

● TRADE ●

insight

EXTRA TIME



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Reflect and take stock

WHEN trade ministers meet in Buenos Aires in December for the Eleventh Ministerial Conference (MC11) of the World Trade Organization (WTO), they will not be saddled with high hopes for substantive outcomes. Hopes are low as negotiations have made tardy progress on outstanding issues on the Doha Development Agenda (DDA), even as new issues are being peddled.

The last Ministerial, in Nairobi in 2015, saw divisions on DDA's continuity. The divisions spilt over to the declaration—a departure from previous such declarations, where it was almost customary for all members to express commitment to the DDA. Reference was also made in the Nairobi Declaration to divisions among members over pursuing negotiations on new issues. These two points continue to shape the negotiations and the character of the impasse observed in the run-up to MC11.

The stalemate is no longer a simple reflection of a rich-country-versus-poor-country divide. Granted, developed countries in general are itching to ditch the Doha Round, take on new approaches and initiate or advance negotiations on new issues, while the DDA is sacrosanct to the developing world. However, there are divisions within the ranks of developing countries too, over a range of issues—from DDA agricultural issues such as domestic support, including that provided under public stockholding programmes, to new topics such as e-commerce and investment facilitation. A fragile global growth recovery and a tepid rebound in world trade, along with protectionist sentiments whipped up by Brexit and the hawkish stance on trade of the new US administration, make sincere attempts to secure a substantive outcome on outstanding Doha agendas all the more elusive.

Questions over the future of Doha Round, launched 16 years ago with development at its front and centre, highlight the urgency for poor and vulnerable countries, including the least-developed countries (LDCs), to recalibrate their trade strategies and explore and pursue other options, bilateral and regional, while also engaging within the WTO. If further outcomes for the LDCs are not possible, then the focus should be on consolidating the gains so far. This would entail, *inter alia*, effective implementation of the decision on preferential rules of origin for the LDCs, operationalization of the services waiver for the LDCs and delivery of additional aid for trade resources by their development partners to enable these countries to better utilize the goods and services preferential schemes, implement the provisions of the Trade Facilitation Agreement and adjust to trade shocks.

The fact that by 2021 up to 15 of the 47 LDCs are expected to have graduated or be on a firm track towards graduation from the LDC status means that these countries can no longer afford to negotiate at the WTO by exclusively aligning themselves with the LDC Group. Bangladesh and Nepal, for example, must start paying attention to the implications of trade rules being negotiated for non-LDC developing countries. Actions must be initiated to build alliances to seek flexibilities and support measures at the WTO in favour of these countries for a specific time following their graduation.

Making precise and operational the special and differential treatment (S&DT) provisions in the WTO agreements has been a long-standing demand of the developing world. The infant industry argument lies at the heart of this demand. A proposal tabled with an eye on MC11—seeking to provide S&DT to *all* developing countries, including China and India—has met with a brick wall, for the same reason that a previous version fell flat at MC10. Differentiating among developing countries, hitherto a taboo of sorts, is in all probability a prerequisite for breaking the logjam on S&DT.

With a global economic and political climate un conducive to a substantive outcome, the Buenos Aires meet would do well to, at the least, serve as a time to reflect and stocktake. ■

Content

EXTRA TIME



Special and differential treatment
Wanted: Binding provisions
Manoj Kumar Acharya, 14-18



Landlocked developing countries need further trade integration

Purushottam Ojha, 8-10

A proposal to facilitate trade in services

Pralok Gupta, 11-13

Role of Enhanced Integrated Framework

Ratnakar Adhikari, 19-21

For a win-win Africa-India trade partnership

Simon Mevel, 22-24

LDCs must unite at the Buenos Aires Ministerial

Asjadul Kibria, 25-27

Fishery in troubled waters

Pragati Koirala, 28-29

South Asia to remain top investment destination

Report, 33

Obituary: Saman Kelegama, 34

Book review
Adults in the room
Dikshya Singh, 35



Trump and Brexit are game changers for multilateral trading system

Bipul Chatterjee and Sanjay Kumar Mangla, 30-32

Collective marks

Saroj Raj Regmi, 36-37

**in the news, 4-7
network news, 38-39**

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Australia ends farm export subsidy

AUSTRALIA has become the first developed-country member of the World Trade Organization (WTO) to eliminate the farm export subsidies from its WTO schedule of commitments. The step has been taken in line with the commitment, made by the WTO members at the Nairobi Ministerial Conference in 2015, to eliminate farm export subsidies.

According to the Nairobi declaration, WTO members have to abolish agricultural export subsidies and fix disciplines on export measures with equivalent effect. In doing so, WTO members have made a collective and historic contribution to delivering on a key target of the UN Sustainable Development Goal to end all forms of hunger and malnutrition.

Australia is the first WTO member among the 16 with export subsidy entitlements in their schedules of commitments to take the step of modifying



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their schedules, according to a press statement of the multilateral trade organisation. Australia's modified schedule is effective as of 22 May

2017, three months after the document outlining the changes was circulated to WTO members. (*www.thefinancial-express-bd.com*, 27.05.2017) ■

'GM crops will impact India's food security'

PROPONENTS of natural and organic farming and progressive activists in India have cautioned against permitting commercial cultivation of genetically modified (GM) crops saying that it will have a negative impact on the food security of the country as farmers will lose seed sovereignty.

The issue came to the fore in view of the impending clearance of the commercial production of GM mustard by the Indian government during a public interaction on the subject on 25 June 2017. The interaction was held in Karnataka, one of the few states in India that has a policy on organic farming.

During the interaction, citing the benefits of using traditional seeds and farming practice, Mr.

Kailashmurthy, a farmer, cautioned that once farmers lose seed sovereignty they will be at the mercy of multinational corporations (MNCs) and will be forced to cultivate the crops for which the seeds are available and this will have a bearing on India's food security.

Mr. Krishnaprasad of Sahaja Samruddha, an organization promoting chemical-free farming, said that there are issues regarding loss of biodiversity, environment, food security and farmers coming under the clutches of MNCs if the GM crops are promoted. "We have already witnessed how cotton cultivators are now under the clutches of the MNCs. What has already come true in case of cotton will come true with regard to other GM crops as

well and should be opposed," he added.

Vast swathes of H.D. Kote in Mysuru District cultivated organic cotton and indigenous cotton till a few years ago. But, over time, it has been supplanted by Bt cotton resulting in native cotton seeds disappearing from the market. Farmers are thus forced to procure them from MNCs who, reportedly, manipulate prices. Statistics indicate that cotton cultivation is the highest in H.D. Kote accounting for almost 65 per cent of the total cultivation in the district. From nearly 48,000 hectares under cotton cultivation in 2014-15, H.D. Kote has 31,000 hectares now and more than 95 per cent of it is under Bt cotton. (*www.thehindu.com*, 26.06.2016) ■

Maldives welcomes first Green Climate Fund donation

GREEN Climate Fund (GCF) has made its first donation to the Maldives with the aim of delivering safe freshwater in the islands facing climate change risks.

GCF's disbursement of funds to this project will bolster an integrated water supply system based on rainwater, groundwater and desalinated water to provide a low-cost supply to vulnerable households in the Maldives. The project will also provide an uninterrupted supply of water to 49 islands that currently rely on emergency deliveries

for three months of each year. GCF's transfer of US\$3 million marks the start of GCF's total contribution of US\$23.6 million pledged to the country. Other contributors to this five-year grant project, totalling US\$28.2 million, are the Maldives Ministry of Environment and Energy and the United Nations Development Program (UNDP), which GCF has accredited to implement the project.

"Projects such as this can have enormous impact in countries like the Maldives, which is highly vulnerable to the impacts of climate change,

including rising sea levels, saltwater intrusion and more frequent droughts, storms and flooding," explained Mr. Achim Steiner, UNDP Administrator.

The geographic characteristic of the Maldives—consisting of 1,190 small, low-lying coral islands spread over 90,000 square kilometres—puts the country at the forefront of climate change. High poverty levels in the Maldives' outer islands exacerbate drinking water shortages during its dry season. (*www.greenclimate.fund*, 30.06.2017) ■

New IPPC standard on trade of plants, seeds

THE International Plant Protection Convention (IPPC)'s governing body, the Commission on Phytosanitary Measures (CPM), adopted a new global standard to ensure that international trade in plants and seeds—vital to feed the world's population—is free from agricultural pests and disease-causing bugs during its 12th session in Incheon, South Korea.

The new standard will help harmonize the ways countries deal with the complexities of the international seed trade. The efforts are also expected to facilitate trade in seeds—valued at about US\$12 billion annually—while ensuring that such shipments safeguard food supplies for a growing global population.

According to the UN Food and Agriculture Organization (FAO), the threat of transmission of pests—unwanted stowaways—on ships and containers transporting agricultural cargo, especially seeds, is a growing concern around the world. "Unlike



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other agricultural products that are destined for consumption, such as wheat, barley or lentils, seeds are a cause for greater concern," said the UN agency in a news release.

The twelfth session of the CPM, which took place in April in Incheon,

Republic of Korea, also discussed guidelines for an import regulatory system, and a series of treatments that stop pests from burrowing into wooden packaging materials and methods to stop fruit flies from attacking citrus fruits. (*www.un.org*, 17.04.2017) ■

EU restores GSP+ concessions to Sri Lanka

THE European Union (EU) has formally restored the Generalised Scheme of Preferences Plus (GSP+) concessions to Sri Lanka seven years after key beneficiary access to the country's biggest export market was suspended. Sri Lankan government's Information Department said on 11 May that the EU Foreign Affairs Council had approved GSP+ for the country. The approval reportedly completes the three procedural requirements for Sri Lanka to receive GSP+ status.

In granting the GSP+ facility, the EU's Foreign Affairs Council said that Sri Lanka has ratified and implemented measures contained in a number of international conventions on human and labour rights, environment protection and good governance.

The EU is Sri Lanka's biggest export market accounting for nearly one third of Sri Lanka's global exports. The EU imports from Sri Lanka amounted to €2.6 billion and consisted mainly of textiles as well as rubber products and machinery. The concessions are



particularly valuable to the apparel, rubber products and ceramics industries.

"Regaining GSP+ calls on Sri Lanka to open up further to attract foreign direct investment in order to diversify our export basket. We need to change our export basket from being buyer-driven to producer-driven to reap the best from this opportunity,"

Foreign Affairs Deputy Minister Mr. Harsha de Silva said pointed out.

The EU withdrew the coveted tariff concessions from Sri Lanka in 2010 in the face of the country's deteriorating human rights record. The new government that came into power after the 2015 presidential elections reapplied for the import duty concession. (*www.ft.lk*, 12.05.2017) ■

Access to medicines resolution adopted

THE United Nations Human Rights Council (UNHRC) has adopted a resolution on the right to health in relation to the UN 2030 Sustainable Development Goals (SDGs), including a call for access to medicines and vaccines for all. The resolution also requested the UN Human Rights Commissioner to report on the right to health. The resolution notes that at least a third of the world's population lacks regular access to medicines and that the problem cuts across developing and developed countries.

In the resolution, the Council "calls upon the international

community to continue to assist developing countries in promoting the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including through access to medicines, in particular essential medicines and vaccines. It requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report, which presents contributions of the right to health framework to the effective implementation and achievement of health-related SDGs, identifying best practices, challenges and

obstacles and submit the findings to the Human Rights Council at its thirty-eighth session,".

The United States, despite accepting the overall resolution, issued statements disagreeing with framing the SDGs in a "right to health framework". It also opposed what it viewed as a threat to intellectual property rights. "The United States objects to statements on technology transfer found in resolutions adopted by this body and reaffirms that this language will have no standing in future negotiations." (*www.ip-watch.org*, 23.06.2017) ■

Ghani inaugurates air corridor with India

AFGHAN President Mr. Ashraf Ghani has inaugurated the first Afghanistan-India air corridor during a ceremony at Kabul's international airport.

The corridor, which provides the two countries a direct route that bypasses Pakistan, is meant to improve commerce. Mr. Ghani, who thanked Indian Prime Minister Mr. Narendra Modi for the air corridor, said the route will create more opportunities and make Afghanistan an exporting country.

The President's Adviser, Mr. Sediqullah Mujadedi, said Afghan agricultural products will for the first time head to India on cargo planes. He

informed that the first India-bound flight on 19 June included 60 tons of medicinal plants and a second flight will carry 40 tons of dry fruits from the southern Kandahar Province.

The Afghan Chamber of Commerce and Industries (ACCI) said the medicinal plants carried on the first flight were valued at US\$11 million. ACCI officials said the cost of transporting a kilogram of vegetables and fresh fruit from Kabul and Kandahar to Indian markets will be about 20 cents per kg, and the cost of a kilogram of goods from India to Afghanistan will be about 40 cents.

Afghanistan is a mountainous

landlocked country and all imports and exports depend on neighbouring countries. Afghanistan's efforts to trade with India have been frustrated by a lack of transit passage through Pakistan. After Afghanistan and Pakistan signed a transit trade agreement in 2010, Islamabad allowed Afghan trucks to carry goods up to the Indian border but barred them from ferrying any Indian goods through Pakistani territory.

Meanwhile, the Pakistan embassy in Kabul said in a statement on Monday that Pakistan too intends to open a transit route for Afghan exports. (*www.hindustantimes.com*, 19.06.2017) ■

Nepal, India to use technology to ease transit

NEPALI and Indian senior customs and trade officials met in Mumbai on 6 June 2017 to discuss ways to ease traffic-in-transit along the route from Kolkata to four major customs points of Nepal, including Raxaul, through an electronic tracking system.

India's Customs Commissioner Mr. Sandeep Kumar and Nepal's Commerce Ministry Joint Secretary Mr. Rabi Shankar Sainju signed a memorandum of intent to pilot the system for a trial period of at least 90 days starting later this year.

The electronic tracking system uses satellite positioning systems, cellular communications, radio frequency identification, electronic seals, and monitoring software to ensure the security of cargo. In doing so, traders will reduce the cost and time spent for clearing cargo at border crossings.

Nepal and India will pilot the tracking system for Nepali transit cargo by road and rail along Kolkata-Birgunj via Raxaul; Kolkata-the

inland container depot (ICD) in Sirsiya via Raxaul; Kolkata-Biratnagar via Jogbani; and Kolkata-Bhairahawa via Sonauli corridors.

The electronic cargo tracking system is an important initiative under the South Asia Subregional Economic Cooperation (SASEC) programme, which involves Bangladesh, Bhutan, India, the Maldives, Myanmar, Nepal, and Sri Lanka. The Asian Development Bank, as SASEC secretariat, is supporting the piloting of the electronic tracking system.

"Nepali traders could benefit greatly from faster transit movement and simplified procedures from the electronic tracking system," says Mr. Sainju. "Through the application of the system, we will not only be able to track the movement of our cargo, but even more, we will easily detect any unwanted incidences such as infiltration, pilferage, or deflection that may occur to our transit cargo in route." (*www.adb.org*, 07.06.2017) ■

Dhaka asks Modi to facilitate its power plan with Nepal

PRIME Minister of Bangladesh Ms. Sheikh Hasina has requested Indian Prime Minister Mr. Narendra Modi to facilitate cross-border power sector cooperation with Nepal during her four-day official visit to India. Power deficit Bangladesh wants to purchase power directly from Nepal. For that purpose, Bangladesh wants India's support for the transmission line.

This idea has already been discussed in the meetings of BBIN (Bhutan, Bangladesh, India and Nepal). Moreover, some Bangladeshis have shown interest in investing in Nepal's hydropower projects.

The two prime ministers also discussed the advantages of sub-regional cooperation in the areas of power, water resources, trade, transit and connectivity for mutual benefit. (*kathmandupost.ekantipur.com*, 09.04.2017) ■

Landlocked developing countries need further trade integration

There is a gaping gap between global pledges/targets on landlocked developing countries' trade performance and the reality.

