progress in these directions is unsatisfactory.

The Agreement on Agriculture (AoA) has failed to deliver on its promises. Commitments for reforms in world agricultural trade remained confined to rhetoric. During negotiations for reforms, developed and developing Members remained indifferent to each other's positions and could not introduce measures that could have better integrated the LDCs. In fact, nothing significant was done until 2000 and the expectations of the LDCs remain unmet.

When the Doha Round of negotiations commenced in November 2001, the expectations of the LDCs rose because the Doha Development Agenda (DDA) brought the issue of "development" at the centre stage of the multilateral trading system. The Doha Declaration came up with promises that envisaged a fair global trading environment for the LDCs.<sup>1</sup>



The expectations of the LDCs, however, were not fulfilled during subsequent negotiations. Due to this and many other reasons, the Doha Round witnessed a setback following the failure of the Fifth Ministerial in Cancún in September 2003.

In August 2004, WTO Members then made decisions on the framework for the modalities of negotiations – known as the July Package (JP). Under JP, a separate annex is devoted for the Framework Establishing Modalities in Agriculture. The framework does not challenge the fundamental structure of AoA and the reform agenda revolves around original three pillars of AoA – market access, domestic support and export competition. However, crucial technical aspects, such as the exact degree of tariff reduction (bands and thresholds) and the level of cuts in distorting farm support were left to future negotiations. The WTO General Council has still been working to finalise the modalities so as to reach an agreement during the Hong Kong Ministerial in December 2005.

Against this backdrop, the natural question for the LDCs is how the ongoing WTO negotiations on agriculture will impact on their economy and agricultural policies. Since JP exempts the LDCs from reduction commitments, they are not required to make any commitment on market access, domestic support and export subsidies. It means that the outcomes of ongoing negotiations do not constrain the LDCs to protect their domestic farm sector up to the existing level. Similarly, the LDCs would not be required to change their agricultural support policy both for domestic consumption and exports. Moreover, the outcomes, if it maintains the spirit of DDA, further explained by JP, have the potential to reduce distortions in global agricultural markets and expand trade opportunities for the LDCs.

Despite these, it cannot be concluded that the new rules shall not have

any negative impact on the LDCs. In fact, there will be greater chances of restrictions in their policy flexibility that they need to develop their agricultural sector. It may also reduce the volatility of world prices. Since many LDCs are net food importing countries, they may also face a rise in world food prices. It may also result in erosion of preferences. In particular, for the LDCs, the outcomes of agricultural negotiations will play a critical role in industrialisation, rural development, food security and more broadly, pov-

**The LDCs need to maintain a trade-off between the possibility of export expansion due to reduction in distortions in international market and the potential increase in the import bills.**

erty reduction. In the light of these facts, what should be the agenda of the LDCs during the ongoing negotiations and the negotiations during the Hong Kong Ministerial?

## Market Access

The export baskets of the LDCs are concentrated in few products and in a few countries. The recent trend in the destination of LDC exports shows that the landscape of agricultural export markets has been shifting from

the developed to the developing countries for most LDCs. The exports to the developed countries are mostly done on the basis of the unilateral preferences provided by them. Thus, the focus of the LDCs on market access should be on opening markets in the developing countries rather than the developed countries. Similarly, it should also be noted that aggressive tariff reductions may erode the existing preferences.

## Domestic Support

The issue of the reduction in domestic support is a double-edged sword. On the one hand, it provides the LDCs a level playing field to compete in the domestic market of the subsidies providing countries. On the other hand, being net food importers, it may increase international prices, thereby increasing their import bills. Thus, the LDCs need to have a very cautious approach on the issues of reduction in domestic support. They need to maintain a trade-off between the possibility of export expansion due to reduction in distortions in international market and the potential increase in the import bills. Similarly, the LDCs, which are exporting processed food, also need to look at the increase in the prices of raw materials, which may result in potential erosion in competitive edge. In the review process of “green box” measures, the LDCs need to see that the subsidies in infrastructure development as well as land reform are not taken out of “green box” and the “green box” subsidies are capped for them.

## Export Subsidies

WTO Members have been providing export subsidies to most of the products of export interest to the LDCs. It has distorted the global market and is prone to displace their products in the export markets. Thus, it is in the interest of the LDCs if export subsidies are eliminated in a short duration





with significant down payment and if it is agreed to standstill commitment on all forms of export subsidies during negotiations. However, the LDCs are required to pay attention to the possibility of increased import bills. In addition to retaining marketing and transport subsidies, export credits should be made permissible for the LDCs.

**Special Safeguard Mechanism should be automatically activated and in addition, the trigger mechanism has to be price and**

Special Safeguard Mechanism (SSM) would provide the requisite policy space and flexibility for policy interventions needed to safeguard non-economic objectives such as food security, livelihood security and rural development needs. More specifically, it should also insulate the markets of the de-

veloping countries from negative effects of import surge and declining international prices. The available information show that there has been an increasing tendency in the import surge of food products in the LDCs. Thus, the issue of SSM is very crucial for them. SSM should be automatically activated and in addition, the trigger mechanism has to be price and volume based. It should be available to all agricultural products and that applicable remedies have to include additional duties and quantitative restrictions. However, in order to provide predictable market access to the LDCs, some restraints on the use of SSM on their exports should be shown. The provision of the Agreement on Safeguards could be a guiding principle in this regard.

### Food Aid

The Marrakesh Decision established a mechanism to secure adequate level of food aid to meet the needs of the LDCs and net food importing developing countries. The proposed mechanism includes access to financial mechanism to smooth short-term difficulties in financing normal levels of commercial imports, and financial and technical assistance to improve productivity and infrastructure of their agricultural sector. The LDCs should pursue to realise these decisions. It is important that the issues of food aid are not tied up only with export competition and be pursued through a holistic approach.

### Preference Erosion

The preferences provided by the European Union and other developed countries have contributed to expand the exports of the LDCs. Erosion of preferences should be considered in the negotiations so that its effect could be slowed down. It could be attained either through the tariff reduction formula that cuts tariffs in the major exportable products of the LDCs that enjoy preferential market access at lower rate or inclusion of these products in the sensitive list. Moreover, preference providing Members are supposed to undertake, as proposed by Harbinson Text, targeted technical assistance programmes and other measures to support preference-receiving countries in efforts to diversify their economies and exports.

### Special Safeguard Mechanism

### Special and Sensitive Products

JP stipulates that all Members may designate an appropriate number of tariff lines to be treated as "sensitive products" for tariff reduction. Similarly, it allows developing countries to designate "special products" based on the criteria of food security, livelihood security and rural development needs. The LDCs need to ensure that special and sensitive products do not adversely affect their market access situation.

### Duty-free and Quota-free Market Access

According to paragraph 45 of the Agriculture Framework, the LDCs should be provided with duty-free and quota-free market access in developed country markets and in the markets of the developing countries in a position to make such conces-

sions. The LDCs must be given effective market access bound in the WTO, for all their agricultural products through duty-free market access by all trading partners. Such market access ought to be immediate and predictable.

### Cotton

In view of the high intensity distortions created by cotton subsidies, an ambitious specific cotton related decision should be made within AoA. The decision should include the elimination of all cotton related subsidies (both domestic and export) no later than the Sixth Ministerial as proposed by the African Group. The decision should also include duty-free and quota-free market access for all cotton and derived products. As a part of development aspects of cotton issue, the WTO, in coordination and with the financial support of other multilateral and bilateral donor agencies, should establish a fund to help cotton-producing LDCs in modernising the cotton sector.

### Conclusion

The above observations indicate that the issues on the negotiation table have disproportionate impacts for the LDCs. The issues of market access, particularly in the developed countries, and the domestic support are not the priority areas, whereas export competition and the peripheral issues for most of the developed and more advanced developing countries such as food aid, preference erosion, SSM, supply capability bear significant importance for the LDCs. Thus, it is necessary that the negotiating capital be channelised to form alliances on case-by-case basis. ■

*(Dr Pandey is President of SAWTEE)*

### NOTE

- <sup>1</sup> The Doha Round was initiated at the Fourth WTO Ministerial at Doha in 2001. Among others, it aims at comprehensive negotiations for agricultural reform targeting substantial improvements in market access; reduction of, with a view to phasing out, all forms of export subsidies and substantial reductions in trade distorting domestic support.

# NAMA

## A Mixed Bag for SOUTH ASIAN Countries

The outcome of the negotiations on non-agricultural market access is likely to have serious implications for the South Asian countries but at different levels.

**Mohammad A. Razzaque**

The Fourth Ministerial Conference of the World Trade Organisation (WTO) at Doha in 2001 provided a mandate to conduct negotiations on “market access for non-agriculture products”. Since then, these negotiations have been termed as non-agricultural market access (NAMA) negotiations.

The background of NAMA negotiations includes addressing the high overall tariffs on imports prevailing in the developing countries and disproportionately high tariffs on a number of products in the developed countries of special export interest to many developing countries. Despite the recent trade reform measures in the South Asian countries, the average industrial tariffs in the region are amongst the highest in the world.<sup>1</sup> There is also a general recognition of the importance of tariffs in promoting industrial development in South Asian economies.<sup>2</sup> In addition, international trade taxes account for a large share in the government revenue budget of these countries.<sup>3</sup> Therefore, future tariff reductions may result in reduced public resources, seriously affecting the sectors/households dependent on the provisioning of the public services. From these contexts, the outcome of NAMA negotiations is likely to have important implications for the South Asian countries.

In the Doha Ministerial, Members

agreed to engage in negotiations on the basis of agreed modalities, to reduce or as appropriate eliminate tariffs – including the reduction or elimination of tariff peak, high tariff, and tariff escalation – as well as non-tariff barriers (NTBs). The Declaration laid emphasis on comprehensive product coverage without any *a priori* exclusion. It was explicitly mentioned that liberalisation measures should particularly consider the products that are of export interest to the developing countries and the negotiations “shall” take fully into account the special needs and interests of the developing countries and the least developed countries (LDCs). The Declaration also called for including appropriate studies and capacity building measures to assist the LDCs participate effectively in the negotiations.<sup>4</sup> Based on the Doha Declaration, which established the modalities of market access for non-agricultural products, the July Package (JP) provided some further directions for future negotiations.<sup>5</sup>

### Tariff Reduction Formula

In JP, WTO Members agreed on a non-linear formula applied on a line-by-line basis for future tariff reductions. However, there has been a deadlock with regard to the choice of the formula. Particularly, how the “special needs and interests of the developing countries, including through less

than full reciprocity in reduction commitments” are to be taken into consideration, has been a matter of controversy. The formula, proposed by the Negotiating Group on Market Access Chairman’s Draft (NGMA-CD) based on a modified version of the Swiss formula used during the Tokyo Round, has drawn a lot of attention. However, it does not indicate any value of a crucial coefficient, which is the determinant of the extent of tariff cuts. Currently, negotiations are underway around a number of alternative formula.

