

# Trade and Development Monitor

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### OPINION IN LEAD

#### Setback to investment cooperation under SAARC

There is a consensus that one way to make the regional economic integration initiative under the auspices of the South Asian Association for Regional Cooperation (SAARC) effective is to expand its scope, to cover services trade and investment. Progress on the services front has been relatively positive, with the South Asian Framework Agreement on Trade in Services (SAFAS) signed in the recently held 16<sup>th</sup> SAARC Summit. Schedules of commitments are yet to be agreed upon, though.

On the other hand, there has been no substantive movement in the area of regional investment cooperation. The result: The region is not a significant source of foreign direct investment (FDI) for South Asian countries for which data are available, except for Bhutan and Nepal, where India commands the FDI scene. South Asia made up just 0.023 percent of FDI to India in 2006-2007, 2.82 percent to Bangladesh in 2005-06, 0.102 percent to Pakistan in 2006-2008 and 7 percent to Sri Lanka in 2005.

In fact, the regional cooperation body has taken a step backwards on this issue. For, while the heads of state or government in the 15<sup>th</sup> SAARC Summit had directed that the Draft Agreement on Investment Promotion and Protection be “finalized early” and that the SAARC Arbitration Council be operationalized, the 16<sup>th</sup> SAARC Summit saw the leaders reverting to a bland emphasis on “the need for greater intra-SAARC investment promotion efforts”.

While the ambition has been lowered at the regional level, bilateral investment promotion and protection agreements are being pursued within South Asia, with India at the forefront. The proposed comprehensive economic partnership agreement between India and Sri Lanka seeks to incorporate investment besides services trade. In the last one year, India has entered into bilateral investment promotion and protection agreements with Bangladesh and Nepal.

There is a lack of political commitment to go for regional investment cooperation. Just as the lacklustre regional trade liberalization process, from the SAARC Preferential Trading Arrangement to the Agreement on South Asian Free Trade Area, has been accompanied by a proliferation of bilateral free trade agreements among South Asian countries, trends portend that regional investment cooperation will be stillborn.

A regional investment promotion and protection agreement has the potential to boost intra-regional investment flows on a sustainable basis while at the same time creating a level playing field for the weaker economies of the region. Asymmetric bargaining power flowing from economic size and geography impinges on the policy space a weaker economy needs to achieve its development goals. It also affects the fair resolution or arbitration of investment-related disputes. Whereas a regional arrangement can help address this asymmetry, bilateral ones tend to reinforce it.

The snail's pace at which SAARC is proceeding is generally attributed, wholly or partly, to the trust deficit among member states—at the leadership level, if not at the people's level. But deeper regional integration under SAARC can be an effective tool to reduce or remove the trust deficit. The establishment of a regional investment promotion and protection regime, taking into consideration the differences in the level of development among member states, would be a milestone in the South Asian integration process. Such a regime is essential to exploit the trade-investment nexus in the region, where intra-regional merchandise trade is barely 5 percent of its total merchandise foreign trade. Pursuit of agreements of the bilateral variety frustrates regional cooperation.

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## **ANALYSIS**

### **Climate deal in Cancun in question**

The annual mid-year meeting of the United Nations Framework Convention on Climate Change (UNFCCC) in Bonn, starting 31 May, is considered an opportunity for countries to lay the groundwork for wrapping up an international climate treaty not achieved in Copenhagen this December in Cancun, where the 16<sup>th</sup> Conference of the Parties (COP 16) is going to be held. However, statements from key officials in recent months have led many pundits to call Cancun a pit stop, rather than a destination.

Among those conceding that a more realistic goal will be COP 17 in Cape Town, South Africa, include European Commissioner for Climate Action Connie Hedegaard and outgoing UNFCCC Executive Secretary Yvo de Boer, who will step down as UNFCCC chief at the end of the two-week meeting.

“I think developing countries especially would want to see what an agreement would entail for them before they are willing to turn it into a legally-binding treaty,” said de Boer. “So I think if we are to get to a treaty, South Africa a year later, is much more realistic.”

Despite commitments from officials from the BASIC countries—Brazil, South Africa, India, China—to push for the completion of a legally binding global climate treaty in Cancun, China now appears to have reconsidered. In a statement in the last week of May, Xie Zhenhua, one of China's top climate change officials, confirmed that China has now set its sights on COP 17 for sealing a deal.

Cancun was further downgraded recently when German news magazine *Der Spiegel* reported that Chancellor Angela Merkel is shying away from her goal of establishing a binding agreement limiting climate change to 2 degrees Celsius. Merkel, formerly a champion of the 2 degree benchmark, is said to have reconsidered based on a lack of support from key developing countries, including India and China.

Four major negotiations are taking place in Bonn: the Subsidiary Body for Scientific and Technological Advice; the Subsidiary Body for Implementation SBI; the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), and Ad Hoc Working Group on Long-term Cooperative Action under the Convention.

Observers will be watching closely as officials work to achieve greater clarity on the future of the Kyoto Protocol. The text, which was submitted by the chair of AWG-KP, is based on the decisions from COP 15 in Copenhagen, including the previous negotiating text and the Copenhagen Accord.