Purushottam Ojha

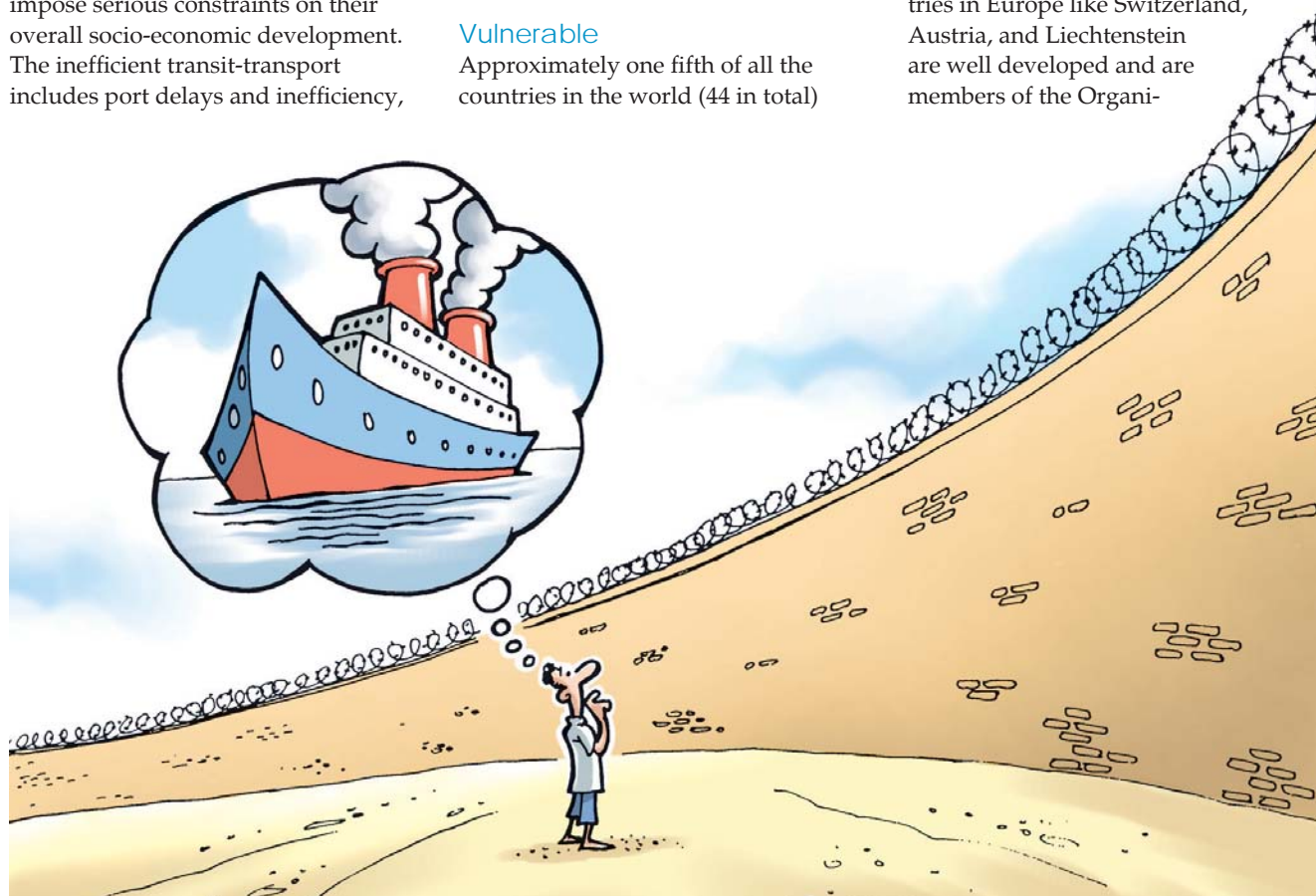
Thanks to their location away from the sea, the linkages of land-locked countries with international markets unavoidably depend on transit through other countries. Landlocked countries normally face high transit-transportation costs that ultimately impose serious constraints on their overall socio-economic development. The inefficient transit-transport includes port delays and inefficiency,

poor infrastructures and outdated processes at border crossings. Their geographical disadvantage usually means a weak domestic transport system, which additionally increases the cost of transaction and erodes their competitiveness.

Vulnerable

Approximately one fifth of all the countries in the world (44 in total)

are landlocked without direct access to the sea. Of these, the number of landlocked developing countries (LLDCs) is 32, with a high concentration in Asia (10) and Africa (16). Two are in Latin America and two in Europe. Some landlocked countries in Europe like Switzerland, Austria, and Liechtenstein are well developed and are members of the Organi-



sation for Economic Cooperation and Development. Out of the 32 LLDCs, 16 are ranked among the poorest, falling under the least-developed category. Their lack of access to marine resources, geo-political vulnerabilities due to heavy dependence on neighbouring countries and the absence of a naval force are other limitations associated with these countries.

In 2015, LLDC trade as a percentage of gross domestic product averaged 69.5 per cent. LLDCs' share in global exports fell to 0.97 per cent in 2015 from an average of 1.21 per cent between 2011 and 2014. Their total merchandise exports declined dramatically in 2015, by 30 per cent, to US\$160 billion. LLDC merchandise imports also fell that year to an estimated US\$195 billion. In 2015, their export concentration ratio at 0.28 was greater than that of their transit neighbors and developed economies. In 2014, the average cost of importing a container to LLDCs was US\$4,344 and it cost US\$3,444 to export the same from them. In contrast, transit countries faced much lower average costs for such containers: US\$ 1,301 to export and US\$1,559 to import.¹

For landlocked countries, transportation cost is considered the key factor inhibiting their access to international markets. Over the past two decades, countries have been moving towards a liberal trade order under the auspices of the World Trade Organization (WTO). The general trend is reduction and elimination of tariffs in favour of the least-developed countries (LDCs). Even so, landlocked countries are handicapped by additional costs of transportation through other territories to utilize such benefits. Developing countries face an average tariff ranging from three to seven per cent in Canada, the European Union, Japan and the United States, while the landlocked among those pay almost three times more due to additional transportation costs.

The transit-transportation issues of LLDCs may be discussed under five headings. The first is related with the quality of transport infrastructures.

Even where basic transport infrastructures exist, there are missing links preventing a smooth connection between the hinterland and the seaports. In many cases, border infrastructures in the form of Inland Clearance Depots and/or border facilities are lacking. Such facilities are considered critical to support logistics services such as consolidation and distribution of cargo and transshipment between road, rail and inland waterways transport services. Inadequacy of road and railway infrastructures, narrow bridges and outdated vehicles contribute to the escalation of transportation costs.

Second, transit-transportation costs face heavy pressures from delays and other costs incurred in the port. Long queues of birthing vessels and waits for railway rakes and trucks to transship containers from the port premises show the deficiency of the port systems.

The efficiency of ports at different locations vary. For example, Chittagong and Mongla Ports in Bangladesh and Kolkata/Haldia ports in India require two to three days to offload the containers from a ship, while such operations are done within three to four hours in Singapore and Port Klang in Malaysia.

Third, the lack of intermodal competition between road, rail and inland water transports has created monopolies of truckers or single-service providers. A coordinated use of these transport services is equally important to deliver traded goods on time.

Fourth, cross-border cooperation is vital for establishing a sound and effective transit-transport system. Overland transit is subjected to the national sovereignty of the transit country and is therefore dependent on the willingness and concessions that such countries provide. Enhancing cross-border coordination is key to the harmonization of technical and operational standards, user's charges, management and control of traffic etc. Cooperation is required between regulatory bodies like the police and customs for security and commercial clearance of vehicles.

Fifth, the transit-transport agreement between LLDCs and their transit neighbours provides the basis for transit operation and, hence, it is the determinant of the transportation cost. Some international instruments are available to guide the negotiations for such transit agreements. But, usually, the agreements are primarily framed in the context of historical, political, economic and cultural ties between these countries.

International pledges

The Istanbul Declaration and Programme of Action (IPoA), for the 2011-20 decade, aims at achieving sustained, equitable and inclusive economic growth for LDCs by building human capacities, reducing vulnerability and enhancing financial resources and good governance at all levels. The IPoA provides a common agenda for LDCs irrespective of their geographical location.

The IPoA has recognized trade as an important means of ensuring sustainable development. It focuses on facilitating market access for all products originating from LDCs.

The Vienna Programme of Action-2014 is another important instrument directed towards enhancing collaboration between landlocked countries and their transit neighbours. It is a successor to the Almaty Programme of Action-2003 and provides a framework of cooperation between landlocked countries and their neighbours for the 2014-24 decade.

Landlocked countries, most of them being least developed and developing countries, are entitled to special and differential treatment and trade-related technical assistance under various WTO agreements. Besides, LLDCs receive support under the WTO's Enhanced Integrated Framework (EIF) and aid for trade initiatives.

The United Nations Convention on the Law of the Sea-1982 and Article V of the WTO's General Agreement on Tariffs and Trade (GATT) guarantee freedom of transit and transit rights for all LLDCs. The GATT provisions

were further consolidated by the Trade Facilitation Agreement, which came into effect on 22 February 2017. When the agreement is fully implemented it is expected to reduce trade costs for LLDCs by over 15 per cent.²

Despite these commitments, LLDCs' trade performance remains dismal. The objective of achieving the target of doubling their export by 2020 remains elusive. LLDC exports are concentrated in a few countries and a handful of products. Six countries—Azerbaijan, Botswana, Kazakhstan, Paraguay, Turkmenistan and Uzbekistan—accounted for 70 per cent of LLDCs' merchandise exports. A few primary commodities, including crude oil, natural gas, minerals and metals, make up most of their exports.

Similarly, global foreign direct investment (FDI) inflows to LLDCs fell by 11 per cent to US\$ 29.7 billion in 2013. Even that was concentrated in a small number of mineral rich economies.³ FDI further fell down precipitously to US\$ 24.5 billion in 2015. Aid for trade disbursement to these countries increased by 6.9 per cent to US\$6.3 billion, while their remittance receipts decreased by 15.5 per cent to US\$26.9 billion in 2015.⁴

Integration strategies

LLDCs face problems in aligning their own domestic reform measures as well as in harmonizing the actions of their development partners. They need to focus more on enhancing their productive capacity, which requires structural transformation, optimal use of natural and human resources, development of physical, institutional and regulatory infrastructures and enhancement of regional integration, among others.⁵ There are specific strategies that the LLDCs could pursue to enhance their participation in global trade. They are:

Development of transport, energy and communication infrastructures:

Transport infrastructure is crucial for the flow of inputs and outputs to and from production units. Uninterrupted supply of reliable energy is critically important in enhancing the produc-

tion of their agriculture, manufacturing and service sectors. The LLDCs should scale up their investment in information and communication technology and reduce the hassles and paper-work related with export, import and transit clearance of cargo. This enhances their competitiveness.

Transit-transport cooperation with neighbouring countries: Transit states can either exacerbate or ameliorate the effects of remoteness of LLDCs through policy. The level of good governance, quality of ports and transport infrastructures and level of political relations collectively contribute to easing of transit services. Hence, there should be concerted efforts and cooperation between LLDCs and their neighbours for facilitation of transit-transportation. Regional and sub-regional transit-transport agreements also provide a good framework for facilitating transit services.

Leverage WTO provisions in favour of developing countries: Various WTO agreements have provisions for positive discrimination in favour of developing and least-developed countries, which are called special and differential treatment provisions. The provisions basically provide LLDCs with a flexible time frame to implement their commitments, besides requiring all WTO members to safeguard the interests of developing countries, facilitate market access and make provisions for technical and financial support to enhance supply capacity. These provisions must be seen to enhance LLDC participation in global trade.

Formulation of transit policies and accession to key international instruments on transit-transport cooperation: LLDCs can formulate their own transit policies in line with various international instruments, including the WTO's Trade Facilitation Agreement, the GATT Article V, the New York Convention-1965 and the Vienna Programme of Action-2014. There are some other international conventions that aim to streamline transit and increase customs cooperation. These include: the Revised Kyoto Convention-1998, the Conven-

tion on International Transport of Goods Under Cover of TIR Carnets (TIR Conventions)-1978, and the UN Convention on Multi-modal Transport of Goods-1980. Emphasis should be given on strong regional/sub-regional integration and economic specialization that help LLDCs to grow from being landlocked into being land-linked and air-linked.

Policies and regulatory framework:

The regulatory framework should support private sector development and facilitate the flow of investment into productive sectors. LLDCs should work to expand their export base with a focus on high-value products and services like health, tourism, education and information technology services. The quality and efficiency of institutions must be enhanced with improvements in the regulatory environment for long-term economic growth. A transparent, predictable and rule-based trade and investment regime would reduce the cost of doing business by lowering economic and political uncertainties. ■

Mr. Ojha is Former Secretary, Government of Nepal.

Notes

- 1 UN-OHRLLS. 2016. *Landlocked Developing Countries: Things to Know, Things to do*. Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS).
- 2 Text of speech of Director General of WTO, Roberto Azevedo, on Fifth Meeting of the Trade Ministers of the Landlocked Developing Countries. Assessed 23 June 2016. https://www.wto.org/english/news_e/spra_e/spra131_e.htm
- 3 UNCTAD. 2016. *World Investment Report 2014: Investing in the SDGs: An Action Plan*. Geneva and New York: United Nations Conference on Trade and Development.
- 4 *ibid*, Note 1.
- 5 UN-OHRLLS. 2013. *Building Productive Capacities to Enhance Structural Transformation in the Landlocked Developing Countries (LLDCs)*. Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS).

A proposal to facilitate trade in services

Trade facilitation agreement in services will reduce transaction costs associated with unnecessary regulatory and administrative burden.

Pralok Gupta

In spite of the importance of the services sector in global trade, trade and investment flows in services remain subject to numerous border and behind-the-border barriers as well as procedural bottlenecks. There has been little effective multilateral liberalization of the sector, notwithstanding the negotiations to improve market access under the auspices of the World Trade Organization (WTO)'s General Agreement on Trade in Services (GATS). Like the Trade Facilitation Agreement in goods adopted by WTO members in 2014, a need was felt for a counterpart Agreement on Trade Facilitation in Services (TFS). A trade

facilitation agreement in services is expected to result in the reduction of transaction costs associated with unnecessary regulatory and administrative burden by addressing the key issues such as transparency, streamlining procedures and eliminating bottlenecks.

The proposal

It was India that submitted a proposal for the TFS agreement to the WTO in February 2017. The proposal on the 'Concept Note for an Initiative on Trade Facilitation in Services' (S/WPDR/W/55)¹ was submitted at the Working Party on Domestic Regula-

tion (WPDR) meeting on 6 October 2016. Subsequently, on 25 November 2016, India tabled a communication on 'Possible Elements of a Trade Facilitation in Services Agreement' (S/WPDR/W/57).² On 23 February 2017, it submitted a draft legal text on 'Trade Facilitation Agreement in Services' at the WTO. This draft legal text received mixed response from WTO members. While some members appreciated the proposal, which generated debate and discussions on services, several developed- and developing-country members expressed concerns on the scope and content of the draft agreement.³ Based on the feedback received,



India presented a revised draft on 27 July 2017.⁴

The revised legal text has a Preamble and three Sections: Section I on Facilitating Trade in Services; Section II on Development Provisions and Section III on Institutional Arrangements and Final Provisions. The text states that the provision of the TFS agreement will apply to measures affecting trade in services in sectors where specific commitments have been undertaken. Thus, the focus of the agreement is on making existing market access meaningful rather than getting new market access.

The proposed agreement contains provisions that are applicable to all modes of services supply. There are also mode-specific provisions. A number of provisions are not obligatory but are there on a best endeavour basis. There are provisions for cooperation among competent authorities, special and differential treatment for least-developed-country (LDC) members and technical assistance to LDCs in developing and strengthening their

institutional capacities. The agreement also mentions establishing a Committee on Trade Facilitation in Services, the role of which would be to ensure a smooth operation of the agreement.

Trade facilitation in services depends, to a significant extent, upon regulatory coherence among trading countries as protection comes generally in the form of regulatory measures, as opposed to tariff and non-tariff measures in the case of goods. Moreover, it is the domestic regulations and regulatory frameworks that are the main policy instruments used to protect domestic service sectors, not to mention meeting other national objectives. The twin nature of these regulations—acting as an instrument of protection as well as meeting public policy objectives—poses significant challenges for their global harmonization, or, in other words, for services trade facilitation.