JP exempts the developing countries and the LDCs with less than 35 percent non-agricultural bound tariffs from making tariff reductions. It also provides longer implementation periods for the developing countries, allowing them to apply less than formula cuts for up to 10 percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10 percent of the total value of a Member’s imports.

### Binding Coverage

The provision of a comprehensive coverage has been reiterated in JP. Although the LDCs are not required to undertake tariff reduction commitments, they are expected to bind 100 percent of their tariff lines at an average level that does not exceed the overall average of bound tariffs of all the developing countries after full implementation of the current concessions. Tariff reductions are to commence from the bound rate, while for unbound tariff lines, the basis for commencing shall be [two] times the most favoured nation (MFN) applied rate in the base year of 2001. All non-*ad valorem* duties will have to be converted into *ad valorem* equivalents on the basis of a “methodology to be determined” and bound in *ad valorem* terms.

### Other Issues: Sectoral Approach and NTBs

Apart from the general tariff reduction and increased coverage, elimination and/or harmonisation of tariffs in certain sectors – to be decided during negotiations – has figured out prominently. The seven sectors listed

in the NGMA-CD for complete elimination of tariffs are fish and fish products, leather goods, textiles and clothing, footwear, stones, gems and precious metals, electronics and electrical goods, and motor vehicles, parts and components. Possibilities of supplementary modalities such as the "zero-for-zero" initiative are also being discussed. Although NTBs continue to affect trade in industrial goods, directions in JP seem to suggest that significant progress on them may not be achieved in the near future. JP encourages all participants to notify NTBs and to proceed with identification, examination, categorisation, and ultimately, negotiations on them. It is specified that modalities for addressing NTBs "should" fully take into account the principle of special and differential treatment (S&DT) for the developing countries and the LDCs.

### Implications for South Asian Countries

As per JP, the South Asian LDCs, viz., Bangladesh, the Maldives and Nepal, are not required to undertake any tariff reduction commitments on NAMA.<sup>6</sup> They have also been exempted from participating in the sectoral approach to liberalisation.<sup>7</sup> However, these countries are expected to substantially increase their level of binding commitments. For the Maldives and Nepal, the tariff binding coverage is already very high; 96.6 and 99.3 percent of their non-agricultural tariff lines are bound. However, the coverage for Bangladesh is very low at 3 percent, which implies that it may have to take commitments to bind a significant proportion of its industrial products as part of the current round of negotiations. This might not cause any serious problem since having implemented the unilateral trade liberalisation programme, average tariffs in Bangladesh have fallen to a low level. In addition, for most developing countries, the bound tariffs are much higher than their applied rates, implying that the provision requiring the bound tariffs to be at an average level not exceeding the overall aver-

age of bound tariffs of all developing countries might not prove to be very stringent.<sup>8</sup> Nevertheless, considering the vulnerabilities of these poor countries, the binding of industrial tariff lines should be undertaken on a voluntary basis by these countries. For the developing South Asian countries, viz., India, Pakistan and Sri Lanka, the binding coverage rates are 69.8, 36.9, and 28.3 percent respectively.

Paragraph 6 of JP mentions that participants with a binding coverage of non-agricultural tariff lines of less than 35 percent, as an exception, would be exempted from making tariff reductions through the formula. This implies that the formula ap-



proach to tariff reductions is applicable to India and Pakistan only. For these two countries, the choice of tariff reduction formula will have important implications for their future tariff regime.

Will the reductions in tariffs result in significant market access? Currently, the MFN tariffs in developed countries average 3.8 percent. Consequently, the market opening effect of further tariff liberalisation is likely to be quite limited. However, it needs to be pointed out that despite generally low average tariffs, many product lines in the developed countries are subject to tariff peaks and tariff escalations. Such tariff peculiarities are mainly concentrated in labour intensive manufacturing goods (for e.g., apparel and footwear) in which the developing countries and the LDCs possess comparative advantage. Tariff reduction in these sectors may benefit these countries substantially. Many developing countries are now growing

markets in which trade preferences given to the LDCs are very limited. Tariff cuts in the developing countries under NAMA negotiations would broaden up market opportunities. Nevertheless, the South Asian LDCs might still face difficulties in taking advantage of this market liberalisation as they will have to compete with other developing as well as developed countries.

S&DT for the LDCs has so far been non-binding in nature. JP leaves the duty-free and quota-free access of LDC exports at the discretion of "developed country participants and other participants who so decide" without any agreed deadline.<sup>9</sup>

Under various regional trade arrangements and generalised system of preference schemes, the South Asian countries have been enjoying preferential tariff margins. With the future tariff cuts, the margin between the MFN and preferential rates could get eroded or completely eliminated. This is likely to have serious consequences for the South Asian LDCs. It has been estimated that losses due to erosion of preferences could be US\$ 222 million for Bangladesh and about US\$ 18 million for Nepal.<sup>10</sup> Accessing trade preferences has been conditional on complying with the rules of origin (ROO) requirements of donor countries. However, complicated rules have resulted in very low utilisation of trade preferences reserved for the LDCs.<sup>11</sup> Therefore, erosion of preference along with the continuation of restrictive ROO will weaken LDCs' competitive position further.

The South Asian countries have long been subject to NTBs, preventing them from getting the benefits of the liberal trade regime. It is not clear how the NAMA negotiations can address the problem of NTBs without conflicting and overlapping with the mandate of other negotiating groups.<sup>12</sup>

### Key Issues at Hong Kong

Some of the key issues that the South Asian countries may wish to put forward, negotiate, and pursue in the



WTO Hong Kong Ministerial are as follows:

- Despite the long-recognised need, completely duty-free and quota-free access of LDC goods in the developed countries has not yet been ensured.<sup>13</sup> South Asian countries should reiterate this demand, especially when negotiations on further reductions in MFN tariffs on non-agricultural goods are underway. Advanced developing countries should be urged to provide market access facilities to the LDCs on a non-reciprocal basis.
- While considering the formula approach to tariff cuts, S&DT and the principle of "less than full reciprocity for developing countries" must be reflected in the preferred formula. The adopted formula should be effective in addressing tariff peak and tariff escalation.
- The implications of loss of government revenue emanating from the tariff-cuts must also be taken into consideration in granting longer implementation period for the developing countries.
- Concrete measures need to be undertaken to offset the preference erosion as a result of tariff-cuts under NAMA negotiations. Establishment of a Competitiveness Fund with contributions from the developed and the advanced developing countries in this regard can greatly help supply-side capabilities of the LDCs and weak developing countries.<sup>14</sup>
- In the absence of flexible ROO, non-agricultural tariff reductions will only deteriorate the competitiveness of the LDCs. Following the Dhaka International Civil Society Declaration 2005, demand for ROO that are flexible, non-trade restrictive, simplified, and LDC-friendly will be in the best interest of the poorest countries.
- Effective trade-related capacity building measures should be considered as an integral part of NAMA modalities. This component should be strengthened along with the integrated framework initiative of the WTO in order to improve the participation of the Members in the negotiations and

enhance the supply-side capacities of the LDCs and other developing countries, particularly in the areas of sanitary and phytosanitary measures and technical barriers to trade.

- Dealing with NTBs is urgent, otherwise, the progress made on tar-

iff cuts can be overshadowed by the latter's indiscriminate use. NTBs faced by the LDCs should be addressed on a priority basis.■

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## NOTES

- 1 Using the UNCTAD Trade Analysis & Information System (TRAINS) trade and tariffs data at the 6-digit HS classification level, Raihan's (2005) estimation of a cross-country trade barrier index (TBI) ranks India as the most closed economy in the world, while Bangladesh, the Maldives, and Pakistan are ranked respectively, 8th, 9th, and 11th amongst a set of 119 countries, for which information is available. Sri Lanka turns out to be a much more open economy with a TBI rank of 76. See Raihan, S. 2005. "Dynamics of Trade Liberalisation in Bangladesh", Unpublished Doctoral Thesis, IDPM, University of Manchester. Very recently, however, India has slashed its tariffs further and has been shown to have MFN average tariffs lower than Bangladesh and Pakistan (see, Mehta and Agarwal, 2005, pp. 85, the full reference for which is given below).
- 2 Mehta, R and P. Agarwal. 2005. "Non-Agricultural Market Access: A Balancing Act for South Asia", in *Mainstreaming Development in Trade Negotiations: Run-up to Hong Kong*, South Asian Yearbook of Trade and Development 2005, pp.81-103. New Delhi: Centre for Trade and Development.
- 3 It has been shown that while trade taxes contribute to less than three percent of the government revenue in developed countries, they are in the range of 11-25 percent in the South Asian region.
- 4 Paragraph 16 in the Doha Declaration, WTO, *Ministerial Declaration*, WT/MIN (01)/Dec/W/1, 14 November 2001.
- 5 "Doha Work Programme: Decision Adopted by the General Council on 1 August 2004", WTO, WT/L/579, 2 August 2004.
- 6 The other South Asian LDC is Bhutan, which is not a WTO Member.
- 7 This is clearly stated in paragraph 9 of the July Package (JP).
- 8 The average bound tariff rate for WTO Members is 43 percent. Moreover, since the provision is specified in terms of overall average tariff rate, the scope of keeping rates significantly higher than the overall average on some sectors is retained.
- 9 This is specified in paragraph 7 of the July Package. See Adhikari, R. and SK Shrestha. 2005. *From Doha to Hong Kong: Issues for South Asia*, Briefing Paper No. 1, Kathmandu: SAWTEE.
- 10 Rahman, M. 2005. "NAMA Negotiations in the WTO and Preference Erosion: Concerns from LDC Perspective", Paper presented at the Regional Conference on the Agenda for WTO Hong Kong Ministerial Challenges for South Asia, organised jointly by Research and Information Systems for the Non-Aligned and Other Developing Economies, Global Bio-Diversity Forum and Federation of Indian Chambers of Commerce and Industry, 11 August 2005.
- 11 The utilisation rate of trade preferences by LDCs in Canada, the European Union, Japan, and the United States (US) has been less than 50 percent. In fact, it has been argued that either preferences given to the South Asian LDCs have limited product coverage or are conditional on complying with very restrictive origin rules. See, Razzaque, MA. 2005. *Making Trade Preferences Work for South Asian LDCs*, Briefing Paper No. 2, Kathmandu: SAWTEE.
- 12 Mehta, R and P. Agarwal. 2005. as cited above.
- 13 The South Asian LDCs continue to face high and discriminatory tariff barriers. For example, the United States (US) has excluded them from its most attractive preferential schemes. As a consequence, Asian LDC exports of textiles and clothing in the US market are subject to an average tariff peak of 16 percent with many individual items facing rates as high as 35-40 percent. These incidences of high tariffs on LDC exports are completely against the spirit of the Doha Round.
- 14 Mr Navin Dahal of SAWTEE has emphasised this point in his various presentations on NAMA Negotiations in the WTO.