The status of the Protocol has been a divisive issue in the negotiations thus far. Developing countries insist that any movement away from the Kyoto framework will result in a weaker agreement. Meanwhile, richer nations argue that the Copenhagen Accord it provides a better framework for a binding deal.

Overall, Bonn will be an important barometer for assessing how swiftly parties are willing to move on advancing a legal agreement. Some issues—such as REDD-plus, the technology mechanism, capacity building and, to some extent, financing—appear to be coming together faster than others and some countries consider these could be early harvest items for Mexico, should parties then not be ready for a full package deal.

*Adapted from Bridges Trade BioRes, Vol. 10, No. 10, 31.05.10,  
<http://ictsd.org/i/news/biores/76781/>*

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## **OTHER NEWS**

### **Drug access waiver debate looms for June TRIPS Council meeting**

Following weeks of consultations, World Trade Organization (WTO) members are set next week to discuss a proposal to review a little-used amendment of WTO intellectual property rules aimed at boosting availability of affordable medicines in developing countries.

Since the last meeting of the WTO Council on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in March, Council Chairman Martin Glass of Hong Kong, has been holding informal consultations on a proposal to hold a workshop evaluating the so-called “paragraph 6” amendment. Consultations were to continue up to the next TRIPS Council meeting on 8-9 June, and may come to a head at the meeting.

Paragraph 6 refers to the 2001 WTO Doha Declaration on TRIPS and Public Health. It provides a mechanism to facilitate access to cheaper generic medicines for countries with no pharmaceutical manufacturing sector. It waives the obligation stated in TRIPS Article 31(f) reserving production of drugs under compulsory licensing to be predominantly for the domestic market, allowing more pharmaceutical products under compulsory licences to be exported to countries lacking production capacity.

WTO members had been unable to agree on a workshop to evaluate paragraph 6 during the March TRIPS Council, and Glass said he would hold informal consultations on the issue. On 6 May, several countries met with Glass in an informal consultation to discuss the workshop. Angola, Bolivia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, India, Indonesia, Peru and Venezuela took part in that consultation, according to participants.

The paragraph 6 mechanism was agreed in August 2003 and made a permanent amendment to TRIPS in December 2005. But to date it has been used only once. Canada amended its national legislation in 2004 and established the Canada's Access to Medicines Regime (CAMR) in order to use the mechanism. Apotex, a Canadian generic manufacturer, asked for a compulsory licence to make two shipments of AIDS medicines to Rwanda. The company said it would not use it again because of the time and difficulty involved.

According to officials from Brazil, Ecuador and India, during the 6 May informal consultation, there was consensus among participants on the necessity to have a workshop to hold a very technical and documented discussion on the paragraph 6 mechanism, based on previous experience of its use and on the mandate agreed by the WTO General Council on 30 August 2003, when the waiver was agreed.

According to an Indian official, although during some February consultations there was consensus for a workshop, at the March TRIPS Council, the United States, Japan and Switzerland suggested there really was no need to hold a workshop and it was proposed to wait until the October TRIPS Council in which paragraph 6 is a regular agenda item to discuss the matter. However, some developing countries are very keen to discuss paragraph 6 now, such as the Africa Group, the least-developed country group, Brazil, China, Ecuador, India, Indonesia, Peru and Venezuela. They are asking for an agenda item for the June TRIPS Council meeting, and they expect the request will be met with a discussion on the topic.

*Source: Catherine Saez, [www.ip-watch.org](http://www.ip-watch.org), 31.05.10.*

## **Trade powers to push for Doha deal to boost economy**

Ministers from major trading powers decided on 26 May to redouble efforts for a deal in the stalled Doha Round, arguing that opening up global trade would boost the world economy without hitting budgets.

They acknowledged the eight-and-a-half-year-old Doha Round was at an impasse and that serious negotiations—away from the glare of the media and public diplomacy—were now needed to break the deadlock.

Australian Trade Minister Simon Crean said Organisation for Economic Cooperation and Development (OECD) ministers meeting in Paris had held frank discussions about the difficulties they faced. British Prime Minister David Cameron, speaking in London, said: "I think if the world wants a stimulus, and it's a stimulus that would really benefit, we should be pushing much harder on getting the Doha trade round going again."

WTO members launched the Doha Round in 2001 to free up world commerce and help poor countries prosper through more trade. The outlines of a deal are clear: rich countries will remove barriers to their food markets and cut trade-distorting farm subsidies while developing countries, except the poorest, open their markets to more goods and services.

But agreeing an overall package has proven impossible so far, with the United States (US) arguing that big emerging economies such as Brazil, China and India—who are now major players in the global economy—should do more to facilitate a deal. The US wants the emerging giants to open up their markets more to goods—from cars to chemicals and services to banking and express delivery—in return for Washington paying farmers less to produce crops such as wheat and soybeans.

US Trade Representative Ron Kirk repeated that call on 26 May, saying the current draft package was not economically compelling and real, substantive negotiations were now

needed. Kirk categorically rejected the idea that the US should make a "pre-payment" to get those negotiations moving, pointing to concessions already made by the US in agriculture. But Kirk made it clear that the US was ready for further concessions once those negotiations start in order to get a satisfactory deal.