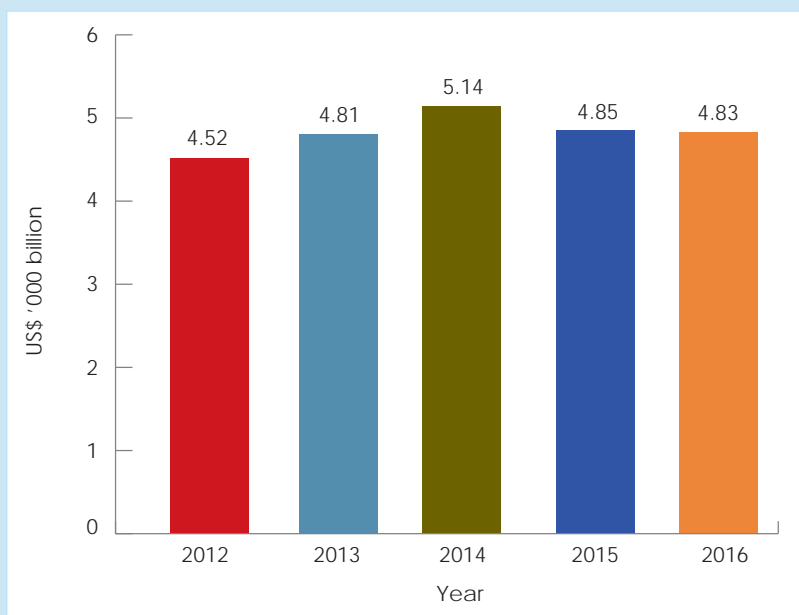
Hoekman and Braga (1997)⁵ and Mattoo, Stern and Zanini (2008)⁶ have highlighted the importance of regulatory measures in international trade in

services. They include licensing and qualification requirements; data protection legislation; standards; codes of conduct; and registration, approval and authorization requirements. Francois and Hoekman (2010)⁷ later suggested that regulation in services is pervasive and is driven by both efficiency and equity concerns. These studies also noted that although many regulations in services are aimed at realizing certain public policy objectives, they often become impediments to trade and investment flows in services due to their onerous nature and the way in which they are administered and implemented.

Thus, regulatory harmonization in services trade is a pertinent issue while tackling the bottlenecks in the sector. Almost all free trade agreements covering services trade, ongoing as well as concluded, talk about regulatory harmonization. The measures include mutual recognition of qualifications. Even in the WTO, an exclusive Working Party on Domestic Regulations (WPDR) has been set up to look into the issues pertaining to services regulations. The Domestic Regulations text proposals, submitted in the WTO in June 2017, include elements that prescribe how WTO members should develop and handle licensing and qualification-related measures and technical standards to ensure that these measures and standards are impartial and adequate and based on objective and transparent criteria.⁸

Regulatory coherence is also important in the context of ongoing discussions in the WTO on e-commerce. This comes from the significant overlap of various e-commerce disciplines with the services trade, not to mention the role of regulatory harmonization in implementing a number of the proposed e-commerce disciplines. For instance, the recently submitted negotiating proposal on e-commerce by the European Union in the WTO, in May 2017, contains provisions for consumer protection; unsolicited commercial electronic messages; electronic authentication and trust services, including

Figure
Global services exports



Source: Trade Map, International Trade Centre

electronic signature; and electronic contract.⁹ All these provisions require some degree of regulatory coherence among WTO members.

At present, global trade in services is dominated by developed countries though developing countries are increasing their shares gradually. Developed countries have relatively mature services markets and the regulatory environment for various services sectors is also well developed. On the other hand, services regulations are either outdated or not present in most developing countries. This difference in the regulatory environment is being used as a protectionist tool by many developed countries in order to inhibit developing countries from having market access. Many times, the information on regulations is not available in an easy and transparent manner. These countries do not provide adequate opportunities for developing countries to show that the regulations of developing countries serve the same purpose as those of developed countries. The proposed TFS agreement is likely to resolve this issue as it will facilitate easy availability and transparency of information. It will also provide the opportunity for developing countries to show that they use different regulatory tools to achieve the same objective that their developed counterparts do with other tools.

Another important element for facilitating services trade, from the perspective of developing countries, is visa and related matters. Under the guise of visa being a sovereign issue, countries often introduce restrictive measures. They include high visa fees, discriminatory salary thresholds, levies of different types, non-transparent economic needs tests, etc. These requirements impair, or at times even nullify, their services commitments under the WTO. High visa fees and cumbersome visa procedures adversely affect commercially meaningful market access in services trade. It is not only visa fees but also visa application processes that affect global trade in services. Most of the devel-

Services trade facilitation depends upon regulatory coherence among trading countries.

oped countries have onerous and cumbersome visa application processes that result in higher transaction costs for foreign services providers.

It is worth noting that most of the developed countries do not feel the pinch of such cumbersome visa requirements as their citizens have visa-free access to most parts of the world for specific visa categories. Thus, it is primarily the developing countries and the LDCs who bear the burden of visa fees as well as onerous visa application processes. The TFS proposal by India has provisions to ensure that competent authorities of a country shall expeditiously process all applications, including applications for extensions and renewals, and also that the fees and charges applied are reasonable, transparent and commensurate with the costs incurred by the competent authorities.

Notwithstanding the benefits of the proposed TFS agreement to developing countries, there will also be certain obligations for them. For instance, publishing information on various regulations will require them to set up an institutional mechanism to do so, if they do not already have it. Moreover, the regulatory environment in various services needs to be updated and well written. This may, *prima facie*, look burdensome for many developing countries, but one should not forget that if a country wants to develop its services sector, developing its regulatory environment and transparent availability of related information are the first step in this direction.

Gainful end

Trade in services needs facilitating to reduce transactions costs and to increase the share of developing countries in global services trade. Market

access is often denied by various countries by imposing numerous regulatory barriers on developing-country services. Facilitation requires regulatory coherence among countries, which should result in quantifiable gains and domestic preparedness of the trading partners. These two aspects of services trade regulatory coherence need to be further explored by economists and researchers. ■

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Notes

- 1 Communication from India to the Working Party on Domestic Regulations, Document S/WPDR/W/55 of the World Trade Organization titled Concept Note for an Initiative on Trade Facilitation in Services.
- 2 Communication from India on the Possible Elements of a Trade Facilitation in Services Agreement submitted on 14 November 2016, Document No. S/WPDR/W/57
- 3 PTI. 2017. "TFS proposal gets mixed response from WTO members, says Nirmala Sitharaman". *Financial Express* 19 July.
- 4 Communication from India on the Trade Facilitation in Services Agreement submitted on 27 July 2017, Document No. TN/S/W/63/Rev.1. https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/237950/q/TN/S/W63R1.pdf
- 5 Hoekman, B., and P. Braga. 1997. "Protection and Trade in Services: A Survey". *Open Economics Review* 8 (3): 285-308.
- 6 Mattoo, A., M.R. Stern and G. Zanini. 2008. *A Handbook of International Trade in Services*. New York: Oxford University Press.
- 7 Francois, J., and B. Hoekman. 2010. "Services Trade and Policy". *Journal of Economic Literature* 48: 642-692.
- 8 WTO. 2017. "WTO members examine new proposals for domestic regulation in services". https://www.wto.org/english/news_e/news17_e/serv_11jul17_e.htm
- 9 Communication from the European Union 2017 titled 'An Enabling Environment to Facilitate Online Transactions' submitted on 23 May 2017, Document No. TN/S/W/64. http://trade.ec.europa.eu/doclib/docs/2TN/S/W/64_017/july/tradoc_155755.pdf

Special and differential treatment Wanted Binding provisions

Most special and differential treatment provisions are limited to paper, their implementation left to members' discretion.

Manoj Kumar Acharya

Although the 47 least-developed countries (LDCs) make up about 12 per cent of world population they accounted for, in 2015, less than two per cent of world GDP, 1.21 per cent of global trade in goods and commercial services, 0.98 per cent of world merchandise exports and 0.76 per cent of world commercial services exports.¹ The global investment inflows in LDCs hover around two per cent. The challenges and obstacles faced by LDCs in mainstreaming their economy into the global economic system, in particular the world trading system, are deep-rooted and structural. From the perspective of trade, enhancing market access and overcoming supply-side capacity constraints are critical for enabling LDCs to be well-integrated into, and benefit from, the global trading system.

Special and differential treatment

The World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and other international



agencies offer special programmes to support LDCs to enhance their participation in the global trading system. The provision for special and differential treatment (S&D) under WTO Agreements was one of the key instruments adopted by its members during the Uruguay Round negotiations (1986-1994) to enhance LDCs' share in

global trade by providing them with different policy space, flexibilities and concessions while implementing WTO Agreements.

S&D is one of the most essential, yet contentious, aspects of the global trading system. Due to their imprecise and shabby formulation, and non-mandatory or best-endeavour

nature, most of the S&D provisions are limited to paper and implementation is left to members' discretion. In view of this, strengthening S&D provisions under the WTO Agreements to offer meaningful outcomes to developing countries, in particular LDCs, merits urgency. Despite it being one of the crucial areas of negotiations under the Doha Development Agenda (DDA), it has been unnecessarily put off for long.

Provisions relating to S&D were enshrined in the WTO Agreements on the premise that developing countries and LDCs, who suffer from capacity constraints, if not offered special treatment and flexibilities, cannot compete and survive in the multilateral trading system. Indeed, structural weaknesses coupled with low socio-economic indicators make LDCs and many developing countries deserving of such flexibilities.

The original General Agreement on Tariffs and Trade (GATT) 1947 did not include any preference or flexibility on the premise that it distorts trade and rewards inefficient producers. However, revisions permitted LDCs a more flexible use of tariff protection and other concessions to assist their economic development. By the time the GATT's eighth round of negotiations kicked off in 1986 in Punta del Este, Uruguay, a considerable number of developing countries had obtained membership of the GATT. This meant that they could exert more pressure for the inclusion of S&D provisions.

The notion of S&D is included in the WTO Agreements right from the preamble itself. The second paragraph of the preamble to the Marrakesh Agreement Establishing the WTO reads "recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development". A similar spirit is reflected even in the preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

and the General Agreement on Trade in Services (GATS).

The Committee on Trade and Development since 2001 has been continuously publishing and updating a compendium that details various S&D provisions scattered in different WTO Agreements. According to the latest revision of 2016, there are 157 S&D provisions in 15 WTO Agreements, of which 12 overlap in several agreements. If overlapping S&D provisions are not counted separately, the total number of S&D becomes 145. Adding decisions/declarations of the WTO ministerials, the General Council and other relevant Committees/Sub-committees takes the number to 170. The WTO Secretariat classified S&D provisions into six types in 2001. The table on the next page provides a summary of the 157 provisions.

Difficult to implement

Owing to their vagueness, or structurally weak formulation, S&D provisions have not been effective in enhancing market access opportunities for LDCs and facilitating their integration into the multilateral trading system. Most of the S&D provisions are based on hortatory language (best-effort clause). As these provisions are not legally binding, their application is left to member countries' discretion. Also, due to their imprecise and scattered nature, implementing them effectively has become difficult.

S&D provisions are subject to different conditions and associated with 'if and but' clauses. For example, in the case of Trade Related Investment Measures (TRIMS), members are required to notify within certain days and, in the case of TRIPS transition ex-

ension, LDCs are required to submit duly motivated requests. If LDCs fail to do so, what happens is not clear. Article 5.2 of the TRIMS Agreement allows derogations to developing countries and LDCs for about five and seven years, respectively, provided that they notify their inconsistent measures that are already in place. In view of LDCs' declining share in manufacturing export, an extension of this deadline was inevitable to protect and promote their infant industries. Recognizing this fact, Hong Kong Ministerial Decision 'Annex F' allowed LDCs to maintain, on a temporary basis, existing TRIMS-inconsistent measures for another seven years with the condition that LDCs are to notify their existing TRIMS measures to the Council for Trade in Goods (CTG) within thirty days of the decision. But due to limited capacity and ignorance, not even one LDC has made the notification. What happens with regard to the transition period? Will LDCs be entitled to enjoy the transition period conferred on them by Hong Kong Ministerial Decision even without a notification? The answer is not clear.

Similarly, Article 66.1 of the TRIPS Agreement provides LDCs with a ten year transition period to implement the agreement. Members can consider extending the period if required and upon submission of a duly motivated request by LDCs. But it does not say for how many more years the extension may apply. In the absence of clear provisions, fixing the terms and tenure of extension lies at the mercy of developed countries. So far, the transition period has been extended twice, the first in 2005, for seven and half years, and the second in 2013 for eight years. Nobody knows what would happen after 2021.

LDCs are impatient to revisit S&D provisions to make them more precise, effective and operational as mandated by Doha Declaration paragraph 44. Efforts to strengthen S&D were initiated even before the Doha Ministerial. Developing countries first attempted to review the provisions during the preparatory process for the Third WTO

Strengthening S&D provisions under the WTO Agreements to offer meaningful outcomes to LDCs merits urgency.

Table

Special and differential treatment provisions by type and agreement (Excerpted from WT/COMTD/W/219)

Agreement	Provisions aimed at increasing the trade opportunities of developing country members	Provisions that require WTO members to safeguard the interests of developing country members	Flexibility of commitments, of action, and use of policy instruments	Transitional time-periods	Technical assistance	Provisions relating to LDC members	Total by Agreement
General Agreement on Tariffs and Trade 1994	8	13	4				25/25
Understanding on Balance of Payments of GATT 1994			1		1		2/2
Agreement on Agriculture	1		9	1		3	14/13
Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures		2		2	2		6/6
Agreement on Technical Barriers to Trade	3	10	2	1	9	3	28/25
Agreement on Trade-Related Investment Measures (TRIMs)			1	2		1	4/3
Agreement on Implementation of Article VI of GATT 1994		1					1/1
Agreement on Implementation of Article VII of GATT 1994		1	2	4	1		8/8
Agreement on Import Licensing Procedures		3		1			4/4
Agreement on Subsidies and Countervailing Measures (SCM)		2	10	7			19/16
Agreement on Safeguards		1	1				2/2
General Agreement on Trade in Services (GATS)	3	4	4		2	2	15/13
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)				2	1	3	6/6
Understanding on Rules and Procedures Governing the Settlement of Disputes		7	1		1	2	11/11
Agreement on Government Procurement (GPA)		3	6		1	2	12/10
TOTAL	15	47	41	20	18	16	157/145

Ministerial held in Seattle, the United States in 1999, but to no avail. Following the Doha mandate, the negotiation on S&D was carried out in the special session of the Committee on Trade

and Development broadly into three areas, i) Agreement-specific proposals, ii) Cross-cutting issues and iii) Monitoring mechanism for special and differential treatment.

In response to the Doha Development Agenda (DDA) mandate, developing countries and LDCs submitted different proposals which had totalled 88 by 2003. The General Council Chair,

on 5 May 2003, summed up all the 88 Agreement-specific S&DT proposals into three categories to advance negotiations:

- **Category I** : contained 38 proposals including the 12 proposals that were agreed to in principle at the beginning of 2003 and 26 proposals on which there appeared to be greater likelihood of making recommendations.
- **Category II** : contained 38 proposals, of which 27 related to areas where mandated negotiations were ongoing and 11 were considered in the respective WTO bodies as part of regular work.
- **Category III** : contained 12 proposals on which there appeared to be some divergence of views, and on which progress did not seem possible without some modification in the text.

In the run-up to the Fifth Ministerial Conference, held in Cancun, Mexico in 2003, members put forth 28 Agreement-specific proposals, known as Cancun 28 proposals, but there was no consensus. After Cancun, in the Sixth Ministerial Conference, held in Hong Kong in 2005, Annex F of the declaration made five S&D-related decisions under LDC Agreement-specific proposals. Two important decisions were made, out of the five-LDC specific proposals of the Hong Kong Ministerial, with far-reaching implications. They are related with duty-free-quota-free (DFQF) and preferential rules of origin and extension of the TRIMS compliance period. The Eighth Ministerial Conference, held in Geneva in 2011, members agreed to adopt services waiver for LDCs and decided to extend the TRIPS compliance period. The Bali Ministerial Conference, 2013, decided on an LDC package that included decisions on four areas, namely preferential rules of origin, operationalization of the services waiver, duty-free and quota-free market access, and subsidies on cotton.