# Services negotiations in DOHA ROUND and South Asia

For the South Asian countries, Mode 4 is a common area of interest and what is immediately required is the easing of restrictions on existing commitments.

**Pranav Kumar**

The services sector accounts for 49 percent of South Asia's gross domestic product. Only India has improved its rank among the South Asian World Trade Organisation (WTO) Members in exports of commercial services.<sup>1</sup> In 1995, India was ranked 34<sup>th</sup> in the world in exports of commercial services; the position improved to 21<sup>st</sup> in 2003. The WTO 2004 *International Trade Statistics* states that barring India, no other South Asian nation fall in the top 40 exporters of commercial services.

Exports of commercial services from South Asia increased from US\$ 7.9 billion in 1993 to US\$ 29 billion in 2003. A large portion (approximately US\$ 25 billion) of it originates from India. Exports of commercial services from other four South Asian nations, viz., Bangladesh, Pakistan, Nepal and Sri Lanka, have either remained constant or increased marginally between 1993 and 2003.

The low growth of exports of commercial services from other South Asian countries may be attributed to substantial underestimation of the real flows as nearly half of the remittances are sent through unofficial channels. It is estimated that 40 percent of remittances to Bangladesh are sent through illegal *hundi* sources, 4.6 percent through friends and relatives,

8 percent are carried by migrants themselves and 46 percent go through official sources.<sup>2</sup> In Pakistan, the real flow of remittances is between US\$ 8-10 billion, of which only US\$ 1 billion is sent through official channels.

## Services Trade: South Asia's Major Strength

Although South Asia has not been able to significantly raise its share in global services trade, migration from this region to both developed and developing countries is increasing rapidly. The region is the second largest recipient of remittances in the world after the Caribbean. In countries like Bangladesh, India, Pakistan and Sri Lanka, remittances represent a signif-

icant ratio of exports. About 20 percent of the annual global international remittances (close to US\$ 100 billion in 2004) flows into South Asia. India alone accounts for 78 percent of this figure, making it the world's largest remittance receiving country, while Bangladesh accounts for 12 percent of South Asian remittances.

Cross-border trade in business services, especially the Information Technology (IT) services, is among the fastest growing areas of services trade. Traditionally, the developed countries have dominated trade in this category but the past decade has seen the emergence of some developing countries as the most dynamic exporters. In India, software exports

have risen from US\$ 1.8 billion in 1997-98 to over US\$ 7 billion in 2001-02 – an average annual increase of 46.3 percent per year. Further, there appears to be a major shift in the exports of IT and business process outsourcing (BPO) services in terms of the composition and mode of delivery of exports. Unlike IT, the bulk of BPO services are processed in India. This has had a major impact on the mode of delivery of software exports.

In 1993-94, nearly 62 percent of all software exports from India were carried out at the clients' location, i.e., "on-site". By 2002-03, "offshore production" became the dominant mode of delivery of software exports, accounting for 58 percent of total exports.

## Other Areas of Strength

Besides cross-border trade through business process outsourcing, remittances and movement of natural persons, other sectors of comparative advantage such as tourism exist. Sri Lanka, Nepal and India attract the bulk of tourists in the region. Tourist arrivals in South Asia are expected to grow at 6.2 percent per year, compared to the world average of 4.1 percent during 1995-2020. In 2003, tourist arrivals reached 6 million and foreign exchange receipts from tourism



touched US\$ 7 billion.

Health tourism has also become common and covers a broad spectrum of medical services. Many tourists come from the United States (US) seeking treatment at cheaper prices. India is a recent entrant into this field. The inflow of foreign patients per year has crossed 150,000 in India, up from 10,000 in 2000. It is estimated that health care for foreign patients will deliver Rs. 100 billion (US\$ 2.3 billion) a year to Indian hospitals by 2012. The market in 2003 was worth US\$ 333 million.

### Market Access: The Major Barrier

The movement of natural persons under General Agreement on Trade in Services (GATS) Mode 4 is subject to a range of restrictions. These include wage-parity requirement, strict visa procedures, "economic needs test", non-recognition of professional qualifications, imposition of discriminatory standards or burdensome licensing requirements, payment of social security without corresponding benefits, and requirements of registration with or membership of professional organisations. Besides, in the aftermath of the 9/11 terrorist attacks in the US, security concerns have emerged as a prime challenge to immigration policies.

The developed countries fear that outsourcing of some kinds of services to the developing countries will lead to job losses in their own countries. This has promoted governments in the developed world to introduce anti-outsourcing bills. Upto March 2005, 40 states in the US introduced 112 anti-outsourcing bills. In Europe, there were legal norms designed to protect workers in outsourced deals known as Transfer of Undertakings and Protection of Employees. All these could turn into future barriers for cross-border trade in services. The current GATS negotiations under the aegis of Doha Round of trade negotiations offer a valuable opportunity to secure openness.

### Services Trade Liberalisation: A "win-win" Situation

The services sector is one where trade liberalisation could result in a "win-win" situation. Greater mobility of temporary workers, the outsourcing of services, foreign direct investment and tourism have the potential to bring benefits for both service suppliers and recipients' nations.

Globalisation has created pressure on firms to look for various cost-saving methods to enhance competitiveness. Enterprises in the developed countries find outsourcing as one of the most convenient ways to save costs by taking advantage of low-wages. Some studies have attempted to assess the implications of outsourcing on a sector and country specific basis. One study shows that, of the approximately US\$ 1.45 – 1.47 of value derived from every dollar spent offshore, US firms receive US\$ 1.12 – 1.14, while supplying firms receive

potentially large. Opening of developed country labour markets to temporary entry by foreign workers, equal to 3 percent of the current global workforce, would generate welfare gains exceeding those that could be attained from full merchandise trade liberalisation, leading to an aggregate gain of US\$ 150 billion a year.

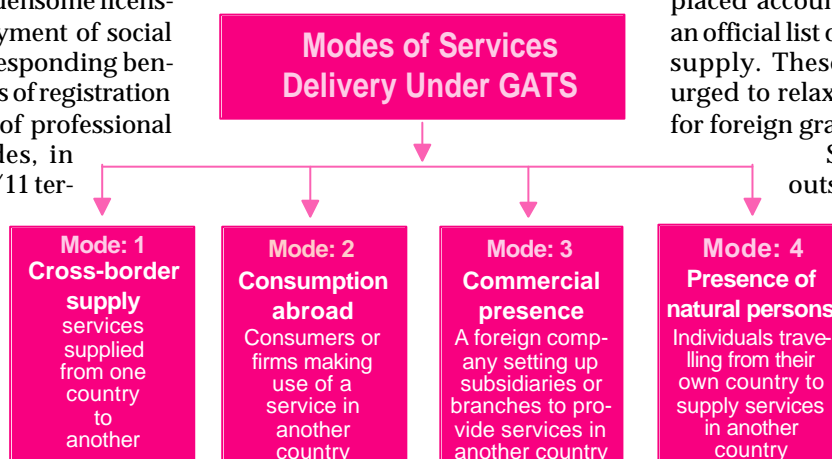
The majority of Organisation for Economic Cooperation and Development countries face acute shortages of labour in some professions. Australia faces a shortage of around 6,000 registered nurses while Canada's shortage of registered nurses is around 16,000 or 7 percent of the present workforce. Indian nurses are in great demand in the US, where the present requirement is 126,000 and is expected to reach 200,000 in 2006 and cross the 1 million mark by 2015. Every year, thousands of Indian nurses go to the US to meet this gap.<sup>4</sup> In 2004, Australia and New Zealand placed accounting professionals on an official list of skills that are in short supply. These countries are being urged to relax their visa regulations for foreign graduates.

Some organisations are outsourcing a number of accounting functions, and have established subsidiaries in India to handle their outflow. In addition to alleviating the skills shortage, this cuts costs too. These arrangements are

likely to become formalised in the future, with plans for some firms to establish Indian centres that will provide accounting services to Australian companies, as they do now with IT.<sup>5</sup>

### Current Status of Services

The Uruguay Round achieved limited liberalisation on trade in services. In Mode 4, where many developing countries have comparative advantage, the commitment level from the developed countries is very low. Renewed negotiations on services started in 2000 with new approach of "requests and offer". Proposals submit-



US\$ 0.33 of the value.<sup>3</sup> Likewise, savings from outsourcing can be significant as wages for software developers and data entry agents in India can be a fraction of that in the rich countries. It enables the preservation of services quality and rise in productivity simultaneously.

The case for temporary movement of natural persons arises primarily because of changing demographic composition in most industrialised nations and low preferences among the local population for some low-skilled jobs. It is estimated that the total welfare gains to the global economy from Mode 4 liberalisation are



ted, so far, reflect a wide variety of ambitions; from enhancing the transparency of the current regimes to securing market access, including the abolition of economic needs test and the introduction of a GATS visa.

An analysis of the commitment schedules of Members in the Uruguay Round shows that the sectoral coverage is poor and countries were more willing to open up less sensitive sectors and modes of delivery of services. A large number of commitments were in sectors such as tourism while social sectors such as health and education received very few commitments. Commitments by modes of supply show that 50 percent of WTO Members undertook full commitment in Mode 2, 30 percent in Mode 1, 20 percent in Mode 3 and virtually none of the countries scheduled sector specific commitments in Mode 4.<sup>6</sup>

Prior to the July Package (JP) of 2004, many Members were interested in ensuring that services would be given adequate prominence. The WTO's General Council fixed May 2005 as a target date for the submission of revised services offers. Members were urged to make high quality offers, particularly in sectors and modes of supply of export interest to the developing countries, with special attention to be given to the least developed countries (LDCs).