Ministers agreed the WTO's 153 members should now broaden the Doha talks to look at the overall package rather than individual sectors such as agriculture or manufactured goods. WTO Director-General Pascal Lamy said it was important to make progress on trade in services and environmental goods and on fisheries subsidies, where gaps remain wide.

Lamy said the international trading system rules banning protectionist tit-for-tat policies had helped to prevent an even worse crisis. Leaders of the G20 rich and emerging countries have also promised not to close their markets.

But a report by independent experts, Global Trade Alert, said governments had continued to resort to protectionism, even though the proportion of benign trade measures was increasing. It said that since the first G20 crisis-related summit in November 2008, the governments of the world have together implemented 496 beggar-thy-neighbor policy measures, that is, more than one for every working day.

*Source: Reuters, [www.reuters.com/article](http://www.reuters.com/article), 27.05.10.*

## **Street protests in Sri Lanka against proposed comprehensive FTA with India**

Hundreds of protesters took to the streets in the capital Colombo 25 May demanding Sri Lanka's government abandon a proposed trade pact with India.

President Mahinda Rajapakse met the demonstrators at his tightly-guarded Temple Trees residence in Colombo and vowed he would not enter any pact that was harmful to the island's economic interests.

"Professionals, including doctors and engineers, came to Temple Trees and protested against the CEPA with India," the president's office said, referring to the proposed Comprehensive Economic Partnership Agreement. It said the president, who is also the finance minister, assured them that he would not go ahead with "any pact or agreement" that was not in the best interest of the island. The protests came two weeks ahead of a proposed visit by Rajapakse to India.

The CEPA had been proposed almost two years ago but had been held up due to opposition from Sri Lankan business leaders who fear that the island could be swamped by cheaper Indian services.

The two South Asian neighbours entered a free trade deal in 1998 limiting tariff concessions to goods, but the CEPA covers services such as banking and allows greater cooperation between customs administrations.

The bilateral trade balance is heavily in favour of India. Sri Lankan exports to India amounted to US\$418.3 million dollars compared to imports of US\$3,443 million dollars from India in 2008.

*Source: Agence France Presse, 25.05.10.*

## **India, Brazil file WTO complaints over generic drug seizures**

After months of threatening action, India and Brazil have both filed official complaints with the World Trade Organization (WTO) over the detention by European Union (EU) customs of Indian-made generics en route to markets in Latin America.

The seizures—which came to the fore in 2008 and 2009—centred on the invocation of European Commission Regulation 1383 which allows seizure by customs of products suspected of intellectual property rights (IPR) infringement.

Under current law, the generic medicine shipments should not have been detained because the patents on the drugs are not recognized in either the country of origin or destination.

The problem arose with the differing interpretation of Regulation 1383, with customs in the Netherlands, for example, taking the position that if such a shipment touched ground in the EU it was considered to be subject to standard customs procedures.

The European Commission launched an online public consultation to review its legislation on customs enforcement of intellectual property rights in March, and maintains that there have been no recent cases of inappropriate seizures by customs operating in the EU.

India and Brazil say they have filed a request for consultation with the EU and the Netherlands, which is the first step in the WTO's dispute resolution procedure. They claim the seizures have violated WTO rules, damaged legitimate trade in generic medicines and impeded access to essential drugs in developing countries.

*Source: [www.securingspharma.com](http://www.securingspharma.com), 12.05.10.*

## **India, ASEAN negotiations on services FTA in June**

Officials from India and the 10-member Association of Southeast Asian Nations (ASEAN) are meeting in June to speed up the ongoing talks for opening trade in services, an area of immense interest for Indian professionals.

The two sides aim at entering the market opening pact in the services sector by August, according to an Indian Commerce Ministry official.

India and the ASEAN signed a free trade agreement in goods in August last year and are engaged in intense negotiations to expand this pact to include services and investments.

The services sector is of key interest to India as it contributes over 55 percent to its gross domestic product. The services sector has also emerged as an important area for export earnings. The country is looking at expanding trade with the ASEAN in several services, including banking, insurance, health, accountancy, architecture and engineering.

Both the sides are also in talks to recognize each other's educational degrees. The two sides aim to increase their US\$44 billion trade to US\$50 billion by the end of 2010.

ASEAN groups Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand, Singapore and Vietnam.

*Source: Press Trust of India, <http://beta.thehindu.com/>, 24.05.10*

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## **ACTIVITIES**

### **Dialogue on trade, poverty and climate change**

SAWTEE, together with the International Centre for Trade and Sustainable Development (ICTSD), Geneva and the Centre for WTO studies, New Delhi, organized a "Dialogue on Trade, Poverty and Climate Change" on 20-21 May 2010 in Kathmandu.

Twenty-five experts from the academia, private sector and non-governmental organizations of eight countries of Europe, South-east Asia and South Asia discussed the interlinkages between trade, poverty and climate change, with poverty as the entry or focal point, in the

context of Asia. They identified knowledge, research, analytical and action gaps in the area of poverty alleviation amid rapid integration of national markets into global markets and climate change impacts.

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