The Bali Ministerial also adopted decisions outlining functions/terms of reference and operation modality of the Monitoring Mechanism (MM) to

Nepal as the LDC Group Coordinator played a pivotal role to inscribe a substantive number of S&D provisions in the Trade Facilitation Agreement.

review all aspects of implementation of S&D provisions. Accordingly, the Monitoring Mechanism—which operates in Dedicated Sessions of the Committee on Trade and Development—is to act as a focal point within the WTO to analyse and review the implementation of S&D provisions. The monitoring of S&D provisions in the Mechanism is to be undertaken on the basis of written inputs or submissions made by members, as well as on the basis of reports received from other WTO bodies to which submissions by members can also be made. To date, no written submission from members seems to have been made. Developing countries and LDC group members were insisting that S&D provisions be first revisited and strengthened before considering fixing the terms and conditions of the MM. Otherwise, it would be similar to "putting the cart before horse", they lamented.

One of the major outcomes of the Bali Ministerial was the adoption of Trade Facilitation Agreement. The Agreement contained S&D provisions for developing and LDC members, although they were confined only to trade facilitation matters. Nepal as the LDC Group Coordinator, together with other LDC and developing country members, played a pivotal role to inscribe a substantive number of S&D provisions in the Agreement. As a result, LDCs were given the liberty to categorize trade facilitation measures into A, B and C categories. They were not required to apply stringent trade facilitation measures until they acquired the capacity and technical assistance to implement them.

In the run up to MC10, LDCs decided to submit a proposal on S&D under Para 44 of the Doha Declaration to secure tangible outcomes, with the coordination of Uganda, in February 2015. To secure concrete outcomes, LDCs reviewed and analysed all 88 S&D proposals, picked up 25 points which were of particular interest to them and developed a proposal for MC10. At the same time, the Africa, Caribbean and Pacific Group of States (ACP) and the Africa Group also submitted a 14-point S&D proposal which overlapped with the LDC Group's proposal. Considering the similarities and the overlapping nature of the two, LDCs decided to join hands with the ACP and the Africa Group while pursuing negotiations. Another reason that tempted LDCs to join hands with other members of the G-90 was the hope of garnering wider developing world support for their S&D proposal. Accordingly, the LDC Group, the ACP and the Africa Group synchronized and amalgamated their proposals into a consolidated draft. Then they submitted it as a G-90 proposal (Job/dev/29) on 30 July 2015. It was revised twice in the course of the negotiations. With only 25 points, the G-90 S&D proposal covered a wide range of issues concerning all three major agreements of the WTO, the enabling clause, TRIMS, agriculture, the Agreement on Subsidies and Countervailing Measures, the Dispute Settlement Understanding and some Ministerial decisions.

Six questions were used by the LDC Group to identify 25 LDC-specific proposals from the 88 S&DT proposals:

- Does the proposal address the priority challenges hindering LDCs from participating in the multilateral trading system effectively?
- Does the proposal aim at increasing the trade opportunities of LDCs in both trade in goods and trade in services (e.g. diversification, value addition) ?
- Does it contribute towards improving effective delivery of technical and financial assistance

or Aid for Trade to address the trade and development needs of LDCs, including supply-side and infrastructural challenges?

- Does it provide development policy space for LDCs and flexibility of commitments, of action, and use of policy instruments (e.g. infant industry protection and industrialization)?
- Is the proposal practical, feasible and able to attract consensus from the perspective of LDCs and other WTO members?
- Does it meet the test (precise, effective, operational) as mentioned in paragraph 44 ?

Following suggestions by some members, the G-90 also revised their proposal in order to make it achievable without losing its substance. However, despite rigorous efforts, no convergence developed in Geneva. As the Chair of the special session of the Committee on Trade and Development, the then Singapore Ambassador, based on the discussion and deliberations among members, picked up nine very moderate proposals as possible deliverables of MC10 at the last moment of the negotiation. Members could not converge on those nine proposals in Nairobi. MC10 could not deliver any outcome on S&D. The Tenth WTO Ministerial Conference that was taking place for the first time on African soil, where the majority of poor communities are concentrated, was a disappointment.

Despite that, the Nairobi Ministerial Declaration does mention, "This work shall maintain development at its centre and we reaffirm that provisions for S&DT shall remain integral. Members shall also continue to give priority to the concerns and interests of LDCs." According to Paragraph 32 of the Tenth Ministerial Declaration, and Paragraph 44 of the Doha Ministerial Declaration, in the run up to MC11 to be held in Buenos Aires, Argentina, later this year, LDCs and other members of G-90 have started S&D negotiations. After reviewing their earlier 25 Agreement-specific proposals, they renewed their sub-

A practical difficulty with S&D is that it would be applicable to all developing countries irrespective of their development status.

mission (JOB/DEV/48, JOB/DEV/TNC/60) on 5 July 2017. The new proposal seems to have included only 10 S&D proposals as a first step towards achieving the target of Paragraph 44 of Doha Ministerial Declaration. The new proposal is claimed to be achievable and meaningful too.

While preparing their 10 S&D proposals, G-90 prioritized issues considered to be supportive of their industrialization/manufacturing sector, attainment of structural transformation and diversification of their economies, accelerating the pace of economic development to raise the standard of living of their population, integration into the multilateral trading system and, lastly, allowing them some policy space.

Developed members may find it difficult now to ignore the proposal by pointing at the doability criteria. It was really difficult for G-90 to strike the balance between the doability and desirability criteria while pursuing negotiations on S&D.

Still, no single developed member has wholeheartedly supported the S&D proposal. Some developed members appear to be looking for excuses already with differing views. Still, most of the members think that if the proposal targets only vulnerable members, especially the LDCs, some achievements are possible.

Lessons and ambiguities

One major practical difficulty experienced in drawing a general S&D outcome is that it would be applicable to all developing countries irrespective of their development status. Since, members' development status in the WTO is based on the self-declaration principle, even countries like South

Korea, China, India, Brazil, Argentina, South Africa and many more identify themselves as a developing country. This is one reason why developed members hesitate to give concessions in the name of S&D. This hurts the LDCs in many respects.

Anyway, consistent follow-up and rapport building with developed countries are important for consensus building. Collaboration and cooperation with other likeminded groups in the WTO are equally critical. Most of all, LDCs and small and vulnerable economies should come together and stand united to produce outcomes favourable to them. The good decisions from Hong Kong and Bali give some rays of hope for LDCs. But first attempts must be made to remove the following ambiguities :

Should proposals on S&D go in tandem with other negotiation areas of the DDA (agriculture, non-agriculture market access, services) or should they be taken up separately?

- Should LDCs submit their separate LDC-specific S&D proposal, or should they go together with other developing members such as G-90?
- Should S&D outcomes be taken as an early harvest or part of a single undertaking under DDA?
- What would be the fate of the remaining S&D proposals submitted earlier, once decisions are made only on a few of them ?
- How should decisions on the G-90's S&D proposals come into implementation—either through a Ministerial Decision (interpretation/clarification) or amendment/modification of the Agreement(s), or both ? What else could be the options? ■

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Note

¹ UNCTAD. 2017. *The Least Developed Countries Report 2016: The Path to Graduation and Beyond – Making the Most of the Process*. Geneva, Switzerland: United Nations Conference on Trade and Development.

LDC productive capacity

Role of Enhanced Integrated Framework

LDCs need support in capacity building to move up the value chain ladder by making forays into sophisticated sectors.

Ratnakar Adhikari

Productive capacity building is any action that helps to increase productivity both at macro (country) and micro (enterprise) levels and enhances their competitiveness in global markets. And, due to the evolving dynamics of the global economy, building productive capacity has never been so important for the least-developed countries (LDCs).

Capacity to participate

First, the LDCs' share of global export is shrinking, despite Paragraph 65(a) of the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020 (IPoA) and Sustainable Development Goal (SDG) Target 17.11 talking of doubling the share of LDC exports by 2020. The LDC share in global merchandise exports declined to 0.94 per cent in 2016, down from 0.97 per cent in 2015 and one per cent in 2014.¹ Developing LDC productive capacity is a prerequisite to reverse this trend.

Second, the LDCs, hitherto protected by a margin of preference in the developed countries and advanced developing countries' markets, are witnessing a gradual erosion in that protection. This makes it even harder for the LDCs to survive in the global market without enhancing efficiency and productivity. Ultimately, they will

have to compete with emerging giants like Brazil, India and China in the global market when the playing field becomes relatively even.

Third, to ensure the LDCs' participation in the global production network, their ability to supply quality products and timely delivery is extremely important. Since almost 80 per cent of global trade occurs within the global production network², this needs to be considered as "mainstreaming trade." Clearly, the LDCs cannot afford to be completely left out.

Fourth, for the LDCs to participate in the global production network and use trade to achieve SDGs, they need to upgrade their participation by moving up the value chain ladder by making forays into sophisticated sectors and distancing themselves away from exports of primary products.³

Left to their own devices, very few LDCs will be able to build their productive capacity, because of a limited human capital endowment, poor infrastructure, lack of technological prowess, inadequate access to finance—particularly for micro-, small- and medium-sized enterprises (MSMEs)—and, above all, because of a deficient institutional and policy environment. More importantly, given the limited ability of the countries to mobilize domestic resources to invest in these

endeavours, development partners' support in the form of Aid for Trade (AfT) is critical.

Although there was a slight decline in AfT disbursements in 2014, flows again picked up in 2015. AfT provided to LDCs in the form of productive capacity building, second only to infrastructure financing, has been around 34 per cent on an average, after the launch of the World Trade Organization (WTO)'s AfT Initiative. However, since infrastructure financing also contributes in large measure to building productive capacity, which accounts for 64 per cent of the total AfT, the average support to LDCs to build their productive capacity has remained at around 98 per cent (Figure in the next page).

A number of international organizations, such as the World Bank, the International Trade Centre, the United Nations Development Programme, the United Nations Industrial Development and the Enhanced Integrated Framework (EIF), as well as several bilateral donors, are involved in providing productive capacity-building support to LDCs. Since the EIF is a partnership framework designed exclusively for building productive capacity in LDCs, this article focuses on the EIF.

Role of EIF

In Burkina Faso, a project being supported by the EIF since 2014 aims to build the productive capacity of a specific sub-sector, namely mango drying, to enhance exports. Prior to that, processors used to dry mango on wooden tables, resulting in considerable waste and contamination. The project provided support for a modern drying facility with steel tables. The project also provided drying machines on a pilot basis, which resulted in further crowding in of private investment in this area.

The project extended support for strengthening the value chain of the mango sector and training to farmers and processors on good agricultural practices, which helped them to obtain organic certification. To further ensure quality and strengthen the value chain, the project imparted packaging training to workers and marketing training to entrepreneurs.

All these efforts resulted in increased exports of dried mango from Burkina Faso. When the project was initiated in 2014, Burkina Faso exported dried mango worth US\$3.895 million in terms of value and 779 metric tons in volume, which increased to US\$10.293 million in value and 1,930 metric tons in volume, respectively⁴. While the value increased by 164 per cent, the volume increased by 148

per cent, reflecting the higher prices fetched by entrepreneurs.

Similarly, in Cambodia, the EIF has supported productive capacity-building projects in several sub-sectors, including rice, silk, cassava, marine fishery and tourism. Rice and silk have already shown impressive results. Rice milling, packing and standardization support, among other things, have resulted in the increase of rice exports from 202,717 metric tons in 2012 to 542,144 metric tons in 2016. It helped Cambodian rice attain the international recognition as “World’s Best Rice” for three consecutive years⁵. The project was implemented by International Finance Corporation (IFC) in partnership with Cambodia Rice Federation, with support of the EIF, the European Union and other donors.

In South Asia, the ginger competitiveness project in Nepal, implemented by the Food and Agriculture Organization (FAO), with support from the EIF and the Standards and Trade Development Facility of the WTO, contained both soft and hard components. On the soft side, training and support were provided through farmer field schools to nearly 2,000 farmers⁶ (60 per cent were women) on seed production, storage, marketing, sanitary and phytosanitary requirements, management of post-harvest loss, safe handling and transportation.

These activities contributed to a three-fold increase in ginger production, coupled with a 60 per cent increase in income from ginger in the project areas.

On the hard side, a ginger washing facility was established in Jhapa District with a capacity to wash up to six metric tons of ginger per hour. The project benefits 8,000 households that can wash ginger and sell it for higher prices. The project was handed over to the beneficiary—the Nepal Ginger Producers and Traders Association (NGPTA)—in 2016.

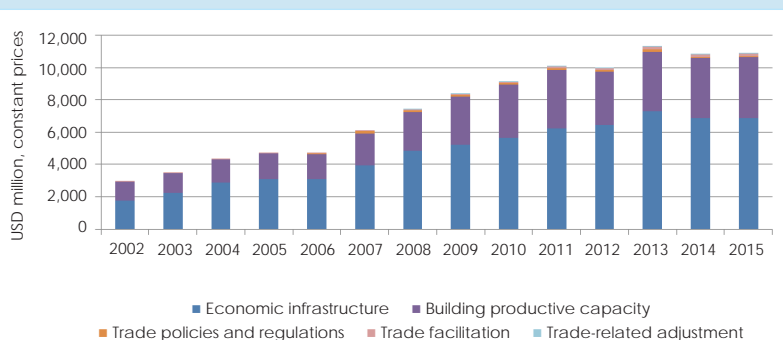
The next step is to empower farmers to diversify their export market to Bangladesh, India, Japan, the UAE and the Netherlands. Step-by-step export guides have been prepared for ginger farmers to enter these markets. Nepalese washed ginger is said to have already found its way to supermarket shelves in Bangladesh.

It is important to note that not all the support provided can deliver results, not least because productive capacity building initiatives can be negatively affected by exogenous factors. Consider the example of Yemen, where the EIF has been supporting two productive capacity-building projects. The first one is aimed at enhancing productive capacity in the export of honey. The project has shown some results, despite a difficult political environment. The second project relates to bee health, which has not produced the desired results so far. This is mainly due to the ongoing conflict in the country. The EIF is working closely with the EIF National Implementation Unit in Sanaa and the Main Implementing Entity, the International Centre of Insect Physiology and Ecology based in Nairobi, to recalibrate the project in line with the country’s situation so that results can be delivered.

Development partners, working alone, cannot achieve substantial results without support from other actors. One of the most important aspects is country ownership, not least because EIF follows the Paris Principle on national ownership and puts the

Figure

Aid for Trade disbursements to the LDCs (2002-2015)



Source: OECD Creditor Reporting System

countries in the driving seat. Another is investment—both from the public sector as well as the private sector—both nationally and internationally.

What EIF does is provide catalytic support to unlock the potential. It is for the national governments, other bilateral and multilateral donors and the private sector, to contribute their resources and expertise to achieve the desired objectives. Project success in the above examples is owed, in large part, to such contributions.

Had the national government not taken ownership of the Burkina Faso project, and the private sector not contributed by installing drying machines on their own, it would have been almost impossible to achieve the results. Similarly, in Cambodia, the government's role in steering the project in the right direction, the IFC's role in mobilizing additional resources from other donors and the Cambodia Rice Federation's role in providing their resources and expertise were all vital for the success of the rice project.

In the case of Nepal, it was the NGPTA that took the lead in implementing the project. The FAO was the Main Implementing Entity with technical and policy support from the Ministry of Agriculture Development of the Government of Nepal.

Most of the initiatives supported by the EIF are relatively small compared to the needs of the LDCs. However, their contribution to structural transformation, employment generation and poverty alleviation and ultimately towards helping the LDCs achieve the SDGs is even more important.

The EIF takes these aspects seriously, not least because its Results Framework for Phase Two of the programme (2016-2022) is aligned with the SDGs. What matters is the EIF's contribution to sustainable and inclusive economic growth, of which an inclusive trade agenda is an integral part.