### South Asia's Approach

In the Doha Round, the approach of South Asian countries (especially India) towards services negotiations is now significantly different from their stance during the Uruguay Round. This change in position resulted from the fact that India has experienced a robust growth in the services sector during the 1990s. In 2000, India made one of the most comprehensive submissions (WTO Document S/CSS/W/12) on the movement of professionals before the Council for Trade in Services. India has tried to make an assessment of the nature of liberalisation that has taken place in Mode 4 under the existing GATS framework and the extent to which the objectives of Article IV of GATS have been operationalised through liberalisation in

this Mode. In July 2003, India and Pakistan, along with some other developing countries, made a first collective proposal (WTO Document TN/S/W/14) on Mode 4, regretting the lack of substantial improvements in the offer submitted at that time (26 in total).

The period since the Cancún Ministerial in 2003 has witnessed more active participation by the developing countries in services negotiations. India and Pakistan have made several joint submissions along with other developing countries suggesting ways to accelerate the GATS negotiations and expressing the concerns of the developing countries. These proposals are intended to initiate a discussion in the Council for Trade in Services in its Special Session about the extent to which Article IV of the GATS is being implemented in the ongoing negotiations. In February 2005, India and Pakistan – along with 10 other developing country Members of the WTO – made a submission (WTO Document TN/S/W/31) before the Council for Trade in Services Special Session, seeking broadening of coverage of categories of natural persons under the horizontal commitments.

### Future Negotiating Strategies

The Doha Round has entered a crucial phase. As a large developing country, India needs to protect the interests of a larger group of developing countries. For the South Asian countries, Mode 4 is a common area of interest.

On Mode 4, what is immediately required is the easing of restrictions on existing commitments. While many schemes facilitate the mobility of the highly skilled, relatively few cover the moderately or low-skilled workers of developing countries. Keeping this in view, South Asian countries must ask for expansion of commitments in categories delinked with commercial presence (Mode 3). Elimination of "economic needs test" will help low-skilled and independent professionals. Some developed countries are also raising security concerns.

As per JP, the developed countries

were supposed to improve their Mode 4 offers substantially. However, both the European Union and the US have disappointed the developing countries by not improving the quality of their offers. Undoubtedly, security concerns are important but solutions need to be found within the GATS framework. That is why the concept of GATS visa was proposed by India and other developing countries. It is worth noting that some of the legislation pending before the US Congress support the concept of temporary workers visa. South Asian countries may also demand for a stand alone agreement on Mode 4 having features like short-term GATS visa, no requirement of economic needs test, strict provisions for return migration etc. These provisions will address the concerns of both the developed countries and the developing countries. ■

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### NOTES

- 1 Commercial services are defined as being equal to services minus government services. Commercial services are further sub-divided into transport, travel and other commercial services, which include communication, construction, insurance, financial, computer and information, audiovisual services, etc.
- 2 The *hundi/hawala* system, common in the Middle East and the Indian sub-continent, is a transfer or remittance from an expatriate worker in one country to a nominated person in his/her own country of origin without a formal transfer of money or use of formal financial institutions. It usually involves intermediaries.
- 3 Chambers of Commerce of the United States. "Jobs, Trade, Sourcing and the Future of the American Workforce", April 2004.
- 4 "Wanted: 1.26 lakh nurses in US" (see <http://in.rediff.com/money/2005/oct/17nurse.htm>)
- 5 "Australia and New Zealand Lack Accountants", *Financial Times*, 5 May 2005.
- 6 Mukherjee, A. 2005. "Developing Countries and GATS Negotiations: The Case of India" in *Global Economy Journal*, Vol. 5, Issue 2.

# Trade Facilitation South Asian Perspective

Dushni Weerakoon and  
Jayanthi Thennakobn



**T**rade facilitation (TF) measures were first included in the World Trade Organisation (WTO) agenda as a separate issue at the 1996 Singapore Ministerial along with three other issues, viz., investment, competition and transparency in government procurement. Works on TF were carried on under the WTO thereafter, though there were divergence in views between the developed and developing countries. The developed countries were largely in favour of negotiating binding rules while the developing countries were not convinced that binding rules in the WTO would be necessary or helpful in this area. The latter have been cautious against having new obligations in the WTO, which may exceed their implementation capacities. Nevertheless, an agreement was reached under the July Package (JP) in 2004 wherein TF was the only “Singapore issue” on which Members agreed to conclude negotiations as part of “single undertaking” under the Doha Development Agenda (DDA). Annex D of JP that deals with modalities on negotiations on TF states that negotiations “shall aim to clarify and improve relevant aspects of Articles V, VIII, and X of the General Agreement on Tariffs and Trade (GATT) 1994 with a view to further expediting the move-

ment, release and clearance of goods, including goods in transit”.

Article V highlights the requirements that Members should fulfill to ensure freedom of transit where the main obligations are to permit freedom of transit through the most convenient route; not to subject traffic in transit to unnecessary delays or restrictions; to ensure that all charges are reasonable; and that most favoured nation (MFN) treatment should be afforded for traffic in transit. Article VIII sets out the administrative aspects of trade, in particular fees and formalities connected with importation and exportation. The main obligations of WTO Members include: commitments that all fees and charges be limited to the cost of the services rendered; desist from imposing substantial penalties for minor breaches of custom regulations; and simplification of fees and charges, import export formalities and documentation requirements. Article X calls for the publication of all trade-related laws and regulations. The main obligations are to promptly publish all laws and regulations; to publish before enforcement of new measures; to enforce uniform and reasonable administration of laws; and to ensure prompt review and correc-

tion of administrative action relating to custom matters.

Negotiations have started with several proposals made by WTO Members. The key issues in the proposals based on Article X are related to advance rulings, use of electronic media, enquiry points, consultative mechanism and appeals. The proposals on Article VIII relate to the levy of fees and charges, provisions to reduce documentation requirements, setting up of a standard processing time and the use of international standards. Key proposals based on Article V include measures for non-discrimination between modes of transport, origin and destination, carriers, routes and goods; publication of fees and charges; use of international standards for transit formalities; a bonded transport regime; and simplified and preferential clearance treatment for perishable goods in transit.

The issues for the South Asian countries with respect to those proposals are many and varied. While the South Asian countries have undertaken efforts to improve TF measures both unilaterally and through regional trading agreements, they have yielded limited results. Issues of transit facilities under Article V is most relevant to India, Bangladesh and Nepal. Transit issues in the sub-continent have been dealt with on a bilateral basis (for e.g., Indo-Nepal Treaty of Transit). However, India, Bangladesh and Nepal are yet to accede to international transit conventions such as the TIR Convention<sup>1</sup> or the ATA Carnet,<sup>2</sup> although India uses the ATA Carnet to a limited extent.

The status of the South Asian countries with respect to the key proposals based on Article VIII indicates that even though these countries have undertaken several computerized systems such as use of ASYCUDA, EASY, EDI, etc., in order to reduce documentation requirements in import and export procedures, there are continuing procedural complexities. In addition, fees and charges in most of these countries are fairly high. According to the available information, no official standard processing time has been set in these countries so far. India and Sri Lanka have set some basic guidelines

for their customs stations. Besides, Pakistan, Sri Lanka and Nepal have committed to implement international standards while India also has to implement several reforms to fully meet international standards.

The current status of the South Asian countries with regard to the proposals based on Article X reveals that authorities in India, Pakistan, Bangladesh, Sri Lanka and Nepal disseminate information using electronic media to some extent while they still use the print media as well. The authorities have started to use electronic media with the introduction of several computerised systems. However, in the case of Bangladesh, Pakistan and Nepal, there is still no progress reported with regard to advance rulings. None of the countries have established a "single window" enquiry point for traders. In addition, there is no consultative mechanism; the Sri Lankan, Indian and Nepalese legislation provide the right of appeal to the affected party.

Efficiency and capacity constraints in South Asia consist of long-standing weaknesses such as low port efficiency and less competitive nature, poor port infrastructure, lack of cross-border transit points and road connections across the region, high cost of road transport, licensing restrictions, poor railway facilities, poor management at customs with high monetary and time cost, administrative problems, non-transparent trade procedures, lack of technical equipments used in customs administration, restrictions on information technology and service sector infrastructure, lack of modern infrastructure networks and problems in meeting standards and technical regulations. In addition, the political will to implement TF measures seems to be lacking.

One of the barriers to TF in these countries is widespread bureaucratic practices at customs and other key government institutions where officials have become accustomed to the existing systems. Furthermore, the pressure from stakeholders to implement TF in most of the South Asian countries is lacking partly because the business community is not fully conversant with the potential benefits of TF.

A key factor inhibiting most developing countries from implementing TF measures concerns the costs associated with large-scale improvements in trade infrastructure.

It is evident that the concerns expressed by the developed countries in multilateral trade negotiations are different from those of the developing countries. While some developed country Members have submitted their proposals for new obligations or clarifications of the relevant existing General Agreement on Tariff and Trade (GATT) rules, many developing country Members insist on voluntary guidelines rather than legally binding rule-based agreements. Although the developing countries do not disagree with TF, they argue that compliance with binding TF standards would be an additional cost to them. Least developed countries (LDCs), in particular, stress the need for precise, effective and operational special and differential treatment (S&DT) provisions and have expressed concerns that the proposals submitted hitherto do not provide for technical and financial assistance by the developed countries. Another submission is that the legal and administrative implications of proposed measures need to be examined considering the existing institutional and administrative capacities of the developing country Members and the LDC Members.

Pakistan has proposed that an assessment should be carried out on the needs and priorities of the developing countries as the basis for future negotiations on TF. Bangladesh, like many other LDCs, has expressed concern that the implementation of TF measures requires technical know-how and necessary resources. Technical assistance alone cannot ensure effective implementation and developing nations have expressed the view that the scope of future negotiations on TF should be within the existing capacity of Members. India too has expressed concerns on the scope and content of the negotiations arguing that some proposals – such as those relating to binding advance rulings for customs purpose, the obligatory use of Harmonised Standard tariff classification, express shipments, etc. – exceed the

mandate for negotiations.

The WTO is not viewed as the most suitable forum for dealing with TF issues since other specialised international organisations or conventions are in force at present. Negotiations on TF with binding rules are not viewed with enthusiasm, with a preference for more general incentive based reform commitments and autonomous implementation. Negotiating strengths differ across South Asia. The smaller economies are likely to face numerous difficulties with respect to TF proposals. They include the ability to follow and participate in the negotiations; the ability to analyse, synthesise proposals and submissions and evaluate the implications of those proposals; the capacity and ability to develop negotiating proposals; and finally the capacity and ability to be able to assess the cost implications of new commitments and obligations. All these factors might reduce the bargaining position of the South Asian countries in the negotiations.