Ensuring inclusiveness

While building productive capacity is a stated EIF objective, it is equally

Development partners alone cannot achieve substantial results without support from other actors.

important to frontload the inclusive trade agenda during the project design for the project to be able to contribute to the higher objectives of the programme. In this respect, three cross-cutting EIF issues are particularly important.

First, whether or not the project results in increased employment opportunity is of primary significance. Even if the project builds productive capacity, enhances the competitiveness of the sector and increases exports, but does not contribute to increased employment opportunities thereby not helping the country to reduce poverty, the project is not likely to pass the initial EIF screening. This is because contributing to Goal 1 of the SDGs, namely poverty eradication by 2030, is one of the most important SDG Goals, to which EIF is fully committed.

Secondly, if the project contributes to the above objective and at the same time ensures that at least 30 per cent of the beneficiaries are women, the project is likely to receive a favourable consideration. This is extremely important, not least because of the shared belief of the EIF partnership that promoting gender-inclusive growth in the LDCs helps in achieving Goal 5 of the SDGs dealing with gender equality.

Third, the project should also contribute to environmental sustainability, either by minimizing resource use or pollution or making use of technology that causes the least harm to the environment. Therefore, projects that meet such requirements deserve special consideration. An example is the ongoing gum arabic project in Mali, which has planted acacia trees in 10,000

hectares of arid land, to extract gum arabic and contribute to halt the advancement of the Sahara Desert, as well as to enhance soil nutrients and fertility.⁷

Equally important is to integrate MSMEs in project design and implementation, provide employment opportunities to the youth, particularly from marginalized communities and people living with disabilities, if possible, from the project areas.

If these efforts are combined with better standard-setting facilities and trade facilitation (including the timely implementation of the WTO Trade Facilitation Agreement), they could generate a multiplier effect. Furthermore, if the LDCs are able to take advantage of opportunities offered by emerging trade opportunities, such as regional economic integration and e-commerce, they can deliver on an inclusive trade agenda as well as have a greater chance of making a transformative impact on a sustainable basis. ■

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For a Win-win Africa-India trade partnership

An African free trade area will put the region in a better position to integrate with India and other developing countries.

Simon Mevel

Initially limited to 15 selected African Union member states under the so-called “Banjul Formula”¹, the India Africa Forum Summit was successfully opened to all African countries in its third and last edition which took place on 26-29 October 2015, in New Delhi, India. The next Summit is expected to be held in 2020 in Africa. Beyond this official platform to advance Africa-India relations, other initiatives have flourished, such as the Confederation of Indian Industry (CII)-EXIM Bank Conclave on India-Africa Project Partnership. The Conclave, held every year since 2005, offers a platform to explore avenues for partnerships between Indian and African governments and industry. This attests to the growing interest from Indian and African authorities as well as private sector actors to enter into strategic partnerships.

In this context, to what extent can trade relations between Africa and India be mutually beneficial and supportive of much-needed structural transformation on both sides?

Africa-India promises

From a trade perspective, Africa and India are becoming increasingly connected. Africa’s exports to India grew from only US\$4.4 billion in 2005 to US\$27.1 billion in 2015, making India one of the top three destinations for

Africa’s exports, just behind the European Union and China. Over the same period, India’s exports to Africa as a whole increased from US\$6.7 billion to US\$25.6 billion, with Africa becoming the fourth top destination for India’s exports.²

India introduced its Duty-Free Tariff Preference (DFTP) scheme in 2008. It progressively removed most of the tariffs faced by least-developed countries (LDCs) on their exports to India.³ DFTP has been an important tool to promote African LDCs’ exports to the Asian economy. However, the scheme has not contributed to significantly diversifying African exports to India so far. The exports are largely concentrated in fuels that originate in a few African countries that are not benefiting from the Indian DFTP (i.e. Nigeria, Angola⁴, South Africa and Egypt). Africa’s exports to India have been strongly influenced by crude oil prices and India’s high demand for oil. African countries often lack the capacity to move away from exports of primary resources and the challenges to comply with market requirements (e.g., rules of origin) imposed by preferential schemes. Hence, a further simplified⁵ and expanded⁶ DFTP scheme would create greater opportunities to stimulate Africa’s exports without necessarily hurting Indian producers. India’s exports to Africa are primarily

dominated by manufactured goods. They are relatively more diversified and better spread out across African countries.

When it comes to investment trends between Africa and India, the situation is rather peculiar. Indeed, India’s foreign direct investment (FDI) stock in Africa rose from US\$11.9 billion in 2010 to US\$15.2 billion in 2014. At the same time, Africa’s FDI stock in India increased from US\$57 billion to US\$73.7 billion. The substantially higher FDI stock from Africa in India is explained by the fact that Mauritius is used as a conduit for Indian inward FDI, thanks to Mauritius’ advantageous tax conditions. In 2014, Mauritius accounted for 99 per cent of Africa’s FDI stock in India as international companies often re-routed their investment in India through Mauritius. Similarly, 91 per cent of India’s FDI in Africa comes from Mauritius reflecting that India’s FDI are largely channeled through Mauritius before reaching other African countries.⁷ However, this situation is expected to change following a revision, negotiated on 1 April 2017 by India with Mauritius, of their Double Tax Avoidance Convention of 1983. Indeed, after 31 March 2019, tax will be charged at full domestic rates, although capital gains on derivatives and fixed-in-

comes securities will continue to be exempted from taxes.⁸

Even the few export gains for African LDCs from the Indian DFTP hang in the balance. They could be wiped out if the Regional Comprehensive Economic Partnership (RCEP)—a mega-regional trade agreement (MRTA,) among India, Australia, China, Japan, South Korea, New Zealand and the ten nations of the Association of Southeast Asian Nations—were to be established.

A recent analysis by Mevel and Mathieu (2016)⁹ empirically assessed that under a scenario where the major MRTAs (i.e., RCEP, Transatlantic Trade and Investment Partnership (TTIP) and Trans-Pacific Partnership (TPP)) were to be implemented, Africa—which is not part of any of the MRTAs considered— would see a significant decline in its trade. The RCEP would be the MRTA that has the most negative impact on Africa’s exports, with the largest decline occurring in Africa’s exports to India. Africa’s exports to India would decrease by nearly US\$10 billion (that is, over 13 per cent) in 2022, relative to a baseline scenario without the RCEP in place. In relative terms, the LDCs—particularly those which currently benefit from India’s DFTP scheme—would be the most negatively impacted. For example, exports from Zambia, Tanzania, Senegal, Ethiopia and Madagascar to India would decrease by 49 per cent, 44 per cent, 21 per cent, 15 per cent and 14 per cent, respectively, following the establishment of the RCEP (Figure 1).

CFTA to the rescue

Since Africa has no control over RCEP and other major MRTAs that are anticipated to impact negatively on Africa’s trade, it must provide its own effective response. The Continental Free Trade Area (CFTA) negotiations, constituting Africa’s own MRTA, could potentially provide a viable basis in that respect. The negotiations were officially launched at the June 2015 African Union Summit in Johannesburg, South Africa and

are expected to be concluded by the end of 2017.¹⁰

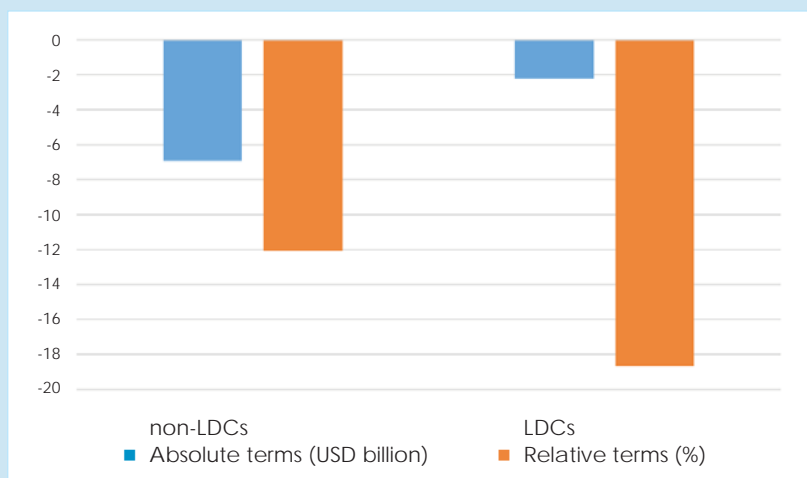
Mevel and Mathieu (2016) indicate that a CFTA would boost intra-African trade and its industrial content. This in turn would more than offset Africa’s trade losses projected to be brought about by the RCEP and other MRTAs. Moreover, the CFTA would not significantly add to the diversion of trade between Africa and India as compared to the sole MRTAs. Indeed, Africa’s exports to India would not be reduced further and India’s exports to Africa (some of them being replaced by intra-African exports) would only be cut by US\$1 billion.

The CFTA is not just in Africa’s interest but in India’s as well if Africa can set-up a large continental-wide market that is unified, simplified and easier to access. The CFTA would also offer significant opportunities for Indian firms and investors.

It is, therefore, necessary to move to a new vision for Africa-India trade relations. The African market should not simply be seen by Indian firms as an opportunity to take advantage of. There should be more to the partnership than the preferential trade programmes offered to African

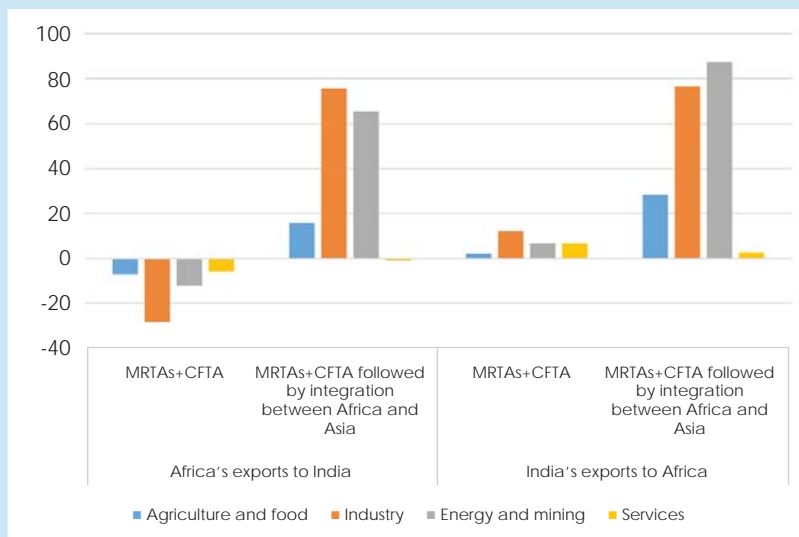
countries by third countries. Just eying the third-country fabric provision of the African Growth and Opportunity Act, between Sub-Saharan African countries and the United States, does not make a sustainable partnership. It should rather be seen as a pathway for future negotiations between Africa and India to secure reciprocity in terms of market access offered to each other and greater investment opportunities. Therefore, India should scale up its support to Africa’s ongoing integration efforts. It needs to work closely with its African counterparts in identifying those sectors that are of interest to India and, at the same time, a key for Africa’s economic diversification and transformation. Then, once the CFTA has been established, Africa will be in a better position to integrate with India and other developing economies. Mevel and Mathieu further highlighted that deepening integration between Africa and Asia would be beneficial to all parties as far as trade is concerned. In particular, as illustrated by Figure 2, Africa’s exports to India and India’s exports to Africa would, both, strongly increase following trade integration of the two parties with benefits in all main sectors. Gains in industry would

Figure 1
Changes in Africa’s exports to India following mega-regionals, relative to baseline (2022)



Source: Author’s calculation based on MIRAGE model

Figure 2
Changes in Africa-India trade under different scenarios, relative to baseline (2022), (figure in US\$ billion)



Source: Author's calculation based on MIRAGE model

Industry on "Deepening Africa-India Trade and Investment Partnership".

Notes

- The "Banjul Formula" adopted in 2006 required the African Union to select 15 African countries which could take part in the India Africa Forum Summit until it was amended prior to the third Summit.
- Author's calculations based on UNCTADStat.
- Since its last expansion in 2014, Indian DFTP exempts 96 per cent of total tariff lines (as defined under the harmonized-system nomenclature at 6 digits) from tariffs on India's imports from LDCs, with an extra 2.2 per cent of lines subject to preferential rates, leaving only 1.8 per cent of lines excluded from any tariff reduction.
- Although Angola is an LDC, it is not currently benefiting from India's DFTP scheme. To date, only 21 out of the 34 African LDCs have sent a letter of intent to the Government of India stating that they wish to be covered under the DFTP and commit to comply with the scheme's provisions.
- Currently, Indian DFTP does not allow for regional cumulation within beneficiary countries that would allow inputs originating from each beneficiary country to be considered as originating inputs in the other beneficiary countries.
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- It is foreseen that an agreement on trade in goods and services could be reached by the end of 2017. In parallel to the implementation phase of this agreement, a second phase of negotiations will be conducted on issues such as investment, intellectual property rights and competition policy.

be substantial, offering opportunities to support structural transformation efforts through trade on both sides.

South-South confidence

In light of this evidence, there are surely real opportunities for mutual trade and investment benefits between Africa and India. Nevertheless, it appears that Africa first needs to be more integrated within for an Africa-India trade partnership to be more conducive and capable of successfully supporting structural transformation for Africa as well as India. This is especially because the two parties are not at the same stage of their transformation process.

Africa and India are required to work more closely in addressing each other's priorities. In particular, India's support to the African CFTA can go a long way towards building regional value chains that can help Africa integrate better and move up global value chains. Africa could also facilitate India's investment in those sectors that are strategic for both India and Africa.

Building confidence between the two partners is key for opening up

their markets to one another. This is what has often been lacking in engagements between North and South partners so far. The lengthy and painful negotiation process of the Economic Partnership Agreements between the European Union and African, Caribbean and Pacific (ACP) countries can provide a meaningful illustration. A solid and well-built Africa-India trade partnership could possibly offer a valuable framework for strengthened South-South Cooperation. ■

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LDCs must unite at the Buenos Aires Ministerial

MC11 is going to be one of WTO's most contentious ministerial conferences as it will decide whether Doha Development Agenda will be replaced by new issues.

Asjadul Kibria

The Eleventh Ministerial Conference (MC11) of the World Trade Organization (WTO) will be held in the Argentine capital Buenos Aires from 10 to 13 December 2017. The ministerial conference, the highest decision-making forum of the multilateral trade body, is taking place at a time when multilateral trade regime is in the doldrums.

Low expectations

United States (US) President Donald Trump's stance against multilateral

free trade and Britain's exit from the European Union, also known as Brexit, make the future of the rules-based multilateral trade regime challenging. In fact, in WTO's last Ministerial Conference (MC10) in Nairobi in 2015, the US made it clear that it was no more interested to continue the prolonged Doha Round of negotiations –that aims at improving trading prospects of developing countries. Many other developed countries also expressed their support in favour of the US position.

Least Developed (LDCs) and developing countries, however, opposed the standpoint and pushed for continuation of the Doha Development Agenda (DDA). This led the Nairobi Ministerial to conclude with a kind of 'compromised deal' with the Declaration mentioning their differences.

Since Nairobi, developed and some developing countries have been gradually pushing for inclusion of some new issues in the WTO even while most of the developing countries are in favour of completing the unfinished



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Doha agenda. These are critical for balanced global trade rules.

Thus, MC11 is going to be one of WTO's most contentious ministerial conferences. Some observers predict that it will be the end of the DDA, if not the end of the WTO. Others believe that the DDA will not be buried, but its issues will be largely replaced by new issues.

Hence, the countries in South Asia have to assess their stakes in the multilateral forum with caution. In fact, South Asia has both offensive and defensive interests in MC11. There are points of convergence and divergence. Nevertheless, a common agenda may be explored to build a kind of 'South Asian coalition' in Buenos Aires.

The latest developments in negotiations make it clear that WTO members have kept their expectations low on the deliverables in Buenos Aires. South Asian countries are no exception. They are aware that both the in-built Doha issues as well as some new issues are already on the table. A permanent solution for public stockholding programmes for food security, domestic support programmes, fishery subsidies, LDC waiver in services trade, special and differential treatment, and LDC issues are the major areas of concern. Besides these, there is a strong move to initiate multilateral negotiations on rule-making for new issues like electronic commerce

(e-commerce), investment facilitation, and micro, small and medium enterprises (MSMEs).

The most pronounced issue for the developing world is to have a permanent solution for its public stockholding programmes. In the Bali Ministerial (MC9), in 2013, member countries had agreed to reach a permanent solution in this regard by 2017. Developing countries led by India and Indonesia have been rightly arguing that the current formula for calculating subsidy is problematic. The countries running these programmes are required to notify the WTO about the amount of subsidy provided. The subsidy—part of the aggregate measurement of support (AMS)—is calculated as the difference between the 1986-88 reference price and the current administered price. The huge difference between today's prices and the 1986-88 prices makes the amount non-realistic and, thus, not related to the actual amount of so-called eligible production. Unless the government publicly announces a limit on the value it can purchase, eligible production would mean 100 per cent of the output, rather than the actual subsidized production. Developing countries are demanding that the public stockholding programmes be included in the Green Box, deemed to be non-trade distorting and hence exempt from reduction commitments.

A permanent solution for public stockholding has immense importance for South Asia. More than 1.7 billion people live in the region, 60 per cent of them poor. Rice is the staple food for a majority and a source of livelihood for some 50 million households. Food security is a major concern of the region, which is also vulnerable to the impacts of climate change. A permanent solution would allow the countries to support farmers as well as contribute towards food security goals.

Divergences

However, full convergence on the issue seems to be lacking in South Asia. While India is strongly advancing the issue, Pakistan has indicated some reservation. Bangladesh and Nepal are in favour of a permanent solution.

Another important issue in agriculture trade is a special safeguard mechanism. The mechanism allows developing countries to be eligible to temporarily raise import tariffs beyond bound levels to contain sudden import surges or price falls.

The negotiation to formulate a set of multilateral rules to discipline illegal, unreported and unregulated fishing is another important area for South Asia. A large population in this region depends on fishing. Disciplining fishery subsidies is likely to contain trade-distorting practices of many countries. South Asian countries may jointly move to make the deal balanced, with due special and differential provisions for LDCs and developing countries.

South Asia had a 10 per cent share in global aquaculture output in 2014. Shares of Bangladesh and India were 2.45 per cent and 6.62 per cent, respectively. In inland water capture production, India and Bangladesh stood third and fourth in the global output table. Again, India is the seventh largest marine capture-producing country in the world. Bangladesh and India also stood third and sixth in producing farmed species in 2014. India was the seventh largest exporter of fish and fisheries in 2014. India and

Box

Key LDC issues at the WTO

- Full implementation of duty-free and quota-free market access
- Simple and flexible preferential rules of origin
- Reduction and eventual elimination of cotton subsidies
- Disciplining fishery subsidies, with flexibilities for LDCs and protection of small and artisanal fishers' livelihoods
- Operationalization of the Service Waiver
- Making precise and operational special and differential treatment provisions
- Aid for trade to build trade-related infrastructure and productive capacity, and implement Trade Facilitation Agreement

Source: Editor's compilation

Bangladesh will be the second and third largest additional consumer in 2025.

The divergence among South Asian countries on the new issues is also visible. India has been opposing any negotiation on the new issues until the ongoing Doha Round of negotiations is concluded. Pakistan and Sri Lanka, however, support the idea of starting negotiations on new issues like e-commerce. In fact, they are members of 'The Friends of e-commerce for Development' (other members are: Argentina, Costa Rica, Kenya and Nigeria).

Negotiating a new global rule for e-commerce in WTO will put the small and medium e-commerce firms in a very uneven competition. Currently, a few giants like Amazon, JD, Apple and Alibaba are dominating the global e-commerce market. Again, China and the US occupy around 70 per cent of the global e-commerce market. There is an apprehension that any new global rule will go in favour of these giants.

In South Asia, though India has the largest volume of e-commerce activities, annual online sales are still below US\$20 billion. As per a projection, made by the investment bank, Morgan Stanley, the figure might reach US\$120 billion by 2020. Pakistan's annual e-commerce is projected to reach US\$1 billion by 2020. The figure for Bangladesh is estimated at around US\$40 million. Thus, e-commerce is still at a nascent stage in South Asia with the potential to reach a robust stage within a decade. National and regional firms are struggling to expand and consolidate. These firms require some time and policy support. In such a situation, stringent global rules that restrict policy space will not be helpful for them. There is no doubt that a multilateral rule for e-commerce will be a reality in the near future. South Asian countries must be given sufficient time for preparation.

The move to set e-commerce rules could face complications while seeking a link with MSMEs. The International Chamber of Commerce

A common agenda could be explored to build a kind of 'South Asian coalition' in Buenos Aires.

has already urged the WTO to begin talks to open up cross-border digital trade for MSMEs and allow them to sell their products across borders through e-commerce. But a global rule for MSMEs forcing the poor countries to open their MSME sector will be damaging. While MSMEs make up a significant portion of the national economies of South Asian countries, their footing is not very consolidated. Moreover, they are not on a par with the MSMEs operating in the developed world. There is still a long way to go for them to adequately adopt the digital trading mechanism. Even so, there is no unique global definition for MSMEs.

Some members also want to start negotiations on investment facilitation, but India and some others have strongly opposed the move, arguing that the topic cannot be an agenda for WTO discussions.

Even though LDCs are not a direct party to these negotiations, the proposals and outcomes will have a significant impact on their economies. In that sense, LDCs have to closely watch the negotiations and may have to maintain an alliance with the developing countries. In South Asia, there are four LDCs: Afghanistan, Bangladesh, Bhutan and Nepal. Of these, Afghanistan is the latest entrant while Bhutan is an observer of the WTO.

South Asian LDCs have some additional challenges to overcome. These come from the divergence of African LDCs' position from the rest. The most critical area of divergence is regarding the 100 per cent duty-free-quota-free (DFQF) access to markets in developed countries. African LDCs have some reservations on the 100 per cent DFQF market access, especially to the US. They are of the view that granting

100 per cent or commercially meaningful market access in the US to all LDCs will marginalize them mainly due to the huge comparative advantage of some Asian LDCs. African and Caribbean countries are enjoying tariff-free market access in the US through the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act, respectively. But the US is yet to provide tariff-free access to South Asian LDCs. Though other developed countries provide DFQF to almost all the LDCs, the access is not necessarily in line with the Hong Kong Ministerial Declaration which actually calls for 100 per cent market access with flexibility up to 97 per cent. While the Bali Ministerial Declaration calls for enhancing the market access coverage, the Nairobi Ministerial Declaration does not say anything regarding DFQF for LDCs.

LDCs must bond

Progress on the issue since Nairobi has been disappointing. The discussion on the proposed terms of reference for a study on DFQF implementation remains inconclusive. The Nairobi Ministerial, however, called for flexible rules of origin. It recommends 25 per cent local value addition as being enough to qualify for preferential market access, but does not make it a binding commitment. LDC services waiver is another important area where progress is slow.

Thus in Buenos Aires, South Asian LDCs have to bond with other LDCs to push their core agenda. Besides the above-mentioned implementation issues, they need to extend their support to complete the unfinished Doha agenda. It is important to note that a number of WTO members have little or almost zero interest in LDC issues without a breakthrough on the broader issues. LDCs must also adopt a united front on new issues. They need to push for a relaxed implementation period, including substantive assistance for any new issue endorsed by MC11. ■

Mr. Kibria is an economic journalist based in Dhaka.

Fishery in troubled waters

Huge fishery subsidies provided by a handful of countries have led to exploitation of global fish stocks and hurt the livelihood and food security of millions.

Pragati Koirala

Fish have and will play an important role in securing a sustainable future in nourishment and livelihood security. But the lack of a strong regulatory regime on the global fisheries industry and large state-sponsored subsidies have not only distorted international trade in fish but also have had a negative impact on the marine ecosystem. The issue of fisheries subsidies has been on the World Trade Organization (WTO)'s itinerary since the launch of the Doha Development Agenda in 2001 without any concrete outcomes so far.

Sustainable fishing

The launch of "The 2030 Agenda for Sustainable Development", with its Goal 14 aiming for sustainable utilization of marine resources, has provided the necessary impetus to member countries to negotiate multilateral rules on the contentious issue. They are now being negotiated with greater vigour than ever before.

Target 14.4 of the Sustainable Development Goal 14 calls for an effective regulation of overfishing, illegal, unreported and unregulated (IUU) fishing, as well as destructive fishing practices, while target 14.6 calls for the prohibition of certain forms of fisheries subsidies, which contribute to overcapacity and overfishing, elimination of subsidies that contribute to IUU fishing and a refrain from introducing new subsidies, all the while recognizing that appropriate and effective special and differential treatment for least-developed and developing countries to be an integral part of the WTO's fisheries subsidies negotiation.¹ Both of these targets are to be achieved by 2020.

It is estimated that 56.6 million people were engaged in capture fishery and aquaculture in 2014, of which 95 per cent reside in developing countries.² Fish is a very important source of protein for a large portion of the world population, making it integral to the food security of many nations. Export and licensing fees from fish and fish products are a major source of earnings for these countries.

The proportion of sources that are fully fished, overfished, depleted, or recovering from overfishing increased from just over 60 per cent in the mid-1970s to about 75 per cent in 2005 and to almost 90 per cent in 2013.³

According to the *State of World Fisheries and Aquaculture 2016* report prepared by the Food and Agriculture Organization of the United Nations, the global capture fishery production from marine waters has stabilized at around 80 million tonnes since 1990. One of the reasons for this could have been the general overexploitation of global fish stocks beyond the Maximum Sustainable Yield⁴. Weak implementation and monitoring of the existing regulatory regime for the conservation and protection of the marine ecosystem has led to the overexploitation of these resources. Moreover, large trade-distorting subsidies are contributing to this tragedy of the commons. This open access to marine resources provides an opportunity to fish in overcapacity without any barriers to entry and exit.

IUU fishing practices as well as fishing in overfished seas have further exacerbated the depletion of fish stocks. These activities are estimated to illicitly harvest 11–26 million tonnes of fish each year, worth between

US\$10 billion and US\$23.5 billion.⁵ In the absence of proper monitoring, the problem of IUU fishing has become rampant. The least-developed countries lack the capacity and technology required to properly monitor overexploitation of their Exclusive Economic Zones (EEZ) by IUU fishing practices. Furthermore, subsidies provided to prop up the fishery industry have aggravated the overfishing.

In 2009, fisheries subsidies were estimated at between US\$15 billion and US\$35 billion, of which US\$ 20 billion was categorized as capacity-enhancing subsidies.⁶ Sixty-five per cent of the total subsidies are provided by developed countries, which could be considered disproportionate given that the developing countries contribute 80 per cent of the global marine catch.⁷ Subsidies are not always trade distorting, they can also be provided for the establishment of a better fish stock management system, reversal and restoration of depleted marine fish stock, and crew safety. The truth is that most of the subsidies have a direct impact on fish stock (overfishing) as well as distort international trade prices of fish and marine products.

Subsidies provided for capacity enhancement of fishing vessels, for vessels involved in IUU fishing activities and for the fishing of overfished stock have a lasting effect on the marine ecosystem. Such capacity-enhancing subsidies and fuel subsidies lower the cost of fisheries and increase their profits, incentivizing them to fish without any care for the environment. Moreover, subsidized overcapacity and overfished captures have a lower cost of production than small and artisanal captures, distorting the prices of

fish and fish products on the international market. This will have a serious implications for the livelihoods of small and artisanal fishermen, as they cannot compete with subsidized large industrial fishing corporations.

Negotiations on fishery subsidies were first mandated by the Doha Ministerial Declaration in 2001 that launched the Doha Development Agenda. The declaration called on members to clarify and improve WTO principles on fishery subsidies all the while taking into account the importance of the sector to developing countries. The Negotiating Group on Rules (NGR) was then given the responsibility of negotiating the rules on fishery subsidies.

The commitment made in the Doha Declaration was then reaffirmed by the Hong Kong Ministerial Declaration, which called on the participants to discipline their subsidies in the fisheries sector, including the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing. Taking into account the importance of this sector to development priorities, poverty reduction and livelihood and food security concerns, the declaration also called for special and differential treatment for the least-developed and developing countries. This changed the narrative on the fishery subsidies negotiations at the WTO. Specifically, prohibition of overcapacity subsidies, and ultimately overfishing and trade distortion, have come on the negotiation agenda.

Continued negotiations after the Hong Kong Declaration produced a comprehensive draft proposal in 2007. It prohibits subsidies contributing to overcapacity and overfishing as well as to vessels engaged in IUU fishing activities and also subsidies affecting fish stock in overfished zones. The draft initially had a provision for special and differential treatment for developing and least-developed countries. However, members could not arrive at a consensus on the draft, leaving the subsidies issue unresolved. The proposal of special and differential treatment to developing countries

became highly controversial as the members were reluctant to provide a blanket deal to major fish-exporting developing countries. Several other attempts were made over the years, right up to the Nairobi Ministerial Conference, to bring the negotiations to an acceptable conclusion. Fourteen years of negotiations have passed without producing any concrete results, except mainstreaming the subsidies issue at the WTO.

In 2016 and 2017, seven different proposals were submitted by different groups to NGR, which then produced a matrix of the proposals to identify the areas of possible alignment among members. Talks on the matrix led to the preparation of working documents pertaining to subsidies on IUU fishing as well as overfished stocks. Another round of talks on other issues—like prohibition of overcapacity and capacity-enhancing subsidies; special and differential treatment; transparency and notifications; standstill; preamble; scope; transitional provisions; and institutional arrangements—were slated for the end of November 2017.

Although much remains to be negotiated, the working documents on two of the issues are a positive sign. Formal and informal news coming out of Geneva also point towards the possibility of a positive outcome, at least on some of the issues, from the upcoming Eleventh WTO Ministerial Conference to be held in Buenos Aires.

Stop the tragedy

Harmful fishery subsidies have been one of the biggest contributors to the depletion of fish stock and may ultimately lead to the depletion of the

The effects of subsidies and the ensuing distortion of international markets will be dire on the livelihoods of vulnerable communities.

marine ecosystem. Infamously known as the tragedy of the commons, this depletion is going to have a very long term effect on the wellbeing of the planet. This necessitates immediate action towards a reversal, rejuvenation and recovery of the depleted resources. Furthermore, the effects of subsidies and the ensuing distortion of international markets on the already vulnerable communities, who have been deprived of similar subsidies, will be dire. Therefore, it is imperative that WTO plays its part in prohibiting these harmful practices. While doing so, there is a need to provide enough policy space for least-developed and developing countries as required by their development needs. The livelihood and income of small and artisanal fishermen of these countries have to be secured. Another important aspect of negotiation that needs to be addressed, from the perspective of poor countries, is technical and financial assistance commitment for capacity building for monitoring their Exclusive Economic Zones. ■

Ms. Koirala is Research Associate at South Asia, Watch on Trade, Economics and Environment.

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Trump and Brexit are game changers for multilateral trading system

Brexit and Trump presidency are significant political events of recent history with a substantial impact on the multilateral trading order.