The priority areas in improving TF for many South Asian countries are improving customs procedures and formalities, harmonisation of standards, and removing constraints on transit procedures, etc. They are, therefore, likely to call for the scope of current negotiations on TF under the WTO to be limited to Articles V, VIII and X of the GATT 1994. Despite the potential benefits of TF, concerns regarding costs associated with new commitments and implementation capacities will mean that provisions of S&DT, technical assistance and capacity building for the developing countries and the LDCs needs to be prioritised in negotiations. ■

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## NOTES

- 1 An international transit system for goods carried by surface transport.
- 2 Designed to facilitate the importation, irrespective of the means of transport used, of goods that are granted temporary duty-free admission.



# Will the Hong Kong Ministerial truly address the “development dimension”?

The “development dimension”, which should have been put at the heart of multilateral trade negotiations, is confined to mere rhetoric.

Ratnakar Adhikari

At the heart of the trade and development discourse is the realisation that trade is not an end itself but a means to achieve broader development goals such as raising living standards and enhancing the quality of life. There is no disagreement that trade can be a powerful instrument for poverty reduction. However, the prospects of its benefits have often been oversold.<sup>1</sup> During negotiations for signing trade agreements, the developed nations tend to restrict the policy space or flexibility available to the developing countries to pursue their development objectives. Since today's developed nations had liberally used such flexibilities during their economic transformation process, the developing countries have every right in demanding that they be allowed to retain such flexibilities.<sup>2</sup>

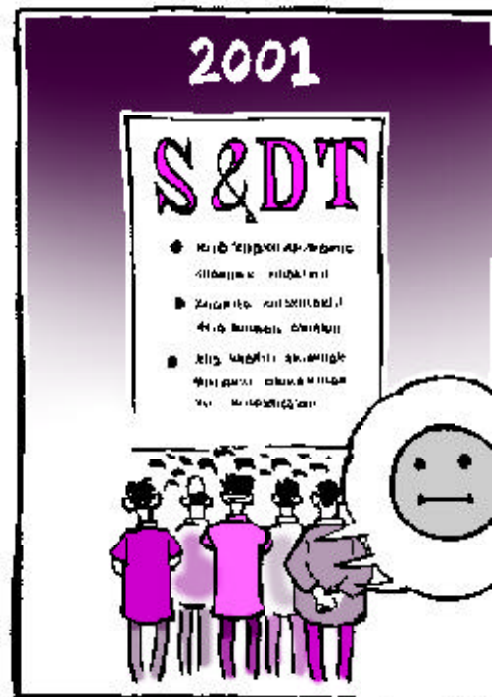
Prior to the Uruguay Round (UR), flexibilities were reflected in various parts of the General Agreement on Tariffs and Trade (GATT), the legal instrument. However, after the conclusion of the UR, which established the World Trade Organisation (WTO) in 1995, the developing countries witnessed the erosion in such flexibilities due to the “single undertaking” principle. As per this principle, the entire agreements of the WTO should be considered a “package” – Members will have to accept either all or none. The developing countries, therefore, complained of “development apathy” of the WTO.

This led to a serious introspection on the part of WTO

Members to make the multilateral trading system more “development friendly”. While efforts made during the First to the Third Ministerial Conferences were rather marginal, the major boost came during the Fourth Ministerial Conference, with the launch of the Doha Development Agenda (DDA). Although the DDA received a major setback due to the failure of the Fifth Ministerial Conference held at Cancún in 2003, it was brought on track in August 2004, after the adoption of the July Package (JP). Nothing substantial has happened in the trade negotiating arena since, but it is worth emphasising that the current negotiations are going to determine the outcomes of the Hong Kong Ministerial Conference during 13-18 December 2005. In this context, the issue of development dimension should be dis-

cussed from three perspectives. First, the pending issue of imbalances, implementation-related issues and concerns and special and differential treatment (S&DT); second, development dimension in the JP; and third, development dimension outside the JP.

On the first set of issues, negotiations are proving largely futile because the imbalances and asymmetries have not been sufficiently addressed. For example, one of the most significant efforts to address the asymmetry was the Declaration on TRIPS and Public Health issued as a part of the DDA. However, continued deadlock over the amendment of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement to address the concerns of the poor countries (with insufficient or no manu-



facturing capacity to exercise the rights conferred to them by the Declaration) shows the apathy on the part of some Members to resolve this issue. In fact, some Members have reneged on their commitments due to the pressure from their pharmaceutical lobbies not to cede to the demands of the developing countries on this issue.

Similarly, as a *quid pro quo* to reduce trade barriers on agriculture, most of the protectionist developed countries are demanding that other (developing) countries provide concessions on industrial tariffs and services. The question arises: why should there be any cross-sectoral link, especially when some countries are being asked to do away with something (for example, subsidies) which is inconsistent with the principles of the WTO? The developing countries argue that it is unfair to put them in "double jeopardy" (or make them pay twice) for creating a level playing field on trade in agricultural goods.<sup>3</sup> This issue was implicitly raised by several developing countries at the WTO General Council (GC) meeting on 28 October 2005.<sup>4</sup>

Progress has been extremely limited on implementation-related issues. The JP entrusted the responsibility to the Director General (DG) to report to

the Trade Negotiations Committee and the GC no later than May 2005 on the progress made on these issues and the GC was supposed to review progress and take any appropriate action no later than July 2005.<sup>5</sup> However, since these deadlines have already been missed and negotiations on the so-called "major issues" (at least as categorised by JP) are consuming most of the time of Members, these issues are not likely to be resolved soon.

In the case of S&DT, the post-July 2004 scenario has been even more disturbing for the developing countries, and more so for the least developed countries (LDCs). The Special Session of the Committee on Trade and Development has not been able to finalise even the minimal S&DT related demand, reflected in the proposal submitted by the LDCs.<sup>6</sup> Out of these proposals, the most important one for the LDCs in the present context is the bound duty-free and quota-free market access. Though a ray of hope has emerged after the preparation of 2 November 2005 Text on this issue by the Chair of WTO Committee on Trade and Development Special Session, the Text neither creates a binding and permanent obligations nor seems applicable to all the products of the LDCs.

On the second set of issues, several initiatives were taken for addressing development concerns but there has been a major retreat in the post-July 2004 scenario. The JP itself was not very supportive of development dimension. For example, the language on duty-free and quota-free market access for LDC exports is much weaker than what was nearly agreed during the Cancún Ministerial.<sup>7</sup> While a separate annex on providing a roadmap for negotiations was prepared for other four issues (agriculture, non-agricultural market access, services and trade facilitation) no such annex was issued for development dimension. Though "less than full reciprocity" principle has been recognised on agriculture and non-agricultural market access texts, this could be reduced to some numbers at the time of adopting the formulae for providing concession. Services text is devoid of development dimension too. To make matters worse, the recent proposal for "benchmarking" introduced by a few developed countries promises to take away the policy flexibility that the General Agreement on Trade in Services (GATS) offered to its Members in the form of allowing countries to liberalise only those sectors in which they are comfortable.

The only major development dimension worth highlighting in the JP is the creation of a link between implementation commitments of the developing countries and technical assistance in the case of trade facilitation. For the first time in the history of multilateral trade negotiations, such a commitment appeared in a legally binding document. As per trade facilitation text, developing country Members are not required to fulfil the commitments to be agreed under a possible discipline on trade facilitation, if they do not have the capacity to do so. Moreover, commitment to provide technical assistance so as to enable them fulfil the obligations is strong and almost automatic, though not open-ended.



On the final set of issues, progress has been slow with considerably entrenched positions among the Members. Two such issues relate to intellectual property rights. The first one relates to access to medicine. The futility of the efforts made by the developing countries to get the TRIPS Agreement amended has been mentioned earlier. The second one relates to conflict between TRIPS and Convention on Biological Diversity. The major proposal of the developing countries to resolve the conflict and prevent biopiracy as well as misappropriation of traditional knowledge is to have "disclosure" requirement incorporated within the TRIPS Agreement as a condition for patent.

While there has been enough rhetoric on placing development at the heart of negotiations, nothing much has happened in terms of substance.

<sup>8</sup> However, continued divergence of positions and failure of the TRIPS Council meeting of 28 October 2005 to reach consensus on the Draft Text for the Hong Kong Ministerial could mean a missed opportunity for the developing countries as a whole. Notwithstanding this, a Deputy DG of the WTO – Rufus Yerxa – has assured that he would hold informal consultation to resolve this issue before the Hong Kong Ministerial.<sup>9</sup>

Regarding WTO rules, one of the major demands of the developing countries (and some developed countries) to prevent the abuse of trade remedy measures (particularly the most selective instrument such as anti-dumping) is not likely to move far enough before the Hong Kong Ministerial. Other issues such as trade, debt and finance; trade and technology transfer; and technical assistance and capacity building have not even made a modest progress worth analysing in the present context.

A recent development worth

highlighting here is the proposal of the European Union (EU) dated 28 October 2005, in which the grouping has also demanded that the Members agree, among others, on: a) stricter rules of the use of anti-dumping measures; b) duty-free and quota-free market access to developed country markets for LDC exports; c) addressing the problem of preference erosion "through a combination of trade-related and supply-side related responses"; d) 28 proposals on S&DT that were originally prepared for the Ministerial Conference in Cancún as well as the five LDC proposals that have been the focus of recent negotiations on development in Geneva; and e) commitment to an expanded aid-for-trade package in Hong Kong in order for it to be in place by 1 January 2007.<sup>10</sup>

The EU proposals appear "too good to be true". Some observers suspect that these proposals have been prepared by the EU to divert the attention of WTO Members from the current agricultural negotiations, which are proving politically difficult for the EU, or even to create a division within the developing countries.