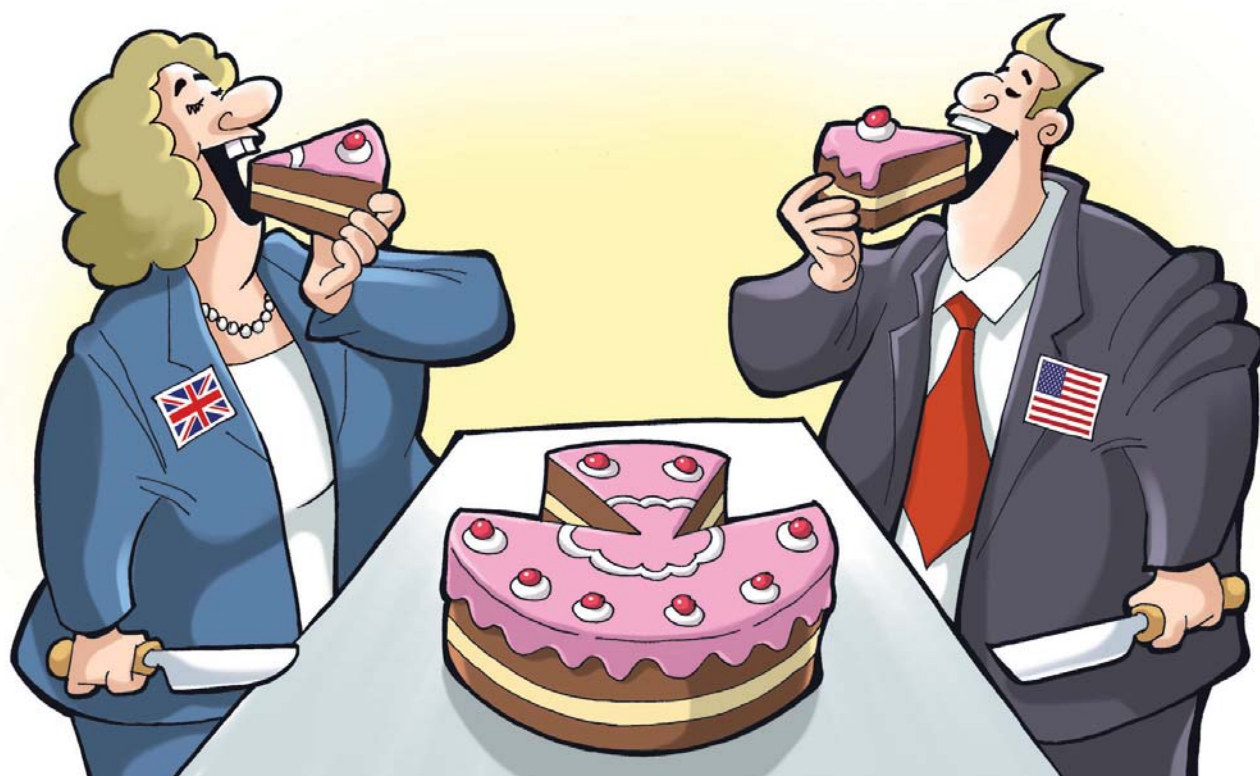
Bipul Chatterjee and Sanjay Kumar Mangla

“It is commerce which is rapidly rendering war obsolete, by strengthening and multiplying the personal interests which are in natural opposition to it. And it may be said without exaggeration that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the great permanent security for the uninter-

rupted progress of the ideas, the institutions and the character of the human race”, John Stuart Mill (1948)¹.

International trade has witnessed unprecedented expansion after World War II. World merchandise exports rose at an annual average of 10.03 per cent from US\$61.81 billion in 1950 to US\$4,320.71 billion in 1994.

Imports rose at an annual average of 9.92 per cent from US\$63.96 billion to US\$4379.94 billion during the same period.² This growth can be attributed to the multilateral trading system developed by the General Agreement on Tariffs and Trade (GATT). The GATT was replaced by the World Trade Organisation (WTO) on 1 January



1995 resulting in a further accelerated trade growth. Between 1995 and 2016, merchandise exports and imports increased at an annual average of 6.13 per cent (from US\$5176.24 billion to US\$15986.09 billion) and 6.11 per cent (from US\$5234.38 billion to US\$16150.39 billion) respectively.³

Rule-making

There are primarily two components of the multilateral trading system: a political process, and a set of political institutions. The political process aims to create global trade rules, based on negotiations among governments. The institutions facilitate these negotiations and promote international trade by establishing cooperation among countries. Any political or commercial incident in the world affect both these components.

Recently, there were two major political episodes which seem to have had a considerable impact on the rules of the multilateral trading system, not to mention the future proceedings of the WTO. The first was the referendum, on 23 June 2016, in the United Kingdom (UK) that led to its withdrawal from the European Union (EU). The second was the surprising election of Mr. Donald Trump as the President of the United States of America (USA) on 8 November 2016. This paper explores the potential impact of these two events.

Ever since the UK referendum, there has been a heated debate on its implications on trade, investment and employment not only in the UK and the EU but also in other countries. The economic fallout of this so-called Brexit will differ among countries depending on their individual trade relations and development partnerships with the EU and the UK and their level of economic diversification, competitiveness and supply capacities, among others.

The EU has emerged as a gigantic powerhouse capturing a big share of global trade. In 2016, the EU ranked second in both exports and imports of merchandise (excluding intra-EU trade) and first in trade of commercial

services. The bloc covers almost 15 per cent of world's merchandise trade and over 20 per cent of global trade in commercial services. It is the largest trading partner of the UK as about 49 per cent of its trade in goods and services takes place with other EU countries⁴.

This scenario is likely to be changed after the UK formally exits the EU. Currently, the UK's trade rules with non-EU countries are governed by agreements signed by the EU with individual countries and regions across the world. Article 207 of the Treaty on the Functioning of the European Union defines and imposes "the common commercial policy" on members. After its formal exit, the UK will have to enter into fresh bilateral/regional agreements with other countries. It is possible that the country may take a different stand on many multilateral negotiations currently being discussed at the WTO and also revert to WTO rules for its trade with the EU. This may also affect EU's trade agreements with other countries that are currently being negotiated. They include those with India, Japan and USA, and the Comprehensive and Economic Trade Agreement with Canada, among others.

As far as least developed countries are concerned, they enjoy duty-free and quota-free (DFQF) access into the UK market under the Everything But Arms (EBA) scheme or under Regional Economic Partnership Agreements (EPA)⁵. Once the UK formally exits the EU, all rights and obligations under these various agreements will cease to apply as it will devise its own trade policy to supersede the EU's common commercial policy. Two important challenges could arise in the post-BREXIT scenario:

- Certain products of export interest to small developing countries could face higher most favoured nation (MFN) tariffs in the UK market. For instance, proportional to current exports, Seychelles would take the biggest hit, with 23.4 per cent of its exports attracting additional duties⁶.

- Higher MFN duties would expose many small developing countries to greater competition in niche sectors in the UK market, including bananas, processed fish (e.g. canned tuna) and sugar, particularly from other large developing countries. For example, without EPA-equivalent preferential treatment, Belize and Saint Lucia would face greater competition from more cost-effective banana suppliers in, for example, Latin America.⁷

Apart from trade, Brexit is likely to have a substantial impact on investment and employment worldwide. Many multinational corporations operate their businesses in the EU through their offices in the UK. After Brexit, companies may shift their offices and fresh/new investment will depend on the UK's foreign investment policy. These changes will have substantial implications for employment opportunities in the UK.

Sovereignty and multilateralism

After President Donald Trump assumed office his 'America First' election slogan manifested in the very initial months of his Presidency through his abrasive policy decisions on trade, employment, visa related matters and environment among others. President Trump released his Trade Policy Agenda (TPA) in March this year⁸ whose underlying rule of conduct is placing USA's national sovereignty at the top of all economic policies over multilateral rule books.

Trump's TPA promises to adopt serious actions against countries having trade surpluses with the USA, such as China, Mexico and Germany. It assures the strict application of Section 301 of the Trade Act 1974, which permits the US president to take appropriate actions where the country's interests are undermined. The USA may relook its trade agreements or impose punitive measures against China, Mexico, and Germany to correct its negative trade balance with them. Countries which are less important, politically and economically, for the USA are less likely to be affected even

if it has a trade deficit with them. The likely risks from the New TPA have pushed various countries to search for more reliable trade partners.

The TPA also suggests that priority will be given to bilateral agreements over regional trade negotiations. In the very first week of President Trump's office the US started the process of pulling out from the Trans-Pacific Partnership (TPP) agreement. His trade policy has created movements in various regional trade groups such as Mercosur that includes Argentina, Brazil, Paraguay, Uruguay and Venezuela and North American Free Trade Agreement (NAFTA). All these happenings are creating a ground for a deeper cooperation of Asia with Europe and Latin America. The vacuum created by the USA has given a big opportunity for China to position itself as a reliable partner in the Pacific and Latin America.

Despite Trump's abrasive trade policy, the US administration is aware of the need and importance of its WTO membership to enjoy a stable export market with low tariff rates for its exports. The Trump administration has indicated that the US will have constructive participation in all ongoing and future WTO negotiations. It can, however, make negotiations harder in the interest of its national sovereignty.

Trump's policies have taken an antagonistic route not only on trade but also in other areas such as climate and employment. The US pulled out from Paris Climate Accord on 1 June 2017 blaming emerging economies like China and India for not fulfilling their commitments on carbon emission. It has imposed several visa restrictions as well, especially H-1B. This has posed great difficulties for exporters (mainly services exporters) in the way of providing smooth services in the US market. Further, it is very likely that the Trump administration will put severe restrictions/conditions for its companies to set up their offices abroad, especially in the Business/Knowledge Process Outsourcing (BPOs/KPOs) sector. All this would change the existing world trade order

Impact of Brexit on the EU-UK trade pact will be decisive for the future world trade order.

with big implications for not only the US but also its trading partners.

Both Brexit and Trump presidency are significant political events of recent history with a substantial impact on the multilateral trading order. They will undoubtedly affect global investment and employment.

Brexit is likely to make EU economically less valuable with a weakened its bargaining power. For the UK's part, it will not be under pressure of protectionist tendencies of other EU Member States as it will be developing its independent trade policy. Theresa May, the UK prime minister, has said that after completing the stiff Brexit process, her country will no longer be part of the EU Customs Union or the single market as it will be pursuing its own open trade policy. Brexit will also result in changing dynamics of investment and employment. Small and developing countries that have their major trade with the UK and the EU are likely to be affected the most. Brexit will open doors for new trade agreements between the UK and several regional blocs, as well as individual countries. It may also affect the ongoing EU trade negotiations.

Boon in disguise

On the other hand, Trump's presidency and his new TPA have provoked fears of trade wars, an end to the multilateral world trade order and a likely benefit for China. Experts are also of the opinion that "if President Trump's abrasive trade policy ends up persuading the rest of the world to cooperate better with one another, the threat of trade wars and punitive tariffs might actually do some good too, at least in the long term"⁹. The two events are likely to provide a

good opportunity to the EU and US for amalgamating their eco-political position by enlarging cooperation with Latin America and Indo-Pacific countries. It will be interesting to see the net result of Brexit on the EU-UK trade pact as this will be a deciding factor of the future world trade order along with surprising announcements from Washington on multilateral negotiations on trade and investment. ■

Mr. Chatterjee is executive director at CUTS International and Mr. Mangla is Fellow at CUTS International.

Notes

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South Asia to remain top investment destination

According to the *World Investment Report 2017: Investment and the Digital Economy*, South Asia is expected to remain one of the preferred foreign direct investment (FDI) destinations mostly due to stable flows to India and a rise in flows to Pakistan.

The annual publication of the United Nations Conference on Trade and Development (UNCTAD) projects that global investment flows will increase to almost US\$1.8 trillion in 2017, continuing to US\$1.85 trillion in 2018, due to a higher economic growth across major regions. However, the Report cautions about policy uncertainty and geopolitical risks that could hamper the recovery.

After a strong rise in 2015, global FDI flows had lost growth momentum in 2016. In developing Asia, the inflows declined by 15 per cent to US\$443 billion. The region still remained the second largest FDI recipient in the world, with China, Hong Kong (China), Singapore and India ranking among the top 10 FDI host economies. South Asia saw the rise of FDI by six per cent, to US\$54 billion. FDI flows to India were largely flat at about US\$44 billion in 2016, up only one per cent from 2015. This is despite a historically high number of announced greenfield projects in 2015.

FDI to Pakistan rose by 56 per cent, pulled by China's rising investment in infrastructure related to the One Belt One Road Initiative. Some projects currently under construction under the overall framework of the China-Pakistan Economic Corridor have also attracted a large amount of foreign investment in infrastructure, especially electricity generation and transport.

FDI outflows from developing Asia rose by seven per cent to US\$363 billion. This was primarily due to



Digital economy is a key driver of growth and development but it comes with a host of policy challenges.

surging cross-border merger and acquisition purchases by Chinese firms. FDI outflows from South Asia declined by 29 per cent to only US\$6 billion in 2016, as India's outward FDI dropped by about one third. The signing of a tax treaty by the Indian and Mauritian Governments in May 2016 might have contributed to reduced round-tripping FDI.

After a high of US\$44 billion in 2015, FDI inflows to the 48 least-developed countries (LDCs) contracted by 13 per cent to US\$38 billion. FDI into LDCs in Asia and Oceania also retreated, by 14 per cent to US\$7 billion. Despite this retreat, Bangladesh and Cambodia, two manufacturing exporters, performed well. Bangladesh became the fourth largest FDI host among LDCs with a record US\$2.3 billion in inflows. China remained the largest investor in the group. Its FDI stock in LDCs was almost three times more than the next largest investor's at the end of 2015.

Official development assistance (ODA) tends to dominate external financial flows to LDCs, including FDI flows. It is due to the fact that various LDCs are major ODA recipients: Afghanistan was the second largest recipient of ODA in the world in 2015. The dip in FDI flows in 2016 made them fall behind remittances, too. Nearly 40 per cent of aggregated remittances to LDCs in the last five years (2012–2016) went to Bangladesh and more than 15 per cent to Nepal.

FDI to LDCs is expected to recover in 2017. Foreign investors are bullish about the LDCs' potential in manufacturing and services, although oil and gas will continue to dominate FDI in the near future. South-based investors continue to show a keen interest in LDCs. Regional integration could also contribute to higher FDI flows to LDCs. Intraregional FDI, especially from China and India, is likely to grow in Bangladesh and Nepal as well.

The theme of this year's Report is "investment and the digital economy". The Report argues that digital economy is a key driver of growth and development. However, it comes with a host of policy challenges, including the need to bridge the digital divide, minimize potential negative social and development impacts and deal with complex internet-specific regulatory issues. Regional cooperation for investment in internet infrastructure is expected to make infrastructure projects more attractive for international investors. Overall, a rules-based investment regime that is credible, has broad international support and aims at sustainability and inclusiveness can help reduce uncertainty and improve the stability of investment relations. ■

(Adapted from the "World Investment Report 2017: Investment and the Digital Economy")



A champion of South Asian cooperation

DR. SAMAN KELEGAMA, a champion of deeper regional cooperation in South Asia, passed away prematurely in June 2017. He was 58.

Dr. Kelegama was the Executive Director of the Institute of Policy Studies of Sri Lanka (IPS) from 1995 until his demise. He served on the Regional Advisory Board of *Trade Insight*. He also served on the Board of Directors of many government, private sector and professional institutions, as well as on the governing boards of other regional and international institutions.

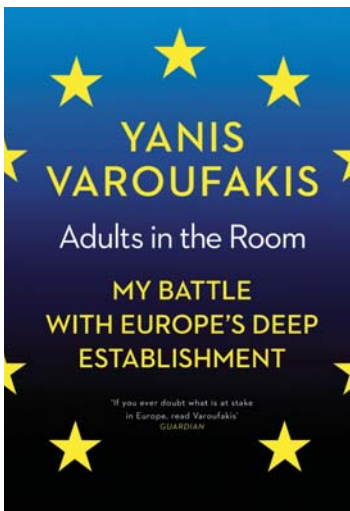
His sudden demise was an irreparable loss for, among others, the research and policymaking community in South Asia and beyond. A widely respected scholar and passionate advocate of regional cooperation and integration in South Asia, he was a key figure behind the launch of the South Asia Economic Summit (SAES). Launched in 2008, SAES has become a premier platform for advancing the cause of the South Asian integration agenda. Five think tanks, including South Asia Watch on Trade, Economics and Environment (SAWTEE), take turns to organize the Summit every year. One of his visions for an integrated South Asia was a South Asia Economic Union.

At SAWTEE, the publisher of *Trade Insight*, he is fondly remembered as a soft-spoken man, the depth of whose knowledge and scholarship was matched by an exceptional humility. His encouragement to the *Trade Insight* team and constructive suggestions will be missed.

Dr. Kelegama obtained his D.Phil (Econ) from Oxford University, UK in 1990, with an MSc (Econ) from Oxford University and an MSc (Maths) first class degree from the Indian Institute of Technology (IIT), Kanpur, India.

He was a Fellow of the National Academy of Sciences of Sri Lanka and the Sri Lanka Economic Association. He was a Visiting Fellow at the Australia South Asia Research Centre, Australian National University, Canberra, Australia (1998); Salzburg Fellow (1997); USIS International Visitor (1993); and Visiting Fellow, Institute of Social Studies, The Hague, The Netherlands (1992/3). He was a Visiting Lecturer at the University of Colombo, Post-Graduate Institute of Management (PIM), Sri Lanka, Bandaranaike Diplomatic Training Institute (BDTI), Sri Lanka and several other institutions. He served as a consultant to the World Bank, Asian Development Bank, United Nations Development Program, United Nations Industrial Development Organization, International Labour Organization, United Nations Economic and Social Commission for Asia and the Pacific, Commonwealth Secretariat, among other organizations.

He served as the co-editor of the South Asia Economic Journal which is published by Sage International Publications, and served on the Editorial Board of the PIM Journal – Sri Lanka Journal of Management. He published a number of books and over 100 articles in refereed journals. Most of his writings have been on the Sri Lankan economy, regional integration and World Trade Organization issues. ■



Outsider in the room

Title: Adults in the Room: My Battle with Europe's Deep Establishment

Author: Yanis Varoufakis

Publisher: Bodley Head

ISBN: 97981847924469

Dikshya Singh

During the first half of 2015, the Greek debt crisis— and the negotiations between Greece and its creditors— was prominently featured in the global press. One of the reasons for the global fixation on the negotiations was the iconoclastic Greek finance minister, Mr. Yanis Varoufakis, who was in charge of negotiating on behalf of the indebted nation. The motor-cycle-riding, leather overcoat-wearing economist was the outsider, who tried to free Greece from a debtor's prison. He ultimately failed after six tumultuous months of negotiations, despite the mass support of the Greek people.

Mr. Varoufakis has published his memoir two years after his brief stint as finance minister of Greece. It recounts what actually happened behind the closed doors as Greece negotiated with the troika—the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF). *Adults in the Room: My Battle with Europe's Deep Establishment* provides a rare glimpse of the political power play that shapes the policies in the European Union (EU) and the Eurozone within it.

Opposing the bailouts, Mr. Varoufakis had argued that the conditions of austerity and higher tax rate would further push the near-bankrupt nation into a vicious circle of indebtedness by eroding its capacity to pay back. In the book, he has made a case that the first bailout of the Greek banks in reality, pushed by Germany and France, was to stem the possible contagion to their own financial systems that were

overexposed to the near-bankrupt banks. When Syriza, the left-wing alliance headed by Mr. Alexis Tsipras, won elections in January 2015, Mr. Varoufakis was appointed negotiator-in-chief. His primary mandate was to reject the programmes of austerity imposed by the troika on the previous governments in return for bailouts, which had left Greece nursing an unemployment rate of 25 per cent and a severe economic contraction.

The negotiations are portrayed as a battle between insiders—the deep establishment of Europe that had already decided upon the result of the consultations—and outsiders like Mr. Varoufakis, who refuse to toe the prescribed line. During the negotiations, Mr. Varoufakis was depicted as irreverent and hostile towards the existing institutions and the procedures within the EU and the Eurozone. In the book, he has tried, and somewhat succeeded, to clarify his position and proposals and the rationale behind them. But, the parties on the other side of the table wanted the Greeks to continue with the existing programs.

At times, the book reads like the plot of a political thriller. The protagonist is Mr. Varoufakis—a smart, virtuous and upright professor, who was whisked into the multi-national game of political negotiations to free his countrymen from debt bondage. The antagonists range from German Finance Minister Mr. Wolfgang Schäuble, who would rather see Greece out of the Eurozone to discipline other European nations,

to European ministers who agreed with the proposals forwarded by Mr. Varoufakis but condemned them in public. Most importantly, Greek PM Mr. Alexis Tsipras is portrayed as the man who betrayed Mr. Varoufakis and the Greek people surrendering to the troika, agreeing to harsher conditions for subsequent bailouts.

Comparing the unfolding of the events with classical Greek and Shakespearean tragedies, the author seems to be trying to absolve himself of the failure to free Greece from a debt spiral. One wonders what might be the flaw of the hero of this narrative—trusting nature, or self-importance. Whatever the shortcoming of the central character, this book has succeeded in portraying the undemocratic nature of governance in the EU. In comparison to democratically elected ministers, technocrats and bureaucrats at the EC, the ECB and the IMF have had more say in designing each European country's policies.

The state of the Greek economy has improved marginally since Mr. Varoufakis' resignation. Unemployment is still around 21 per cent, although economic contraction seems to have ended. The Tsipras government has since signed up for the third bailout, accepting conditions harsher than the ones previous governments had agreed to. One wonders how things would have played out if Mr. Varoufakis's plans had been implemented.

Ms. Singh is Research Officer at South Asia, Watch on Trade, Economics and Environment.

Collective marks for South Asia

Although the right emanating from a collective mark is protected, it is always subject to some limitations and conditions.

Saroj Raj Regmi

Collective mark is a concept in the law of intellectual property about the proprietary rights of the members of a group over particular trademarks, where trademark can be defined as a mark which indicates the symbol of a business entity in the course of trade for the purpose of identifying the trade origin. Collective marks indicate a connection in the course of trade, but such connection is not with a particular manufacturer. It is with an association of persons of which such manufacturer is a member. The collective mark is not owned by any individual manufacturer or member of the association. It is collectively owned and possessed by the association of persons¹.

Collective property

The function of collective marks is to distinguish and identify the goods or services of the members of the association of persons which owns such collective marks. The association of persons generally adopts some device, name, or symbol to be used by its members to indicate their membership of such association to the members of trade, general public or others connected with the goods or services offered by the association².

Collective marks are intellectual property and are conceptually similar to trademarks and service marks. Technically, there are two types of collective marks³: Collective Trademarks and Service Marks, and Collec-

tive Membership Marks. Collective Trademarks and Service Marks are related with the product of goods and services of a certain group. Since Collective Trademarks and Service Marks are the identity and features of any business entrepreneurs, they show the source of the products and services sold by the members of the collective and distinguish the products from those of the competitors. It is not the collective itself that sells products or services but its members.

On the other hand, Collective Membership Marks, like collective trademark, are also used with the purpose of indicating membership of a collective group. Usually, organizations register their group name to protect its use from non-members. The collective does not use the mark in commerce to identify the source of its product or service. In order to be registrable, the mark needs to be generally used by the members of the collective. Members can use the mark on membership cards, wall plaques, or rings to show their membership. Occasional use or use by specific members of the group does not make the mark a collective membership mark. For example, the mark AAA® inside an oval indicates membership of the American Automobile Association. Similarly, FTD is a collective membership mark that signals that a specific flower shop is part of a flower delivery system. In order to use the FTD mark, the shops need to pay

a membership fee and meet certain requirements⁴.

Collective marks also have some special features and prerequisites to be registered legally and be protected with lawful proprietary rights. Some of the general features that collective marks possess are found in Indian legislation⁵:

- A collective mark shall not be registered if it is likely to create confusion in or deceive the public,
- The application for registration of a collective mark should be accompanied by the regulations which govern the use of the collective mark,
- Any amendment proposed in connection with regulations shall be filed first with the Registrar and accepted and published by him before being incorporated into original regulations.

Collective marks are often used to promote products which are characteristic of a given region. In such cases, the creation of a collective mark has not only helped to market such products domestically and, occasionally, internationally, but also provided a framework for cooperation between local producers. The creation of a collective mark must go hand in hand with the development of certain standards and criteria, including a common strategy. In this sense, collective marks may become powerful tools for local development⁶.

In Nepal, collective marks have not been defined separately by statutory provisions. Patent, Design and Trademark Act, 1965 exclusively classifies patents, design and service marks or trademarks as intellectual property protected under the law. There are also a few provisions, related with the protection of trademarks or service marks with classification, stating that the government may classify such trademarks or service marks as seem appropriate. However, the term “collective marks” has not been expressed by the Nepalese Intellectual Law. In this sense, collective marks in Nepal have not been protected through explicit provisions. Patent, Design and Trademark Act, 1965 also mentions that any “person” may file an application for the registration of trademarks or service marks. This means “collective marks” as such cannot be registered by any organization or group. It can be said that collective rights as such are not addressed by the law in Nepal.

Regarding the region, in spite of immense opportunities and some of the most dynamic entrepreneurs in the world, studies reveal challenges to trade and businesses in South Asia. The region has the second worst business environment in the world. It performs poorly on most business indicators, not to mention corruption. Law and order could be improved to strengthen the protection of property rights. Business institutions, chambers of commerce and media can guard against government’s predation.

In such a context, the challenges in the application of collective marks in South Asia could be:

- Lack of adequate policy and legal provisions for the protection of collective marks in some countries,
- Markets unfavourable for competition,
- Non-uniform market practices and monopoly of certain industries in certain products and goods,

The function of collective mark is to inform the public about certain features of the product that uses it.

- Ambiguity in differentiation of trademarks, service marks and collective marks, in terms of legal protection and practices,
- Absence of regional frameworks for the protection of collective marks,

There are other problems associated with the application of collective marks in South Asia. The lack of a favourable environment for business and trade has overwhelmingly disturbed their application. This indicates that collective marks are being exercised by business enterprises and entrepreneurs to a limited extent only.

Conditional right

The owner of the collective mark is responsible for ensuring compliance with certain standards (usually fixed by regulations concerning the collective mark use) by its members. Thus, the function of the collective mark is to inform the public about certain features of the product that uses it. Most countries require that an application for a collective mark be accompanied by a copy of the regulations, which govern the use of the collective mark⁷. Although the right emanating from a collective mark is protected, it is always subject to some limitations and conditions depending on governing regulations, policies and practices of the respective jurisdictions. Therefore, states should formulate adequate laws with the provision of basic principles. Such laws have to be enforced with due procedures. Moreover, the provisions have to be judicially interpreted and established as precedents for better future practices.

A healthy exercise of collective rights requires a favourable environment: legal protection and effectiveness of regulatory mechanisms of state organs. One can expect many reforms in this respect in South Asian countries, including:

- Creating regional frameworks for uniform provisions and practices regarding the protection and application of collective marks in South Asia,
- Developing National Statutes pursuant to those regional frameworks for certainty, clarity and consistency in the application of such marks in the region,
- Generating principles from the best practices adopted by other countries of the world,
- Giving special direction through judicial principles to allow best practices to be established,
- Involving technical and legal human resources for generating policy, laws and principles related with collective marks. This ensures their efficient functioning and competency in application. ■

Mr. Regmi is Deputy Registrar at the Supreme Court of Nepal.

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- 7 *ibid.*

Water scarcity forces farmers to cities

PAKISTAN'S water issues cannot be seen in isolation, but must be dealt with while considering their economic, political and cultural aspects, environmentalist Dr. Daanish Mustafa said while delivering a lecture on Hydro-hazardscapes of Climate Change in Pakistan organized by the Sustainable Development Policy Institute (SDPI) on 5 April 2017. Dr. Mustafa, Reader at the Department of Geography at King's College London also pointed out that water scarcity and high water salinity were forcing poor farmers in the Indus basin to migrate to urban centres.

Contrary to the popular view of mitigating climate change and

its impact, Dr. Mustafa was of the view that this was not the correct strategy. Instead, he suggested that immediate issues of the people should be addressed, including contemporary problems which the people were facing in the country such as water scarcity.

Noting that people in the saline groundwater zone mostly in the lower reaches of the Indus Basin were facing an urgent problem, Dr. Mustafa said that small farmers were bearing most of the brunt of water.

He said that most of these farmers had to buy their inputs on credit, but owing to poor harvests from low water tables and high salinity, there were often unable to repay their debts.

"This phenomenon is contributing to an urbanisation rate which is higher than anywhere else in South Asia," Dr. Mustafa explained.

He added that the debate on water issues in Pakistan had become a source of mistrust between the people from different provinces. Keeping in view their extreme positions, it was really hard to converge their opinions while finding the solutions to their water problems.

While the real water and security challenges were substantial, the cultural and social capital realized through water must not be underestimated, he concluded. ■

Nepal-India informal trade in farm inputs discussed

A study has found that Nepali farmers are dependent on informal imports from India to meet their requirement of seeds, chemical fertilizers and agriculture machineries.

The findings of the study titled "Linkages and impacts of cross-border informal trade in agricultural inputs between Nepal and India" conducted by South Asia Watch on Trade Economics and Environment (SAWTEE) in association with Consumer Unity & Trust (CUTS) International, an India based think-tank, was discussed in an event on 2 May 2017 in Kathmandu.

The study was conducted to explore the extent of informal cross-border trade in agricultural inputs across specific locations along the India-Ne-



pal border and find out the impact and drivers of such informal trade.

Its findings point out lack of timely and reliable availability of fertilizers as the major reason for farmers in Nepal to buy fertilizers from across the border.

Moreover, difference in price, almost 20 per cent less in India than in

Nepal due to Indian government's subsidy, seem to be prompting Nepali farmers to buy inputs from India. Likewise, the study also found that farmers are buying restricted to Indian crop varieties due to their better productivity.

During the function, experts emphasized the need for providing timely inputs such as seeds and fertilizers to farmers to minimize informal trade at the Nepal-India border. Participants of the programme pointed out the need to regulate the amount of pesticides and other similar agro-chemical that enters Nepal through the informal channel. The need to educate farmers on the health hazards of excessive use of agro-chemicals was also emphasized. ■

World Bank funds Brahmaputra water transport



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PROCESSING of the first phase of the World Bank-funded US\$150 million (around INR 10 billion) infrastructure development project of the Inland Water Transport (IWT) Directorate for the Brahmaputra river has started and it is expected that this phase of the project could be completed by 2022. The World Bank sanctioned the project in the 2017-18 financial year.

This was disclosed by IWT Joint Director Mr. M. Rahman in a presentation made at a function organized by the Assam-based Rashtriya Gramin Vikash Nidhi (RGVN) in collaboration with Consumer Unity & Trust Society (CUTS) International on promoting navigational usage of inland waterways in Ganga and Brahmaputra basins.

The project includes two broad components—a long-term strategic plan and institutional and capacity development, and improvement of passenger ferry services. While

the first component will cost US\$15 million, the second one is estimated to cost US\$135 million, said the IWT Joint Director Mr. M Rahman.

He apprised the participants of the programme that the project will also undertake a study on the natural flow channel of the river, which is called right of the river, and the impact of the project on the riparian people and river biodiversity.

Around 6.9 million people in Assam use the IWT ferry services annually on the Brahmaputra river. There are 100 ferry services of the IWT on the Brahmaputra, Barak and their tributaries but many are operated by unorganised service providers, especially around Dhubri region.

The ferry service on the Brahmaputra suffers from lack of adequate infrastructure facilities and frequent shift in the river's course.

The event was a part of the CUTS International's study on navigability in Ganga and Brahmaputra basins. ■

Global Food Policy Report launched in Sri Lanka

A workshop on the topic 'Emerging Food Safety and Quality Risks in South Asia: Challenges and Opportunities for Sri Lanka', organized by the Ministry of Primary Industries (MPI) and Institute of Policy Studies of Sri Lanka (IPS) in collaboration with the International Food Policy Research Institute (IFPRI) was held on 8-9 May 2017 in Battaramulla.

The main aim of the workshop was to understand the problems and issues associated with food safety and quality issues in Sri Lanka, share the lessons from other South Asian countries, and develop a roadmap for the food safety policies in Sri Lanka.

The keynote address was delivered by Dr. P.K. Joshi, Director-South Asia of IFPRI. During the event, *Global Food Policy Report 2017*, IFPRI's flagship publication, was launched by Minister of Primary Industries, Mr. Daya Gamage. The report is a comprehensive review of major policy and development activities related to agriculture, food security and nutrition.

IPS Research Fellow, Dr. Manoj Thibbotuwawa, represented IPS at the head table and also served as the chairperson of the policy theme of the group work session that discussed the "Emerging Food Safety and Quality Risks: Way forward". ■



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

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