As matters stand today, the "road to Hong Kong" looks as bumpy as the "road to Cancún" as far as development dimension is concerned. While there has been enough rhetoric on placing development at the heart of negotiations, nothing much has happened in terms of substance. Since development dimension is not only a negotiating issue in itself, which is of tremendous value to the developing countries, but also a cross-cutting issue, the failure to address the same in earnest could jeopardise the future of DDA itself. This is because DDA itself is a "single undertaking" and nothing can be considered as agreed unless everything is agreed! ■

(Mr Adhikari is Programme Specialist at United Nations Development Programme — Asia Pacific Regional Centre, Colombo. The views expressed in this article are those of the author alone and do not necessarily reflect UNDP or UN policy)

## NOTES

- 1 Rodrik, D. 2002. "Trade Policy Reform as Institutional Reform", in B. Hoekman, A. Mattoo and P. English (eds.) *Development, Trade and the WTO*. Washington D.C.: The World Bank; and Stiglitz, J. 2003. "Poverty, globalisation and growth: perspectives on some of the statistical links", in *Human Development Report 2003*, United Nations Development Programme. New York: Oxford University Press.
- 2 For a more descriptive insight on this subject, see Chan, H. 2002. *Kicking Away the Ladder: Development Strategy in Historical Perspective*. London: Anthem Press.
- 3 Due to these illegal subsidies, the developing countries suffered serious terms of trade loss as well as threat to the livelihood of their farmers due to dumped imports. Now, they are being asked to make concessions on other areas (such as services and/or industrial market access), which will inevitably restrict their policy space.
- 4 The European Union wants, among others, deeper cuts in industrial tariff; mandatory, quantitative and qualitative targets for services liberalisation, and extension of geographical indications to all products. See International Centre for Trade and Sustainable Development. 2005. *BRIDGES Weekly Trade News Digest*, Vol. 9, Number 37, 2 November, Geneva.
- 5 World Trade Organisation. 2004. *Doha Work Programme: Decision Adopted by the General Council on 1 August WT/L/579*. WTO. Geneva.
- 6 These are: a) Understanding in Respect of Waivers of Obligations; b) Duty and Quota-Free Access for the LDCs; c) Coherence between International Monetary Fund, World Bank and WTO Measures; d) Exemption from Agreement on Trade-Related Investment Measures, or TRIMs; and e) Measure in Favour of the LDCs.
- 7 World Trade Organisation. 2003. *Draft Cancún Ministerial Text* 13 September, Cancún.
- 8 Disclosing the source of origin of the biological resources or traditional knowledge used in the process of invention to the patent authorities. See Adhikari, R. 2005. "Emerging Issues Relating to Conflicts between TRIPS and Biodiversity: Development Implications for South Asia", in *South Asian Year Book on Trade and Development*. New Delhi: Centre for Trade and Development.
- 9 See ICTSD. 2005. Above note 4.
- 10 See ICTSD. 2005. Above note 4.



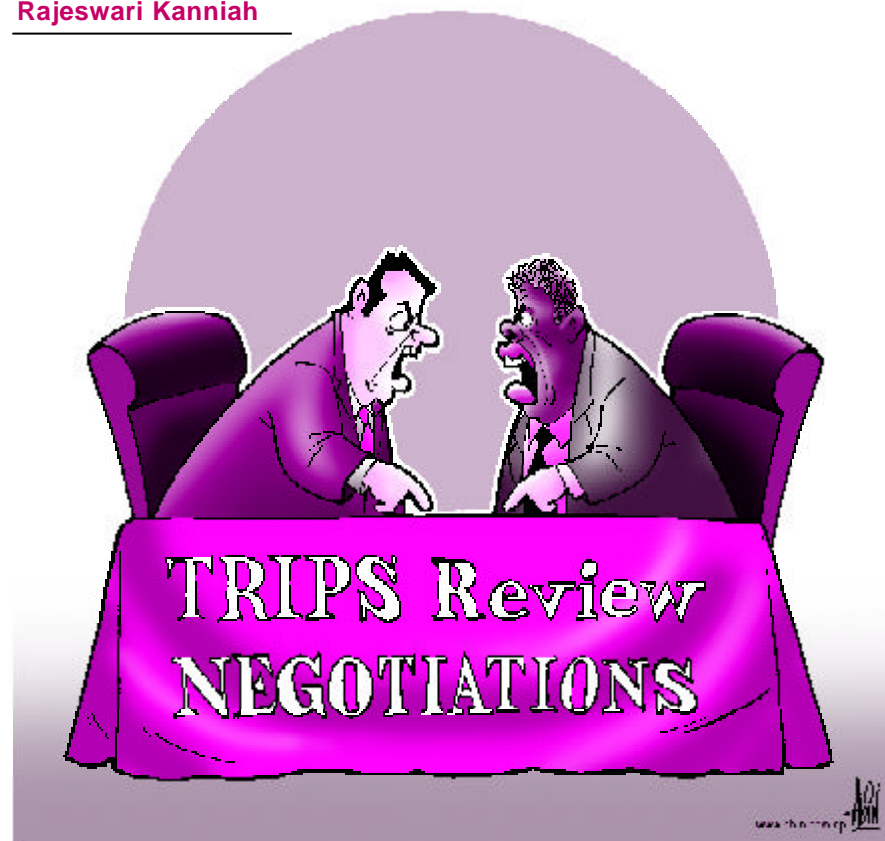
# TRIPS Review

## DIVERGENCE in

# Developing Country Positions

The efforts of the developing countries at the TRIPS Council have not led to their intended consequences since they have failed to take a common stand on a pivotal issue during the review negotiations.

Rajeswari Kanniah



**S**ensitive issues in the World Trade Organisation (WTO) invariably assume a developed vs. developing country (or a North vs. South) divide. So it is with the review of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Proposals and counter proposals have been made without quite addressing

the concerns raised by either side. The divide has prevented a consensus being reached before the Sixth WTO Ministerial in Hong Kong in December 2005. It even prompted the Indian Minister of Commerce to issue a letter to 31 trade ministers calling for an aggressive strategy to ensure that TRIPS protects biodiversity and tra-

ditional knowledge (TK).<sup>1</sup> The TRIPS review, however, has resulted in not just a North-South divide. It has witnessed a deep division even among the developing countries themselves; two divergent positions have been adopted making a consensus in the TRIPS review itself difficult.

The review of TRIPS is mandated by Article 27-3 (b); the review had to occur four years after the entry into force of TRIPS and was confined to that "sub-paragraph". It was the Doha Declaration 2001 that enlarged the review to examine the relationship between TRIPS and the Convention on Biological Diversity (CBD), the protection of TK and folklore.

Civil society organisations (CSOs) have called for a more fundamental review of TRIPS. They want TRIPS to serve the development needs of the least developed countries (LDCs) and bring about a better balance between the public interest and private rights, especially in the areas of health-care, agriculture and education. This Article is confined to a discussion of the review of Article 27-3 (b) as defined in the Doha Declaration.

The principal proposal of the developing countries with regard to the review mandated by the Doha Declaration is for an equitable intellectual property right (IPR) regime that prevents misappropriation (biopiracy) of genetic resources and TK and the conservation of biodiversity in compliance with CBD.

The efforts of the developing countries at the TRIPS Council have not led to their intended consequences and this is to a great degree due to their failure to take a common stand on a pivotal issue during the TRIPS review negotiations. They have not adopted a common stand in relation to the issue of patents on life forms. There are essentially two groups of developing countries actively engaged in the TRIPS review and their current positions are discussed below.

As soon as the TRIPS review began in 1999<sup>2</sup>, the African group proposed that there should be no patents on all life forms (plants, animals, micro-organisms) and a form of *sui generis* protection for plant varieties that protects farmers' rights to use and

share harvested seeds.<sup>3</sup> The African group has maintained this position.

Another group of developing countries comprising Bolivia, Brazil, Cuba, Ecuador, India, Peru, Thailand, and Venezuela do not reject the patenting of life forms *per se*<sup>4</sup>. They merely seek to ensure that patent applications provide for disclosure of source and country of origin of biological/genetic resource and/or TK, prior informed consent (PIC), and access and benefit sharing (ABS).<sup>5</sup>

The developed countries (represented by Australia, Canada, the European Union, Japan, Singapore, South Korea, Switzerland, and the United States) have argued that there is no need for any changes to the current construction of TRIPS. The concession they are willing to make is the concerns of the developing countries to be addressed outside the TRIPS system, i.e., by such means

It is important to note that the disclosure requirements are already an accepted norm in international patent law practice.

as national laws, private contractual arrangements, the World Intellectual Property Organisation Patent Cooperation Treaty, the Union for the Protection of New Varieties of Plants Convention and the CBD.

### No Patents on Life Forms

The African group of WTO Members, subsequently backed by other developing countries and many CSOs, have called for TRIPS to be amended to provide for no patents on life forms on the ground that “patents on life forms are unethical” and “contrary to the moral and cultural norms” of many societies. The African group proposed that Article 27-3 (b):

“...be revised to prohibit patents on plants, animals, micro-organisms, essentially biological processes for the production of plants and animals, and non-biological and micro-biological processes for the production of plants and animals.”<sup>6</sup>

This position is categorical. No patents shall be provided for plants, animals and micro-organisms and processes (be they biological, non-biological or microbiological) for the

production of plants and animals.

The African group is silent on the appropriate form of protection (other than patents) for life forms but accepts *sui generis* systems of IPR with respect to plant varieties. In this regard, the African group has proposed that such systems:

“...must clearly, and not just implicitly or by way of exception, strike a good balance with the interests of the community as a whole and protect farmers’ rights and traditional knowledge, and ensure the preservation of biological diversity.”<sup>7</sup>

The African group has called for TRIPS, CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture to be implemented in a mutually supportive and consistent manner and that the Members retain the right in their domestic laws to require disclosure of sources of biological

material and proof of benefit sharing.

On TK, the African group is of the view that TRIPS only provides for minimum standards and does not prevent the Members from adopting additional areas of protection. The African group has drafted a ‘Decision on Traditional Knowledge’ for adoption by the WTO Members as an integral part of TRIPS. The Decision provides a definition of TK and deals with the rights to be given effect; the documentation of TK; and the establishment of a Committee on Traditional Knowledge and Genetic Resources.

### Disclosure, PIC and ABS

The position adopted by the group of developing countries that call for disclosure, PIC and ABS is one that works within the patent system. They consequently accept patents on life forms but want such patents to be granted after careful and full examination of the criteria for patentability. The three additional requirements they have proposed (disclosure, PIC and ABS) need to be conditions for approving patent rights over biologi-

cal resources and associated TK. They have pointed out the limitations of relying only on databases, national laws or contracts to ensure that patents over genetic resources and TK are granted correctly. They see this route as the means to ensure conformity between TRIPS and CBD.

On 2 March 2004, the group addressed the possible technical issues that may arise in incorporating their three additional requirements for patent applications.<sup>8</sup> Detailed proposals were submitted to the TRIPS Council on 21 September 2004, 27 September 2004, 10 December 2004, and 18 March 2005.<sup>9</sup> The following three sections present the gist of the arguments.

**On Disclosure of Source and Country of Origin:** Only a legally binding obligation will guide patent examiners to ensure that all relevant prior art information is available to patent examiners. Disclosure will assist patent examiners to determine whether the claimed invention constitutes an invention that is excluded from patentability under Article 27-3 (b), paragraphs 2 and 3 of TRIPS. It would serve as part of a process to systematise available information of biological/genetic resources and TK to build the prior art information available to patent examiners and the general public. It will also be useful in cases relating to challenges to patent grants or disputes on inventorship or entitlement to a claimed invention. It has already been shown that patent challenges involve huge cost in terms of time and resources and are consequently not a suitable option for developing countries. In any case, disclosure requirements of various types are already an accepted norm in international patent law practice.

**On Evidence of Prior Informed Consent:** Article 15 of CBD requires, in recognition of the sovereign rights of states over their natural resources, that access to biological/genetic resources shall be subject to PIC of the contracting party providing such resources. IPRs have to be integrated into such an exercise. Mandatory fur-

nishing of evidence of PIC by patent applicants would facilitate the monitoring of Article 15 of CBD and a harmonious construction of TRIPS and CBD. TRIPS and CBD should be seen as two sides of the same system, aimed at promoting a consensual access to and sustainable use of biological/genetic resources. Contractual arrangements are unsatisfactory as parties to a contract are of vastly unequal bargaining strengths, as would be the case when traditional or indigenous communities and commercial interests are involved.

**On Access and Benefit Sharing:** This is to ensure benefit sharing that is fair and equitable among the parties. Factors that could be used in this determination include mutually agreed terms relating to conditions, obligations, procedures, types, timing, distribution and mechanisms of the benefits shared; and a reporting obligation on issues relating to patenting/commercialisation, where future benefit sharing is contemplated.

To sum up, this group of developing countries calls for the establishment of an international framework of protection that permits the use for commercialisation and/or taking out of IPRs of biological material and/or associated TK outside the country of origin. This is to be done only after the competent authority in the country of origin certifies that the source of origin has been disclosed, and that PIC and ABS conditions have been accepted. TRIPS and the patent system should be adapted to support the objectives of such a framework.

### First Principles and Compromises

The current state of affairs on the TRIPS review is unsatisfactory as the developed and the developing countries have made no headway in convincing each other to come to an agreement.

The divergent positions taken by the two groups of developing countries also make a consensus difficult. The African group refuses to compromise on patents on life forms except to agree to a *sui generis* regime for protection of plant varieties. The other group

of developing countries has compromised with the developed countries and entered into a technical discussion on the requirements for disclosure, PIC and ABS in patent applications.

It is a pity that the group of developing countries did not follow the early lead provided by the African group and offered a compromise deal instead – an offer that has not dislodged the dogged stand of the developed countries. It was unwise to offer such a compromise. It would also have been better to stick to first principles and follow through with the logic of that position than to compromise and still fail to achieve a consensus.

The proposal of the African group and the group of developing countries are still on board and will have to be addressed along with the proposals by the developed countries. The positions of the two groups of developing countries need to be reconciled. A possible approach for an agreement is: (i) to accept that there be no patents on life forms, and (ii) agree to a *sui generis* system for life forms that requires disclosure, PIC and ABS. ■

(Ms Kanniah is Acting Regional Director of Consumers International – Asia Pacific Office, Kuala Lumpur)

## NOTES

- 1 "India calls for biodiversity protection under WTO", Indo-Asian News Service, 29 July 2005 (see <http://www.eians.com/stories/2005/07/29/29ind.shtml>)
- 2 'Review of the Provisions of Article 27(3)(b) – Communication from Kenya on behalf of the African Group', IP/C/W/163, 8 November 1999.
- 3 In 2000, India also took this position and called for prohibition on patenting of inventions based on traditional knowledge or those that violate Article 15 of the CBD. 'Communication from India', IP/C/W/196, 12 July 2000. However, it has also joined other developing countries in calling for patent applications relating to biological materials or traditional knowledge to disclose source or country of origin of the biological resource and the traditional knowledge used in the invention, evidence of prior informed consent and access and benefit sharing.
- 4 In 2002, China, the Dominican Republic, Pakistan, Zambia and Zimbabwe were part of this group of developing countries and took up a similar position. 'The Relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge', IP/C/W/356, 24 June 2002. In 2003, with the exception of the Dominican Republic, the other countries listed here had dropped out of this group of developing countries. 'The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge', IP/C/W/403, 24 June 2003. After 2003, the Dominican Republic is no longer a part of this group of developing countries.
- 5 This position is also supported by Peru. 'Article 27-3(b), Relationship Between the TRIPS Agreement and the CBD and Protection of Traditional Knowledge and Folklore-Communication from Peru', IP/C/W/447, 8 June 2005.
- 6 'Taking Forward the Review of Article 27-3(b) of the TRIPS Agreement – Joint Communication from the African Group', IP/C/W/404, 26 June 2003.
- 7 *Ibid.*
- 8 'The Relationship between the TRIPS Agreement and the Convention on Biological Diversity – Checklist of Issues' IP/C/W/420, 2 March 2004.
- 9 'Elements of the Obligation to Disclose the Source and Country of Origin of Biological Resource and/or Traditional Knowledge used in an Invention', IP/C/W/429, 21 September 2004; 'Elements of the Obligation to Disclose the Source and Country of Origin of Biological Resource and/or Traditional Knowledge used in an Invention – Revision', IP/C/W/429/Rev. 1, 27 September 2004; 'The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge – Elements of the Obligation to Disclose Evidence of Prior Informed Consent under the Relevant National Regime', IP/C/W/438, 10 December 2004; 'The Relationship Between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge - Elements of the Obligation to Disclose Evidence of Benefit-Sharing under the Relevant National Regime', IP/C/W/442, 18 March 2005.



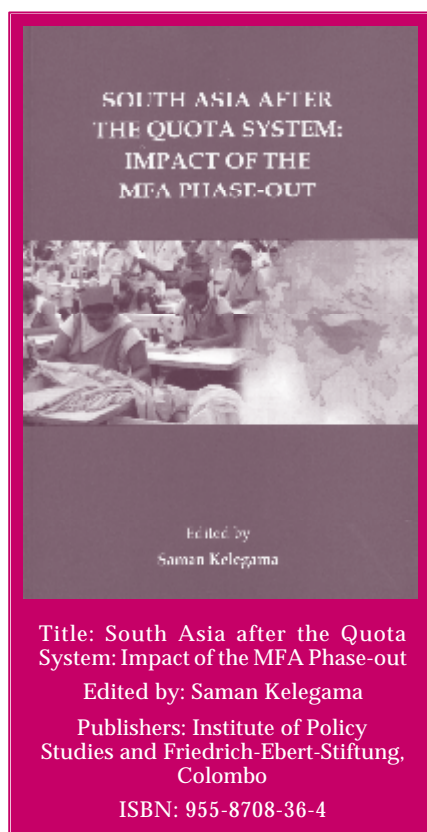
# The End of the Quota System Boon or Bane for South Asia?

Hemant Dabadi

The quota system – represented by the Multi-Fibre Arrangement (MFA) and subsequently by the Agreement on Textiles and Clothing (ATC) – which governed global trade on textiles and clothing (T&C) for the last four decades expired on 31 December 2004. The T&C trade was brought into the ambit of the World Trade Organisation (WTO) rules since 1 January 2005. The ATC, concluded under the Uruguay Round (UR), was meant to end the prevailing distortions in T&C trade and usher in a competitive milieu.

Trade in T&C is a major issue as most of the countries embark on industrialisation with the development of T&C sector. Although the quota system was initially meant to protect the industries in the developed world, it also fostered the growth of this sector in many developing countries that were not necessarily most efficient producers of T&C products. The end of the quota system has been a contentious issue since the conclusion of the UR and the establishment of the WTO in 1995. It was expected that larger developing countries like China and India would gain at the cost of smaller economies. The issue is about the extent of gain or loss for the latter and what adjustments need to be made for vulnerable economies.

*South Asia after the Quota System: Impact of the MFA Phase-out* reviews the immediate aftermath following the end of quotas as well as discusses the likely long-term and short-term impacts. Published by Institute of Policy Studies (IPS) in cooperation with Friedrich-Ebert-Stiftung (FES), Colombo, the book is divided into three parts, viz., introduction, South Asian experience and Sri Lankan case studies. The South Asian experience consists of the analyses of the likely impact on five South Asian countries: Bang-



ladesh, India, Nepal, Pakistan and Sri Lanka.

The quota phase-out has been a mixed experience for South Asia. Bigger economies like India and Pakistan have maintained their strong positions in the global textiles industry while some of the LDCs have been experiencing shocks. Nepal has been the most adversely affected in South Asia as its T&C exports have been steadily declining in its major market, viz., the United States, in 2005.

The book contains useful analysis of emerging market access issues in the T&C trade; implications for labour such as social protection and decent work; and system of preferences provided under bilateral and multilateral schemes. Initiatives taken by the governments and business to take

advantage of the quota phase-out and counter the negative impact of the full integration of the T&C trade in the WTO regime are also discussed.

One important issue, which still remains to be analysed is how the T&C sector will perform in each of the South Asian countries in the post-MFA era under different scenarios in future. The challenge is to come up with reliable quantified gains and losses under different scenarios. As a collection of articles of various writers, the book does not provide quantifiable gains or losses for each country. The authors rely solely on secondary data, which is probably the biggest drawback of the book. In the case of smaller economies such as Nepal, the unavailability of data required for such quantification also poses a problem although the two chapters on Bangladesh and India attempt to quantify the impact by the research of the authors themselves. However, as these calculations were done for another study and the assumptions are not the same, a suitable comparison of the impacts does not become possible.

It may be derived from this book that there cannot be a common South Asian outlook on the impact of the quota phase-out. The experience of Sri Lanka proves that economic size and lack of raw materials do not stand in the way to develop a niche in the T&C industry.

Although the book has been published after the expiry of the quota regime, the analysis (except for Nepal) is mostly based on information prior to the expiry of the ATC. It would suffice to state here that the book enhances our understanding about the issues emerging from the ATC expiry. ■

(Dr Dabadi is Research Director at SAWTEE)

# Mainstreaming Trade into Development and Poverty Reduction Strategies

**ON** 11 November 2005, SAWTEE and Pro Public organised the launch meeting of the project titled Linkages Between Trade, Development and Poverty Reduction. The project will be implemented in Nepal over the next four years. The project aims at helping the government and the stakeholders, including the private sector, to realise the linkages between trade, development and poverty reduction so that they could actively play their part in mainstreaming trade into the country's overall development and poverty reduction strategies.

At the meeting, participants discussed various aspects of development and poverty reduction. They stressed that poverty reduction is not possible without streamlining and linking trade and development policies with national poverty reduction strategies. They viewed that there is a serious need for Nepal to manifest the policy relevance and coherence of international trade on poverty reduction, especially in light of Nepal's accession to the

World Trade Organisation (WTO).

Eminent economist Dr Yubaraj Khatiwada presented the key findings of a preliminary research paper



on Trade, Development and Poverty Reduction in the Nepalese Context. The paper points out that trade issues should be addressed adequately in documents such as country's five year plans and the poverty reduction strategy paper. Further, trade, investment and industrial policies, including fiscal and monetary policies, have to be devised for meeting the core objectives of poverty alleviation as

there have been failures in this regard. The paper also states that there is a need to devise safety nets for the poor so that they do not get affected from the country's trade policies. Also, it is important to make strategic interventions to build the supply-side capacities.

The same project is also being implemented in 14 other countries in South Asia, South East Asia, Southern Africa, Eastern Africa and Europe by different local organisations in collaboration with Consumer Unity and Trust Society (CUTS), Jaipur, India, which is a network institution of SAWTEE.

As part of the same project, CUTS organised, in association with the United Nations Non-Governmental Liaison Service, the International Symposium on Linkages between Trade, Development and Poverty Reduction on 24 November at Geneva.

The theme of the symposium was "Stakeholder Perceptions on Trade, Development and Poverty Reduction". ■

## South Asian Perspective on the July Package

**SAWTEE** organised the National Consultation on WTO Doha Round and South Asia: Linking Civil Society with Trade Negotiations on 19 September 2005 in Kathmandu. The consultation was organised to take inputs from various stakeholders on five issues under the July Package (JP), which Members of the World Trade Organisation (WTO) had adopted in August 2004. At the consultation, researchers from India, Nepal and Sri Lanka presented papers on five issues: agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension.



The researchers at the consultation shared their findings of the research papers with the stakeholders for comments and suggestions. The

participants provided their inputs to the researchers based on their expertise and experience. The consultation was fruitful for the researchers as many suggestions from the stakeholders were relevant. After the researchers finalise their research based on the inputs taken from the stakeholders, a research book will be published for distribution at the Hong Kong Ministerial in December 2005. The book will be particularly useful for South Asian trade negotiators and other stakeholders as it will capture the South Asian perspective on five issues being negotiated under JP. ■

## Eighth Sustainable DEVELOPMENT Conference

**The** Sustainable Development Policy Institute (SDPI), Pakistan is holding its Eighth Sustainable Development Conference (SDC) during 7-9 December 2005 in Islamabad.

The themes for the Conference are gender, livelihoods, multilateral trade and governance, health, peace, people's rights and child labour.

SDPI organises SDC each year as a forum for sharing and exchanging ideas and experiences on different issues of sustainable development. Various actors and agencies, including practitioners, civil society and policy-makers of different countries participate in the Conference.

In December 2004, the Seventh SDC was organised, which covered issues such as globalisation, migration and urbanisation, food and water security, health, environment, energy, resource rights, gender, human trafficking and literature and development. Some 150 panelists from 18 countries had participated in that SDC.

The SDC series has been recognised as a major Conference in South Asia on sustainable development issues due to which it attracts leading intellectuals and policymakers. SDPI publishes an anthology on sustainable development and launches at each Conference.

In the Eighth SDC, the participants will discuss how problems and issues concerning sustainable development in South Asia can be dealt effectively at various levels by different stakeholders, including the governments and the civil society. ■

## Promoting Agribusiness



**SAWTEE** and Federation of Nepalese Chambers of Commerce and Industry – Agro Enterprise Centre – organised the national policy dialogue titled Promotion of Agribusiness in Nepal on 18 November 2005.

Participants opined that the government, in collaboration with the private sector and other concerned stakeholders, should take adequate measures for quality control, investment, access to the market and cost of compliance to strengthen and promote agribusiness in Nepal. In the context of Nepal's membership to the World Trade Organisation (WTO), they viewed that a national strategy to strengthen and develop a partnership among the government, private sector and farmers should be designed so that they could work together and promote the Nepalese agribusiness in the globalised era.

Presenting his paper "Agribusiness Promotion Policy for Multilateral Trade Competitiveness", Dr Krishna Prasad Pant, economist at Ministry of Agriculture and Cooperatives, Kathmandu, called for exporters to explore market potential of their products and also meet the requirements that are critical for exporting products in the international market.

Participants attending the programme admitted that unless there is research and development in the agribusiness sector, it would be difficult for the country to identify its trade competitiveness in agriculture, which, in turn, will limit Nepal's potential to derive benefits from WTO membership. Around 60 participants representing the government, private sector, non-government sector, donors and media participated in the dialogue. ■

## Regional Economic Cooperation in South Asia

**CUTS**-Centre for International Trade, Economics & Environment (CUTS-CITEE) organised a three-day national consultation in Dhaka during 21-23 November 2005.

The consultation was a part of the project titled Regional Economic Cooperation in South Asia. CUTS-CITEE, Friedrich-Ebert-Stiftung of India, Unnayan Shamannay, Bangladesh, and the Federation of Bangladesh Chambers of Commerce and Industry jointly organised the consultation.

The event was designed to involve

business representatives, government authorities, civil society representatives and academics from Bangladesh to create an awareness towards regional cooperation with a view to influencing the future policy direction on trade and investment promotion within the country and amongst other South Asian countries.

The project endeavours to assess the present status of South Asian Association for Regional Cooperation and analyse the future prospects of economic cooperation. ■



# SAWTEE Activities during the Hong Kong Ministerial

## **South Asian Civil Society's Perspective on Doha Round**

The discussion will be held from 11:00 - 13:00 hrs on 12 December 2005 at Room No. 408, NGO Center, Hong Kong.

The outcome of the Doha Round of multilateral trade negotiations will have significant implications for international trade and national development, including of the developing and least developed countries. This event will be focusing on the five key issues of the July Package (JP). The event will come up with recommendations to WTO Members for conducting negotiations on these issues in Hong Kong in a manner that also protects the interests of the developing and least developed countries.

*Organisers:* Consumer Unity & Trust Society-Centre for International Trade, Economics & Environment (CUTS-CITEE) and SAWTEE.

## **Advancing LDC Interests in the Doha Negotiations**

The discussion will be held from 10:15 - 12:45 hrs on 14 December 2005 at Room 404, Hong Kong Trade and Development Symposium, Hong Kong.

The focus of the event will be to evaluate how the Doha Development Round will facilitate the least developed countries to benefit from the multilateral trading system. In the context of overall development trend and prospects of the least developed countries, particularly in view of the new focus of developments such as Millennium Development Goals and Poverty Reduction Strategy Paper, the event will be important to discuss the interests of the least developed countries.

*Organisers:* Centre for Policy Dialogue (CPD) Bangladesh, Southern and Eastern African Trade Information and Negotiations Institute (SEATINI) and SAWTEE.

## **The TRIPS Review Process: ABS, PIC and Disclosure Issues**

The discussion will be held from 11:00 - 13:00 hrs on 15 December 2005 at Room A5, NGO Center, Hong Kong.

Article 27.3 (b) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) had been subjected for review four years after the implementation of the Agreement, i.e., 1999. Recently, the Indian Commerce Minister, Mr Kamal Nath has written a letter to 31 trade ministers to agree to a proposal submitted by eight countries to the TRIPS Council. In this context, the panel discussion is being organised to support the proposal of developing countries and conduct advocacy programmes to defend their interests.

*Organisers:* SAWTEE along with its network institutions – Bangladesh Environment Lawyers Association (BELA), Bangladesh; CUTS Calcutta Resource Center, India; Law & Society Trust, Sri Lanka; Forum for Protection of Public Interest (Pro Public), Kathmandu; and Sustainable Development Policy Institute (SDPI), Pakistan.

## **Supply Side Constraints of LDCs**

The discussion will be held from 10:00 - 12:00 hrs on 16 December 2005 at Room A5, NGO Center, Hong Kong.

It has been realised that market access for the least developed countries is commercially meaningless if they cannot increase their competitiveness in the sectors in which they have preferential market access. The discussion is being organised to facilitate an informed debate on the supply-side constraints of the least developed countries and identify the ways to tackle them.

*Organisers:* SAWTEE and Centre for Policy Dialogue (CPD), Bangladesh.

## **Challenges of Market Access and Compliance under the WTO: Case Studies from South Asia**

The discussion will be held from 16:45 - 19:00 hrs on 17 December 2005 at Room 401, Hong Kong Trade and Development Symposium, Hong Kong.

*Organisers:* Trade Knowledge Network (TNK) South Asian Partners; Sustainable Development Policy Institute (SDPI) Pakistan; Singapore Institute of International Affairs (SIIA), Singapore and SAWTEE.



**Title:** Making Trade Preferences Work for South Asian LDCs  
**Publisher:** SAWTEE  
**Author:** Mohammad A Razzaque

## Making Trade Preferences Work for South Asian LDCs

**DEVELOPING** countries, including the least developed countries (LDCs), have been granted preferential market access in major industrialised countries for the past three decades. However, the latter enjoy the discretion to apply preferences to some LDCs but not to others. In this respect, many regional trade agreements exempt South Asian LDCs to enjoy similar facilities as their LDC counterparts in other regions of the world.

In most cases, preferences are applicable if the LDCs fulfil rules of origin requirements whilst various tariff and non-tariff barriers also undermine the utility of trade preferences. The result is that South Asian LDCs have been unable to optimally utilise existing preferences in major developing country markets. This briefing paper scrutinises the benefits of such preferences in the wake of challenges that continue to hamper sustainable trading prospects and export growth of South Asian LDCs. ■



**Title:** Trade Justice: A South Asian Perspective  
**Publisher:** SAWTEE  
**Authors:** Bharath Jairaj and Kirtana Chandrasekaran

## Trade Justice: A South Asian Perspective

**THE** Trade Justice movement has become increasingly visible in its role of highlighting the widening gap between many of the stated objectives of the world trading regime and the global reality of growing inequalities. The remit of the Trade Justice movement is wide and includes several issues of concerns to developing countries and least developed countries. There are sufficient studies and realities to prove the fact that the benefits of the international trade system have largely gone to/been felt by those who already “have”, while failing to benefit the “have nots”.

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

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

Launched in December 1994 at Nagarkot, Nepal by a consortium of South Asian NGOs, South Asia Watch on Trade, Economics & Environment (SAWTEE) is a regional network that operates through its secretariat in Kathmandu and 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.

